

General Conditions describe the government's and contractors' rights and obligations in various types of contractual situations. Through the addition of clauses and additional statements, specific to an individual requirement, they form the foundation upon which contracts are built.

Prior to the introduction of the *Standard Acquisition Clauses and Conditions* Manual, General Condition sets were attached to bid solicitation packages. This practice has been replaced by incorporation by reference. The General Conditions specified in standard clause K0000D form part of the procurement document.

To improve readability, each set of General Conditions include an index section (article) - 00, which details the various subjects covered within the condition set. As well, each section has an effective date. As conditions are updated and modified, only the affected section will receive a new effective date, corresponding to the effective date for the whole condition set; thus making changes more readily identifiable by users.

The following list identifies those sets of General Conditions which are currently in use by the Department of Public Works and Government Services, their latest revision date and their title.



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**1026A 00 (2005-12-16) Supplies - Firm Price****Public Works and Government Services Canada**

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**1026A 01 (2004-12-10) Interpretation**

1. In the Contract, unless the context otherwise requires,

"Agreement" means the particular agreement or contract of which, in each specific case, these general conditions are made a part;

"Canada", "Crown", "Her Majesty", "the Government" means Her Majesty the Queen in right of Canada;

"Contract" includes the Agreement, these general conditions and any supplemental general conditions, specifications, labour conditions, schedules and any other documents referred to in the Agreement as constituting the Contract;

"Contract Price" means the amount expressed in the Contract to be payable to the Contractor for the finished work;

"cost" means cost determined in accordance with Contract Cost Principles 1031-2 (as revised to date of Contract) and any subsequent revisions thereof;

"equipment" includes machinery, apparatus, jigs, tools, dies, gauges, instruments and equipment of all kinds;

"finished work" means the defence supplies or defence project or other work completed in accordance with the provisions of the Contract;

"Government Issue" means all materials, parts, components, equipment, specifications, articles and things which may be supplied to the Contractor by or on behalf of Canada for the purposes of the Work;

"herein", "hereby", "hereof", "hereunder" and similar expressions, when used in any section, shall be understood to relate to the Contract as a whole and not merely to the section in which they appear;

"Inspector" means the person designated as such by the Contract and any person acting on behalf of Canada or the Minister as the Inspector under the Contract;

"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;

"Minister" means the minister responsible for the Contract and includes his deputy minister and any acting, associate or assistant deputy minister and any duly authorized officer or representative of the Minister;

"Specifications" means the specifications, plans, drawings, designs and models, if any, furnished to the Contractor by Canada or the Minister for the carrying out of the Contract;

"supplemental general conditions" means any other general conditions forming part of the Contract;

"Work" means the whole of the work, materials, matters and things required to be done, furnished and performed in order to carry out the Contract;

2. Words in the singular number includes the plural and vice versa.
3. In the event of any inconsistencies, the provisions of the Agreement and these general conditions shall prevail over the specifications and the provisions of the Agreement and supplemental general conditions shall prevail over these general conditions.
4. The Contract is a defence contract within the meaning of the *Defence Production Act* and shall be read accordingly.

#### **1026A 02 (1999-12-13) Powers of Minister**

The Minister is the agent of Canada for all purposes of the Contract. Nothing contained in or omitted from the Contract shall restrict any of the rights or powers of Canada or the Minister under the *Defence Production Act* or otherwise. Every right, remedy, power and discretion vested in the Minister under the Contract or otherwise shall be cumulative and non-exclusive.

#### **1026A 03 (2000-12-01) Assignment and Subletting**

1. The Contractor shall not assign the Contract or sublet any of the Work without the prior written consent of the Minister and any assignment or subletting made without such consent shall be of no effect provided that, unless the Contract or the Minister directs otherwise, the Contractor may sublet such portions of the Work as is customary in the carrying out of similar contracts. No assignment or subletting shall relieve the Contractor from any of its obligations under the Contract or impose any liability upon Canada or the Minister to an assignee or subcontractor.
2. Unless otherwise agreed to by the Minister in any assignment or subletting, the Contractor agrees to bind each assignee or subcontractor by the terms of the general conditions, the supplemental general conditions, if any, the Labour Conditions, the drawings and specifications as far as applicable to the Work.
3. No act or omission of the Contractor, whether before or after the entry into the Contract, shall have the effect of rendering any monies payable by Canada under the Contract payable to any person, firm or corporation other than the Contractor, unless Canada consents thereto.
4. Subject to the preceding provisions of this section, the Contract shall inure to the benefit of and shall be binding upon the successors and assigns of Canada and the Contractor, respectively.

#### **1026A 04 (1991-06-01) Conduct of the Work**

1. The Contractor agrees to carry out the Work diligently and to provide efficient supervision and inspection thereof and that the Work will be of proper quality, material and workmanship and in full conformity with the specifications, drawings, models or samples, if any, and all other requirements of the Contract.
2. No materials or parts shall be used or processed and no finished work shall be submitted for acceptance or shall be delivered unless or until approved by the Contractor's inspection staff and,

wherever practicable, marked with an approval stamp satisfactory to the Inspector. The Contractor shall keep proper and adequate inspection records which shall at all times be open to examination by the Inspector who may make copies thereof and take extracts therefrom.

3. The Minister and the Inspector shall have access to the Work at all times and to the plant and premises where any part of the Work is being carried on, and may make such inspections and tests of the Work and of parts, materials and work-in-process as the Minister or the Inspector may think fit. The Contractor shall provide at its own expense all assistance and facilities, test pieces and samples which the Minister or the Inspector may reasonably require for the carrying out of any such inspections and any such tests as aforesaid, and shall forward at its own expense such test pieces and samples to such person or location as the Minister or the Inspector may direct. The Contractor shall at its own expense provide the Minister and the Inspector with such accommodation as they may require for the purpose of such inspections and any such tests and for the exercise of any other powers conferred upon them hereunder.
4. The Contractor shall not stop or suspend work pending the settlement or determination of any differences arising under the Contract, unless so instructed by the Minister.

**1026A 05 (1999-12-13) Specifications, Drawings, etc.**

1. All Specifications, drawings, patterns, samples and other information furnished to the Contractor in connection with the Contract shall be used by the Contractor solely for the purpose of carrying out the Work and for no other purpose except with the consent in writing of the Minister and shall remain the property of Canada and be returned to Canada or the Minister upon demand.
2. Any minor part or parts not shown in the Specifications, drawings, patterns or samples, but which are necessary for the due completion of the Work shall be deemed to be included in the Contract price and no addition to the Contract Price will be allowed by reason of such omission, unless otherwise agreed to by the Minister.

**1026A 06 (1991-06-01) Inspection**

All work shall be subject to inspection by the Inspector prior to acceptance. Should the Work be defective in materials or workmanship or otherwise not be in accordance with the requirements of the Contract, the Inspector shall have the right to reject the Work or to require its correction. Inspection by the Inspector either at the plant of the Contractor or of any of its subcontractors shall not relieve the Contractor from responsibility for defects or other failure to meet the requirements of the Contract. The Contractor agrees to accept and be bound by the Inspector's interpretation of the meaning of the specifications.

**1026A 07 (2000-12-01) Title and Acceptance**

Except as otherwise provided in the Contract, title to the Work or any part thereof shall vest in Canada upon delivery to the consignee and acceptance thereof by the consignee. Acceptance by the consignee of the Work or any part thereof shall be deemed to be acceptance thereof by Canada.

**1026A 08 (2004-12-10) Warranty**

Notwithstanding prior acceptance of the finished work, and without restricting any other term of the Contract or any condition, warranty or provision implied or imposed by law, the Contractor, if requested by the Minister to do so at any time within twelve (12) months from the date of delivery, shall:

- (a) replace or make good at its own expense any finished work, excluding Government Issue incorporated therein, which becomes defective or which fails to conform to contract requirements as a result of faulty or inefficient manufacture, material or workmanship;
- (b) deliver such finished work free from all defects to the delivery point specified in the Contract, unless otherwise agreed to by the Minister;

provided that where, in the opinion of the Minister, it is not expedient to remove such defective finished work from its location, the Contractor shall replace or make good the defective finished work at such location, and shall be paid the actual cost incurred in so doing (including reasonable travelling and living expenses) with no allowance thereon by way of overhead profit, less a sum equivalent to the cost of making good the defective finished work had it been made good at the Contractor's plant.

**1026A 09 (1999-12-13) Government Issue**

1. All items comprised in any Government Issue shall be used by the Contractor solely for the purposes of the Contract and shall always be and remain the property of Canada and wherever feasible the Contractor shall maintain adequate accounting records of all Government Issue and shall mark the same as being Canada's property.
2. All Government Issue (except such as are installed or incorporated in the Work) shall be returned to Canada upon demand, in the same condition as when supplied to the Contractor provided that the Contractor shall not be responsible for any loss or damage resulting from ordinary wear and tear or causes beyond the Contractors' control.
3. All scrap and waste materials derived from any Government Issue or from any other materials, articles or things which are the property of Canada, shall, unless otherwise specifically provided herein, remain the property of Canada and shall be disposed of only as prescribed by the Minister.

**1026A 10 (2004-12-10) Conditions Precedent to Payment**

No payment shall be made to the Contractor unless or until,

- (a) invoices, inspection notes and all other documents prescribed from time to time by the Minister or Inspector are submitted in accordance with the terms of the Contract or instructions of the Minister, and
- (b) the Contractor, if required to do so, establishes to the satisfaction of the Minister that all materials, parts, work-in-process or finished work in respect of which payment is being made are free from all claims, liens, attachments, charges or encumbrances.

**1026A 11 (2004-12-10) Indemnity Against Claims**

Except as otherwise provided in the Contract, the Contractor shall indemnify and save harmless Canada and the Minister from and against any and all claims, damages, loss, costs and expenses which they or either of them may at any time incur or suffer as a result of or arising out of,

- (a) any injury to persons (including injuries resulting in death) or loss of or damage to property of others which may be or be alleged to be caused by or suffered as a result of the carrying out of the Work or any part thereof; and
- (b) any liens, attachments, charges or other encumbrances or claims upon or in respect of any materials, parts, work-in-process or finished work delivered to or in respect of which any payment has been made by Canada.

**1026A 12 (2000-12-01) Title on Progress Payments**

Upon any payment being made to the Contractor for or on account of materials, parts, work-in-process, or finished work, either by way of progress payments or accountable advances or otherwise, title in and to all materials, parts, work-in-process and finished work so paid for by such progress payments or accountable advances or otherwise shall vest and remain in Canada unless already so vested under any provision of the Contract and the Contractor shall be responsible therefor in accordance with the provisions of section 14 hereof, it being understood and agreed that such vesting of title in Canada shall not constitute acceptance by Canada of such materials, parts, work-in-process and finished work and shall not relieve the Contractor of its obligations to perform the Work in conformity with the requirements of the Contract.

**1026A 13 (1999-12-13) Further Assurances**

Wherever it is herein provided that title to any parts, materials, work-in-process or finished work becomes vested in Canada, the Contractor shall execute such conveyances thereof and other instruments as the Minister may request.

**1026A 14 (1999-12-13) Care of Crown Property**

Except as otherwise provided in the Contract, no insurance shall be carried by the Contractor on any property, title to which is vested in Canada, including any machinery, equipment and production tooling which is the property of Canada. The Contractor shall take reasonable and proper care of all property, title to which is vested in Canada, while the same is in, on or about the plant and premises of the Contractor or otherwise in his possession or subject to his control and shall be responsible for any loss or damage resulting from his failure to do so other than loss or damage caused by ordinary wear and tear.

**1026A 15 (1991-06-01) Time of Essence**

Time shall be deemed to be of the essence of the Contract, provided that the time for completing any of the Work which has been or is likely to be delayed by reason of force majeure or other cause beyond the reasonable control of the Contractor shall be extended by a period equal to the length of the delay so caused, provided that prompt notice in writing of the occurrence causing or likely to cause such delay is given to the Minister.

**1026A 16 (2000-12-01) Security and Protection of the Work**

1. The Contractor shall keep confidential all information provided to the Contractor by or on behalf of Canada in connection with the Work, and all information developed by the Contractor as part of the Work, and shall not disclose any such information to any person without the written permission of the Minister, except that the Contractor may disclose to a subcontractor, authorized in accordance with this Contract, information necessary to the performance of the subcontract. This section does not apply to any information that:
  - (a) is publicly available from a source other than the Contractor; or
  - (b) is or becomes known to the Contractor from a source other than Canada, except any source that is known to the Contractor to be under an obligation to Canada not to disclose the information.
2. When 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 shall, at all times, take all measures reasonably necessary for the safeguarding of the material so identified, including those set out in the Department of Public Works and Government Services Industrial Security Manual and its supplements and any other instructions issued by the Minister.
3. Without limiting the generality of subsections 1 and 2, when the Contract, the Work, or any information referred to in subsection 1 is identified as TOP SECRET, SECRET, CONFIDENTIAL or PROTECTED by Canada, the Minister shall be 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, and the Contractor shall comply with, and ensure that any such subcontractor complies with, all written instructions issued by the Minister dealing with the material so identified, including any requirement that employees of the Contractor or of any such subcontractor execute and deliver declarations relating to reliability screenings, security clearances and other procedures.

**1026A 17 (2000-12-01) Patent Claims and Royalties**

1. In this section, "Royalties" includes license fees and all other payments analogous to royalties for, and also claims for damages based upon, the use of infringement of any patent, registered industrial design, or copyright, by the Contractor in, or the furnishing of any engineering or technical assistance or services to the Contractor for the performance of the Contract or any part thereof.
2. Canada shall indemnify the Contractor against claims, actions or proceedings for the payment of royalties in respect of anything the model, plan, design or specification of which shall have been supplied by or on behalf of Canada to the Contractor, but this indemnity shall apply only to the Contract.
3. Except as provided in subsection 2 of this section, and subject as hereinafter provided, the Contractor shall indemnify Canada against claims, actions, or proceedings for the payment of royalties in respect of the carrying out of the Contract, or in respect of the use of or disposal by or for Canada of articles and supplies furnished hereunder.
4. The Contractor shall forthwith notify the Minister of all royalties which the Contractor or any of its subcontractors will or may be obligated to pay or proposes to pay for or in respect of the carrying out of the Contract, and the basis thereof, and the parties to whom the same are payable, and shall from time to time promptly advise the Minister of any and all claims or arrangements made or proposed which would or might result in further or different payments by way of royalties being made by the Contractor or any of its subcontractors.
5. If and to the extent that the Minister so directs, the Contractor shall not pay, and shall direct its subcontractors not to pay any royalties in respect of the carrying out of the Contract except with the consent in writing of the Minister and subject to such conditions as the Minister may impose.
6. From and after the giving of any such direction, and subject to compliance by the Contractor with the foregoing provisions, Canada shall relieve and indemnify the Contractor from and against all claims, actions or proceedings for payment of such royalties as are covered by such direction.

7. The Contract Price shall be reduced by the amount of royalties included therein to which the indemnity provided by subsection 6 of this section shall apply.

**1026A 18 (2003-12-12) Patent Licenses and use of Technical Information**

1. The Contractor shall promptly report and fully disclose to the Minister any and all inventions, methods or processes, whether patented or unpatented, conceived or made in the course of carrying out the Work and the Contractor agrees to and does hereby grant unto Canada a non-exclusive, irrevocable, royalty-free license to make, have made and use for military purposes throughout the world and to sell or otherwise dispose of any article or thing embodying or using any and all such inventions, methods or processes, and a similar license to practice or cause to be practiced any such method or processes.
2. Canada may duplicate, use, and disclose in any manner for Government purposes, including delivery to other governments for the furtherance of mutual defence of Canada and such other governments, all or any part of the technical information including reports, drawings, blueprints, and other data specified to be delivered by the Contractor under this Contract.

**1026A 19 (1991-06-01) Suspension of Work and Change in Specifications**

The Minister may, at any time and from time to time, order a suspension of the Work in whole or in part, and make modifications of, changes in or additions to the specifications, changes in methods of shipment or packing and in the place or time of delivery. All directions given by the Minister with respect of the foregoing shall be complied with by the Contractor. If any such suspension, modification, change or addition shall result in an increase or decrease in the cost of the Work, the Contract Price shall be adjusted accordingly provided that the Contractor shall in no event be entitled to compensation for any loss of anticipated profits and provided further that minor increases or decreases in cost shall be disregarded.

**1026A 20 (1992-04-01) Use of Canadian Labour and Materials**

CANCELLED

**1026A 21 (2000-12-01) Default by Contractor**

1. If the Contractor is in default in carrying out any of the terms, conditions, or obligations of the Contract, or if the Contractor becomes bankrupt or insolvent, or has a receiving order made against it, or makes an assignment for the benefit of creditors, or if an order is made or resolution passed for the winding up of the Contractor, or if the Contractor takes the benefit of any statute for the time being in force relating to bankrupt or insolvent debtors, the Minister may, upon giving notice in writing to the Contractor, terminate the whole or any part of the Contract.
2. Upon the giving of such notice, the Contractor shall have no claim for any further payment save as hereinafter in this section 21 provided, but shall remain liable to Canada for all loss and damage which may be suffered by Canada by reason of the default or occurrence upon which such notice was based.
3. Notwithstanding the provisions of subsection 2 of this section, the Contractor shall not be liable for any loss or damage if the failure to perform the Contract on which the notice of termination is based arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes include but are not restricted to strikes, floods, fires, epidemics, act of God or of the Queen's enemies.
4. Upon termination of the Contract under this section, the Minister may require the Contractor to deliver to Canada, in the manner and to the extent directed by the Minister, any finished work which has not been delivered and accepted prior to such termination and any materials, parts, work-in-process, or tools, which the Contractor has specifically acquired or produced for the fulfilment of the Contract. Subject to the deduction of any claim which Canada may have against the Contractor arising under the Contract or out of the termination, Canada shall pay or credit to the Contractor the value of all such finished work delivered pursuant to such direction and accepted by Canada determined in accordance with the Contract Price and shall pay or reimburse the Contractor the reasonable and proper cost to the Contractor of all materials, parts or work-in-process delivered to Canada pursuant to such direction.
5. If after notice of termination of the Contract under the provisions of subsection 1 of this section it is determined by the Minister that the default of the Contractor is due to causes beyond the control of the Contractor, such notice of termination shall be deemed to have been issued pursuant to section 26 of these general conditions and the rights and obligations of the parties hereto shall be governed by that section.

**1026A 22 (1999-12-13) No Bribe, etc.**



The Contractor warrants that no bribe, gift, or other inducement has been paid, given, promised or offered to any official or employee of Canada for, or with a view to, the obtaining of the Contract by the Contractor.

**1026A 23 (1991-06-01) Labour and Health Conditions**

The Contractor shall comply with all labour conditions and with all health conditions and requirements, from time to time applicable to the Work.

**1026A 24 (1991-06-01) Members of the House of Commons**

No members of the House of Commons shall be admitted to any share or part of the Contract or to any benefit to arise therefrom.

**1026A 25 (1991-06-01) Notice**

Any notice to the Contractor hereunder shall be effectively given if sent by letter or by telegram, postage prepaid or with charges prepaid as the case may be, addressed to the Contractor at its address as given in the Contract or, if no address is so given, at its address as shown by the records of the Minister. Any notice so given shall be deemed to have been received by the Contractor at the time when in the ordinary course such letter or telegram should have reached its destination.

**1026A 26 (2004-05-14) Termination**

1. Notwithstanding anything in the Contract contained, the Minister may, by giving notice to the Contractor (hereinafter sometimes referred to as a "termination notice"), terminate the Contract as regards all or any part or parts of the Work not theretofore completed. Upon a termination notice being given, the Contractor shall cease work (including the manufacturing and procuring of materials for the fulfilment of the Contract) in accordance with and to the extent specified in such 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.
2. In the event of a termination notice being given under the provisions of this section, and subject as hereinafter provided
  - (a) all finished work, whether completed before the giving of such notice or completed thereafter pursuant to such notice, shall be paid for (subject to acceptance in accordance with the provisions of the Contract) on the basis of the Contract Price;
  - (b) in respect of work not completed before the giving of such notice, and not completed thereafter pursuant to such notice, the Contractor shall be entitled to be reimbursed the actual cost to the Contractor of such uncompleted work and to receive in addition an amount representing a fair and reasonable profit in respect of work done thereon. Cost shall be determined in accordance with the provisions of Contract Cost Principles 1031-2, subject to any modifications thereof which the Minister may consider to be appropriate in the circumstances;
  - (c) subject as provided in paragraph (d) of this subsection 2, the Contractor shall be entitled to be reimbursed the amount of any capital expenditures specifically authorized by the Contract or approved by the Minister for the purpose of the Contract (and actually made or incurred) to the extent that the same (less any depreciation in respect thereof already taken into account in determining cost) were reasonably and properly incurred by the Contractor in respect of and are properly apportionable to the performance of the Contract and not included in the amounts paid or payable to the Contractor in respect of finished work;
  - (d) if the Contract is exclusively a Contract for the making of capital expenditures in respect of additional equipment or plant additions, the foregoing paragraphs (a) to (c) inclusive of this subsection 2 shall not apply but Canada shall pay, or reimburse the Contractor for the reasonable and proper cost to the Contractor (not previously paid by Canada) of:
    - (i) all additional equipment which, prior to the giving of the termination notice, shall have been purchased, acquired or manufactured by the Contractor, or contracted for and for which the Contractor is obligated to make payments, and
    - (ii) all additional equipment in process of manufacture by the Contractor as at the date of the giving of such notice and all work in connection with the construction of the plant addition up to the said date, including the cost of materials and parts contracted for by

the Contractor for the purpose of such manufacture of construction and for which the Contractor is obligated to make payment.

3. Provided always that no reimbursements shall be made in respect of work which has been or may be rejected after inspection as not complying with the requirements of the Contract.
4. The Contractor shall not be reimbursed any amount which, taken together with any amounts paid or due or becoming due to the Contractor under the Contract, shall exceed the Contract Price applicable to the work or the particular part thereof.
5. Notwithstanding the provisions of any of the foregoing subsections 1 to 4 inclusive, the amounts which the Contractor shall be entitled to be reimbursed in the event of the giving of a termination notice under this section 26 shall include, subject as hereinafter provided, the costs of the Contractor of and incidental to the cancellation of obligations incurred by the Contractor pursuant to the termination notice, the cost of preparing the necessary accounts and statements with respect to work performed to the effective date of such termination and commitments made by the Contractor with respect to the terminated portions of the Work, wages which the Contractor is obligated under any laws and regulations for the time being in force, to pay to employees whose services are no longer required by reason of such termination, the costs of and incidental to the taking of an inventory of materials, components, work-in-process and finished work on hand at the effective date of the termination and other costs and expenses of and incidental to the termination, in whole or in part, of operations under the Contract provided always that payment and reimbursement under the provisions of this subsection shall be made only to the extent that it is established to the satisfaction of the Minister that the costs and expenses aforesaid were actually incurred by the Contractor and that the same are reasonable and are properly attributable to the termination of the Work or the part thereof so terminated.
6. In case of disagreement as to the amount which the Contractor is entitled to be reimbursed, the matter shall be referred to the Federal Court.
7. As far as practicable, the Contractor shall place purchase orders and subcontracts on terms that will enable the Contractor to terminate the same upon conditions and terms similar in effect to those provided in this section, and generally the Contractor shall co-operate with the Minister and do everything reasonably within its power at all times to minimize and reduce the amount of Canada's obligations in the event of termination hereunder.
8. Title to all materials, parts, plant, equipment and work-in-process in respect of which reimbursement is made to the Contractor as herein provided shall, upon such reimbursement 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 and work-in-process shall be delivered to the order of the Minister, but the materials thus taken over will in no case be in excess of what would have been required for performing the Contract in full if no termination notice had been given.
9. If the Minister is satisfied that by reason of any action taken under the provisions of this section exceptional hardships have resulted to the Contractor, then the Minister may, in his absolute discretion, grant such allowance (not to include in any case, however, any allowance or compensation for loss of profit) to the Contractor as, in the opinion of the Minister, is warranted by the circumstances.
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 or notice given by the Minister under or pursuant to the provisions of this section to the extent in this section expressly provided.

**1026A 27 (1991-06-01) Accounts**

The Contractor shall keep proper accounts and records of the cost to the Contractor of the work and of all expenditures or commitments made by the Contractor in connection therewith and such accounts and records together with the related invoices, receipts and vouchers shall be open to audit and inspection by the authorized representatives of the Minister (who may make copies thereof and take extracts therefrom) at any time until the expiration of six (6) years from the end of the calendar year in which the Contract is terminated or completed and the Contractor shall afford all facilities for such audits and inspections and shall furnish the Minister and his authorized representatives with all such information as he or they may from time to time require with reference to such accounts, records, invoices, receipts and vouchers until the expiration of six (6) years from the end of the calendar year in which the Contract is terminated or completed, but shall preserve and keep the same available for audit and inspection at any time during such retention period.

**1026A 28 (1991-06-01) Foreign Exchange**

Unless otherwise provided in the Contract or agreed to by the Minister, the Contractor shall not be entitled to any increase in the Contract Price by reason of foreign exchange fluctuations.

**1026A 29 (1991-06-01) Increased Taxes and Duties**

1. In the event of any change in any tax imposed under the *Excise Act*, the *Excise Tax Act*, or any duties imposed under the Customs Tariff after the date of the Contract and which affects the cost to the Contractor of the work, the Contract Price shall be adjusted to reflect the increase or decrease in the cost to the Contractor.
2. As a prerequisite of payment, the Contractor shall forward to the Minister a certified statement showing the increase or decrease in cost to the Contractor that is directly attributable to the change in tax or duty. Any price revision under this section may be verified by government audit.
3. For the purpose of determining the adjustment in price referred to in subsection 2 of this section resulting from any change in tax or duty described in subsection 1 of this section, where such tax or duty is changed after the date of submission of the Contractor's tender or price proposal but public notice of such change has been given by the Minister of Finance before the date of submission thereof, the change of such tax or duty shall, for the purposes of this section, be deemed to have occurred before the date of submission of such tender or price proposal.

**1026A 30 (1994-06-06) Certification - Contingency Fees**

1. The Contractor certifies that it has not directly or indirectly paid or agreed to pay and covenants that it will not directly or indirectly pay a contingency fee for the solicitation, negotiation or obtaining of this Contract to any person other than an employee acting in the normal course of the employee's duties.
2. All accounts and records pertaining to payments of fees or other compensation for the solicitation, obtaining or negotiation of the Contract shall be subject to the Accounts and Audit provisions of the Contract.
3. If the Contractor certifies falsely under this section or is in default of the obligations contained therein, the Minister may either terminate this Contract for default in accordance with the termination for default provisions of the Contract or recover from the Contractor by way of reduction to the Contract Price or otherwise the full amount of the contingency fee.

4. In this section,

"contingency fee" means any payment or other compensation that is contingent upon or is calculated upon the basis of a degree of success in soliciting or obtaining a government contract or negotiating the whole or any part of its terms;

"employee" means a person with whom the Contractor has an employer/employee relationship;

"person" includes an individual or group of individuals, a corporation, a partnership, an organization and an association and, without restricting the generality of the foregoing, includes any individual who is required to file a return with the registrar pursuant to section 5 of the *Lobbyist Registration Act*, R.S. 1985 c.44 (4<sup>th</sup> Supplement) as the same may be amended from time to time.

**1026A 31 (2000-12-01) Interest on Overdue Accounts**

1. For the purposes of this section:

"Average Rate" means the simple arithmetic mean of the Bank Rates in effect at 4:00 p.m. Eastern Standard Time each day during the calendar month which immediately precedes the calendar month in which payment is made, where the "Bank Rate" means the rate of interest established from time to time by the Bank of Canada as the minimum rate at which the Bank of Canada makes short term advances to members of the Canadian Payments Association.

"date of payment" means the date of the negotiable instrument drawn by the Receiver General for Canada and given for payment of an amount due and payable;

an amount is "due and payable" when it is due and payable by Canada to the Contractor in accordance with the terms of the Contract; and

an amount becomes "overdue" when it is unpaid on the first day following the day upon which it is due and payable.

2. Canada shall be liable to pay to the Contractor simple interest at the Average Rate plus 3 percent per annum on any amount that is overdue, from the date such amount becomes overdue until the day prior to the date of payment, inclusive. Interest shall be paid without notice from the Contractor.
3. Canada shall not be liable to pay interest in accordance with this section if Canada is not responsible for the delay in paying the Contractor.
4. Canada shall not be liable to pay interest on overdue advance payments.

**1026A 32 (2005-12-16) Conflict of Interest**

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, 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 this Contract.

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**1026B 00 (2005-12-16) Supplies - Cost Reimbursement****Public Works and Government Services Canada**

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**1026B 01 (2004-12-10) Interpretation**

1. Unless the context otherwise requires,

"Agreement" means the particular agreement or contract of which, in each specific case, these general conditions are made a part;

"Canada", "Crown", "Her Majesty" or "the Government" means Her Majesty the Queen in right of Canada;

"Contract" includes the Agreement, these general conditions and any supplemental general conditions, specifications, labour conditions, schedules and any other documents referred to in the Agreement as constituting the Contract;

"Contract Price" means the amount expressed in the Contract to be payable to the Contractor or for the work;

"cost" means cost determined in accordance with Contract Cost Principles 1031-2 (as revised to date of contract) and any subsequent revisions thereof;

"equipment" includes machinery, apparatus, jigs, tools, dies, gauges, instruments and equipment of all kinds;

"finished work" means the defence supplies or defence project or other work completed in accordance with the provisions of the Contract;

"Government Issue" means all materials, parts, components, equipment, specifications, articles and things which may be supplied to the Contract or by or on behalf of Canada for the purposes of the work;

"herein", "hereby", "hereof", "hereunder" and similar expressions, when used in any section, shall be understood to relate to the Contract as a whole and not merely to the section in which they appear;

"Inspector" means the person designated as such by the Contract and any person acting on behalf of Canada or the Minister as the Inspector under the Contract;

"inventions" 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;

"Minister" means the Minister responsible for the Contract and includes his Deputy Minister and any Acting, Associate or Assistant Deputy Minister and any duly authorized officer or representative of the Minister;

"supplemental general conditions" means any other general conditions forming part of the Contract;

"specifications" means the specifications, plans, drawings, designs and models, if any, furnished to the Contract or by Canada or the Minister for the carrying out of the Contract;

"subcontractor" includes a person, firm or corporation having a Contract with the Contractor for the execution of a part or parts of the work and also a person, firm or corporation furnishing materials to the Contractor in connection with the work;

"Work" means the whole of the work, materials, matters and things required to be done, furnished and performed in order to carry out the Contract;

2. The singular number includes the plural and vice versa.
3. In the event of any inconsistencies, the provisions of the Agreement and these general conditions shall prevail over the specifications and the provisions of the Agreement and supplemental general conditions shall prevail over these general conditions.
4. The Contract is a defence contract within the meaning of the *Defence Production Act* and shall be read accordingly.

#### **1026B 02 (1999-12-13) Powers of Minister**

The Minister is the agent of Canada for all purposes of the Contract. Nothing contained in or omitted from the Contract shall restrict any of the rights or powers of Canada or the Minister under the *Defence Production Act*, or otherwise. Every right, remedy, power and discretion vested in the Minister under the Contract or otherwise shall be cumulative and non-exclusive.

#### **1026B 03 (2000-12-01) Assignment and Subletting**

1. The Contractor shall, before entering into any subcontracts or Work or materials, notify the Minister in writing of such proposed subcontracts and shall furnish such particulars thereof as the Minister may require. The Contract shall not be assigned nor any of the Work sublet without the prior written consent of the Minister and any assignment or subletting made without such consent shall be of no effect provided that, unless the Contract or the Minister directs otherwise, the Contractor may sublet such portions of the Work as is customary in the carrying out of similar contracts. No assignment or subletting shall relieve the Contractor from any of its obligations under the Contract or impose any liability upon Canada or the Minister to an assignee or subcontractor, unless otherwise agreed to by the Minister.
2. Unless otherwise agreed to by the Minister in any assignment or subletting, the Contractor agrees to bind each assignee or subcontractor by the terms of the general conditions, the supplemental general conditions, if any, the labour conditions and the drawings and specifications as far as applicable to the Work.
3. No act or omission of the Contractor, whether before or after the entry into the Contract, shall have the effect of rendering any monies payable by Canada under the Contract payable to any person, firm or corporation other than the Contractor, unless Canada consents thereto.

4. The Minister may, on request, furnish to any subcontractor evidence of the amounts submitted by the Contractor on the subcontractor's account.
5. Subject to the foregoing, the Contract shall inure to the benefit of and shall be binding upon the successors and assigns of Canada and of the Contractor, respectively.

**1026B 04 (1991-06-01) Discounts**

The Contractor shall, as far as practicable, take all trade discounts, rebates, refundable taxes and duties, credits, commissions and other allowances. In determining the actual net cost of articles and materials of every kind required for the performance of this Contract, there shall be deducted from the gross cost thereof all trade discounts, rebates, refundable taxes and duties, credits, commissions and other allowances as aforesaid. Such benefits lost through no fault or neglect on the part of the Contractor shall not be deducted from gross costs.

**1026B 05 (1991-06-01) Conduct of the Work**

1. The Contractor agrees to carry out the Work diligently and to provide efficient supervision and inspection thereof and that the Work will be of proper quality, material and workmanship and in full conformity with the specifications, drawings, models or samples, if any.
2. No materials or parts shall be used or processed and no finished work shall be submitted for acceptance or shall be delivered unless or until approved by the Contractor's inspection staff and, wherever practicable, marked with an approval stamp satisfactory to the Inspector. The Contractor shall keep proper and adequate inspection records which shall at all times be open to examination by the Inspector who may make copies thereof and take extracts therefrom.
3. The Minister and the Inspector shall have access to the Work at all times and to the plant and premises where any part of the work is being carried on, and may make such inspections and tests of the Work and of parts, materials and work in process as the Minister or the Inspector may think fit. The Contractor shall provide all assistance and facilities, test pieces and samples which the Minister or the Inspector may reasonably require for the carrying out of any such inspections and any such tests as aforesaid and shall forward such test pieces and samples to such person or location as the Minister or the Inspector may direct. The Contractor shall provide the Minister and the Inspector with such accommodation as they may require for the purpose of such inspections and any such tests and for the exercise of any other powers conferred upon them hereunder.
4. The Contractor shall not stop or suspend Work pending the settlement or determination of any differences arising under the Contract, unless so instructed by the Minister.

**1026B 06 (1999-12-13) Specifications, Drawings, etc.**

All specifications, drawings, patterns, samples and other information furnished the Contractor in connection with the Contract shall be used by the Contractor solely for the purpose of carrying out the Work and for no other purpose except with the consent in writing of the Minister and shall remain the property of Canada and be returned to Canada or the Minister upon demand.

**1026B 07 (1991-06-01) Inspection**

All Work shall be subject to inspection by the Inspector prior to acceptance. Should the Work be defective in materials or workmanship or otherwise not be in accordance with the requirements of the Contract, the Inspector shall have the right to reject the Work or to require its correction. Inspection by the Inspector either at the plant of the Contractor or of any of its subcontractors shall not relieve the Contractor from responsibility for defects or other failure to meet the requirements of the Contract. The Contractor agrees to accept and be bound by the Inspector's interpretation of the meaning of the specifications.

**1026B 08 (2000-12-01) Title and Acceptance**

Except as otherwise provided in the Contract, title to the Work or any part thereof shall vest in Canada upon delivery to the consignee and acceptance thereof by the consignee. Acceptance by the consignee of the Work or any part thereof shall be deemed to be acceptance thereof by Canada.

**1026B 09 (2004-12-10) Warranty**

Notwithstanding prior acceptance of the finished work, and without restricting any other term of the Contract or any condition, warranty or provision implied or imposed by law, the Contractor, if requested by the Minister to do so at any time within twelve (12) months from the date of delivery, shall:

- (a) replace or make good at its own expense any finished work, excluding Government Issue incorporated therein, which becomes defective or which fails to conform to contract requirements as a result of faulty or inefficient manufacture, material or workmanship
- (b) deliver such finished work free from all defects to the delivery point specified in the Contract, unless otherwise agreed to by the Minister;

provided that where, in the opinion of the Minister, it is not expedient to remove such defective finished work from its location, the Contractor shall replace or make good the defective finished work at such location, and shall be paid the actual cost incurred in so doing (including reasonable travelling and living expenses) with no allowance thereon by way of overhead or profit, less a sum equivalent to the cost of making good the defective finished work had it been made good at the Contractor's plant.

**1026B 10 (1999-12-13) Government Issue**

1. All items comprised in any Government Issue shall be used by the Contractor solely for the purposes of the Contract and shall always be and remain the property of Canada and wherever feasible the Contractor shall maintain adequate accounting records of all Government Issue and shall mark the same as being Canada's property.
2. All Government Issue (except such as are installed or incorporated in the Work) shall be returned to Canada upon demand, in the same condition as when supplied to the Contractor provided that the Contractor shall not be responsible for any loss or damage resulting from ordinary wear and tear or causes beyond the Contractor's control.
3. All scrap and waste materials derived from any Government Issue or from any other materials, articles or things which are the property of Canada, shall, unless otherwise specifically provided herein, remain the property of Canada and shall be disposed of only as prescribed by the Minister.

**1026B 11 (1991-06-01) Spoilage and Defective Work**

The Contractor shall carry out the Work as economically as possible and shall avoid waste and spoilage. If the character and value of any spoiled and wasted materials, or defective Work, in the opinion of the Minister constitutes mismanagement on the part of the Contractor, the cost of the spoiled and wasted materials and the cost of re-working the defective Work to the extent directed by the Minister shall not be considered as part of the cost of the Work and the Contractor shall not be reimbursed therefor.

**1026B 12 (1999-12-13) Care of Crown Property**

Except as otherwise provided in the Contract, no insurance shall be carried by the Contractor on any property, title to which is vested in Canada, including any machinery, equipment and production tooling which is the property of Canada. The Contractor shall take reasonable and proper care of all property, title to which is vested in Canada, while the same is in, on or about the plant and premises of the Contractor or otherwise in his possession or subject to his control and shall be responsible for any loss or damage resulting from his failure to do so other than loss or damage caused by ordinary wear and tear.

**1026B 13 (1991-06-01) Time of Essence**

Time shall be deemed to be of the essence of the Contract provided that the time for completing any of the Work which has been or is likely to be delayed by reason of force majeure or other cause beyond the reasonable control of the Contractor shall be extended by a period equal to the length of the delay so caused, provided that prompt notice in writing of the occurrence causing or likely to cause such delay is given to the Minister.

**1026B 14 (1991-06-01) Accounts**

The Contractor shall keep proper accounts and records of the cost to the Contractor of the Work and of all expenditures or commitments made by the Contractor in connection therewith and such accounts and records together with the related invoices, receipts and vouchers shall be open to audit and inspection by the authorized representatives of the Minister (who may make copies thereof and take extracts therefrom) at any time until the expiration of six (6) years from the end of the calendar year in which the Contract is terminated or completed and the Contractor shall afford all facilities for such audits and inspections and shall furnish the Minister and his authorized representatives with all such information as he or they may from time to time require with reference to such accounts, records, invoices, receipts and vouchers. The Contractor shall not, without the consent of the Minister, dispose of any such accounts, records, invoices, receipts and vouchers until the expiration of six (6) years from the end of the calendar year in which the Contract is terminated or



completed, but shall preserve and keep the same available for audit and inspection at any time during such retention period.

**1026B 15 (2000-12-01) Security and Protection of Work**

1. The Contractor shall keep confidential all information provided to the Contractor by or on behalf of Canada in connection with the Work, and all information developed by the Contractor as part of the Work, and shall not disclose any such information to any person without the written permission of the Minister, except that the Contractor may disclose to a subcontractor, authorized in accordance with this Contract, information necessary to the performance of the subcontract. This section does not apply to any information that:
  - (a) is publicly available from a source other than the Contractor; or
  - (b) is or becomes known to the Contractor from a source other than Canada, except any source that is known to the Contractor to be under an obligation to Canada not to disclose the information.
2. When 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 shall, at all times, take all measures reasonably necessary for the safeguarding of the material so identified, including those set out in the Department of Public Works and Government Services Industrial Security Manual and its supplements and any other instructions issued by the Minister.
3. Without limiting the generality of subsections 1 and 2, when the Contract, the Work, or any information referred to in subsection 1 is identified as TOP SECRET, SECRET, CONFIDENTIAL or PROTECTED by Canada, the Minister shall be 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, and the Contractor shall comply with, and ensure that any such subcontractor complies with, all written instructions issued by the Minister dealing with the material so identified, including any requirement that employees of the Contractor or of any such subcontractor execute and deliver declarations relating to reliability screenings, security clearances and other procedures.

**1026B 16 (2000-12-01) Patent Claims and Royalties**

1. In this section, "royalties" includes license fees and all other payments analogous to royalties for, and also claims for damages based upon, the use or infringement of any patent, registered industrial design, or copyright by the Contractor in, or the furnishing of any engineering or technical assistance or services to the Contractor for the performance of the Contract or any part thereof.
2. Canada shall indemnify the Contractor against claims, actions or proceedings for the payment of royalties in respect of anything, the model, plan, design or specification of which shall have been supplied by or on behalf of Canada to the Contractor, but this indemnity shall apply only to the Contract.
3. Except as provided in subsection 2 of this section, and subject as hereinafter provided, the Contractor shall indemnify Canada against claims, actions, or proceedings for the payment of royalties in respect of the carrying out of the Contract, or in respect of the use of or disposal by or for Canada of articles and supplies furnished hereunder.
4. The Contractor shall forthwith notify the Minister of all royalties which the Contractor or any of its subcontractors will or may be obligated to pay or proposes to pay for or in respect of the carrying out of the Contract, and the basis thereof, and the parties to whom the same are payable, and shall from time to time promptly advise the Minister of any and all claims or arrangements made or proposed which would or might result in further or different payments by way of royalties being made by the Contractor or any of its subcontractors.
5. If and to the extent that the Minister so directs, the Contractor shall not pay, and shall direct its subcontractors not to pay any royalties in respect of the carrying out of the Contract except with the consent in writing of the Minister and subject to such conditions as the Minister may impose.
6. From and after the giving of any such direction, and subject to compliance by the Contractor with the foregoing provisions, Canada shall relieve and indemnify the Contractor from and against all claims, actions or proceedings for payment of such royalties as are covered by such direction.

**1026B 17 (2000-12-01) Patent Licenses and Use of Technical Information**

1. The Contractor shall promptly report and fully disclose to the Minister any and all inventions, methods or processes, whether patented or unpatented, conceived or made in the course of carrying out the Work and the Contractor agrees to and does hereby grant unto Canada a non-exclusive, irrevocable, royalty-free license to make, have made and use for military purposes throughout the world and to sell or otherwise dispose of any article or thing embodying or using any and all such inventions, methods or processes, and a similar license to practice or cause to be practiced any such methods or processes.
2. Canada may duplicate, use, and disclose in any manner for Government purposes, including delivery to other governments for the furtherance of mutual defense of Canadian and such other governments, all or any part of the technical information including reports, drawings, blueprints, and other data specified to be delivered by the Contractor under this Contract.

**1026B 18 (1992-04-01) Use of Canadian Labour and Materials**  
CANCELLED.

**1026B 19 (2004-12-10) Conditions Precedent to Payment**

No payment shall be made to the Contractor unless or until:

- (a) invoices, inspection notes and all other documents prescribed from time to time by the Minister or Inspector are submitted in accordance with the terms of the Contract or instructions of the Minister, and
- (b) the Contractor, if required to do so, establishes to the satisfaction of the Minister that all materials, parts, work in process or finished work in respect of which payment is being made are free from all claims, liens, attachments, charges or encumbrances.

**1026B 20 (2004-12-10) Indemnity Against Claims**

Except as otherwise provided in the Contract, the Contractor shall indemnify and save harmless Canada and the Minister from and against any and all claims, damages, loss, costs and expenses which they or either of them may at any time incur or suffer as a result of or arising out of:

- (a) any injury to persons (including injuries resulting in death) or loss of or damage to property of others which may be or be alleged to be caused by or suffered as a result of the carrying out of the Work or any part thereof, and
- (b) any liens, attachments, charges or other encumbrances or claims upon or in respect of any materials, parts, work in process or finished work delivered to or in respect of which any payment has been made by Canada.

**1026B 21 (2000-12-01) Title on Progress Payments**

Upon any payment being made to the Contractor for or on account of materials, parts, work in process, or finished work, either by way of progress payments or accountable advances or otherwise, title in and to all materials, parts, work in process and finished work so paid for by such progress payments or accountable advances or otherwise shall vest and remain in Canada, unless already so vested under any provision of the Contract, and the Contractor shall be responsible therefor in accordance with the provisions of section 12 hereof, it being understood and agreed that such vesting of title in Canada shall not constitute acceptance by Canada of such materials, parts, work in process and finished work and shall not relieve the Contractor of its obligations to perform the Work in conformity with the requirements of the Contract.

**1026B 22 (1999-12-13) Further Assurances**

Wherever it is herein provided that title to any parts, materials, work in process or finished work becomes vested in Canada, the Contractor shall execute such conveyances thereof and other instruments as the Minister may request.

**1026B 23 (1991-06-01) Suspension of Work and Changes in Specifications**

The Minister may at any time and from time to time order a suspension of the Work, in whole or in part, and make modifications of, changes in or additions to the specifications, changes in methods of shipment or packing and in the place or time of delivery. All directions given by the Minister with respect to the foregoing shall be complied with by the Contractor. Should any such suspension, modification, change or addition result in a material increase or decrease in the scope of the Work, the Minister may make an adjustment in the Contractor's fee and the Minister's decision on the adjustment to be made shall be final.

**1026B 24 (2000-12-01) Default by Contractor**

1. If the Contractor is in default in carrying out any of the terms, conditions, covenants or obligations of the Contract, or if the Contractor becomes bankrupt or insolvent, or has a receiving order made against it, or makes an assignment for the benefit of creditors, or if an order is made or resolution passed for the winding up of the Contractor, or if the Contractor takes the benefit of any statute for the time being in force relating to bankrupt or insolvent debtors, the Minister may, by giving notice in writing to the Contractor, terminate the whole or any part of the Contract. In such event, the Contractor shall not be entitled to the payment of any fee or any portion thereof with respect to any of the Work not completed by the Contractor in accordance with the terms of the Contract at the time of the said notice in writing to the Contractor.
2. If after notice of termination of the Contract under the provisions of subsection 1 of this section, it is determined by the Minister that the default of the Contractor is due to causes beyond the control of the Contractor, such notice of termination shall be deemed to have been issued pursuant to section 25 of these general conditions, and the rights and obligations of the parties hereto shall be governed by that section.
3. Upon termination of the Contract under this section, the Minister may require the Contractor to deliver to Canada, in the manner and to the extent directed by the Minister, any finished work which has not been delivered and accepted prior to such termination and any materials, parts, work in process or tools which the Contractor has specifically acquired or produced for the fulfilment of the Contract. Canada shall pay the Contractor for all such finished work delivered pursuant to such direction and accepted by Canada, the cost to the Contractor of such finished work plus the proportionate part of any fee fixed by the said Contract and shall pay or reimburse the Contractor the reasonable and proper cost to the Contractor of all materials, parts or work in process delivered to Canada pursuant to such direction.

**1026B 25 (2004-12-10) Termination**

1. Notwithstanding anything in the Contract contained, the Minister may, by giving notice to the Contractor, terminate the Contract as regards all or any part or parts of the Work not theretofore completed. Upon such notice being given, the Contractor shall cease Work (including the manufacturing and procuring of materials for the fulfilment of the Contract) in accordance with and to the extent specified in such notice but shall proceed with all reasonable speed to complete such part or parts (if any) of the Work as are by the terms of such notice to be completed and shall also proceed with all reasonable speed to complete up to such time or stage as may be specified in the notice any part or parts of the Work as required by such notice. Furthermore, the Minister may, at any time or from time to time, give one or more additional notices with respect to any or all parts of the Work which remain to be completed after the giving of any previous notice or notices.
2. In the event of any notice given under the provisions of this section, and subject as hereinafter provided:
  - (a) All Work completed by the Contractor hereunder before the giving of such notice, and all Work completed thereafter pursuant to such notice, shall be paid for (subject to inspection and acceptance by Canada) in accordance with the terms hereof;
  - (b) In respect of Work not completed hereunder before the giving of such notice, and not completed thereafter pursuant to such notice, Canada shall pay the Contractor's cost thereof as determined under the provision hereof, and in addition an amount representing a fair and reasonable profit in respect of Work done thereon;
  - (c) Subject as provided in paragraph (d) of this subsection 2, if the Contract shall have specifically authorized or if the Minister shall have specifically approved the making of capital expenditures by the Contractor to enable it to carry out the Contract, the Contractor shall be entitled to be reimbursed the amount of such capital expenditures so authorized or approved (and actually made or incurred) to the extent that the same (less any depreciation in respect thereof already taken into account in determining cost in accordance with the provisions of the Contract) were reasonably and properly incurred by the Contractor in respect of and are properly apportionable to the performance of the Contract;
  - (d) If the Contract is exclusively a Contract for the making of capital expenditures in respect of additional equipment or plant additions, the foregoing paragraphs (a) to (c) inclusive of this subsection 2 shall not apply, but Canada shall pay or reimburse the Contractor for the reasonable and proper cost to the Contractor (not previously paid by Canada) of:

- (i) all additional equipment which, prior to the giving of the termination notice, shall have been purchased, acquired or manufactured by the Contractor, or contracted for and for which the Contractor is obligated to make payments, and
  - (ii) all additional equipment in process of manufacture by the Contractor as at the date of the giving of such notice and all Work in connection with the construction of the plant addition up to the said date, including the cost of materials and parts contracted for by the Contractor for the purpose of such manufacture of construction and for which the Contractor is obligated to make payment.
3. Notwithstanding the provisions of subsections 1 and 2, the amounts which the Contractor shall be entitled to be reimbursed in the event of the giving of a termination notice under this section 25 shall include, subject as hereinafter provided, the costs of the Contractor of and incidental to the cancellation of obligations incurred by the Contractor pursuant to the termination notice, the cost of preparing the necessary accounts and statements with respect to the Work performed to the effective date of such termination and commitments made by the Contractor with respect to the terminated portions of the Work, wages which the Contractor is obligated under any laws or regulations for the time being in force, to pay to employees whose services are no longer required by reason of such termination, the costs of and incidental to the taking of an inventory of materials, components, work in process and finished work on hand at the effective date of the termination and other costs and expenses of and incidental to the termination in whole or in part, of operations under the Contract provided always that payment and reimbursement under the provisions of this subsection shall be made only to the extent that is established to the satisfaction of the Minister that the costs and expenses aforesaid were actually incurred by the Contractor and that the same are reasonable and are properly attributable to the termination of the Work or the part thereof so terminated.
4. In the procuring of materials and parts required for the performance of the Contract and in subletting of any Work hereunder, the Contractor, unless otherwise authorized by the Minister, shall procure or sublet on terms that will enable the Contractor to terminate any contracts entered into by the Contractor upon the same conditions and terms as those provided for in this section in respect of the termination of the Contract by the Minister and the giving of a notice or notices as aforesaid and upon the same conditions and terms in respect of reimbursement and profit as those contained in this section and in the event of the termination of the Contract as herein provided as regards all or any part of the Work, the Contractor shall co-operate with Canada and the Minister and do everything reasonably within its power at all times to minimize and reduce the amount of Canada's obligations under the provisions of this section.
5. In case of disagreement as to the amount which the Contractor is entitled to be reimbursed, the matter shall be referred to the Federal Court.
6. Upon reimbursement being made the Contractor as herein provided, title to the materials, parts, plant, equipment and work in process in respect of which such reimbursement is made shall pass to and vest in Canada (the Contractor hereby agreeing to execute and deliver all requisite instruments by way of further assurance) and such materials, parts, plant, equipment and work in process shall be delivered to the order of the Minister, but the materials thus taken over will in no case be in excess of what would have been required for performing the Contract in full if no notice has been given under the provisions hereof.
7. If it is established to the satisfaction of the Minister by the Contractor that by reason of any action taken by the Minister under the provisions of this section exceptional hardship has resulted to the Contractor, then the Minister may, notwithstanding any other provisions of this section, in his absolute discretion grant such allowance (not to include in any case, however, any allowance or compensation for loss of profit) to the Contractor as, in the opinion of the Minister, is warranted by the circumstances.
8. 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 notice given by the Minister under or pursuant to the provisions of this section except as and to the extent in this section expressly provided.
9. The right of termination and of giving notice hereinbefore provided for shall be in addition to and not in substitution for any other right possessed by Canada and the Minister.

**1026B 26 (1991-06-01) Notice**

Any notice to the Contractor hereunder shall be effectively given if sent by letter or by telegram, postage prepaid or with charges prepaid as the case may be, addressed to the Contractor at its address as given in the Contract or, if no address is given, at its address as shown by the records of the Minister. Any notice so given

shall be deemed to have been received by the Contractor at the time when in the ordinary course such letter or telegram should have reached its destination.

**1026B 27 (1999-12-13) No Bribe, etc.**

The Contractor warrants that no bribe, gift, or other inducement has been paid, given, promised or offered to any official or employee of Canada for, or with a view to, the obtaining of the Contract by the Contractor.

**1026B 28 (1991-06-01) Labour and Health Conditions**

The Contractor shall comply with all labour conditions, and with all health conditions and requirements, from time to time applicable to the Work.

**1026B 29 (1991-06-01) Members of the House of Commons**

No member of the House of Commons shall be admitted to any share or part of the Contract or to any benefit to arise therefrom.

**1026B 30 (1991-06-01) Extras**

Except as otherwise provided in the Contract, no payment for extras shall be made unless such extras and the price thereof have been authorized in writing by the Minister.

**1026B 31 (1994-06-06) Certification - Contingency Fees**

1. The Contractor certifies that it has not directly or indirectly paid or agreed to pay and covenants that it will not directly or indirectly pay a contingency fee for the solicitation, negotiation or obtaining of this Contract to any person other than an employee acting in the normal course of the employee's duties.
2. All accounts and records pertaining to payments of fees or other compensation for the solicitation, obtaining or negotiation of the Contract shall be subject to the Accounts and Audit provisions of the Contract.
3. If the Contractor certifies falsely under this section or is in default of the obligations contained therein, the Minister may either terminate this Contract for default in accordance with the termination for default provisions of the Contract or recover from the Contractor by way of reduction to the Contract Price or otherwise the full amount of the contingency fee.
4. In this section:

"contingency fee" means any payment or other compensation that is contingent upon or is calculated upon the basis of a degree of success in soliciting or obtaining a government contract or negotiating the whole or any part of its terms;

"employee" means a person with whom the Contractor has an employer/employee relationship;

"person" includes an individual or group of individuals, a corporation, a partnership, an organization and an association and, without restricting the generality of the foregoing, includes any individual who is required to file a return with the registrar pursuant to section 5 of the Lobbyist Registration Act, R.S. 1985 c.44 (4<sup>th</sup> Supplement) as the same may be amended from time to time.

**1026B 32 (2000-12-01) Interest on Overdue Accounts**

1. For the purposes of this section:

"Average Rate" means the simple arithmetic mean of the Bank Rates in effect at 4:00 p.m. Eastern Standard Time each day during the calendar month which immediately precedes the calendar month in which payment is made, where the "Bank Rate" means the rate of interest established from time to time by the Bank of Canada as the minimum rate at which the Bank of Canada makes short term advances to members of the Canadian Payments Association.

"date of payment" means the date of the negotiable instrument drawn by the Receiver General for Canada and given for payment of an amount due and payable;

an amount is "due and payable" when it is due and payable by Canada to the Contractor in accordance with the terms of the Contract; and

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an amount becomes "overdue" when it is unpaid on the first day following the day upon which it is due and payable.

2. Subject to the Contract, Canada shall be liable to pay to the Contractor simple interest at the Average Rate plus 3 percent per annum on any amount that is overdue, from the date such amount becomes overdue until the day prior to the date of payment, inclusive. Interest shall be paid without notice from the Contractor.
3. Canada shall not be liable to pay interest in accordance with this section if Canada is not responsible for the delay in paying the Contractor.
4. Canada shall not be liable to pay interest on overdue advance payments.

**1026B 33 (2005-12-16) Conflict of Interest**

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, 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 this Contract.

**1031-2 00 (2004-12-10) Contract Cost Principles****Public Works and Government Services Canada**

- 01 General Principle
- 02 Definition of a Reasonable Cost
- 03 Direct Costs
- 04 Indirect Costs
- 05 Allocation of Indirect Costs
- 06 Credits
- 07 Non-applicable Costs

**1031-2 01 (1992-04-01) General Principle**

The total cost of the Contract shall be the sum of the applicable direct and indirect costs which are, or are to be reasonably and properly incurred and/or allocated, in the performance of the Contract, less any applicable credits. These costs shall be determined in accordance with the Contractor's cost accounting practices as accepted by the Crown and applied consistently over time.

**1031-2 02 (1991-06-01) Definition of a Reasonable Cost**

1. A cost is reasonable if, in nature and amount, it does not exceed that which would be incurred by an ordinary prudent person in the conduct of a competitive business.
2. In determining the reasonableness of a particular cost, consideration shall be given to:
  - (a) whether the cost is of a type generally recognized as normal and necessary for the conduct of a contractor's business or performance of the Contract;
  - (b) the restraints and requirements by such factors as generally accepted sound business practices, arm's length bargaining, federal, provincial and local laws and regulations, and Contract terms;
  - (c) the action that prudent business persons would take in the circumstances, considering their responsibilities to the owners of the business, their employees, customers, the Government and public at large;
  - (d) significant deviations from the established practices of the Contractor which may unjustifiably increase the Contract costs; and
  - (e) the specifications, delivery schedule and quality requirements of the particular contract as they affect costs.

**1031-2 03 (2004-12-10) Direct Costs**

There are three categories of direct costs:

- (a) Direct Material Cost meaning the cost of materials which can be specifically identified and measured as having been used or to be used on the Contract and which are so identified and measured consistently by the Contractor's cost accounting practices as accepted by the Crown.
  - (i) These materials may include, in addition to materials purchased solely for the Contract and processed by the Contractor, or obtained from subcontractors, any other materials issued from the Contractor's general stocks.
  - (ii) Materials purchased solely for the Contract or subcontracts shall be charged to the Contract at the net laid-down cost to the Contractor before cash discounts for prompt payment.
  - (iii) Materials issued from the Contractor's general stocks shall be charged to the Contract in accordance with the method as used consistently by the Contractor in pricing material inventories.
- (b) Direct Labour Cost meaning that portion of gross wages or salaries incurred for work which can be specifically identified and measured as having been performed or to be performed on the Contract and

which is so identified and measured consistently by the Contractor's cost accounting practices as accepted by the Crown.

- (c) Other Direct Costs meaning those applicable costs, not falling within the categories of direct material or direct labour, but which can be specifically identified and measured as having been incurred or to be incurred in performance of the Contract and which are so identified and measured consistently by the Contractor's costing practices as accepted by the Crown.

#### **1031-2 04 (1991-06-01) Indirect Costs**

- 1 Indirect Costs (overhead) meaning those costs which, though necessarily having been incurred during the period of the Contract performance for the conduct of the Contractor's business in general, cannot be identified and measured as directly applicable to contracts.
2. These Indirect Costs may include, but are not necessarily restricted to, such items as:
- (a) indirect materials and supplies(\*);
  - (b) indirect labour;
  - (c) fringe benefits (the Contractor's contribution only);
  - (d) service expenses: expenses of a general nature such as power, heat, light, operation and maintenance of general assets and facilities;
  - (e) fixed/period charges: recurring charges such as property taxes, rentals and reasonable provision for depreciation;
  - (f) general and administrative expenses: including remuneration of executive and corporate officers, office wages and salaries and expenses such as stationery, office supplies, postage and other necessary administration and management expenses;
  - (g) selling and marketing expenses associated with the products or services being acquired under the Contract;
  - (h) general research and development expenses as considered applicable by the Crown.

- (\*) For supplies of similar low-value, high-usage items the costs of which meet the above definition of Direct Material Costs but for which it is economically expensive to account for these costs in the manner prescribed for direct costs, then they may be deemed to be indirect costs for the Contract purposes.

#### **1031-2 05 (2004-12-10) Allocation of Indirect Costs**

Indirect costs shall be accumulated in appropriate indirect cost pools, reflecting a contractor's organizational or operational lines and these pools subsequently allocated to contracts in accordance with the following two principles:

- (a) the costs included in a particular indirect cost pool should have a similarity of relationship with each contract to which that indirect cost pool is subsequently distributed; further, the costs included in an indirect cost pool should be similar enough in their relationship to each other that the allocation of the total costs in the pool provides a result which would be similar to that achieved if each cost within that pool were separately distributed;
- (b) the allocation basis for each indirect cost pool should reflect, as far as possible, the causal relationship of the pooled costs to the contracts to which these costs are distributed.

#### **1031-2 6 (1991-06-01) Credits**

The applicable portion of any income, rebate, allowance, or any other credit relating to any applicable direct or indirect cost, received by or accruing to the Contractor, shall be credited to the Contract.

#### **1031-2 07 (2004-12-10) Non-applicable Costs**

Notwithstanding that the following costs may have been or may be reasonably and properly incurred by the Contractor during the performance of the Contract, they are considered non-applicable costs to the Contract:



- (a) allowance for interest on invested capital, bonds, debentures, bank or other loans together with related bond discounts and finance charges;
- (b) legal, accounting and consulting fees in connection with financial reorganization, security issues, capital stock issues, obtaining of patents and licenses and prosecution of claims against the Crown;
- (c) losses on investments, bad debts and expenses for the collection thereof;
- (d) losses on other contracts;
- (e) federal and provincial income taxes, excess profit taxes or surtaxes and/or special expenses in connection therewith;
- (f) provisions for contingencies;
- (g) premiums for life insurance on the lives of officers and/or directors where proceeds accrue to the Contractor;
- (h) amortization of unrealized appreciation of assets;
- (i) depreciation of assets paid for by the Crown;
- (j) fines and penalties;
- (k) expenses and depreciation of excess facilities;
- (l) unreasonable compensation for officers and employees;
- (m) product development or improvement expenses not associated with the product being acquired under the Contract;
- (n) advertising, except reasonable advertising of an industrial or institutional character placed in trade, technical or professional journals for the dissemination of information for the industry or institution;
- (o) entertainment expenses;
- (p) donations except those to charities registered under the *Income Tax Act*;
- (q) dues and other memberships other than regular trade and professional associations;
- (r) fees, extraordinary or abnormal for professional advice in regard to technical, administrative or accounting matters, unless approval from the Contracting Authority is obtained.



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**1034 00 (2005-12-16) Construction - Fixed Price and Unit Prices****Public Works and Government Services Canada**

- 01 Interpretation
- 02 Successors and Assigns
- 03 Assignment of Contract
- 04 Subcontracting by Contractor
- 05 Description of Work All-inclusive
- 06 No Implied Obligations
- 07 Time of Essence
- 08 Indemnification by Contractor
- 09 Indemnification by Canada
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- 21 Claims Against and Obligations of the Contractor or Subcontractor
- 22 Execution of Work under Direction of Engineer
- 23 Clearing of Site
- 24 Contractor's Superintendent
- 25 Unsuitable Workmen
- 26 No Additional Payment for Increased Costs
- 27 Canadian Labour and Materials (CANCELLED)
- 28 Security and Protection of the Work
- 29 Protection of Work and Documents (SUPERSEDED)
- 30 Public Ceremonies
- 31 Insurance
- 32 Insurance Proceeds
- 33 Precautions against Damage, Infringements of Rights, Fire, etc.
- 34 Interpretation of Contract by Engineer
- 35 Rectification of Defects in Work
- 36 Non-compliance by Contractor
- 37 Protesting Engineer's Decisions
- 38 Engineer may order Additional Work, Changes, etc.
- 39 Cooperation with other Contractors
- 40 Engineer's Certificates
- 41 Security Deposit - Forfeiture or Return
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- 43 Municipal Permits
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**1034 01 (1999-12-13) Interpretation**

1. In the Contract,

"Canada", "Crown", or "Her Majesty" means Her Majesty the Queen in right of Canada;

"Engineer" means the person designated as such by the Minister, and includes a person specially authorized by him to perform, on his behalf, any function under the Contract;

"herein", "hereby", "hereof", "hereunder" and similar expressions refer to the Contract as a whole and not to any particular subdivision or part thereof;

"material" includes all materials, commodities, articles and things required to be furnished under the Contract for incorporation in the Work;

"Minister" includes a person acting for, or if the office is vacant, in the place of such Minister, under the authority of an order of the Governor General of Canada in Council, and also his successors in the office, and his or their lawful deputy;

"plant" includes all animals, tools, implements, machinery, vehicles, buildings, structures, equipment, articles and things required for the execution of the Work;

"security deposit" means the security given by the Contractor to Canada in accordance with the Contract;

"subcontractor" means a person, firm or corporation to whom or to which the Contractor has, pursuant to section 4 of these General Conditions and with the consent of the Engineer, subcontracted the whole or any portion of the Work;

"superintendent" means the employee of the Contractor who is designated by the Contractor as being in full charge of the field operations of the Contractor for the purposes of the Contract; and

"Work" includes the whole of the works, materials, matters and things required to be done, furnished and performed by the Contractor under the Contract.

2. The marginal notes in the Contract form no part of the Contract but shall be deemed to be inserted for the convenience of reference only.

3. Unless the context otherwise requires, where in the Contract reference is made to a subsection or paragraph, the reference shall be deemed to be a reference to a subsection or paragraph of the section or subsection, as the case may be, in which the reference is made.

4. In interpreting the Contract in the event of discrepancies or conflicts between anything in the Plans and Specifications and these General Conditions, the General Conditions shall govern.

5. In interpreting the Plans and Specifications,

(a) in the event of discrepancies or conflicts between the Plans and Specifications, the Specifications shall govern;

(b) in the event of discrepancies or conflicts between the Plans, the Plans drawn with the largest scale shall govern; and

(c) in the event of discrepancies or conflicts between the figured dimensions and scaled dimensions, the figured dimensions shall govern.

**1034 02 (1991-06-01) Successors and Assigns**

The Contract shall inure to the benefit of and be binding upon the parties hereto and their executors, administrators, successors and assigns.

**1034 03 (1991-06-01) Assignment of Contract**

The Contract may not be assigned without the written consent of the Minister.

**1034 04 (1991-06-01) Subcontracting by Contractor**

1. Neither the whole or any part of the Work may be subcontracted by the Contractor without the written consent of the Minister.
2. Every subcontracting by the Contractor shall provide that the subcontractor shall comply with all terms and conditions of this Contract which can reasonably be applied to his undertaking.

**1034 05 (1991-06-01) Description of Work All-inclusive**

The description of the Work and material set out in the Contract includes not only the particular kind of Work and material mentioned but also all labour, plant and material necessary for the full execution, completion and delivery ready for use of the Work and material.

**1034 06 (1999-12-13) No Implied Obligation**

No implied obligation of any kind by or on behalf of Canada shall arise from anything in the Contract, and the express covenants and agreements herein contained and made by Canada are and shall be the only covenants and agreements upon which any rights against Canada are to be founded and, without limiting the generality of the foregoing, the Contract supersedes all communications, negotiations and agreements, either written or oral, relating to work and made prior to the date of the Contract.

**1034 07 (1991-06-01) Time of Essence**

Time is of the essence of the Contract.

**1034 08 (1999-12-13) Indemnification by Contractor**

1. Except as provided in section 9 of the General Conditions, the Contractor shall indemnify and save harmless Canada from and against all claims, demands, losses, costs, damage, actions, suits or proceedings by whomsoever made, brought or prosecuted in any manner based upon, arising out of, related to, occasioned by or attributable to the activities of the Contractor in executing the Work under the Contract or to an infringement or an alleged infringement by the Contractor of a patent of invention.
2. For the purposes of subsection 1, "activities" includes an act improperly carried out, an omission to carry out an act and a delay in carrying out an act.

**1034 09 (2000-12-01) Indemnification by Canada**

Canada shall indemnify and save harmless the Contractor from and against all claims, demands, losses, costs, damage, actions, suits or proceedings arising out of his activities under the Contract which are directly attributable to

- (a) lack of or a defect in, title or an alleged lack of or defect in, title to the site of the Work; or
- (b) an infringement or an alleged infringement of any patent of invention in executing anything for the purposes of the Contract, the model, plan or design of which was supplied by Canada to the Contractor.

**1034 10 (1991-06-01) Members of the House of Commons not to Benefit**

No Member of the House of Commons shall be admitted to any share or part of the Contract or to any benefit arising therefrom.

**1034 11 (1991-06-01) Notice, Orders, etc., to Contractor**

1. Notices for the purposes of paragraph 16.1.(a) and sections 18 and 19 of these General Conditions shall be in writing and shall
  - (a) be delivered to the Contractor in person or, if the Contractor is a corporation or partnership, be delivered to a senior administrative or executive officer of the corporation or partnership; or
  - (b) be sent by mail to the Contractor or his superintendent addressed to the address mentioned in the Contract;

and if any question arises as to whether any such notice was communicated to the Contractor, it shall be deemed to have been sufficiently communicated to him;

- (c) if it was delivered pursuant to paragraph (a), on the day it was delivered; and

- (d) if it was sent by mail pursuant to paragraph (b), on the day it was received by the Contractor or on the sixth day after it was mailed, whichever is earlier.
2. Any notice, order, direction, decision or communication other than a notice to which subsection 1 refers, which may be given to the Contractor pursuant to the Contract, may be given in any manner, but it shall be deemed to have been sufficiently communicated to the Contractor if it was put in writing and the writing was
- (a) delivered to the Contractor in person or, if the Contractor is a corporation or partnership, was delivered to a senior administrative or executive officer of the corporation or partnership;
- (b) delivered to the Contractor's superintendent;
- (c) left at the Contractor's office or, if he has more than one office, at one of them; or
- (d) sent by mail to the Contractor or his superintendent addressed to the address mentioned in the Contract or to the Contractor's last known place of business or residence.

**1034 12 (2000-12-01) Changes in Soil Conditions and Neglect or Delay by Canada**

1. No payment will be made by Canada to the Contractor in addition to the payment expressly promised by the Contract on account of any extra expense, loss or damage incurred or sustained by the Contractor for any reason including a misunderstanding on the part of the Contractor as to any fact, whether or not such misunderstanding is attributable directly or indirectly to Canada or any of Canada's agents or servants (whether or not any negligence or fraud on the part of Canada's agents or servants is involved) unless, in the opinion of the Engineer, the extra expense, loss or damage is directly attributable to
- (a) a substantial difference between information relating to soil conditions at the site of the Work, or a reasonable assumption of fact based thereon, in the Plans and Specifications or other documents or material communicated by Canada to the Contractor for his use in preparing his tender and the real soil conditions encountered at the site of the Work by the Contractor when executing the Work; or
- (b) neglect or delay occurring after the date of the Contract on the part of Canada in providing any information or in doing any act which the Contract either expressly requires Canada to do or which would be done by an owner, in accordance with the usage of the trade, to enable his Contractor to carry out an undertaking similar to the Work being executed under the Contract for Canada,
- in which case, if the Contractor has given to the Engineer written notice of his claim before the expiration of thirty days from the encountering of the soil conditions giving rise to the claim or from the day on which the neglect occurs or the delay commences, as the case may be, Canada will pay to the Contractor in respect of the additional expense, loss or damage incurred or sustained by reason of that difference, neglect or delay, an amount equal to the cost, calculated in accordance with sections 44 to 47 of these General Conditions, of the additional plant, labour and materials necessarily involved.
2. If, in the opinion of the Engineer, the Contractor has effected a saving of expenditure by reason of the execution of the Work by the Contractor being rendered less difficult and less costly because the soil conditions actually encountered by the Contractor at the site of the Work when executing the Work are substantially different from soil conditions indicated in information or a reasonable assumption of fact based thereon in the Plans and Specifications or other documents or material communicated by Canada to the Contractor for his use in preparing his tender, the amount set out in the Contract shall be reduced by an amount equal to the saving effected by the Contractor.
3. Paragraph 1.(a) and subsection 2 are applicable only to a fixed price arrangement.
4. If information relating to soil conditions at the site of the Work appeared in the Plans and Specifications or in other documents or material communicated by Canada to the Contractor for his use in preparing his tender and if the real soil conditions encountered at the site of the Work by the Contractor when executing the Work are substantially different from such information, or a reasonable assumption of fact based thereon, so that the cost to the Contractor of executing the Work is directly and substantially increased or decreased by reason of such difference, then the Minister and the Contractor may, by agreement, amend the Unit Price Table so that the benefit of a substantial decrease in cost shall accrue to Canada and the burden of a substantial increase in cost will not be borne by the Contractor.
5. Subsection 4 is applicable only to a Unit Price Arrangement.

**1034 13 (2000-12-01) Materials, Plant and Real Property Become Property of Canada**

1. All materials and plant and the interest of the Contractor in all real property, licences, powers and privileges acquired, used or provided by the Contractor for the Work shall, from the time of being so acquired, used or provided, become and they are the property of Canada for the purposes of the Work and they shall continue to be the property of Canada
  - (a) in the case of materials, until incorporated in the Work or until the Engineer indicates that he is satisfied that they will not be required for the Work; and
  - (b) in the case of plant, real property, licences, powers and privileges, until the Engineer indicates that he is satisfied that the interest vested in Canada therein is no longer required for the purposes of the Work.
2. material or plant that is the property of Canada by virtue of this section shall not be taken away from the site of the Work, or used or disposed of, except for the purposes of the Work, without the consent in writing of the Engineer.
3. Canada is not liable for loss or damage to material or plant that is the property of Canada by virtue of this section and the Contractor is liable for such loss or damage notwithstanding that the material or plant is the property of Canada.

**1034 14 (2000-12-01) Materials, Plant and Real Property Supplied by Canada**

1. The Contractor is liable to Canada for loss or damage to material, plant or real property, whether attributable to causes beyond his control or not, supplied or made available by Canada to the Contractor for use in connection with the Work other than loss or damage resulting from and directly attributable to reasonable wear and tear.
2. The Contractor will not use material, plant or real property to which this section applies, except for the purpose of carrying out this Contract.
3. When the Contractor has failed, within a reasonable time after being required by the Engineer to do so, to make good any loss or damage for which he is liable under this section, the Engineer may cause the loss or damage to be made good, and the Contractor shall thereupon be liable to her Majesty for the cost thereof and shall, on demand, pay to Canada an amount equal to such cost.
4. The Contractor shall keep records of material, plant and real property to which this section applies that the Engineer from time to time requires and shall, from time to time as the Engineer requires, satisfy the Engineer that such material, plant and real property are at the place and in the condition that they ought to be.
5. This section applies to material, plant and real property supplied or made available by Canada to the Contractor for use in connection with the Work.

**1034 15 (2000-12-01) Extension of Time**

1. The Minister may, on the application of the Contractor made before the day fixed by the Contract for completion of the Work or before any new date for completion fixed under this subsection, if in his opinion it is in the public interest, extend the time for completion of the Work by fixing a new day for completion of the Work.
2. Where the Contractor does not complete the Work by the day fixed by the Contract for completion of the Work but does complete the Work thereafter, the Contractor shall pay to Canada.
  - (a) an amount equal to all salaries, wages and travelling expenses paid by Canada to persons superintending the Work during the period of delay;
  - (b) an amount equal to the value to Canada of the use of the completed Work for the period of delay; and
  - (c) an amount equal to all other expenses and damages incurred or sustained by Canada as a result of the Work not being completed during the period of delay.
3. For the purpose of this section,

- (a) the Work shall be deemed to be completed on the day the Engineer issues his Interim Certificate of Completion; and
  - (b) "period of delay" means the period commencing on the day fixed by the Contract for completion of the Work and ending on the day immediately preceding the day on which the Work is completed, but excluding therefrom any day within a period of extension granted under subsection 1, if on such day, in the opinion of the Minister, causes beyond the control of the Contractor delayed completion of the Work.
4. The Minister may, if in his opinion it is in the public interest, waive the right of Canada to the whole or any part of a payment payable pursuant to subsection 2.

**1034 16 (2000-12-01) Taking the Work out of the Contractor's Hands**

1. In any of the following cases, namely,
- (a) where the Contractor has made default or delayed in commencing or in diligently executing the Work or any portion thereof to the satisfaction of the Engineer and the Minister or the Engineer has given notice thereof to the Contractor and has by such notice required the Contractor to put an end to such default or delay, and such default or delay continues for six days after such notice was communicated;
  - (b) where the Contractor has made default in the completion of the Work, or any portion thereof, within the time limited for such completion by the Contract;
  - (c) where the Contractor has become insolvent;
  - (d) where the Contractor has committed an act of bankruptcy;
  - (e) where the Contractor has abandoned the Work;
  - (f) where the Contractor has made an assignment of the Contract without the required consent; or
  - (g) where the Contractor has otherwise failed to observe or perform any of the provisions of the Contract;

the Minister may, without any other authorization, take all or any part of the Work out of the Contractor's hands and may employ such means as he may see fit to complete the Work.

2. Where the Work or any portion thereof has been taken out of the Contractor's hands under subsection 1, the Contractor shall not, except as provided in subsection 3, be entitled to any further payment, including payments then due and payable but not paid, and the obligation of Canada to make payments as provided for in the Contract shall be at an end and the Contractor shall be liable to and upon demand therefor pay to Canada an amount equal to all loss and damage suffered by Canada by reason of the non-completion of the Work by the Contractor.
3. Where the Work or any portion thereof has been taken out of the Contractor's hands under subsection 1 and that portion is subsequently completed by Canada, the Engineer shall determine the amount, if any, of holdback and progress claims of the Contractor unpaid at the time of taking the Work out of his hands that in his opinion are not required by Canada for the purposes of the Contract and the Minister shall, if he is of opinion that no financial prejudice to Canada will result, authorize payment of that amount to the Contractor.

**1034 17 (2000-12-01) Effect of Taking the Work from Contractor**

1. The taking of the Work, or any portion thereof, out of the Contractor's hands pursuant to section 16 of the General Conditions does not operate so as to relieve or discharge the Contractor from any obligation under the Contract or imposed upon him by law except the obligation to complete the physical execution of that portion of the Work so taken out of his hands.
2. If the Work or any part thereof is taken out of the Contractor's hands pursuant to section 16, all materials and plant and the interest of the Contractor in all real property, licences, powers and privileges acquired, used or provided by the Contractor for the purposes of the Work shall, notwithstanding subsection 1 of section 13 of these General Conditions, be the property of Canada without compensation to the Contractor.



3. If the Engineer certifies that any interest in the property of Canada by virtue of subsection 2 is no longer required for the purposes of the Work and that it is not in the interests of Canada to retain the interest, it shall become the property of the Contractor.

**1034 18 (1991-06-01) Suspension of Work by the Minister**

1. The Minister may, when in his opinion it is in the public interest, require the Contractor to suspend execution of the Work, either for a specified or unspecified period, by communicating notice to that effect to the Contractor.
2. The Contractor, upon receiving notice of the Minister's requirement pursuant to subsection 1, shall suspend all operations except those which, in the Engineer's opinion, are necessary for the care and preservation of the Work, the materials and plant.
3. During the period of suspension, the Contractor shall not remove from the site any part of the Work, any materials or any plant without the consent of the Engineer.
4. If the period of suspension is 30 days or less, the Contractor, upon expiration of the period of suspension, shall resume the execution of the Work and he is entitled to be paid the cost, calculated in accordance with sections 44 to 47 of the General Conditions, of any plant, labour and material necessarily involved in complying with the suspension.
5. If the period of suspension is more than 30 days and if, upon the expiration of the period of suspension, the Minister and the Contractor agree that the execution of the Work be completed by the Contractor, the Contractor shall resume operations and complete the execution of the Work in accordance with any terms and conditions agreed upon by the Minister and the Contractor.
6. If, upon the expiration of a period of suspension of more than 30 days, the Minister and the Contractor do not agree that the Work will be completed by the Contractor or they are unable to agree upon the terms and conditions under which the Contractor will complete the Work, the notice of suspension shall be deemed to be a notice of termination pursuant to section 19.

**1034 19 (2000-12-01) Termination of Contract**

1. The Minister may, at any time by giving notice to that effect, terminate the Contract.
2. The Contractor will, upon receipt of a notice pursuant to subsection 1, cease all operations forthwith.
3. If the Contract is terminated pursuant to subsection 1, Canada will pay to the Contractor an amount equal to the lesser of
  - (a) the cost, as agreed upon by the Contractor and the Minister, of all labour, material and plant supplied by the Contractor as at the date of termination or, if the Contractor and the Minister cannot agree, as calculated in accordance with the formula set out in section 46 of the General Conditions, less all amounts already paid to the Contractor by Canada and less all amounts which the Contractor is liable to pay to Canada; and
  - (b) the amount calculated in accordance with the terms of payment which would have been payable to the Contractor had he completed the Work.
4. If the Contract is terminated pursuant to subsection 1, Canada will pay to the Contractor an amount equal to the cost, as agreed upon by the Contractor and the Minister, of all labour, material and plant supplied by the Contractor as of the date of termination or, if the Contractor and the Minister cannot agree, as calculated in accordance with the formula set out in section 46 of the General Conditions, less all amounts already paid to the Contractor by Canada and less all amounts which the Contractor is liable to pay to Canada.
5. Subsection 3 is applicable only to a fixed price arrangement and subsection 4 is applicable only to a unit price arrangement.

**1034 20 (1991-06-01) Provision for Execution of Work**

The Contractor will provide everything necessary for the execution of the Work, except things in respect of which the Contract expressly provides otherwise and except the site of the Work if the Work when completed is to remain permanently affixed thereon.

**1034 21 (2000-12-01) Claims Against and Obligations of the Contractor or Subcontractor**

1. Canada may, in order to discharge lawful obligations of and satisfy lawful claims against the Contractor or a subcontractor arising out of the execution of the Work, pay any amount which is due and payable to the Contractor pursuant to the Contract or is payable pursuant to section 41 of the General Conditions following a conversion or a negotiation of the security deposit directly to the obligees of and the claimant against the Contractor or the subcontractor.
2. A payment made pursuant to subsection 1 is, to the extent of the payment, a discharge of Canada's liability under the Contract to the Contractor.
3. To the extent that the circumstance of the Work being executed for Canada permits it, the Contractor will comply with all laws in force in the Province where the Work is being executed relating to payment periods, mandatory holdbacks, and creation and enforcement of mechanics' liens or, if such Province is the Province of Quebec, the law relating to privileges.
4. The Contractor will discharge all lawful obligations of his and will satisfy all lawful claims against him arising out of the execution of the Work, at least as often as the Contract requires Canada to discharge Her obligations to the Contractor.
5. The Contractor will, whenever so requested by the Engineer, make a statutory declaration deposing to the existence and condition of the obligations and claims referred to in subsection 4.

**1034 22 (1991-06-01) Execution of Work under Direction of Engineer**

The Contractor will permit the Engineer to have access to the Work at all times during the execution of the Work, will provide the Engineer with full information concerning what is being done to execute the Work, and will give the Engineer every possible assistance in respect of the performance of his duty to see that the Work is executed in accordance with the Contract and also in respect of the performance and exercise of the duties and powers specially imposed or conferred on him by the Contract.

**1034 23 (1991-06-01) Clearing of Site**

The Contractor will, upon completion of the Work, clear and clean the Work and its site to the satisfaction of and in accordance with any directions of the Engineer.

**1034 24 (1991-06-01) Contractor's Superintendent**

1. The Contractor will, during working hours, until the Work has been completed, keep on the site of the Work a competent superintendent who has authority to receive on behalf of the Contractor any order, direction or other communication that may be given under the Contract.
2. The Contractor will, upon the request of the Engineer, remove any superintendent who, in the opinion of the Engineer, is incompetent or has been conducting himself improperly and shall replace a superintendent so removed with another superintendent as described in subsection 1.

**1034 25 (1991-06-01) Unsuitable Workmen**

The Contractor will, at the request of the Engineer, remove from the Work any person employed on the Work who, in the opinion of the Engineer, is incompetent or has been conducting himself improperly and the Contractor shall not permit a person so removed to remain on the site of the Work.

**1034 26 (1991-06-01) No Additional Payment for Increased Costs**

1. The amount payable to the Contractor under the Contract will not be increased or decreased by reason of any increase or decrease in the cost of the Work brought about by an increase or decrease in the cost of plant, labour, material or the wage rates set out in or prescribed pursuant to the Labour Conditions.
2. Notwithstanding section 12 and subsection 1 of this section, the amount set out in the Contract shall be adjusted, in the manner provided in subsection 3, in the event of any change in any tax imposed under the Excise Act, the Excise Tax Act, or the Customs Tariff,
  - (a) after the date of the submission by the Contractor of the tender for the Contract; and
  - (b) that applies to the materials incorporated or to be incorporated in the Work and that affects the cost to the Contractor of such materials.

3. In the event of any change after the date of submission of the tender for the Contract by the Contractor in any tax described in subsection 2 that applies to the materials incorporated or to be incorporated in the Work and that affects the cost to the Contractor of such materials, the amount set out in the Contract shall
- (a) be increased where the cost to the Contractor of any of the materials has been increased by virtue of the change; or
  - (b) be decreased where the cost to the Contractor of any of the materials has been decreased by virtue of the change,
- by an amount equal to such amount as it is established upon examination of the relevant records of the Contractor referred to in section 48, represents the increase or decrease, as the case may be, in the cost to the Contractor of the materials involved that is directly attributable to the change in the tax levied on such materials.
4. For the purpose of determining the adjustment in the amount set out in the Contract by virtue of any change in any tax described in subsection 2, where such tax is changed after the date of submission of the tender by the Contractor but public notice of such change has been given by the Minister of Finance before the date of submission of the tender, the change and such tax shall, for the purposes of this section, be deemed to have occurred before the date of submission of the tender.

**1034 27 (1992-04-01) Canadian Labour and Materials**  
CANCELLED.

**1034 28 (2000-12-01) Security and Protection of the Work**

1. The Contractor shall keep confidential all information provided to the Contractor by or on behalf of Canada in connection with the Work, and all information developed by the Contractor as part of the Work, and shall not disclose any such information to any person without the written permission of the Minister, except that the Contractor may disclose to a subcontractor, authorized in accordance with this Contract, information necessary to the performance of the subcontract. This section does not apply to any information that:
- (a) is publicly available from a source other than the Contractor; or
  - (b) is or becomes known to the Contractor from a source other than Canada, except any source that is known to the Contractor to be under an obligation to Canada not to disclose the information.
2. When 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 shall, at all times, take all measures reasonably necessary for the safeguarding of the material so identified, including those set out in the Department of Public Works and Government Services *Industrial Security Manual* and its supplements and any other instructions issued by the Minister.
3. Without limiting the generality of subsections 1 and 2, when the Contract, the Work, or any information referred to in subsection 1 is identified as TOP SECRET, SECRET, CONFIDENTIAL or PROTECTED by Canada, the Minister shall be 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, and the Contractor shall comply with, and ensure that any such subcontractor complies with, all written instructions issued by the Minister dealing with the material so identified, including any requirement that employees of the Contractor or of any such subcontractor execute and deliver declarations relating to reliability screenings, security clearances and other procedures.
4. The Contractor shall safeguard the Work and the Contract, the specifications, plans, drawings and any other information provided by Canada to the Contractor, and shall be liable to Canada for any loss or damage from any causes.

**1034 29 (1992-04-01) Protection of Work and Documents (SUPERSEDED)**  
This section has been superseded by the revised section 28.

**1034 30 (1991-06-01) Public Ceremonies**

1. The Contractor will not allow or permit any public ceremony in connection with the Work without the permission of the Minister.

2. The Contractor will not erect or permit the erection of any sign or advertising on the Work without the approval of the Engineer.

**1034 31 (1999-12-13) Insurance**

1. The Contractor will, at his expense, maintain insurance contracts in a form and with companies approved by the Minister of the nature, in the amounts, for the periods and containing the terms and conditions, if any, set out in the Insurance Schedule.
2. All fire insurance contracts maintained by the Contractor pursuant to subsection 1 shall provide that the proceeds thereof are payable to Canada.
3. The Contractor will deposit with the Engineer the originals of all contracts of insurance maintained by the Contractor pursuant to subsection 1 and the Contractor will, when required by the Engineer, submit to him proof that such policies are in force.
4. Upon application by the Contractor, the Engineer may waive compliance with subsections 2 and 3.

**1034 32 (2000-12-01) Insurance Proceeds**

1. If the Work or any portion thereof is lost or destroyed and monies are paid to Canada in respect of the loss or damage under a contract of fire insurance maintained by the Contractor pursuant to section 31 of these General Conditions, the monies will be held by Canada for the purposes of the Contract.
2. The Minister may, on behalf of Canada, elect to retain absolutely the monies held under subsection 1 and, in such event, the monies belong absolutely to Canada and
  - (a) the Contractor is liable to Canada in an amount equal to the amount by which the insurance monies payable is less than the loss and damages suffered and sustained by Canada, including costs associated with clearing and cleaning the site of the Work; and
  - (b) there shall be a financial accounting between Canada and the Contractor in respect of the portion of the Work which was lost or damaged and in respect of which monies have been retained absolutely by Canada and there shall be included in the financial accounting all amounts paid or payable by Canada under the Contract together with all amounts paid or payable by the Contractor under the Contract to Canada and Canada will pay to the Contractor any amount which the financial accounting shows to be payable by Canada to the Contractor under the Contract and similarly the Contractor will pay to Canada any amount which the financial accounting shows to be payable by the Contractor to Canada under the Contract.
3. Upon payment as required by subsection 2 by Canada or the Contractor, as the case may be, Canada and the Contractor are discharged from all rights and obligations under the Contract in respect of the portion of the Work which was lost or damaged and in respect of which monies have been retained absolutely by Canada, as though such portion of the Work had been fully completed and executed by the Contractor in accordance with the Contract.
4. If any election is not made under subsection 2, the Contractor shall restore and replace the portion of the Work lost or damaged and the monies shall be disbursed by Canada to the Contractor in the manner and subject to the terms and conditions governing monies payable under the Contract to the Contractor by Canada, except that for the purpose of monies "100%" shall be substituted in subsection 4 of section 49 of these General Conditions for "95%" and "90%".

**1034 33 (1991-06-01) Precautions Against Damage, Infringements of Rights, Fire, etc.**

1. The Contractor shall, at his own expense, do whatever is necessary to ensure that
  - (a) no person, property, right, easement or privilege is injured, damaged or infringed by reason of the Contractor's activities under this Contract;
  - (b) pedestrian and other traffic on any public or private road or waterway is not unduly impeded, interrupted or endangered by the execution or existence of the Work and plant;
  - (c) fire hazards are eliminated and in the case of a fire in or about the works that it is promptly extinguished;
  - (d) the health of all persons employed on the Work is not endangered;

- (e) adequate medical supervision of all persons employed on the Work is maintained;
  - (f) adequate sanitation measures in respect of the Work are taken; and
  - (g) all stakes, buoys, and marks placed on or about the works by or under the authority of the Engineer are protected and are not removed, defaced or altered.
2. The Engineer may direct the Contractor to do such things and to construct such works which the Engineer considers reasonable and necessary to ensure compliance with or to remedy a breach of subsection 1.
  3. The Contractor will at his own expense comply with a direction of the Engineer made pursuant to subsection 2.

**1034 34 (1991-06-01) Interpretation of Contract by Engineer**

1. If at any time before the Work has been completed and the Engineer has issued his Final Certificate of Completion, any question arises as to whether anything has been done as required by the Contract or as to what the Contractor is required by the Contract to do, and, in particular, and without limiting the generality of the foregoing, as to
  - (a) the meaning of anything in the Plans and Specifications;
  - (b) the meaning to be given to the Plans and Specifications in case of any error therein, an omission therefrom, or an obscurity or discrepancy in their wording or intention;
  - (c) whether the quality or quantity of any material or workmanship meets the requirements of the Contract;
  - (d) whether the plant, materials or workmen provided by the Contractor for executing the Work and carrying out the Contract are adequate to ensure that the Work will be executed in accordance with the Contract and that the Contract will be carried out in accordance with its terms;
  - (e) what quantity of any kind of Work has been completed by the Contractor; or
  - (f) the timing and scheduling of the various phases of the execution of the Work,the question shall be decided by the Engineer.
2. The Contractor will construct the Work in accordance with the decisions and directions of the Engineer given under this section and in accordance with any consequential decisions and directions given by the Engineer.

**1034 35 (1991-06-01) Rectification of Defects in Work**

1. Without restricting any warranty or guarantee implied or stipulated by law, the Contractor will, at his own expense, rectify and make good any defect or fault however caused, that within twelve months from the date of the Engineer's Final Certificate of Completion appears in the Work.
2. If any defect or fault appears in the Work and the Engineer is of the opinion that it is one which the Contractor, either under subsection 1 or under a warranty or guarantee implied or stipulated by law, is obligated to remedy and make good, the Engineer may direct the Contractor to remedy and make good the defect or fault by giving notice to the Contractor of the existence of the defect or fault and the notice may specify the time within which the defect or fault is to be rectified and made good.
3. The Contractor will rectify and make good the defect or fault described in a notice given pursuant to subsection 1 within the time specified in the notice.

**1034 36 (2000-12-01) Non-compliance by Contractor**

1. Where the Contractor has failed to comply with any decision or direction given by the Engineer under sections 23, 29, 33, 34 or 35 of these General Conditions, the Engineer may employ such methods, as he deems advisable, to do that which the Contractor failed to do.
2. The Contractor shall, on demand, pay to Canada all costs, expenses and damage incurred or sustained by Canada by reason of the Contractor's non-compliance with any decision or direction

given by the Engineer under sections 23, 29, 33, 34 or 35 of these General Conditions and by the action taken by the Engineer pursuant to subsection 1.

**1034 37 (2000-12-01) Protesting Engineer's Decisions**

If the Contractor has, within ten days of communication to him by the Engineer of any decision or direction of the Engineer under sections 23, 29, 33, 34 or 35 of these General Conditions, given notice to the Engineer and the Minister in writing that the decision or direction of the Engineer is accepted under protest, Canada will pay to the Contractor for anything the Contractor was required by the Engineer's decision or direction to do beyond what the Contract correctly understood and interpreted would have required the Contractor to do, the cost calculated in accordance with sections 44 to 47 of these General Conditions, of the labour, materials and plant necessarily involved in carrying out the decisions or direction.

**1034 38 (2000-12-01) Engineer may order Additional Work, Changes, etc.**

1. The Engineer may, with the approval of the Minister, at any time before he issues his Final Certificate of Completion, in writing,
  - (a) order Work or material in addition to that provided for in the Plans and Specifications; and
  - (b) dispense with or change the dimensions, character, quantity, quality, description, location or position of the whole or any part of the Work or material provided for in the Plans and Specifications or as ordered pursuant to paragraph (a);and the Contractor will execute the Work in accordance with such orders, dispensations and changes as if the same had appeared in and been part of the Plans and Specifications.
2. The Engineer shall determine whether anything done or not done by the Contractor pursuant to an order, dispensation or change made by the Engineer pursuant to subsection 1, increased or decreased the cost of the Work to the Contractor.
3. If the Engineer determines, under subsection 2, that the cost has been increased, Canada will pay to the Contractor the cost, calculated in accordance with sections 44 to 47 of these General Conditions, of the additional labour, materials and plant necessarily involved.
4. If the Engineer determines, under subsection 2, that the cost has been decreased, Canada may reduce the amount payable to the Contractor under the Contract by an amount equal to the cost, calculated in accordance with sections 44 to 47 of these General Conditions, of the labour, material and plant necessarily involved.
5. Subsections 2, 3 and 4 are applicable only to a fixed price arrangement.

**1034 39 (2000-12-01) Cooperation with other Contractors**

1. Where, in the opinion of the Engineer, it is necessary that contracting persons or workmen, with or without plant and materials, be sent on to the site of the Work, the Contractor shall, to the satisfaction of the Engineer, allow them access to the Work and shall cooperate with them in the carrying out of their duties and obligations.
2. If the sending on to the Work of a contracting firm or workmen under subsection 1 could not have been reasonably foreseen or anticipated by the Contractor when entering into the Contract and if, in the opinion of the Engineer, the Contractor has incurred expense in complying with subsection 1 in respect of that contracting firm or those workmen, Canada, if the Contractor has given to the Engineer and the Minister written notice of his claim before the expiration of thirty days from the sending on to the Work of the contracting firm or workmen involved, shall pay to the Contractor the cost, calculated in accordance with sections 44 to 47 of these General Conditions, of the material, labour and plant necessarily involved.

**1034 40 (2000-12-01) Engineer's Certificates**

1. On the day that
  - (a) the Work has been completed; and
  - (b) the Contractor has complied with the Contract and all orders and directions made pursuant thereto,

- to the satisfaction of the Engineer, he shall issue to the Contractor a Final Certificate of Completion.
2. If the Engineer is satisfied that the Work is substantially completed and is acceptable for use by Canada, he may, at any time before issuance of a Final Certificate of Completion, issue to the Contractor an Interim Certificate of Completion, and shall describe therein the portions of the Work not completed to his satisfaction and all things which must be done by the Contractor before a Final Certificate of Completion can be issued.
  3. The Engineer, before issuing a Final Certificate of Completion, may, in addition to the matters described in the Interim Certificate of Completion, require the Contractor to rectify any other portions of the Work not completed to the satisfaction of the Engineer and to do any other things necessary for the completion of the Work.
  4. The Engineer shall measure and keep records of his measurements of the quantities of labour, material and plant performed, used and supplied by the Contractor in executing the Work and shall, at the request of the Contractor, inform him of his measurements and the Contractor will assist and cooperate with the Engineer in such measuring and is entitled to inspect the records of measurement kept by the Engineer.
  5. On the day that the Engineer issues his Final Certificate of Completion under subsection 1, he shall issue a Final Certificate of Measurement showing the quantity of labour, plant and material performed, used and supplied by the Contractor in executing the Work and all measurements included therein shall be binding upon Canada and the Contractor and are conclusive between them as to the quantity of any labour, plant or material performed, used or supplied by the Contractor in executing the Work.
  6. Subsections 4 and 5 are applicable only to a unit price arrangement.

**1034 41 (2000-12-01) Security Deposit - Forfeiture or Return**

If the Work is taken out of the Contractor's hands pursuant to section 16 of these General Conditions or if the Contract is terminated pursuant to section 19 of these General Conditions or if the Contractor is in breach of or in default under the Contract, Canada may negotiate the security deposit, in the case of bonds, or convert the security deposit to its own use, in the case of money, and the amount realized by Canada shall be deemed to be a debt payable by Canada to the Contractor and Canada shall have the right of set-off and may set-off against the debt any sum or amount which the Contractor may be liable to pay to Canada and the balance of the debt, if any, after the right of set-off has been exercised, and if such balance, in the opinion of the Minister, is not required for the purposes of the Contract shall be paid by Canada to the Contractor.

**1034 42 (2000-12-01) Security Deposit - Return all or any Part Thereof**

1. Upon the Engineer's Interim Certificate of Completion being issued, Canada will, if the Contractor is not in breach of or in default under the Contract, return to the Contractor that part of the security deposit which, in the opinion of the Minister, is not required for the purposes of the Contract.
2. If the security deposit was deposited in the Consolidated Revenue Fund of Canada, Canada will pay to the Contractor interest thereon in accordance with the Government Contracts Regulations.

**1034 43 (2000-12-01) Municipal Permits**

1. The Contractor will, within one month from the date of the Contract, tender to the municipal authority an amount equal to all fees and charges which would be payable to the municipal authority in respect of building permits if the Work were being constructed for a person other than Canada.
2. The Contractor will notify the Minister within ten (10) days of the tender the amount of and whether or not the municipal authority accepted the tender.
3. If the municipal authority did not accept the tender, the Contractor will deliver to the Minister, within the time limited by subsection 2, the amount of the tender.
4. For the purposes of this section, "municipal authority" means an authority which would have jurisdiction respecting permission to construct the Work if the owner of the Work were not Canada.

**1034 44 (1991-06-01) Determination of Cost - Unit Price Table**

Whenever it is necessary for the purposes of sections 12, 18, 37, 38 and 39 of these General Conditions to determine the cost of labour, plant or material, the Unit Price Table shall be used, that is the cost shall be equal to the product of the quantity of such labour, plant or material expressed in the unit set out in the Unit Price

Table in respect of the labour, plant or material involved, multiplied by the price in respect of the unit set out in the Unit Price Table.

**1034 45 (1991-06-01) Determination of Cost - Negotiation**

If the method of determination in section 44 of these General Conditions cannot be used because the labour, plant or material involved is not included in the Unit Price Table, the cost of the labour, plant or material for the purposes of sections 12, 18, 37, 38 and 39 of these General Conditions shall be the amount agreed upon from time to time by the Contractor and the Minister.

**1034 46 (1991-06-01) Determination of Cost - Failing Negotiations**

1. If the method of determination in section 44 of these General Conditions cannot be used and if the Contractor and the Minister cannot agree as contemplated by section 45 of these General Conditions, the cost of labour, plant or material for the purposes of sections 12, 18, 37, 38 and 39 of these General Conditions shall be equal to the aggregate of
  - (a) all reasonable and proper amounts actually expended by or legally payable by the Contractor in respect of the labour, plant or material which fall within one of the classes of expenditure described in subsection 2 (being costs which are directly attributable to the execution of the Work and are not costs in respect of which the allowance in paragraph (b) is made); and
  - (b) 10% of the total of the expenditures of the Contractor that meet the test in paragraph (a) being an allowance for all other expenditures by the Contractor and for profit and without limiting the generality of the foregoing, being also an allowance for payments and charges relating to overhead, head office expenses and general administration costs of the Contractor, including finance and interest charges.
2. Classes of expenditure that are allowable are:
  - (a) payments to subcontractors;
  - (b) wages, salaries and travelling expenses of employees of the Contractor while they are actually and properly engaged on the Work other than wages, salaries, bonuses, living and travelling expenses of personnel of the Contractor generally employed at the head office, or at a general office, of the Contractor, unless such personnel is engaged at the site of the Work with the approval of the Engineer;
  - (c) payments for materials necessary for and incorporated in the Work, or necessary for and consumed in the execution of the Work;
  - (d) payments for tools, other than tools customarily provided by tradesmen, necessary for and used in the execution of the Work;
  - (e) payments for preparation, inspection, delivery, installation and removal of plant and materials necessary for the execution of the Work;
  - (f) payments for renting, erecting, maintaining and removing temporary offices, sheds and similar structures necessary for and used by the Contractor in executing the Work;
  - (g) assessments payable under any statutory scheme relating to workmen's compensation, unemployment insurance or holidays with pay;
  - (h) payments for renting plant and allowances for plant owned by the Contractor necessary for the execution of the Work provided that such payments or allowances are reasonable or have been agreed to by the Contractor and the Engineer; and
  - (i) payments made with the approval of the Engineer that are necessary for the execution of the Work.

**1034 47 (1991-06-01) Determination of Cost - Clarification of Terms**

1. For the purposes of sections 45 and 46 of these General Conditions, "plant" does not include tools.
2. For the purposes of sections 44, 45 and 46 of these General Conditions, "Unit Price Table" means the table set out in the Contract.



**1034 48 (1991-06-01) Records to be Kept by Contractor**

1. The Contractor shall maintain full records of his estimates of and actual cost to him of the Work together with all proper tender calls, quotations, contracts, correspondence, invoices, receipts and vouchers relating thereto, shall make them available to audit and inspection by the Minister, or by persons acting on his behalf, shall allow them to make copies thereof and to take extracts therefrom, and shall furnish them with any information which they may require from time to time in connection with such records.
2. The records maintained by the Contractor pursuant to this section shall be kept intact until the expiration of two years from the date of issuance of the Final Certificate of Completion under subsection 1 of section 40 of the General Conditions or until the expiration of such other period as the Minister may direct.
3. The Contractor shall require all subcontractors and all firms, corporations and persons directly or indirectly controlled by or affiliated with the Contractor and all firms, corporations and persons directly or indirectly having control of the Contractor to comply with subsections 1 and 2 as if they were the Contractor.

**1034 49 (2000-12-01) Time of Payment**

1. For the purposes of this section, "Payment Period" means such interval (if any) as the Contractor and the Minister agree upon.
2. The Contractor shall, upon the expiration of a Payment Period, deliver to the Engineer a Progress Claim in writing and shall describe therein any portion of the Work completed and any materials delivered to the site of the Work but not incorporated into the Work during the Payment Period in respect of which the Progress Claim is made.
3. Within 14 days of receipt by the Engineer of the Progress Claim, the Engineer shall inspect the portion of the Work and the material described therein and shall issue a Progress Report, which may take the form of an endorsement on the Progress Claim, indicating the value of the portion of the Work and the materials described in the Progress Claim which meet with his satisfaction and which, in his opinion, have been completed or delivered in accordance with the Contract and which are not included in any other Progress Report.
4. Thirty days after the expiration of the fourteen days referred to in subsection (3) and if the Contractor has made and delivered to the Engineer his Statutory Declaration deposing to the fact that as at the date of the immediately preceding Progress Claim, if any, all his lawful obligations to subcontractors, workmen and suppliers of materials in respect of the Work are fully discharged, an amount equal to 95% of the value of the Work and materials as shown in the Progress Report shall become due and be payable by Canada to the Contractor, but where a Labour and Material Payment Bond has not been furnished by the Contractor, the amount payable under this subsection shall be an amount equal to 90% of the value of the Work and materials as shown in the Progress Report.
5. Upon the expiration of 60 days from the date of issuance of an Interim Certificate of Completion under subsection 2 of section 40 of these General Conditions and if the Contractor has made and delivered to the Engineer his Statutory Declaration deposing to the fact that all his lawful obligations to subcontractors, workmen and suppliers of material in respect of the Work are fully discharged, the amount payable under the Contract less the aggregate of
  - (a) all payments made pursuant to subsection 4;
  - (b) an amount equal to double the cost to Canada of completing the items and doing the things described in the Interim Certificate of Completion which, in the opinion of the Engineer, are brought about by defects and faults in the Work; and
  - (c) an amount equal to the cost to Canada of completing the items and doing the things described in the Interim Certificate of Completion other than items or things to which paragraph (b) applies;shall become due and be payable by Canada to the Contractor.
6. Upon the expiration of 60 (sixty) days from the date of issuance of a Final Certificate of Completion under subsection 1 of section 40 of these General Conditions and if the Contractor has made and delivered to the Engineer his Statutory Declaration deposing to the fact that all his lawful obligations

and lawful claims against him, arising out of the execution of the Work, have been discharged and satisfied, the amount payable under the Contract less the aggregate of

- (a) all payments made pursuant to subsection 4; and
- (b) all payments made pursuant to subsection 5;

shall become due and be payable by Canada to the Contractor.

**1034 50 (2000-12-01) Progress Report and Payment thereunder not Binding on Canada**

Neither a Progress Report nor a payment by Canada pursuant to the Contract shall be construed as evidence that the Work, material or any part thereof is complete, is satisfactory or is in accordance with the Contract.

**1034 51 (2000-12-01) Interest on Overdue Accounts**

1. For the purposes of this section:

"Average Rate" means the simple arithmetic mean of the Bank Rates in effect at 4:00 p.m. Eastern Standard Time each day during the calendar month which immediately precedes the calendar month in which payment is made, where the "Bank Rate" means the rate of interest established from time to time by the Bank of Canada as the minimum rate at which the Bank of Canada makes short term advances to members of the Canadian Payments Association.

"date of payment" means the date of the negotiable instrument drawn by the Receiver General for Canada and given for payment of an amount due and payable;

an amount is "due and payable" when it is due and payable by Canada to the Contractor in accordance with the terms of the Contract; and

an amount becomes "overdue" when it is unpaid on the first day following the day upon which it is due and payable.

2. Subject to the Contract, Canada shall be liable to pay to the Contractor simple interest at the Average Rate plus 3 percent per annum on any amount that is overdue, from the date such amount becomes overdue until the day prior to the date of payment, inclusive. Interest shall be paid without notice from the Contractor.
3. Canada shall not be liable to pay interest in accordance with this section if Canada is not responsible for the delay in paying the Contractor.
4. Canada shall not be liable to pay interest on overdue advance payments.

**1034 52 (2000-12-01) Right of Set-off**

1. Without restricting any right of set-off given or implied by law, Canada may set-off against any amount payable to the Contractor under the Contract, any amount payable to Canada by the Contractor under this Contract or under any current contract and without restricting the generality of the foregoing Canada may, when making payment pursuant to section 49 of these General Conditions, deduct from the amount payable any amount which is then payable to Canada by the Contractor under the Contract or which, by virtue of the right of set-off, may be retained by Canada.
2. For the purposes of this section "current contract" means:
- (a) a contract between Canada and the Contractor under which the Contractor has an undischarged obligation to perform or supply Work, labour or materials; or
  - (b) a contract between Canada and the Contractor in respect of which Canada has, since the date of this Contract, exercised the right to take the Work, the subject of that contract, out of the Contractor's hands.

**CONSTRUCTION INSURANCE SCHEDULE**

This is the Insurance referred to in section 31 of these General Conditions

1. The Contractor shall effect and maintain Fire Insurance including supplemental perils during construction on all buildings and structures included in the Work and on all materials, plant or real

- property at the site of the Work, whether or not such materials, plant or real property shall have been supplied or made available to the Contractor by Her Majesty, in an amount at least equal to the amount of the contract price, less cost of excavation and of brick, stone or concrete foundations, piers or other supports which are below the under-surface of the lowest basement floor or, where there is no basement, which are below the surface of the ground. Unless otherwise instructed by the Minister, the Contractor shall keep such insurance in force until the issuance of the Engineer's Final Certificate of Completion.
2. Notwithstanding the foregoing provisions, the Contractor shall not, unless otherwise instructed by the Minister, effect Fire Insurance including supplemental perils on Crown-owned buildings and structures which pursuant to this Contract are being repaired, added to, improved, maintained or rehabilitated, but the Contractor may at his option and for his own protection insure the Work being performed in connection with such Crown buildings and structures against loss or damage by fire.
  3. The Contractor shall effect and maintain Boiler and Machinery Insurance for direct damage only, which insurance is to include provision for inspection service; provided however that such Boiler and Machinery Insurance shall not, unless otherwise instructed by the Minister, be effected in respect of Crown-owned buildings and structures which pursuant to this Contract are being repaired, added to, improved, maintained or rehabilitated.
  4. Liability Insurance in the minimum amounts set out below shall be effected unless otherwise instructed by the Minister. If the Minister directs an increase or decrease in such limits, the contract price shall be adjusted accordingly. Each policy shall provide that, if Canada sustains loss from a risk insured against in circumstances which give Canada a cause of action against the Contractor, the policy shall protect Canada in the same manner as it would any other claimant:
    - (a) General Public Liability to third parties, up to \$100,000 for death or injury to any one person arising from one accident and \$200,000 for death or injury to more than one person arising from any one accident and Property Damage up to \$100,000 for damage to property arising from any one accident.
    - (b) Automobile and other vehicular coverage for Public Liability up to \$100,000 for death or injury to any one person arising from one accident and \$200,000 for death or injury to more than one person arising from one accident and Property Damage up to \$25,000 for any one accident.
    - (c) Workmen's Compensation Insurance or Employer's Liability Insurance in accordance with the legal requirements of the province or territory where the Work is being carried out.
  5. The policies covering the above-mentioned insurance shall be issued in the joint names of the Contractor and Canada the Queen in right of Canada as their respective interests may appear and, as provided by subsection 2 of section 31 of these General Conditions, all fire insurance policies shall provide that the proceeds thereof are payable to Canada.

**1034 53 (1994-06-06) Certification - Contingency Fees**

1. The Contractor certifies that it has not directly or indirectly paid or agreed to pay and covenants that it will not directly or indirectly pay a contingency fee for the solicitation, negotiation or obtaining of this Contract to any person other than an employee acting in the normal course of the employee's duties.
2. All accounts and records pertaining to payments of fees or other compensation for the solicitation, obtaining or negotiation of the Contract shall be subject to the Accounts and Audit provisions of the Contract.
3. If the Contractor certifies falsely under this section or is in default of the obligations contained therein, the Minister may either terminate this Contract for default in accordance with the termination for default provisions of the Contract or recover from the Contractor by way of reduction to the Contract Price or otherwise the full amount of the contingency fee.
4. In this section:

"contingency fee" means any payment or other compensation that is contingent upon or is calculated upon the basis of a degree of success in soliciting or obtaining a government contract or negotiating the whole or any part of its terms;

"employee" means a person with whom the Contractor has an employer/employee relationship;

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"person" includes an individual or group of individuals, a corporation, a partnership, an organization and an association and, without restricting the generality of the foregoing, includes any individual who is required to file a return with the registrar pursuant to section 5 of the *Lobbyist Registration Act*, R.S. 1985, c.44 (4<sup>th</sup> Supplement) as the same may be amended from time to time.

**1034 54 (2000-12-01) Health and Labour Conditions**

1. In this section, "Public Entity" means the municipal, provincial or federal government body authorized to enforce any laws concerning health and labour applicable to the performance of the Work or any part thereof.
2. The Contractor shall comply with all laws concerning health and labour conditions applicable to the performance of the Work or part thereof and shall also require compliance of same by all its subcontractors when applicable.
3. The Contractor upon any request for information or inspection dealing with the Work by an authorized representative of a Public Entity shall forthwith notify the Engineer.
4. Evidence of compliance with laws applicable to the performance of the Work or part thereof by either the Contractor or its subcontractor shall be furnished by the Contractor to the Engineer at such time as the Engineer may reasonably request.

**1034 55 (2005-12-16) Conflict of Interest**

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, 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 this Contract.

**2005 00 (2006-08-15) General Conditions - Standing Offers - Goods or Services****Public Works and Government Services Canada**

- 01 Interpretation
- 02 General
- 03 Standard Conditions and Clauses
- 04 Offer
- 05 Call-ups
- 06 Withdrawal
- 07 Revision
- 08 Disclosure of Information

**2005 01 (2006-08-15) Interpretation**

In the Standing Offer, unless the context otherwise requires:

"Call-up" means an order issued under the authority of the duly authorized Identified User against a particular standing offer. Communication of a call-up against a standing offer to the Offeror constitutes acceptance of its offer and results in the creation of a contract between Her Majesty the Queen in right of Canada and the Offeror for the goods, services or both described in the Call-up;

"Canada", "Crown", "Her Majesty" or "the Government" means Her Majesty the Queen in right of Canada as represented by the Minister of Public Works and Government Services and any other person duly authorized to act on behalf of that Minister.

"Identified User" means a person or entity identified in the Standing Offer and authorized by the Standing Offer Authority to make Call-ups against the Standing Offer;

"Offeror" means the person or entity whose name appears on the signature page of the Standing Offer and who offers to provide goods, services or both to Canada under the Standing Offer;

"Standing Offer" means the written offer from the Offeror, these general conditions, any referenced conditions and clauses, and any other document specified or referred to as forming part of the Standing Offer;

"Standing Offer Authority" means the person designated as such in the Standing Offer, or by notice to the Offeror, to act as the representative of Canada in the management of the Standing Offer. The Standing Offer Authority will issue a document called "Standing Offer and Call-up Authority" (SOCA) to authorize Identified Users to make Call-ups against the Standing Offer and to notify the Offeror that authority to make Call-ups against the Standing Offer has been given to Identified Users.

**2005 02 (2006-08-15) General**

The Offeror acknowledges that a standing offer is not a contract and that the issuance of a Standing Offer and Call-up Authority does not oblige or commit Canada to procure or contract for any goods, services or both listed in the Standing Offer. The Offeror understands and agrees that Canada has the right to procure the goods, services or both specified in the Standing Offer by means of any other contract, standing offer or contracting method.

**2005 03 (2006-08-15) Standard Conditions and Clauses**

Pursuant to the *Department of Public Works and Government Services Act*, S.C. 1996, c.16, the clauses and conditions identified in the Standing Offer by title, number and date are incorporated by reference into the Standing Offer and form part of any contract resulting from the Standing Offer as though expressly set out in the Standing Offer and resulting Contract.

**2005 04 (2006-08-15) Offer**

1. The Offeror offers to provide and deliver to Canada the goods, services or both described in the Standing Offer, in accordance with the pricing set out in the Standing Offer as and when the Identified User may request such goods, services or both, in accordance with the conditions listed at paragraph 2 below.
2. The Offeror understands and agrees that:

- (a) a Call-up against the Standing Offer will form a contract only for those goods, services, or both, which have been called-up, provided that such Call-up is made in accordance with the provisions of the Standing Offer;
  - (b) Canada's liability is limited to that which arises from Call-ups against the Standing Offer made within the period specified in the Standing Offer;
  - (c) Canada may require that the purchase of goods, services or both listed in the Standing Offer be made using an electronic purchasing tool. Before doing so, Canada will provide the Offeror at least three (3) months' notice regarding the requirements related to the electronic purchasing tool;
  - (d) the Standing Offer cannot be assigned or transferred in whole or in part;
- the Standing Offer may be set aside by Canada at any time.

**2005 05 (2006-08-15) Call-ups**

If applicable, Designated Users will use the form specified in the Standing Offer to order goods, services or both. Goods, services or both may also be ordered by other methods such as telephone, facsimile or electronic means. With the exception of call-ups paid for with a Government of Canada acquisition card (credit card), call-ups made by telephone must be confirmed in writing on the document specified in the Standing Offer.

Call-ups against the Standing Offer paid for with the Government of Canada acquisition card (credit card) at point of sale must be accorded the same prices and terms and conditions as any other Call-up.

**2005 06 (2006-08-15) Withdrawal**

In the event that the Offeror wishes to withdraw the Standing Offer after authority to call-up against the Standing Offer has been given, the Offeror must provide no less than thirty (30) days' written notice to the Standing Offer Authority, unless otherwise indicated in the Standing Offer. The thirty (30) days' period will start upon receipt of the notification by the Standing Offer Authority and the withdrawal will be effective at the expiry of that period. The Offeror must fulfill any and all Call-ups which are made before the expiry of that period.

**2005 07 (2006-08-15) Revision**

The period of the Standing Offer may only be extended, or its usage increased, by the Standing Offer Authority issuing a revision to the Standing Offer in writing.

**2005 08 (2006-08-15) Disclosure of Information**

The Offeror agrees to the disclosure of its standing offer unit prices or rates by Canada, and further agrees that it will have no right to claim against Canada, the Identified User, their employees, agents or servants, or any of them, in relation to such disclosure.

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**2010 00 (2006-06-16) General Conditions - Goods or Services (Medium Complexity)****Remarks:**

Use the following general conditions for Medium Complexity Competitive and Non-Competitive requirements for goods or services.

**Public Works and Government Services Canada**

01	Interpretation
02	Standard Clauses and Conditions
03	Status of the Contractor
04	Conduct of the Work
05	Subcontracts
06	Excusable Delay
07	Inspection, Acceptance and Warranty
08	Invoice Submission
09	Taxes
10	Transportation Charges
11	Shipment Documentation
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17	Title
18	Confidentiality
19	Copyright
20	Government Property
21	Amendment
22	Assignment
23	Default by the Contractor
24	Termination for Convenience
25	Conflict of Interest
26	Contingency Fees
27	International Sanctions
28	Entire Agreement

**2010 01 (2005-06-10) Interpretation**

In the Contract, unless the context otherwise requires,

"Canada", "Crown", "Her Majesty" or "the Government" means Her Majesty the Queen in right of Canada;

"Contract" means the written agreement between the Parties, these general conditions, any referenced conditions and clauses, and any other document specified or referred to as forming part of the Contract, all as amended by agreement of the Parties from time to time;

"Contractor" means the person or entity whose name appears on the signature page of the written agreement and who is to supply goods or services to Canada under the Contract;

"Contract Price" means the amount expressed in the Contract to be payable to the Contractor for the Work;

"Cost" means cost determined in accordance with Contract Cost Principles 1031-2 as revised to the date of the bid solicitation;

"Government Property" means anything supplied to the Contractor by or on behalf of Canada for the purposes of performing the Contract and anything acquired by the Contractor in any manner in connection with the Work the cost of which is paid by Canada under the Contract;

"Minister" means the Minister of Public Works and Government Services and any other person duly authorized to act on behalf of that Minister;

"Moral Rights" has the same meaning as in the *Copyright Act*, R.S.C. 1985, c. C-42;

"Party" means Canada or the Contractor or any other signatory to the Contract and "Parties" means all of them;

"Subcontract" includes a contract let by any subcontractor at any tier for the performance or supply of a part of the Work;

"Work" means the whole of the activities, services, goods, equipment, matters and things required to be done, delivered or performed by the Contractor in accordance with the terms of the Contract.

**2010 02 (2006-06-16) Standard Clauses and Conditions**

Pursuant to the *Department of Public Works and Government Services Act*, S.C. 1996, c. 16, the clauses and conditions identified by title, number and date in the Contract are incorporated by reference into and form part of the Contract as though expressly set out in the Contract.

**2010 03 (2005-06-10) Status of the Contractor**

The Contractor is engaged as an independent Contractor for the sole purpose of performing the Work. Neither the Contractor nor any of its personnel is engaged as an employee, servant or agent of Canada. The Contractor is responsible for all deductions and remittances required by law in relation to its employees.

**2010 04 (2006-06-16) Conduct of the Work**

1. The Contractor represents and warrants that:
  - (a) it is competent to perform the Work; and
  - (b) it has the necessary qualifications, including knowledge and skill, to perform the Work.
2. The Contractor must:
  - (a) supply everything necessary for the performance of the Work;
  - (b) carry out the Work in a diligent and efficient manner; and
  - (c) perform the Work in accordance with standards of quality acceptable to Canada and in full conformity with the requirements of the Contract.

**2010 05 (2005-06-10) Subcontracts**

1. The Contractor may subcontract the supply of standard goods or services which are customarily subcontracted by the Contractor. In any other instance, the Contractor must obtain the prior consent in writing of the Minister. The Minister may require the Contractor to furnish such particulars of the proposed Subcontract as he deems necessary.
2. Subcontracting does not relieve the Contractor from any of its obligations under the Contract or impose any liability upon Canada or the Minister to a subcontractor.
3. In any Subcontract, the Contractor agrees to bind the subcontractor by the same terms and conditions by which the Contractor is bound under the Contract, unless the Minister requires or agrees otherwise.

**2010 06 (2005-06-10) Excusable Delay**

1. A delay in the performance by the Contractor of any obligation under the Contract which is caused solely by an event that
  - (a) was beyond the reasonable control of the Contractor,
  - (b) could not reasonably have been foreseen,
  - (c) could not reasonably have been prevented by means reasonably available to the Contractor, and
  - (d) occurred without the fault or neglect of the Contractor,

constitutes an "Excusable Delay" provided that the Contractor advises the Minister of the occurrence of the delay or of the likelihood of the delay occurring as soon as the Contractor becomes aware of it. The Contractor must further advise the Minister, within fifteen (15) working days, of the full facts or matters giving rise to the delay and provide to the Minister for approval a clear work-around plan



- indicating in detail the steps that the Contractor proposes to take in order to minimize the impact of the event causing the delay.
2. In the event of an Excusable Delay, any delivery date or other date that is directly affected will be postponed for a reasonable time not to exceed the duration of the Excusable Delay.
  3. The Minister may, however, after an Excusable Delay has continued for thirty (30) days or more, in the Minister's absolute discretion, terminate the Contract. In such a case, the Parties agree that neither will make any claim against the other for damages, costs, expected profits or any other loss arising out of the termination or the event that gave rise to the Excusable Delay. The Contractor agrees to repay immediately to Canada the portion of any advance payment that is unliquidated at the date of the termination.
  4. Except to the extent that Canada is responsible for the delay for reasons of failure to meet an obligation under the Contract, Canada is not liable for any costs or charges of any nature incurred by the Contractor or any of its subcontractors or agents as a result of an Excusable Delay.
  5. Upon termination of the Contract under this section, the Minister may require the Contractor to deliver to Canada, in the manner and to the extent directed by the Minister, any completed parts of the Work which have not been delivered and accepted prior to the termination and any materials, parts, plant, equipment or work-in-process which the Contractor has acquired or produced specifically in the fulfilment of the Contract. Canada will pay the Contractor the value, determined on the basis of the Contract Price, including the proportionate part of the Contractor's profit or fee included in the Contract Price, of all completed parts of the Work and the Cost to the Contractor that the Minister considers reasonable in respect of all materials, parts, plant, equipment or work-in-process delivered to Canada and accepted by Canada. In no event will the aggregate of the amounts paid by Canada under the Contract to the date of termination and any amounts payable pursuant to this subsection exceed the Contract Price.

**2010 07 (2005-06-10) Inspection, Acceptance and Warranty**

The Work is subject to inspection and acceptance by Canada. Despite prior acceptance of the Work and without restricting any conditions or warranty imposed by law, the Contractor, if requested by the Minister to do so, must replace, repair or correct at its option and its own expense any Work which becomes defective or which fails to conform to the Contract requirements, where applicable. For goods, the warranty period will be twelve (12) months after delivery and acceptance or the length of the Contractor's or manufacturer's standard warranty period, whichever is longer. Any Work replaced, repaired or corrected pursuant to this section is subject to all provisions of the contract to the same extent as Work initially performed.

Canada must pay the transportation cost associated with returning any Work to the Contractor for replacement, repair or making good and the Contractor must pay the transportation cost associated with forwarding the replacement or returning the Work to the delivery point specified in the Contract or to another location as directed by Canada. If, in the opinion of the Minister, it is not expedient to remove the Work from its location, the Contractor must carry out any necessary repair or making good of the Work at that location and will be paid its reasonable travelling and living expenses.

**2010 08 (2005-06-10) Invoice Submission**

Invoices must be submitted in the name of the Contractor. They must show the name and address of the client department, item/reference number, deliverable and/or description of Work, contract serial number, Client Reference Number (CRN), Procurement Business Number (PBN) and financial code(s). If applicable, the method of shipment together with date, case numbers and part or reference numbers, item, quantity, unit of issue, unit price, and additional charges will be shown on the invoice. If applicable, fixed time labour rates and level of effort and, the amount invoiced (exclusive of the Goods and Services Tax {GST} or Harmonized Sales Tax {HST} as appropriate), will be shown separately.

GST or HST, if applicable, will be incorporated into all invoices and shown as a separate item on invoices. All items that are zero-rated, exempt or to which the GST or HST does not apply, are to be identified as such on all invoices. Invoices must be submitted for each delivery/shipment and must apply to one contract only. Each invoice must indicate whether it covers partial or final delivery.

**2010 09 (2005-06-10) Taxes**

1. Municipal Taxes  
Municipal Taxes are not applicable.
2. Provincial Taxes

- (a) Excluding legislated exceptions, federal government departments and agencies are not required to pay any ad valorem sales tax levied by the province in which the taxable goods or services are delivered. This exemption has been provided to federal government departments and agencies under the authority of one of the following:
  - (i) Provincial Sales Tax (PST) Exemption Licence Numbers, for the provinces of:
 

Prince Edward Island	OP-10000-250
Ontario	11708174G
Manitoba	390-516-0
British Columbia	R005521
  - (ii) For Quebec, Saskatchewan, the Yukon Territory, the Northwest Territories and Nunavut, an Exemption Certification, which certifies that the goods or services purchased are not subject to the provincial/territorial sales and consumption taxes because they are being purchased by the federal government with Canada funds for the use of the federal government.
- (b) Currently, in Alberta, the Yukon Territory, the Northwest Territories and Nunavut, there is no general PST. However, should a PST be introduced in the Northwest Territories, Nunavut, or Yukon Territory, the sales tax exemption certificate would be required on the purchasing document.
- (c) Federal departments are required to pay the HST in the participating provinces of Newfoundland and Labrador, Nova Scotia and New Brunswick.
- (d) The Contractor is not exempt from paying PST under the above Exemption Licence Numbers or Exemption Certification. The Contractor is required to pay the PST on taxable goods or services used or consumed in the performance of the Contract (as per appropriate provincial legislation), including material incorporated into real property.

**3. Changes to Taxes and Duties**

In the event of any change in any tax imposed under the *Excise Act*, R.S.C 1985, c. E-14, and *Excise Tax Act*, R.S.C. 1985, c. E-15, or any duties imposed under the Customs Tariff or any other federal or provincial sales, excise or other like duties, taxes, charges or impositions after the bid submission date and which affects the costs of the Work to the Contractor, the Contract price will be adjusted to reflect the increase or decrease in the cost to the Contractor.

**4. Goods and Services Tax/Harmonized Sales Tax**

The estimated Goods and Services Tax (GST) or Harmonized Sales Tax (HST), if applicable, is included in the total estimated cost on page 1 of the Contract. The GST or HST is not included in the Contract price but will be paid by Canada as provided in the Invoice Submission clause above. The Contractor agrees to remit to Canada Revenue Agency any amounts of GST and HST paid or due.

**2010 10 (2005-06-10) Transportation Charges**

If transportation charges are payable by Canada under the terms of the Contract and the Contractor makes the transportation arrangements, shipments must be made by the most direct and economical means consistent with normal shipping practice. The charges must be shown as a separate item on the invoice. The federal government's policy of underwriting its own risks precludes payment of insurance or valuation charges for transportation beyond the point at which title of goods passes to the federal government (determined by the FOB point or Incoterms). Where increased carrier liability is available without charge, the Contractor must obtain the increased liability for shipment.

**2010 11 (2005-06-10) Shipment Documentation**

For the shipment of goods, the transportation bill of lading must accompany the original invoice, except for "collect" shipments (if and when stipulated), in which event it must accompany the shipment. In addition, a packing slip must accompany each shipment, showing item, quantity, part or reference numbers, description of suppliers and contract reference numbers, including the Client Reference Number (CRN) and Procurement Business Number (PBN). If the goods have been inspected at the Contractor's plant, the signed inspection voucher must be attached to the packing slip normally enclosed in the packing note envelope.

**2010 12 (2005-06-10) Payment**

Payment by Canada for the Work will be made following delivery, inspection and acceptance of the Work, and upon presentation of invoices and any other substantiating documentation as Canada requires.

**2010 13 (2005-06-10) Interest on Overdue Accounts**

1. For the purposes of this section:

"Average Rate" means the simple arithmetic mean of the Bank Rates in effect at 4:00 p.m. Eastern Standard Time each day during the calendar month which immediately precedes the calendar month in which payment is made;

"Bank Rate" means the rate of interest established from time to time by the Bank of Canada as the minimum rate at which the Bank of Canada makes short term advances to members of the Canadian Payments Association;

"date of payment" means the date of the negotiable instrument drawn by the Receiver General for Canada and given for payment of an amount due and payable under the Contract;

an amount becomes "overdue" when it is unpaid on the first day following the day upon which it is due and payable in accordance with the terms of the Contract.

2. Canada is liable to pay to the Contractor simple interest at the Average Rate plus three percent (3%) per annum on any amount that is overdue, from the date such amount becomes overdue until the day prior to the date of payment, inclusive. Interest will be paid without notice from the Contractor.
3. Canada is not liable to pay interest in accordance with this section if Canada is not responsible for the delay in paying the Contractor. Canada is not liable to pay interest on overdue advance payments.

**2010 14 (2005-06-10) Audit**

1. The Contractor must keep proper accounts and records of the Cost to the Contractor of the Work and of all expenditures or commitments made by the Contractor in connection with the Work and must keep all invoices, receipts and vouchers relating to the Work. The Contractor must not, without the prior written consent of the Minister, dispose of any such accounts, records, invoices, receipts or vouchers until the expiration of 6 years after final payment under the Contract, or until the settlement of all outstanding claims and disputes, whichever is later.
2. All such accounts and records as well as any invoices, receipts and vouchers must at all times during the retention period referred to in subsection 1 be open to audit, inspection and examination by the authorized representatives of the Minister, who may make copies and take extracts. The Contractor must provide all facilities for such audits and inspections and must furnish all such information as the representatives of the Minister may from time to time require with respect to such accounts, records, invoices, receipts and vouchers.

**2010 15 (2005-06-10) Compliance with Applicable Laws**

The Contractor must comply with all laws applicable to the performance of the Work.

**2010 16 (2005-06-10) Time of the Essence**

The Work must be performed within or at the time stated in the Contract.

**2010 17 (2005-06-10) Title**

1. Except as otherwise provided in the Contract, and except as provided in subsection 2, title of the Work or any part of the Work belongs to Canada upon delivery and acceptance by or on behalf of Canada.
2. If any payment is made to the Contractor for or on account of materials, parts, work-in-process or finished work, either by way of progress payments or accountable advances or otherwise, title in and to all materials, parts, work-in-process and finished work so paid for belongs to Canada upon payment. Transfer pursuant to this subsection does not constitute acceptance by Canada of the materials, parts, work-in-process or finished work, and does not relieve the Contractor of its obligation to perform the Work in accordance with the Contract.

3. Despite any transfer of title referred to in this section and except as otherwise provided in the Contract, the risk of loss or damage to the materials, parts, work-in-process or finished Work remains with the Contractor until their delivery to Canada in accordance with the Contract.
4. Where title to any materials, parts, work-in-process or finished Work is transferred to Canada, the Contractor must, upon the Minister's request, establish to the Minister's satisfaction that the title is free and clear of all claims, liens, attachments, charges or encumbrances and must execute such conveyances and other instruments necessary to perfect that title as the Minister may request.

**2010 18 (2005-06-10) Confidentiality**

1. The Contractor must keep confidential all information provided to the Contractor by or on behalf of Canada in connection with the Work and all information conceived, developed or produced by the Contractor as part of the Work. Information provided to the Contractor by or on behalf of Canada must be used solely for the purpose of the Contract and remains the property of Canada.
2. 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 agrees not to 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.
3. The obligations of the Parties set out in this section do not apply to any information where the same information:
  - (a) is publicly available from a source other than the other Party; or
  - (b) 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
  - (c) is developed by a Party without use of the information of the other Party.

**2010 19 (2005-06-10) Copyright**

1. Anything that is created or developed by the Contractor as part of the Work under the Contract in which copyright subsists belongs to Canada. The Contractor must incorporate the copyright symbol and either of the following notices, as appropriate:
  - © HER MAJESTY THE QUEEN IN RIGHT OF CANADA (year)
  - or
  - © SA MAJESTÉ LA REINE DU CHEF DU CANADA (année)
2. At the request of the Minister, the Contractor must provide to Canada, at the completion of the Work or at such other time as the Minister may require, a written permanent waiver of Moral Rights, in a form acceptable to the Minister, from every author that contributed to the Work. If the Contractor is an author, the Contractor permanently waives the Contractor's Moral Rights.

**2010 20 (2005-06-10) Government Property**

The Contractor must take reasonable and proper care of all Government Property while such property is in its possession or subject to its control and is responsible for any loss or damage, ordinary wear and tear excepted, resulting from its failure to do so.

**2010 21 (2005-06-10) Amendment**

No amendment to the Contract is effective unless it is incorporated into the Contract by written amendment executed by the authorized representatives of the Minister and of the Contractor.

**2010 22 (2005-06-10) Assignment**

1. The Contract must not be assigned, in whole or in part, by the Contractor without the prior consent in writing of the Minister and any assignment made without that consent is void and of no effect.
2. Assignment of the Contract does not relieve the Contractor from any obligation under the Contract or impose any liability upon Canada or the Minister, unless otherwise agreed to in writing by the Minister.

**2010 23 (2005-06-10) Default by the Contractor**

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, either immediately, or at the expiration of a cure period specified in the notice if the Contractor has not cured the default to the satisfaction of the Minister within that cure period.
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, upon giving notice to the Contractor, immediately terminate for default the whole or any part of the Contract.
3. Upon the giving of a notice provided for in subsection 1 or 2, the Contractor will have no claim for further payment, but remains liable to Canada for any amounts, including milestone payments, paid by Canada and for all losses and damages which may be suffered by Canada by reason of the default, including any increase in the cost incurred by Canada in procuring the Work from another source.
4. Upon termination of the Contract under this section, the Minister may require the Contractor to deliver to Canada, in the manner and to the extent directed by the Minister, any completed parts of the Work which have not been delivered and accepted prior to the termination and any materials, parts, plant, equipment or work-in-process which the Contractor has acquired or produced specifically in the fulfilment of the Contract.
5. Subject to the deduction of any claim that Canada may have against the Contractor arising under the Contract or out of the termination, Canada will pay the Contractor the value, determined on the basis of the Contract Price including the proportionate part of the Contractor's profit or fee included in the Contract Price, of all completed parts of the Work and the Cost to the Contractor that the Minister considers reasonable in respect of all materials, parts, plant, equipment or work-in-process delivered to Canada pursuant to a direction under subsection 4 and accepted by Canada.

**2010 24 (2005-06-10) Termination for Convenience**

1. The Minister may, at any time prior to the completion of the Work, by giving notice to the Contractor in writing, terminate the Contract as regards all or any part of the Work not completed. Upon a termination notice being given, the Contractor must cease Work in accordance with and to the extent specified in the notice, but must proceed to complete such part or parts of the Work as are not affected by the termination notice.
2. In the event of a termination notice being given pursuant to subsection 1, the Contractor will 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 that is accepted in accordance with the Contract, whether completed before, or after and in compliance with the instructions contained in the termination notice;
  - (b) the Cost to the Contractor plus a fair and reasonable profit, for all Work terminated by the termination notice before completion, the Cost to the Contractor being determined in accordance with the terms of the Contract and with Contract Cost Principles 1031-2;
  - (c) all costs of and incidental to the termination 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.
3. 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.
4. The total of the amounts to which the Contractor is entitled under subsections 2.(a) and (b), together with any amounts paid or due or becoming due to the Contractor under other provisions of the Contract, must not exceed the Contract Price or the portion that is applicable to the part of the Work that is terminated.

5. The Contractor has 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 section, except to the extent that this section expressly provides.

**2010 25 (2006-06-16) Conflict of Interest**

Persons not in compliance with the provisions of the Conflict of Interest and Post-Employment Code for Public Office Holders, the Values and Ethics Code for the Public Service, or the Defence Administrative Orders and Directives governing Conflict of Interest and Post-Employment, cannot derive any direct benefit from the Contract.

**2010 26 (2006-06-16) Contingency Fees**

The Contractor certifies that it has not directly or indirectly paid or agreed to pay and agrees that it will not directly or indirectly pay a contingency fee for the solicitation, negotiation or obtaining of the Contract to any person, other than an employee of the Contractor acting in the normal course of the employee's duties. In this section, "contingency fee" means any payment or other compensation that is depending or calculated upon the basis of a degree of success in soliciting, negotiating or obtaining the Contract and "person" includes any individual who is required to file a return with the registrar pursuant to section 5 of the *Lobbyists Registration Act*, R.S., 1985, c. 44 (4th Supp.).

**2010 27 (2006-06-16) International Sanctions**

1. 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.

Details on existing sanctions can be found at:  
<http://www.dfait-maeci.gc.ca/trade/sanctions-en.asp>.

2. The Contractor must not supply to the Government of Canada any goods or services which are subject to economic sanctions.
3. By law, the Contractor 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 addition of a good or service to the list of sanctioned goods or services cause an impossibility of performance for the Contractor, the situation will be treated by the Parties as a force majeure. The Contractor must immediately inform Canada of the situation and the procedures applicable to force majeure will then apply.

**2010 28 (2006-06-16) Entire Agreement**

The Contract constitutes the entire and sole agreement between the parties.

**2029 00 (2006-06-16) General Conditions - Goods or Services (Low Dollar Value)**

**Remarks:** Use the following general conditions for Low Dollar Value Competitive and Non-Competitive requirements for goods or services.

**Public Works and Government Services Canada**

- 01 Interpretation
- 02 Standard Clauses and Conditions
- 03 Status of the Contractor
- 04 Inspection, Acceptance and Warranty
- 05 Invoice Submission
- 06 Taxes
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**2029 01 (2006-06-16) Interpretation**

In the Contract, unless the context otherwise requires:

"Canada", "Crown", "Her Majesty" or "the Government" means Her Majesty the Queen in right of Canada;

"Contract" means the written agreement between the Parties, these general conditions, any referenced conditions and clauses, and any other document specified or referred to as forming part of the Contract, all as amended by agreement of the Parties from time to time;

"Contractor" means the person or entity whose name appears on the signature page of the written agreement and who is to supply goods or services to Canada under the Contract;

"Government Property" means anything supplied to the Contractor by or on behalf of Canada for the purposes of performing the Contract and anything acquired by the Contractor in any manner in connection with the Work the cost of which is paid by Canada under the Contract;

"Minister" means the Minister of Public Works and Government Services and any other person duly authorized to act on behalf of that Minister;

"Work" means the whole of the activities, services, goods, equipment, matters and things required to be done, delivered or performed by the Contractor in accordance with the terms of the Contract.

**2029 02 (2006-06-16) Standard Clauses and Conditions**

Pursuant to the *Department of Public Works and Government Services Act*, S.C. 1996, c.16, the clauses and conditions identified in the Contract by title, number and date in the Contract are incorporated by reference into and form part of the Contract as though expressly set out in the Contract.

**2029 03 (2005-06-10) Status of the Contractor**

The Contractor is engaged as an independent Contractor for the sole purpose of performing the Work. Neither the Contractor nor any of its personnel is engaged as an employee, servant or agent of Canada. The Contractor is responsible for all deductions and remittances required by law in relation to its employees.

**2029 04 (2005-06-10) Inspection, Acceptance and Warranty**

The Contractor must perform the Work efficiently in accordance with standards of quality acceptable to Canada and in full conformity with all the requirements of the Contract.

The Work is subject to inspection and acceptance by Canada. Despite prior acceptance of the Work and without restricting any conditions or warranty imposed by law, the Contractor, if requested by the Minister to do so, must replace, repair or correct, at its option and its own expense any Work which becomes defective or which fails to conform to the Contract requirements, where applicable. For goods, the warranty period will be twelve (12) months after delivery and acceptance of the Work or the length of the Contractor's or manufacturer's standard warranty period, whichever is longer. Any Work replaced, repaired or corrected pursuant to this section is subject to all provisions of the Contract to the same extent as Work initially performed.

Canada must pay the transportation cost associated with returning any Work to the Contractor for replacement, repair or making good and the Contractor must pay the transportation cost associated with forwarding the replacement or returning the Work to the delivery point specified in the Contract or to another location as directed by Canada. If, in the opinion of the Minister, it is not expedient to remove the Work from its location, the Contractor must carry out any necessary repair or making good of the Work at that location and will be paid its reasonable travelling and living expenses.

**2029 05 (2005-06-10) Invoice Submission**

Invoices must be submitted in the name of the Contractor. They must show the name and address of the client department, item/reference number, deliverable and/or description of Work, contract serial number, Client Reference Number (CRN), Procurement Business Number (PBN) and financial code(s). If applicable, the method of shipment together with date, case numbers and part or reference numbers, item, quantity, unit of issue, unit price, and additional charges will be shown on the invoice. If applicable, fixed time labour rates, level of effort and, the amount invoiced (exclusive of the Goods and Services Tax {GST} or Harmonized Sales Tax {HST} as appropriate), will be shown separately.

GST, HST or other taxes, if applicable, will be incorporated into all invoices and shown as a separate item on invoices. All goods or services that are zero-rated, exempt or to which the GST or HST does not apply, are to be identified as such on all invoices. Invoices must be submitted for each delivery/shipment and must apply to one contract only. Each invoice must indicate whether it covers partial or final delivery.

**2029 06 (2005-06-10) Taxes**

1. Municipal Taxes  
Municipal Taxes are not applicable.
2. Provincial Taxes
  - (a) Excluding legislated exceptions, federal government departments and agencies are not required to pay any ad valorem sales tax levied by the province in which the taxable goods or services are delivered. This exemption has been provided to federal government departments and agencies under the authority of one of the following:
    - (i) Provincial Sales Tax (PST) Exemption Licence Numbers, for the provinces of:

Prince Edward Island	OP-10000-250
Ontario	11708174G
Manitoba	390-516-0
British Columbia	R005521
    - (ii) For Quebec, Saskatchewan, the Yukon Territory, the Northwest Territories and Nunavut, an Exemption Certification, which certifies that the goods or services purchased are not subject to the provincial/territorial sales and consumption taxes because they are being purchased by the federal government with Canada funds for the use of the federal government.
  - (b) Currently, in Alberta, the Yukon Territory, the Northwest Territories and Nunavut, there is no general PST. However, should a PST be introduced in the Northwest Territories, Nunavut, or Yukon Territory, the sales tax exemption certificate would be required on the purchasing document.
  - (c) Federal departments are required to pay the Harmonized Sales Tax (HST) in the participating provinces of Newfoundland and Labrador, Nova Scotia and New Brunswick.



- (d) The Contractor is not exempt from paying PST under the above Exemption Licence Numbers or Exemption Certification. The Contractor is required to pay the PST on taxable goods or services used or consumed in the performance of the Contract (as per appropriate provincial legislation), including material incorporated into real property.
3. **Changes to Taxes and Duties**  
In the event of any change in any tax imposed under the *Excise Act*, R.S.C 1985, c. E-14, and *Excise Tax Act*, R.S.C. 1985, c. E-15, or any duties imposed under the Customs Tariff or any other federal or provincial sales, excise or other like duties, taxes, charges or impositions after the bid submission date and which affects the costs of the Work to the Contractor, the Contract price will be adjusted to reflect the increase or decrease in the cost to the Contractor.
4. **Goods and Services Tax/Harmonized Sales Tax**  
The estimated Goods and Services Tax (GST) or Harmonized Sales Tax (HST), if applicable, is included in the total estimated cost on page 1 of the Contract. The GST or HST is not included in the Contract price but will be paid by Canada as provided in the Invoice Submission clause above. The Contractor agrees to remit to Canada Revenue Agency any amounts of GST and HST paid or due.

**2029 07 (2005-06-10) Transportation Charges**

If transportation charges are payable by Canada under the terms of the Contract and the Contractor makes the transportation arrangements, shipments must be made by the most direct and economical means consistent with normal shipping practice. The charges must be shown as a separate item on the invoice. The federal government's policy of underwriting its own risks precludes payment of insurance or valuation charges for transportation beyond the point at which title of goods passes to the federal government (determined by the FOB point or Incoterms). Where increased carrier liability is available without charge, the Contractor must obtain the increased liability for shipment.

**2029 08 (2005-06-10) Shipment Documentation**

For the shipment of goods, the transportation bill of lading must accompany the original invoice, except for "collect" shipments (if and when stipulated), in which event it must accompany the shipment. In addition, a packing slip must accompany each shipment, showing item, quantity, part or reference numbers, description of suppliers and contract reference numbers, including the Client Reference Number (CRN) and Procurement Business Number (PBN). If the goods have been inspected at the Contractor's plant, the signed inspection voucher must be attached to the packing slip normally enclosed in the packing note envelope.

**2029 09 (2005-06-10) Payment and Interest on Overdue Accounts**

1. Payment by Canada for the Work will be made following delivery, inspection and acceptance of the Work, and upon presentation of invoices and any other substantiating documentation as Canada requires.
2. For the purposes of this section:
- "Average Rate" means the simple arithmetic mean of the Bank Rates in effect at 4:00 p.m. Eastern Standard Time each day during the calendar month which immediately precedes the calendar month in which payment is made;
- "Bank Rate" means the rate of interest established from time to time by the Bank of Canada as the minimum rate at which the Bank of Canada makes short term advances to members of the Canadian Payments Association;
- "date of payment" means the date of the negotiable instrument drawn by the Receiver General for Canada and given for payment of an amount due and payable under the Contract;
- an amount becomes "overdue" when it is unpaid on the first day following the day upon which it is due and payable in accordance with the terms of the Contract.
3. Canada is liable to pay to the Contractor simple interest at the Average Rate plus three percent (3%) per annum on any amount that is overdue, from the date such amount becomes overdue until the day prior to the date of payment, inclusive. Interest will be paid without notice from the Contractor.
4. Canada is not liable to pay interest in accordance with this section if Canada is not responsible for the delay in paying the Contractor. Canada is not liable to pay interest on overdue advance payments.

**2029 10 (2005-06-10) Audit**

The amount claimed by the Contractor under the Contract is subject to audit by Canada before or after payment has been made to the Contractor. The Contractor must keep proper accounts and records of the cost of performing the Contract and keep all documents relating to such cost for a period of 6 years after final payment under the Contract.

**2029 11 (2005-06-10) Compliance with Applicable Laws**

The Contractor must comply with all laws applicable to the performance of the Work.

**2029 12 (2005-06-10) Time of the Essence**

The Work must be performed within or at the time stated in the Contract.

**2029 13 (2005-06-10) Title**

Except as otherwise provided in the Contract, title to the Work (including copyright where it exists) belongs to Canada upon delivery and acceptance by Canada and the risk of loss or damage remains with the Contractor until delivery of the Work to Canada.

**2029 14 (2005-06-10) Government Property**

The Contractor must take reasonable and proper care of all Government Property while such property is in its possession or subject to its control and is responsible for any loss or damage, ordinary wear and tear excepted, resulting from its failure to do so.

**2029 15 (2005-06-10) Amendment and Assignment**

The Contract must not be amended or assigned, in whole or in part, without the prior written agreement of the parties.

**2029 16 (2005-06-10) Default by the Contractor**

If the Contractor is in default in carrying out any of its obligations under the Contract, or is bankrupt or insolvent or in receivership, the Minister may, upon giving written notice to the Contractor, terminate the whole or any part of the Contract. Upon the giving of such notice, the Contractor will have no claim for any further payment and remains liable to Canada for all losses and damages suffered by Canada by reason of the default, including any increase in the cost incurred by Canada in procuring the Work from another source.

**2029 17 (2005-06-10) Termination for Convenience**

The Minister may, any time prior to the completion of the Work, by giving notice to the Contractor in writing, terminate all or any portion of the Contract. In such case, the Contractor will be paid for Work that has been performed, accepted and unpaid in accordance with the Contract price. The Contractor will be entitled to be reimbursed the actual costs reasonably and properly incurred as a direct result of the termination, but in no case such reimbursement must exceed the Contract price. The Contractor will have no claim for damages, compensation, loss of profit or otherwise, except as provided in this section.

**2029 18 (2006-06-16) Conflict of Interest**

Persons 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 cannot derive any direct benefit from the Contract.

**2029 19 (2006-06-16) Contingency Fees**

The Contractor certifies that it has not directly or indirectly paid or agreed to pay and agrees that it will not directly or indirectly pay a contingency fee for the solicitation, negotiation or obtaining of the Contract to any person, other than an employee of the Contractor acting in the normal course of the employee's duties. In this section, "contingency fee" means any payment or other compensation that is depending or calculated upon the basis of a degree of success in soliciting, negotiating or obtaining the Contract and "person" includes any individual who is required to file a return with the registrar pursuant to section 5 of the *Lobbyists Registration Act*, R.S. 1985 c.44 (4th Supplement).

**2029 20 (2006-06-16) International Sanctions**

1. 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.  
  
Details on existing sanctions can be found at:  
<http://www.dfait-maeci.gc.ca/trade/sanctions-en.asp>.
2. The Contractor must not supply to the Government of Canada any goods or services which are subject to economic sanctions.
3. By law, the Contractor 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 addition of a good or service to the list of sanctioned goods or services cause an impossibility of performance for the Contractor, the situation will be treated by the parties as a force majeure. The Contractor must immediately inform Canada of the situation and the procedures applicable to force majeure will then apply.

**2029 21 (2006-06-16) Entire Agreement**

The Contract constitutes the entire and sole agreement between the parties.



**9601 00 (2006-08-15) General Conditions - Long Form****Public Works and Government Services Canada**

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02	Powers of the Minister
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30	Members of the House of Commons
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35	Successors and Assigns
36	Entire Agreement
37	Certification - Contingency Fees
38	Taxes
39	Invoice Submission
40	Shipment Documentation
41	Condition of Material
42	Transportation Charges
43	Shipment into Canada

**9601 01 (2004-05-14) Interpretation**

1. In the Contract, unless the context otherwise requires,

"Canada", "Crown", "Her Majesty" or "the Government" means Her Majesty the Queen in right of Canada;

"Contract" means the written agreement between the Parties, these general conditions, any supplemental general conditions specified in the written agreement, and every other document specified or referred to in any of them as forming part of the Contract, all as amended by agreement of the Parties from time to time;

"Contracting Authority" means the person designated as such in the Contract, or by notice to the Contractor, to act as the representative of the Minister in the management of the Contract;

"Contractor" means the person or entity whose name appears on the signature page of the written agreement and who is to supply goods or services to Canada under the Contract;

"Contract Price" means the amount expressed in the Contract to be payable to the Contractor for the Work;

"Cost" means cost determined in accordance with Contract Cost Principles 1031-2 as revised to the date of the bid solicitation;

"Government Property" means all materials, parts, components, Specifications, equipment, software, articles and things supplied to the Contractor by or on behalf of Canada for the purposes of performing the Contract and anything acquired by the Contractor in any manner in connection with the Work the cost of which is paid by Canada under the Contract and, without restricting the generality of the foregoing, includes Government Issue as defined in the *Defence Production Act*, R.S. 1985, c. D-1, Government Furnished Equipment and Government Supplied Materiel;

"Inspection Authority" means the person designated as such in the Contract, or by notice to the Contractor, to act as the representative of the minister for whose department or agency the Work is being carried out in matters concerning the inspection of the Work, and for purposes of section 18 includes a Quality Assurance Authority if such an authority is mentioned in the Contract;

"Minister" means the Minister of Public Works and Government Services and any other person duly authorized to act on behalf of that Minister;

"Moral Rights" has the same meaning as in the *Copyright Act*, R.S. 1985, c. C-42;

"Party" means Canada or the Contractor or any other signatory to the Contract and "Parties" means all of them;

"Specifications" means the functional or technical description of the Work set out or referred to in the Contract, including drawings, samples and models, and further includes, except to the extent inconsistent with anything set out or referred to in the Contract, any such description set out or referred to in any brochure, product literature or other documentation furnished by the Contractor in relation to the Work or any part thereof;

"Subcontract" includes a contract let by any subcontractor at any tier for the performance or supply of a part of the Work, and includes a purchase referred to in paragraph 8.2.(a) at any such tier, and the derivatives of the word shall be construed accordingly;

"Technical Authority" means the person designated in the Contract, or by notice to the Contractor, to act as the representative of the Minister for whose department or agency the Work is being carried out in matters concerning the technical aspects of the Work;

"Work" means the whole of the activities, services, materials, equipment, software, matters and things required to be done, delivered or performed by the Contractor in accordance with the terms of the Contract.

2. The headings used in these general conditions are inserted for convenience of reference only and shall not affect their interpretation.
3. If the Contract is a defence contract within the meaning of the *Defence Production Act*, R.S. 1985, c. D-1, it is subject to that Act and shall be governed accordingly.
4. In the Contract, words importing the singular number include the plural and vice versa, and words importing the masculine gender include the feminine gender and the neuter.

**9601 02 (1994-01-04) Powers of the Minister**

Every right, remedy, power and discretion vested in or acquired by Canada or the Minister under the Contract or by law shall be cumulative and non-exclusive.

**9601 03 (2004-05-14) Status of the Contractor**

1. The Contractor is engaged as an independent contractor for the sole purpose of performing the Work. Neither the Contractor nor any of its personnel is engaged as an employee, servant or agent of Canada. The Contractor is responsible for all deductions and remittances required by law in relation to its employees including those required for Canada or Quebec Pension Plans, unemployment insurance, workers' compensation, or income tax.

2. Without restricting the terms and conditions of the Contract, and particularly section 22 of these general conditions, it is hereby understood and agreed that, except to the extent caused by or due to Canada, Canada shall not be liable for any losses, claims, damages, or expenses relating to any injury, disease, illness, disability or death of the Contractor or any employee, agent or representative of the Contractor caused or alleged to be caused as a result of performing the Contract. The Contractor agrees to fully protect and indemnify Canada and not to make any claims or demands against Canada in respect of any of the foregoing contingencies.

**9601 04 (1994-01-04) Amendments and Waivers**

1. No design change, modification to the Work, or amendment to the Contract shall be binding unless it is incorporated into the Contract by written amendment or design change memorandum executed by the authorized representatives of the Minister and of the Contractor.
2. While the Contractor may discuss any proposed changes or modifications to the scope of the Work with the Technical Authority, Canada shall not be liable for the cost of any such change or modification until it has been incorporated into the Contract in accordance with subsection 1.
3. No waiver shall be valid, binding or affect the rights of the Parties unless it is made in writing by, in the case of a waiver by Canada, the Contracting Authority and, in the case of a waiver by the Contractor, the authorized representative of the Contractor.
4. The waiver by a Party of a breach of any term or condition of the Contract shall not prevent the enforcement of that term or condition by that Party in the case of a subsequent breach, and shall not be deemed or construed a waiver of any subsequent breach.

**9601 05 (2004-12-10) Conduct of the Work**

1. The Contractor represents and warrants that:
  - (a) it is competent to perform the Work; and
  - (b) it has the necessary qualifications, including knowledge, skill and experience, to perform the Work, together with the ability to use those qualifications effectively for that purpose.
2. Except for Government Property specifically provided for in the Contract, the Contractor shall supply everything necessary for the performance of the Work, including all the resources, facilities, labour and supervision, management, services, equipment, materials, drawings, technical data, technical assistance, engineering services, inspection and quality assurance procedures, and planning necessary to perform the Work.
3. The Contractor shall:
  - (a) carry out the Work in a diligent and efficient manner;
  - (b) apply as a minimum quality assurance tests, inspections and controls consistent with those in general usage in the trade and that are reasonably calculated to ensure the degree of quality required by the Contract; and
  - (c) ensure that the Work:
    - (i) is of proper quality, material and workmanship;
    - (ii) is in full conformity with the Specifications; and
    - (iii) meets all other requirements of the Contract.
4. Unless the Minister orders the Work or part thereof to be suspended pursuant to section 25, the Contractor shall not stop or suspend any part of the Work pending the settlement or resolution of any difference between the Parties arising out of the Contract.
5. The Contractor shall provide such reports on the performance of the Work as are required by the Contract and such other reports as may reasonably be required by the Minister or the Technical Authority.
6. The Contractor shall be fully responsible for performing the Work and Canada shall not be liable for any negative consequences or extra costs arising out of the Contractor's following any advice given by

Canada, whether given without or upon invitation by the Contractor, unless the advice was provided to the Contractor in writing by the Contracting Authority and was accompanied by a statement specifically relieving the Contractor of any responsibility for negative consequences or extra costs that might arise from following the advice.

**9601 06 (1994-01-04) Compliance with Applicable Laws**

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 Contracting Authority at such times as the Contracting Authority may reasonably request.

**9601 07 (2001-05-25) Specifications**

1. Where, pursuant to the terms of the Contract, Specifications furnished by the Contractor are subject to approval by the Minister or the Technical Authority, such approval shall not relieve the Contractor of its responsibility to complete the Work and to meet all requirements of the Contract. Any such approval shall not be unreasonably withheld.
2. The Contractor agrees to accept and be bound by the Inspection or Quality Assurance Authority's interpretation of the Specifications, insofar as such an interpretation is not inconsistent with any other part of the Contract.

**9601 08 (1994-01-04) Subcontracting**

1. Unless otherwise provided in the Contract, the Contractor shall obtain the consent of the Minister in writing prior to subcontracting or permitting the subcontracting of any portion of the Work at any tier. The Minister shall not unreasonably withhold consent.
2. Notwithstanding subsection 1, the Contractor may, without prior consent of the Minister:
  - (a) purchase "off-the-shelf" items and software and such standard articles and materials as are ordinarily produced by manufacturers in the normal course of business;
  - (b) subcontract for the provision of such incidental services as might ordinarily be subcontracted in performing the Work;
  - (c) in addition to purchases and services referred to in paragraphs (a) and (b), subcontract any part or parts of the Work to one or more subcontractors up to a total value in the aggregate of 40 percent of the Contract Price; and
  - (d) permit its subcontractors at any tier to make purchases or subcontract as permitted in paragraphs (a), (b) and (c).

A Subcontract at any tier may not be let without consent, under paragraph (b), (c) or (d), where the subcontractor would obtain title to intellectual property developed as part of the Work.

3. In any Subcontract other than a Subcontract referred to in paragraph 2 (a), the Contractor shall, unless the Minister otherwise consents in writing, ensure that the subcontractor is bound by terms and conditions compatible with and, in the opinion of the Minister, not less favourable to Canada than the terms and conditions of the Contract. Deviations in any subcontract from the terms of the Contract, including any right of termination of the Contract, shall be entirely at the risk of the Contractor.
4. The Contractor is not obliged to seek consent to subcontracts specifically authorized in the Contract.
5. Any consent to a Subcontract shall not relieve the Contractor from its obligations under the Contract or be construed as authorizing any liability on the part of Canada or the Minister to a subcontractor.

**9601 09 (1994-01-04) Replacement of Personnel**

1. When specific persons have been named in the Contract as the persons who must perform the Work, the Contractor shall provide the services of the persons so named unless the Contractor is unable to do so for reasons beyond its control.



2. If at any time the Contractor is unable to provide the services of any specific person named in the Contract, it shall provide a replacement person with similar qualifications and experience. The Contractor shall, as soon as possible, give notice to the Minister of:
  - (a) the reason for the removal of the named person from the Work;
  - (b) the name, qualifications and experience of the proposed replacement person; and
  - (c) proof that the person has the required security clearance granted by Canada, if applicable.
3. The Minister may order the removal from the Work of any such replacement person and the Contractor shall immediately remove the person from the Work and shall, in accordance with subsection 2, secure a further replacement.
4. The fact that the Minister does not order the removal of a replacement person from the Work shall not relieve the Contractor from its responsibility to meet the requirements of the Contract.

**9601 10 (1994-01-04) Assignment**

1. The Contract shall not be assigned, in whole or in part, by the Contractor without the prior consent in writing of the Minister and any purported assignment made without that consent is void and of no effect.
2. No assignment of the Contract shall relieve the Contractor from any obligation under the Contract or impose any liability upon Canada or the Minister, unless otherwise agreed to in writing by the Minister.

**9601 11 (1994-01-04) Time of the Essence**

Time is of the essence of the Contract.

**9601 12 (1994-01-04) Excusable Delay**

1. A delay in the performance by the Contractor of any obligation under the Contract which is caused solely by an event that
  - (a) was beyond the reasonable control of the Contractor,
  - (b) could not reasonably have been foreseen,
  - (c) could not reasonably have been prevented by means reasonably available to the Contractor, and
  - (d) occurred without the fault or neglect of the Contractor,shall, subject to subsections 2, 3 and 4, constitute an "Excusable Delay" provided that the Contractor invokes this section by notice under subsection 4.
2. If any delay in the Contractor's performance of any obligation under the Contract is caused by a delay of a subcontractor, such a delay may constitute an Excusable Delay for the Contractor, but only if the delay of the subcontractor meets the criteria set out in this section for an Excusable Delay by the Contractor and only to the extent that the delay has not been contributed to by the Contractor.
3. Notwithstanding subsection 1, any delay caused by lack of financial resources of the Contractor or an event that is a ground for termination provided for in subsection 2 of article 26, or any delay in the Contractor fulfilling an obligation to deliver a bond, guarantee, letter of credit or other security relating to performance or the payment of money, shall not qualify as an Excusable Delay.
4. The Contractor shall not benefit from an Excusable Delay unless the Contractor has:
  - (a) used its best efforts to minimize the delay and recover lost time;
  - (b) advised the Minister of the occurrence of the delay or of the likelihood of a delay occurring as soon as the Contractor has become aware of it;
  - (c) within fifteen (15) working days of the beginning of a delay or of the likelihood of a delay coming to the attention of the Contractor, advised the Minister of the full facts or matters giving rise to the delay, and provided to the Minister for approval (which approval shall not be

unreasonably withheld) a clear "work-around" plan indicating in detail the steps that the Contractor proposes to take in order to minimize the impact of the event causing the delay; this plan shall include alternative sources of materials and labour, if the event causing the delay involves the supply of them; and

- (d) carried out the work-around plan approved by the Minister.
5. In the event of an Excusable Delay, any delivery date or other date that is directly affected shall be postponed for a reasonable time not to exceed the duration of the Excusable Delay. The Parties shall amend the Contract, as appropriate, to reflect any such change in dates.
6. Notwithstanding subsection 5, the Minister may, after an Excusable Delay has continued for 30 days or more, in the Minister's absolute discretion terminate the Contract. In such a case, the Parties agree that neither will make any claim against the other for damages, costs, expected profits or any other loss arising out of the termination or the event that gave rise to the Excusable Delay. The Contractor agrees to repay immediately to Canada the portion of any advance payment that is unliquidated at the date of the termination. Subsections 4, 5 and 6 of article 26 apply in the event of a termination under this subsection.
7. Except to the extent that Canada is responsible for the delay for reasons of failure to meet an obligation under the Contract, Canada shall not be liable for any costs or charges of any nature incurred by the Contractor or any of its subcontractors or agents as a result of an Excusable Delay.

**9601 13 (2001-05-25) Security and Protection of the Work**

1. The Contractor shall 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 where copyright or any other intellectual property rights in such information (except a licence) vests in Canada under the Contract. The Contractor shall not disclose any such information to any person without the written permission of the Minister, except that the Contractor may disclose to a subcontractor authorized in accordance with section 08 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 the Contractor by or on behalf of Canada shall be used solely for the purpose of the Contract and shall remain the property of Canada or the third party, as the case may be. Unless the Contract otherwise expressly provides, the Contractor shall deliver to Canada all such information, together with every copy, draft, working paper and note thereof that contains such information, upon completion or termination of the Contract or at such earlier time as the Minister may require.
2. Subject to the *Access to Information Act*, R.S. 1985, c. A-1 and to any right of Canada under this Contract to release or disclose, Canada shall 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.
3. The obligations of the Parties set out in this section do not apply to any information where the same information:
- (a) is publicly available from a source other than the other Party; or
  - (b) 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
  - (c) is developed by a Party without use of the information of the other Party.
4. Wherever practical, the Contractor shall mark or identify any proprietary information delivered to Canada under the Contract as "Property of (Contractor's name), permitted Government uses defined under the Public Works and Government Services Canada (PWGSC) Contract No. (fill in Contract number)", and Canada shall not be liable for any unauthorized use or disclosure of information that could have been so marked or identified and was not.
5. When 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 shall 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 the Minister.

6. Without limiting the generality of subsections 1 and 2, when the Contract, the Work, or any information referred to in subsection 1 is identified as TOP SECRET, SECRET, CONFIDENTIAL", or PROTECTED by Canada, the Minister shall be 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, and the Contractor shall comply with, and ensure that any such subcontractor complies with, all written instructions issued by the Minister dealing with the material so identified, including any requirement that employees of the Contractor or of any such subcontractor execute and deliver declarations relating to reliability screenings, security clearances and other procedures.
7. Any proposed change in the security requirements after the effective date of the Contract that would involve a significant increase in cost to the Contractor shall require an amendment to the Contract under the provisions of section 04.

**9601 14 (1994-01-04) Payment**

1. Notwithstanding any other provision of the Contract, no payment shall be made to the Contractor unless and until:
  - (a) an invoice, inspection notes, certificates and any other documents required by the Contract have been submitted in accordance with the terms of the Contract and the instructions of the Minister;
  - (b) all such documents have been verified by the Minister;
  - (c) with respect to all parts of the Work in respect of which payment is claimed, the Contractor, where required to do so, establishes to the satisfaction of the Minister that such parts of the Work will be free from all claims, liens, attachments, charges or encumbrances; and
  - (d) in the case of payment in respect of finished work, the finished work has been inspected by Canada and accepted as being in accordance with the Contract, including the Specifications.
2. The Minister shall notify the Contractor, within 15 days of receipt of an invoice, of any inadequacy of the invoice or of the supporting documentation, and where any such notice is given within that period the date for payment of the amount invoiced shall be postponed until the Contractor remedies the inadequacy to the satisfaction of the Minister.
3. Where a delay referred to in section 12 has occurred, the Minister may, at the Minister's discretion, withhold all or a portion of any payment due to the Contractor until a "work-around" plan approved by the Minister has been implemented in accordance with that section. Section 15 shall not apply to any amount withheld under this subsection.

**9601 15 (2000-12-01) Interest on Overdue Accounts**

1. For the purposes of this section:

"Average Rate" means the simple arithmetic mean of the Bank Rates in effect at 4:00 p.m. Eastern Standard Time each day during the calendar month which immediately precedes the calendar month in which payment is made, where the "Bank Rate" means the rate of interest established from time to time by the Bank of Canada as the minimum rate at which the Bank of Canada makes short term advances to members of the Canadian Payments Association.

"date of payment" means the date of the negotiable instrument drawn by the Receiver General for Canada and given for payment of an amount due and payable;

an amount is "due and payable" when it is due and payable by Canada to the Contractor in accordance with the terms of the Contract; and

an amount becomes "overdue" when it is unpaid on the first day following the day upon which it is due and payable.
2. Subject to the Contract, Canada shall be liable to pay to the Contractor simple interest at the Average Rate plus 3 percent per annum on any amount that is overdue, from the date such amount becomes overdue until the day prior to the date of payment, inclusive. Interest shall be paid without notice from the Contractor.
3. Canada shall not be liable to pay interest in accordance with this section if Canada is not responsible for the delay in paying the Contractor.

4. Canada shall not be liable to pay interest on overdue advance payments.

**9601 16 (1994-01-04) Changes in Taxes and Duties**

1. In this section, "bid" includes a proposal, tender or offer submitted by the Contractor in response to an invitation from the Minister.
2. Subject to subsection 3, in the event of any change (including a new imposition or repeal), on or after the date of submission of the bid, of any tax, customs or other duty, charge, or any similar imposition that is imposed under sales or excise tax legislation of the Government of Canada and which affects the Cost to the Contractor of the Work, the Contract Price shall be adjusted to reflect the increase or decrease in the Cost to the Contractor.
3. There shall be no adjustment under subsection 2 in respect of any change that would increase the Cost to the Contractor of the Work if public notice of the change was given before the bid submission date in sufficient detail to permit the Contractor to have calculated the effect on its Cost before that date.
4. The Contractor shall forward to the Minister a certified statement showing the increase or decrease in Cost to the Contractor that is directly attributable to the change in the imposition. The Minister may verify the increase or decrease in Cost by audit before or after the Contract Price is adjusted.
5. Notwithstanding subsections 2 to 4, no adjustment to the Contract Price in respect of the Work or a part thereof shall be made for a change in any imposition referred to in this section that occurs after the date required by the Contract for delivery of the Work or that part of the Work.

**9601 17 (1994-01-04) Discounts, Wastes and Spoilage**

1. This section applies only to a Contract or part thereof that has a cost reimbursable basis of payment.
2. The Contractor shall, as far as practicable, take all trade discounts, rebates, refunds of taxes and duties, credits, and other allowances available in carrying out the Work. In determining the cost of articles, materials and services of every kind to be paid by Canada, all trade discounts, rebates, refunds of taxes and duties, credits and allowances not taken by the Contractor shall be deducted from gross costs, except those not taken through no fault or neglect on the part of the Contractor.
3. The Contractor shall carry out the Work as economically as possible and shall avoid waste and spoilage. Where, in the opinion of the Minister, the character and value of spoiled or wasted materials constitutes mismanagement on the part of the Contractor, the cost of the spoiled and wasted materials shall, to the extent directed by the Minister, not be considered to be part of the cost of the Work and the Contractor shall not be reimbursed therefor.

**9601 18 (1994-01-04) Inspection of the Work**

1. The Work and any and all parts thereof shall be subject to such inspection as the Technical or Inspection Authority determines to be appropriate, consistent with the relevant provisions of the Contract, if any, prior to acceptance by Canada. The Contracting Authority and the Technical or Inspection Authority, or their representatives, shall have access to the Work at any time during working hours where any part of the Work is being carried out and may make examinations and such tests of the Work as they may think fit. Should the Work or any part thereof not be in accordance with the requirements of the Contract, the Technical or Inspection Authority shall have the right to reject the Work and require its correction or replacement at the Contractor's expense. The Technical or Inspection Authority, as the case may be, shall inform the Contractor of the reasons for any such rejection.
2. The Contractor shall provide all assistance and facilities, test pieces, samples and documentation that the Technical or Inspection Authority may reasonably require for the carrying out of any such inspection, and the Contractor shall forward such test pieces and samples to such person or location as the Technical, Inspection or Contracting Authority may direct. Inspection by the Technical or Inspection Authority shall not relieve the Contractor from responsibility to meet the requirements of the Contract.
3. No part of the Work shall be submitted for acceptance or delivery until it has been inspected and approved by the Contractor and, wherever practicable, marked with an approval stamp satisfactory to the Technical or Inspection Authority. The Contractor shall keep accurate and complete inspection records which shall, upon request, be made available to the Technical or Inspection Authority, who

may make copies thereof and take extracts therefrom during the performance of the Contract and for any period of time thereafter provided for in the Contract.

**9601 19 (1994-01-04) Title**

1. Except as otherwise provided in the Contract including the intellectual property provisions, and except as provided in subsection 2, title to the Work or any part thereof shall vest in Canada upon delivery and acceptance thereof by or on behalf of Canada.
2. Except as otherwise provided in the intellectual property provisions of the Contract, upon any payment being made to the Contractor for or on account of materials, parts, work-in-process or finished work, either by way of progress payments or accountable advances or otherwise, title in and to all materials, parts, work-in-process and finished work so paid for shall vest in and remain in Canada unless already so vested under any other provision of the Contract.
3. Notwithstanding any vesting of title referred to in this section and except as otherwise provided in the Contract, the risk of loss or damage to the materials, parts, work-in-process or finished work or part thereof so vested shall remain with the Contractor until their delivery to Canada in accordance with the Contract. The Contractor shall be liable for any loss or damage to any part of the Work caused by the Contractor or any subcontractor after such delivery.
4. Any vesting of title referred to in subsection 2 shall not constitute acceptance by Canada of the materials, parts, work-in-process or finished work, and shall not relieve the Contractor of its obligation to perform the Work in accordance with the Contract.
5. Where title to any materials, parts, work-in-process or finished work becomes vested in Canada, the Contractor shall, upon the Minister's request, establish to the Minister's satisfaction that the title is free and clear of all claims, liens, attachments, charges or encumbrances and shall execute such conveyances thereof and other instruments necessary to perfect that title as the Minister may request.
6. If the Contract is a defence contract within the meaning of the *Defence Production Act*, R.S. 1985, c. D-1, title to the Work or to any materials, parts, work-in-process or finished work shall vest in Canada free and clear of all claims, liens, attachments, charges or encumbrances, and the Minister shall be entitled at any time to remove, sell or dispose of it or any part of it in accordance with section 20 of that Act.

**9601 20 (2001-05-25) Warranty**

1. Notwithstanding inspection and acceptance of the Work by or on behalf of Canada and without restricting any other provision of the Contract or any condition, warranty or provision implied or imposed by law, the Contractor warrants that, for a period of twelve (12) months from the date of delivery, or if acceptance takes place on a later date, the date of acceptance, or for such other period as may be specified in the written agreement between the Parties, the Work shall be free from all defects in design, materials or workmanship, and shall conform with the requirements of the Contract, provided that with respect to Government Property not supplied by the Contractor, the Contractor's warranty shall extend only to its proper incorporation into the Work.
2. In the event of a defect or non-conformance in any part of the Work during the warranty period defined in subsections 1 and 5, the Contractor, at the request of the Minister to do so, shall as soon as possible repair, replace or otherwise make good at its own option and expense the part of the Work found to be defective or not in conformance with the requirements of the Contract.
3. The Work or any part thereof found to be defective or non-conforming shall be returned to the Contractor's plant for replacement, repair or making good; provided that, when in the opinion of the Minister it is not expedient to remove the Work from its location, the Contractor shall carry out any necessary repair or making good of the Work at that location, and shall be paid the fair and reasonable Cost (including reasonable travelling and living expenses) incurred in so doing, with no allowance therein by way of profit, less an amount equal to the Cost of rectifying the defect or non-conformance at the Contractor's plant.
4. Canada shall pay the transportation cost associated with returning any work or part thereof to the Contractor's plant pursuant to subsection 3, and the Contractor shall pay the transportation cost associated with forwarding the replacement or returning the Work or part thereof when rectified to the delivery point specified in the Contract, or such lesser cost as may be required to transport the Work or part thereof to another location directed by the Technical Authority.

5. The warranty period set out in subsection 1 shall be extended by the duration of any period or periods during the life of the warranty, including any such extension, in which the Work is unavailable for use or cannot be used because of a defect or non-conformance referred to in this section, less the duration of any delay by Canada in informing the Contractor of the defect or non-conformance or in returning the Work or part thereof to the Contractor's plant. Upon returning the Work or part thereof to Canada, the Contractor shall advise the Minister in writing of the warranty period remaining, including any such extension.
6. The warranties set out in subsection 1 shall apply to any part of the Work repaired, replaced or otherwise made good pursuant to subsection 2, for the greater of
  - (a) the warranty period remaining under subsection 5, or
  - (b) ninety (90) days or such other period as may be specified for that purpose in the written agreement between the Parties.

All of the provisions of subsections 2 to 6 of this section inclusive apply, with such minimum changes as the context may require, to any such part of the Work that is found during that period to be defective or not in conformance with the Contract.

**9601 21 (2004-12-10) Government Property**

1. Unless otherwise provided in the Contract, all Government Property shall be used by the Contractor solely for the purpose of the Contract and shall remain the property of Canada, and the Contractor shall maintain adequate accounting records of all Government Property, and, whenever feasible, shall mark the same as being the property of Canada.
2. The Contractor shall take reasonable and proper care of all Government Property while the same is in, on, or about the plant and premises of the Contractor or otherwise in its possession or subject to its control, and shall be responsible for any loss or damage resulting from its failure to do so other than loss or damage caused by ordinary wear and tear.
3. All Government Property, except such as is installed or incorporated into the Work, shall, unless otherwise specifically provided in the Contract, be returned to Canada on demand.
4. All scrap and all waste materials, articles or things that are Government Property shall, unless otherwise provided in the Contract, remain the property of Canada and shall be disposed of only as directed by the Minister.
5. At the time of completion of the Contract, and if requested by the Contracting Authority, the Contractor shall provide an inventory of all Government Property relating to the Contract to both the Contracting Authority and the Technical Authority.

**9601 22 (1994-01-04) Indemnity Against Third-party Claims**

1. The Contractor shall indemnify and save harmless Canada, the Minister and their servants and agents from and against any damages, costs or expenses or any claim, action, suit or other proceeding which they or any of them may at any time incur or suffer as a result of or arising out of
  - (a) any injury to persons (including injuries resulting in death) or loss of or damage to property of others which may be or be alleged to be caused by or suffered as a result of the performance of the Work or any part thereof, except that Canada and the Minister shall not claim indemnity under this section to the extent that the injury, loss or damage has been caused by Canada, and
  - (b) any liens, attachments, charges or other encumbrances or claims upon or in respect of any materials, parts, work-in-process or finished work furnished to, or in respect of which any payment has been made by, Canada.
2. The Minister shall give notice to the Contractor of any claim, action, suit or proceeding referred to in subsection 1 and the Contractor shall, to the extent requested by the Attorney General of Canada, at its own expense participate in or conduct the defence of any such claim, action, suit or proceeding and any negotiations for settlement of the same, but the Contractor shall not be liable to indemnify Canada for payment of any settlement unless it has consented to the settlement.

**9601 23 (1994-01-04) Royalties and Infringement**

1. In this section, "Royalties" includes
  - (a) license fees and all other payments analogous to royalties for, and also claims for damages based upon, the use or infringement of any patent, registered industrial design, trade mark, copyrighted work, trade secret, or other intellectual property right, and
  - (b) any costs or expenses incurred as a result of the exercise by any person of Moral Rights.
2. Subject to subsection 4, the Contractor shall indemnify and save harmless Canada, the Minister and their servants and agents against any claim, action, suit or other proceeding for the payment of Royalties, that results from or is alleged to result from the carrying out of the Contract or the use or disposal by Canada of anything furnished by the Contractor under the Contract.
3. Canada shall indemnify and save harmless the Contractor and its servants and agents against any claim, action, suit or other proceeding for the payment of Royalties, that results from or is alleged to result from
  - (a) the use by the Contractor, in performing the Contract, of equipment, Specifications or other information not prepared by the Contractor and supplied to the Contractor by or on behalf of Canada, or
  - (b) the Contractor complying with production drawings not prepared by the Contractor and supplied by or on behalf of Canada which direct an alteration of or modification to the Work,provided that the Contractor notifies the Minister immediately of any such claim, action, suit or other proceeding, but Canada shall not be liable to indemnify or save harmless the Contractor for payment of any settlement unless Canada has consented to the settlement.
4. The Minister shall give notice to the Contractor of any claim, action, suit or proceeding referred to in subsection 2 and the Contractor shall, to the extent requested by the Attorney General of Canada, at its own expense participate in or conduct the defence of any such claim, action, suit or proceeding and any negotiations for settlement of the same, but the Contractor shall not be liable to indemnify or save harmless Canada for payment of any settlement unless it has consented to the settlement.
5. The Contractor shall notify the Minister 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 the Contract, and the basis thereof, and the parties to whom the same are payable, and shall promptly advise the Minister of any and all claims which would or might result in further or different payments by way of Royalties being made by the Contractor or any of its subcontractors.
6. Where and to the extent that the Minister so directs, the Contractor shall not pay and shall direct its subcontractors not to pay any Royalties in respect of the carrying out of the Contract.
7. After the giving of any direction provided for in subsection 6, and subject to compliance by the Contractor with the foregoing provisions, Canada shall indemnify the Contractor and its subcontractors from and against all claims, actions, suits or proceedings for payment of such Royalties as are covered by the direction.
8. The Contractor shall not be entitled to any payment in respect of any Royalties included in the Contract Price to which the indemnity provided in subsection 7 applies.

**9601 24 (2001-05-25) Copyright**

1. In this section,

"Material" means anything that is created or developed by the Contractor as part of the Work under the Contract, and in which copyright subsists, but does not include computer programs and related software documentation.
2. Copyright in the Material shall vest in Canada and the Contractor shall incorporate in all Material the copyright symbol and either of the following notices, as appropriate:
  - © HER MAJESTY THE QUEEN IN RIGHT OF CANADA (year)or
  - © SA MAJESTÉ LA REINE DU CHEF DU CANADA (year)

3. At the completion of the Contract, or at such other time as the Contract or the Minister may require, the Contractor shall fully and promptly disclose to the Minister all Material created or developed under the Contract.
4. Where copyright in any Material vests in Canada under the Contract, the Contractor shall execute such conveyances and other documents relating to title or copyright as the Minister may require.
5. The Contractor shall not use, copy, divulge or publish any Material except as is necessary to perform the Contract.
6. At the request of the Minister, the Contractor shall provide to Canada, at the completion of the Work or at such other time as the Minister may require, a written permanent waiver of Moral Rights, in a form acceptable to the Minister, from every author that contributed to the Material.
7. If the Contractor is an author of the Material, the Contractor hereby permanently waives the Contractor's Moral Rights in respect of the Material.

**9601 25 (1994-01-04) Suspension of the Work**

1. The Minister may at any time, by written notice, order the Contractor to suspend or stop all or part of the Work under the Contract for a period of up to one hundred and eighty (180) days. The Contractor shall immediately comply with any such order in the manner that minimizes the cost of so doing. While such an order is in effect, the Contractor shall not remove any part of the Work from any premises without the prior written consent of the Contracting Authority. At any time prior to the expiration of the one hundred and eighty (180) days, the Minister shall either rescind the order or terminate the Contract, in whole or in part, under section 26 or section 27.
2. When an order is made under subsection 1, unless the Minister terminates the Contract by reason of default by the Contractor or the Contractor abandons the Contract, the Contractor shall be entitled to be paid its additional costs incurred as a result of the suspension plus a fair and reasonable profit thereon.
3. When an order is made under subsection 1 and is rescinded:
  - (a) the Contractor shall as soon as practicable resume work in accordance with the Contract;
  - (b) if the suspension has affected the Contractor's ability to meet any delivery date under the Contract, the date for the performance of that part of the Work affected by the suspension shall be extended for a period equal to the period of suspension plus a period, if any, which in the opinion of the Minister following consultation with the Contractor is reasonably necessary for the Contractor to resume the Work; and
  - (c) subject to section 04, an equitable adjustment shall be made as necessary to affected terms and conditions of the Contract.

**9601 26 (1994-01-04) Default by the Contractor**

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, either immediately, or at the expiration of a cure period specified in the notice if the Contractor has not cured the default to the satisfaction of the Minister within that cure period.
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 Canada, upon giving notice to the Contractor, immediately terminate for default the whole or any part of the Contract.
3. Upon the giving of a notice provided for in subsection 1 or 2, the Contractor shall have no claim for further payment other than as provided in this section, but shall be liable to Canada for any amounts, including milestone payments, paid by Canada and for all losses and damages which may be suffered by Canada by reason of the default or occurrence upon which the notice was based, including any increase in the cost incurred by Canada in procuring the Work from another source. The Contractor agrees to repay immediately to Canada the portion of any advance payment that is unliquidated at the date of the termination. Nothing in this section affects any obligation of Canada under the law to mitigate damages.



4. Upon termination of the Contract under this section, the Minister may require the Contractor to deliver to Canada, in the manner and to the extent directed by the Minister, any completed parts of the Work which have not been delivered and accepted prior to the termination and any materials, parts, plant, equipment or work-in-process which the Contractor has acquired or produced specifically in the fulfilment of the Contract.
5. Subject to the deduction of any claim that Canada may have against the Contractor arising under the Contract or out of the termination, Canada shall pay or credit to the Contractor the value, determined on the basis of the Contract Price including the proportionate part of the Contractor's profit or fee included in the Contract Price, of all completed parts of the Work delivered to Canada pursuant to a direction under subsection 4 and accepted by Canada, and shall pay or credit to the Contractor the Cost to the Contractor that the Minister considers reasonable in respect of all materials, parts, plant, equipment or work-in-process delivered to Canada pursuant to a direction under subsection 4 and accepted by Canada, but in no event shall the aggregate of the amounts paid by Canada under the Contract to the date of termination and any amounts payable pursuant to this subsection exceed the Contract Price.
6. 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 that would not have been required to perform the Work or that exceed what would have been required to perform the Work.
7. Where, subsequent to issuance of a notice pursuant to subsection 1, the Minister is satisfied that grounds did not exist for a termination under this section, the notice shall be deemed a notice of termination for convenience issued under subsection 1 of article 27.

**9601 27 (2004-12-10) Termination for Convenience**

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 section 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 (including the manufacture and procuring of materials for the fulfilment of the Contract) 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.
2. In the event of a termination notice being given pursuant to subsection 1, 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 including the unliquidated portion of any advance payment:
  - (a) on the basis of the Contract Price, for all completed work that is inspected and accepted in accordance with the Contract, whether completed before, or after 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 the terms of the Contract and with Contract Cost Principles 1031-2;
  - (c) the amount of any capital expenditures actually incurred only if they were specifically authorized under the Contract or approved in writing by the Minister for the purpose of the Contract, less any depreciation in respect thereof already taken into account in determining cost, to the extent that the capital expenditures are properly apportionable to the performance of the Contract;
  - (d) if the Contract is exclusively for the making of capital expenditures in respect of additional equipment or plant additions, in lieu of the amounts described in paragraphs (a) to (c) inclusive, the reasonable and proper cost to the Contractor of:
    - (i) all additional equipment that, prior to the giving of the termination notice, has been purchased, acquired or manufactured by the Contractor or contracted for and for which the Contractor is obligated to make payment, and

- (ii) all additional equipment in process of manufacture by the Contractor at the date of giving of the termination notice and all work in connection with the construction of the plant additions to that date, including the cost of materials and parts Contracted for by the Contractor for the purpose of such manufacture or construction and for which the Contractor is obligated to make payment; and
  - (e) 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.
- 3. In paragraphs 2.(c) and (d), "capital expenditures" includes the entry into leases of real property and equipment.
- 4. 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.
- 5. Notwithstanding anything in subsection 2, the total of the amounts to which the Contractor is entitled under paragraphs 2.(a) to (d) 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.
- 6. 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, unless otherwise authorized by the Minister, place purchase orders and subcontracts on terms that will enable the Contractor to terminate the same upon terms and conditions similar in effect to those provided in this section, and generally 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 section.
- 7. 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 that would not have been required to perform the Work or that exceed what would have been required to perform the Work.
- 8. 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 section, except to the extent that this section expressly provides.

**9601 28 (1994-01-04) Accounts and Audit**

- 1. The Contractor shall keep proper accounts and records of the Cost to the Contractor of the Work and of all expenditures or commitments made by the Contractor in connection therewith, and shall keep all invoices, receipts and vouchers relating thereto. The Contractor shall not, without the prior written consent of the Minister, dispose of any such accounts, records, invoices, receipts or vouchers until the expiration of six (6) years after final payment under this Contract, or until the settlement of all outstanding claims and disputes, whichever is later.
- 2. All such accounts and records as well as any invoices, receipts and vouchers shall at all times during the retention period referred to in subsection 1 be open to audit, inspection and examination by the authorized representatives of the Minister, who may make copies and take extracts thereof. The Contractor shall provide all facilities for such audits and inspections and shall furnish all such information as the representatives of the Minister may from time to time require with respect to such accounts, records, invoices, receipts and vouchers.

**9601 29 (1994-01-04) Notice**

Any notice shall be in writing and may be delivered by hand or by courier, by registered mail, or by facsimile or other electronic means that provides a paper record of the text of the notice, addressed to the Party for whom it is intended at the address in the Contract or at the last address of which the sender has received notice in accordance with this section. Any notice shall be deemed to be effective on the day it is received at that address.

**9601 30 (1994-01-04) Members of the House of Commons**

No member of the House of Commons shall be admitted to any share or part of the Contract or to any benefit arising from the Contract.

**9601 31 (2005-12-16) Conflict of Interest**

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, 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 this Contract.

**9601 32 (1994-06-01) No Bribe**

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.

**9601 33 (1994-01-04) Survival**

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 Specifications, warranty, Government Property, indemnity against third-party claims, royalties and infringement, intellectual property rights and accounts and audit shall survive the expiry of the Contract or the termination of the Contract for default, for convenience, pursuant to subsection 12.6, 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.

**9601 34 (1994-01-04) Severability**

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.

**9601 35 (1994-01-04) Successors and Assigns**

The Contract shall enure to the benefit of, and shall be binding upon, the successors and permitted assignees of Canada and of the Contractor.

**9601 36 (1994-01-04) Entire Agreement**

The Contract constitutes the entire and sole agreement between the Parties with respect to the subject matter of the Contract and supersedes all previous negotiations, communications and other agreements, whether written or oral, relating to it, unless they are incorporated by reference in the Contract. There are no terms, covenants, representations, statements or conditions binding on the Parties other than those contained in the Contract.

**9601 37 (1994-06-06) Certification - Contingency Fees**

1. The Contractor certifies that it has not directly or indirectly paid or agreed to pay and covenants that it will not directly or indirectly pay a contingency fee for the solicitation, negotiation or obtaining of this Contract to any person other than an employee acting in the normal course of the employee's duties.
2. All accounts and records pertaining to payments of fees or other compensation for the solicitation, obtaining or negotiation of the Contract shall be subject to the Accounts and Audit provisions of the Contract.
3. If the Contractor certifies falsely under this section or is in default of the obligations contained therein, the Minister may either terminate this Contract for default in accordance with the termination for default

provisions of the Contract or recover from the Contractor by way of reduction to the Contract Price or otherwise the full amount of the contingency fee.

4. In this section:

"contingency fee" means any payment or other compensation that is contingent upon or is calculated upon the basis of a degree of success in soliciting or obtaining a government contract or negotiating the whole or any part of its terms;

"employee" means a person with whom the Contractor has an employer/employee relationship;

"person" includes an individual or group of individuals, a corporation, a partnership, an organization and an association and, without restricting the generality of the foregoing, includes any individual who is required to file a return with the registrar pursuant to section 5 of the *Lobbyists Registration Act*, R.S. 1985, c. 44 (4<sup>th</sup> Supplement) as the same may be amended from time to time.

**9601 38 (2006-08-15) Taxes**

1. Municipal Taxes

Municipal Taxes are not applicable.

2. Provincial Taxes

(a) Excluding legislated exceptions, federal government departments and agencies are not required to pay any ad valorem sales tax levied by the province in which the taxable goods or services are delivered. This exemption has been provided to federal government departments and agencies under the authority of one of the following:

(i) Provincial Sales Tax (PST) Exemption Licence Numbers, for the provinces of:

Prince Edward Island	OP-10000-250
Ontario	11708174G
Manitoba	390-516-0
British Columbia	R005521

(ii) For Quebec, Saskatchewan, the Yukon Territory, the Northwest Territories and Nunavut, an Exemption Certification, which certifies that the goods or services purchased are not subject to the provincial/territorial sales and consumption taxes because they are being purchased by the federal government with Canada funds for the use of the federal government.

(b) Currently, in Alberta, the Yukon Territory, the Northwest Territories and Nunavut, there is no general PST. However, should a PST be introduced in the Northwest Territories, Nunavut, or Yukon Territory, the sales tax exemption certificate would be required on the purchasing document.

(c) Federal departments are required to pay the HST in the participating provinces of Newfoundland and Labrador, Nova Scotia and New Brunswick.

(d) The Contractor is not exempt from paying PST under the above Exemption Licence Numbers or Exemption Certification. The Contractor is required to pay the PST on taxable goods or services used or consumed in the performance of the Contract (as per appropriate provincial legislation), including material incorporated into real property.

3. Changes to Taxes and Duties

In the event of any change in any tax imposed under the *Excise Act*, R.S.C 1985, c. E-14, and *Excise Tax Act*, R.S.C. 1985, c. E-15, or any duties imposed under the Customs Tariff or any other federal or provincial sales, excise or other like duties, taxes, charges or impositions after the bid submission date and which affects the costs of the Work to the Contractor, the Contract price will be adjusted to reflect the increase or decrease in the cost to the Contractor.

4. Goods and Services Tax/Harmonized Sales Tax

The estimated Goods and Services Tax (GST) or Harmonized Sales Tax (HST), if applicable, is included in the total estimated cost on page 1 of the Contract. The GST or HST is not included in the Contract price but will be

paid by Canada as provided in the Invoice Submission clause above. The Contractor agrees to remit to Canada Revenue Agency any amounts of GST and HST paid or due.

**9601 39 (2006-08-15) Invoice Submission**

Invoices must be submitted in the name of the Contractor. They must show the name and address of the client department, item/reference number, deliverable and/or description of Work, contract serial number, Client Reference Number (CRN), Procurement Business Number (PBN) and financial code(s). If applicable, the method of shipment together with date, case numbers and part or reference numbers, item, quantity, unit of issue, unit price, and additional charges will be shown on the invoice. If applicable, fixed time labour rates and level of effort and, the amount invoiced (exclusive of the Goods and Services Tax {GST} or Harmonized Sales Tax {HST} as appropriate), will be shown separately.

GST or HST, if applicable, will be incorporated into all invoices and shown as a separate item on invoices. All items that are zero-rated, exempt or to which the GST or HST does not apply, are to be identified as such on all invoices. Invoices must be submitted for each delivery/shipment and must apply to one contract only. Each invoice must indicate whether it covers partial or final delivery.

**9601 40 (2006-08-15) Shipment Documentation**

For the shipment of goods, the transportation bill of lading must accompany the original invoice, except for "collect" shipments (if and when stipulated), in which event it must accompany the shipment. In addition, a packing slip must accompany each shipment, showing item, quantity, part or reference numbers, description of suppliers and contract reference numbers, including the Client Reference Number (CRN) and Procurement Business Number (PBN). If the goods have been inspected at the Contractor's plant, the signed inspection voucher must be attached to the packing slip normally enclosed in the packing note envelope.

**9601 41 (2006-08-15) Condition of Material**

Unless otherwise specified elsewhere in the Contract, materiel supplied shall be new and conform to the latest issue of the applicable drawing, specification and/or part number that is in effect on the solicitation closing date.

**9601 42 (2006-08-15) Transportation Charges**

If transportation charges are payable by Canada under the terms of the Contract and the Contractor makes the transportation arrangements, shipments must be made by the most direct and economical means consistent with normal shipping practice. The charges must be shown as a separate item on the invoice. The federal government's policy of underwriting its own risks precludes payment of insurance or valuation charges for transportation beyond the point at which title of goods passes to the federal government (determined by the FOB point or Incoterms). Where increased carrier liability is available without charge, the Contractor must obtain the increased liability for shipment.

**9601 43 (2006-08-15) Shipment into Canada**

Goods shipped into Canada from another country are to be consigned to destination, in bond, unless otherwise directed.



**Public Works and Government Services Canada**

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**9624 01 (2005-06-10) Interpretation**

1. In the Contract, unless the context otherwise requires,

"Background Information" means all Technical Information that is not Foreground Information and that is proprietary to or the confidential information of the Contractor, its subcontractors or any other supplier of the Contractor;

"Canada", "Crown", "Her Majesty" or "the Government" means Her Majesty the Queen in right of Canada;

"Commercial Exploitation in Competition with the Contractor" does not include exploitation by Canada or by any contractor where the good or service produced through such exploitation is for end use by Canada, nor does it include dissemination or distribution by Canada to persons or to other governments at or below cost of any good or service delivered under the Contract or produced through such exploitation;

"Contract" means the written agreement between the Parties, these general conditions, any supplemental general conditions specified in the written agreement, and every other document specified or referred to in any of them as forming part of the Contract, all as amended by agreement of the Parties from time to time;

"Contracting Authority" means the person designated as such in the Contract, or by notice to the Contractor, to act as the representative of the Minister in the management of the Contract;

"Contractor" means the person or entity whose name appears on the signature page of the written agreement and who is to supply goods or services to Canada under the Contract;

"Contract Price" means the amount expressed in the Contract to be payable to the Contractor for the Work;

"Cost" means cost determined in accordance with Contract Cost Principles 1031-2, as revised to the date of the bid solicitation;

"Deliverables" means any technical information, equipment, prototype, or any other thing developed under the Contract that are expressly required to be delivered by the Contractor in order to carry out its obligations under the Contract;

"Firmware" means any computer program stored in integrated circuits, read-only memory or other similar devices;

"Foreground Information" means any Invention first conceived, developed or reduced to practice as part of the Work under the Contract and all other Technical Information conceived, developed or produced as part of the Work under the Contract;

"Government Property" means all materials, parts, components, specifications, equipment, Software, articles and things supplied to the Contractor by or on behalf of Canada for the purposes of performing the Contract and anything acquired by the Contractor in any manner in connection with the Work the cost of which is paid by Canada under the Contract and, without restricting the generality of the foregoing, includes Government Issue as defined in the *Defence Production Act*, R.S. 1985, c. D-1, Government Furnished Equipment and Government Supplied Materiel;

"Inspection Authority" means the person designated as such in the Contract, or by notice to the Contractor, to act as the representative of the Minister for whose department or agency the Work is being carried out in matters concerning the inspection of the Work, and for purposes of section 16 includes a Quality Assurance Authority if such an authority is mentioned in the Contract;

"Intellectual Property Rights" 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;

"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, whether or not patentable;

"Minister" means the Minister of Public Works and Government Services and any other person duly authorized to act on behalf of that Minister;

"Moral Rights" has the same meaning as in the *Copyright Act*, R.S. 1985, c. C-42;

"Party" means Canada or the Contractor or any other signatory to the Contract and "Parties" means all of them;

"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, and includes modifications to any of the foregoing;



"Specifications" means the functional or technical description of the Work set out or referred to in the Contract, including drawings, samples and models, and further includes, except to the extent /inconsistent with anything set out or referred to in the Contract, any such description set out or referred to in any brochure, product literature or other documentation furnished by the Contractor in relation to the Work or any part thereof;

"Subcontract" means a contract let by any subcontractor at any tier for the performance or supply of a part of the Work, and includes a purchase referred to in paragraph 7.2.(a) at any such tier, and the derivatives of the word shall be construed accordingly;

"Technical Authority" means the person designated in the Contract, or by notice to the Contractor, to act as the representative of the Minister for whose department or agency the Work is being carried out in matters concerning the technological content or the technical aspects of the Work;

"Technical Information" means all information of a scientific, technical or artistic nature relating to the Work, whether oral or recorded in any form or medium and whether or not subject to copyright, including but not limited 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 the Contract by Canada or the Contractor, such as internal financial or management information, unless it is a deliverable under the Contract;

"Work" means the whole of the activities, services, materials, equipment, Software, matters and things required to be done, delivered or performed by the Contractor in accordance with the terms of the Contract.

2. The headings used in these general conditions are inserted for convenience of reference only and shall not affect their interpretation.
3. If the Contract is a defence contract within the meaning of the *Defence Production Act*, R.S. 1985, c. D-1, it is subject to that Act and shall be governed accordingly.
4. In the Contract, words importing the singular number include the plural and vice versa, and words importing the masculine gender include the feminine gender and the neuter.

#### **9624 02 (1994-01-04) Powers of the Minister**

Every right, remedy, power and discretion vested in or acquired by Canada or the Minister under the Contract or by law shall be cumulative and non-exclusive.

#### **9624 03 (2004-05-14) Status of the Contractor**

1. The Contractor is engaged as an independent Contractor for the sole purpose of performing the Work. Neither the Contractor nor any of its personnel is engaged as an employee, servant or agent of Canada. The Contractor is responsible for all deductions and remittances required by law in relation to its employees including those required for Canada or Quebec Pension Plans, unemployment insurance, workers' compensation, or income tax.
2. Without restricting the terms and conditions of the Contract, and particularly section 20 of these general conditions, it is hereby understood and agreed that, except to the extent caused by or due to Canada, Canada shall not be liable for any losses, claims, damages, or expenses relating to any injury, disease, illness, disability or death of the Contractor or any employee, agent or representative of the Contractor caused or alleged to be caused as a result of performing the Contract. The Contractor agrees to fully protect and indemnify Canada and not to make any claims or demands against Canada in respect of any of the foregoing contingencies.

#### **9624 04 (1994-01-04) Amendments and Waivers**

1. No design change, modification to the Work, or amendment to the Contract shall be binding unless it is incorporated into the Contract by written amendment or design change memorandum executed by the authorized representatives of the Minister and of the Contractor.
2. While the Contractor may discuss any proposed changes or modifications to the scope of the Work with the Technical Authority, Canada shall not be liable for the cost of any such change or modification until it has been incorporated into the Contract in accordance with subsection 1.

3. No waiver shall be valid, binding or affect the rights of the Parties unless it is made in writing by, in the case of a waiver by Canada, the Contracting Authority and, in the case of a waiver by the Contractor, the authorized representative of the Contractor.
4. The waiver by a Party of a breach of any term or condition of the Contract shall not prevent the enforcement of that term or condition by that Party in the case of a subsequent breach, and shall not be deemed or construed a waiver of any subsequent breach.

**9624 05 (2004-12-10) Conduct of the Work**

1. The Contractor represents and warrants that:
  - (a) it is competent to perform the Work; and
  - (b) it has the necessary qualifications, including knowledge, skill and experience, to perform the Work, together with the ability to use those qualifications effectively for that purpose.
2. Except for Government Property specifically provided for in the Contract, the Contractor shall supply everything necessary for the performance of the Work, including all the resources, facilities, labour and supervision, management, services, equipment, materials, drawings, technical data, technical assistance, engineering services, inspection and quality assurance procedures, and planning necessary to perform the Work.
3. The Contractor shall:
  - (a) carry out the Work in a diligent and efficient manner;
  - (b) apply as a minimum quality assurance tests, inspections and controls consistent with those in general usage in the trade and that are reasonably calculated to ensure the degree of quality required by the Contract; and
  - (c) ensure that the Work:
    - (i) is of proper quality, material and workmanship;
    - (ii) is in full conformity with the Statement of Work; and
    - (iii) meets all other requirements of the Contract.
4. Notwithstanding acceptance of the Deliverables or any part thereof, the Contractor warrants that the Deliverables shall be of such quality as to clearly demonstrate that the Contractor has performed the Work in accordance with the undertaking in subsection 3.
5. The Contractor shall adhere to the Technical Authority's reasonable interpretation of the requirements of the Contract, insofar as such an interpretation is not inconsistent with any other part of the Contract.
6. Unless the Minister orders the Work or part thereof to be suspended pursuant to section 31, the Contractor shall not stop or suspend any part of the Work pending the settlement or resolution of any difference between the Parties arising out of the Contract.
7. The Contractor shall provide such reports on the performance of the Work as are required by the Contract and such other reports as may reasonably be required by the Minister or the Technical Authority.
8. The Contractor shall be fully responsible for performing the Work and Canada shall not be liable for any negative consequences or extra costs arising out of the Contractor's following any advice given by Canada, whether given without or upon invitation by the Contractor, unless the advice was provided to the Contractor in writing by the Contracting Authority and was accompanied by a statement specifically relieving the Contractor of any responsibility for negative consequences or extra costs that might arise from following the advice.

**9624 06 (1994-01-04) Compliance with Applicable Laws**

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 Contracting Authority at such times as the Contracting Authority may reasonably request.

**9624 07 (2004-12-10) Subcontracting**

1. Unless otherwise provided in the Contract, the Contractor shall obtain the consent of the Minister in writing prior to subcontracting or permitting the subcontracting of any portion of the Work at any tier.
2. Notwithstanding subsection 1, the Contractor may, without prior consent of the Minister:
  - (a) purchase "off-the-shelf" items and Software and such standard articles and materials as are ordinarily produced by manufacturers in the normal course of business;
  - (b) subcontract any of the Work, to any one or more subcontractors, up to a total value of:
    - (i) for contracts valued up to \$100,000 - 50 percent of the Contract value,
    - (ii) for contracts valued over \$100,000 - \$50,000 plus 10 percent of the value of the Contract in excess to \$100,000 up to a total value of \$100,000.
  - (c) authorize its subcontractors at any tier to make purchases or subcontract as permitted in paragraphs (a) and (b).

A Subcontract at any tier may not be let without consent under subsection (b) or (c) where the subcontractor would obtain title to intellectual property developed as part of the Work.

3. In any Subcontract other than a Subcontract referred to in paragraph 2.(a), the Contractor shall, unless the Minister otherwise consents in writing, ensure that the subcontractor is bound by terms and conditions compatible with and, in the opinion of the Minister, not less favourable to Canada than the terms and conditions of the Contract. Deviations in any Subcontract from the terms of the Contract, including any right of termination of the Contract, shall be entirely at the risk of the Contractor.
4. The Contractor is not obliged to seek consent to subcontracts specifically authorized in the Contract.
5. Any consent to a Subcontract shall not relieve the Contractor from its obligations under the Contract or be construed as authorizing any liability on the part of Canada or the Minister to a subcontractor.
6. When consent is required, the Contractor shall submit to the Contracting Authority a completed copy of the form required by the Minister, a copy of the proposed Subcontract, and any additional information required by the Contracting Authority.

**9624 08 (1994-01-04) Replacement of Personnel**

1. When specific persons have been named in the Contract as the persons who must perform the Work, the Contractor shall provide the services of the persons so named unless the Contractor is unable to do so for reasons beyond its control.
2. If at any time the Contractor is unable to provide the services of any specific person named in the Contract, it shall provide a replacement person with similar qualifications and experience.
3. The Contractor shall, at least thirty (30) days, where possible, in advance of the date upon which a replacement person is to commence work, provide notice in writing to the Technical Authority with copy to the Contracting Authority containing:
  - (a) the reason for the removal of the named person from the Work;
  - (b) the name, qualifications and experience of the proposed replacement person; and
  - (c) proof that the person has the required security clearance granted by Canada, if applicable.
4. Canada shall have twenty (20) days after receipt of the notice to the Technical Authority to review the proposed replacement person for purposes of acceptance. If the Contractor is not notified within this 20-day period, the proposal shall be considered as having been accepted.
5. In no event shall the Contractor allow performance of the Work by unauthorized replacement persons and acceptance of a replacement person by the Technical Authority and the Contracting Authority shall not relieve the Contractor from responsibility to meet the requirements of the Contract.

6. The Minister may order the removal from the Work of any such replacement person and the Contractor shall immediately remove the person from the Work and shall, in accordance with subsection 2 and paragraphs 3.(b) and (c), secure a further replacement.
7. The fact that the Minister does not order the removal of a replacement person from the Work shall not relieve the Contractor from its responsibility to meet the requirements of the Contract.

**9624 09 (1994-01-04) Assignment**

1. The Contract shall not be assigned, in whole or in part, by the Contractor without the prior consent in writing of the Minister and any purported assignment made without that consent is void and of no effect.
2. No assignment of the Contract shall relieve the Contractor from any obligation under the Contract or impose any liability upon Canada or the Minister, unless otherwise agreed to in writing by the Minister.

**9624 10 (1994-01-04) Time of the Essence**

Time is of the essence of the Contract.

**9624 11 (2001-05-25) Excusable Delay**

1. A delay in the performance by the Contractor of any obligation under the Contract which is caused solely by an event that
  - (a) was beyond the reasonable control of the Contractor,
  - (b) could not reasonably have been foreseen,
  - (c) could not reasonably have been prevented by means reasonably available to the Contractor, and
  - (d) occurred without the fault or neglect of the Contractorshall, subject to subsections 2, 3 and 4, constitute an "Excusable Delay" provided that the Contractor invokes this section by notice under subsection 4.
2. If any delay in the Contractor's performance of any obligation under the Contract is caused by a delay of a subcontractor, such a delay may constitute an Excusable Delay for the Contractor, but only if the delay of the subcontractor meets the criteria set out in this section for an Excusable Delay by the Contractor and only to the extent that the delay has not been contributed to by the Contractor.
3. Notwithstanding subsection 1, any delay caused by lack of financial resources of the Contractor or an event that is a ground for termination provided for in subsection 32.2, or any delay in the Contractor fulfilling an obligation to deliver a bond, guarantee, letter of credit or other security relating to performance or the payment of money, shall not qualify as an Excusable Delay.
4. The Contractor shall not benefit from an Excusable Delay unless the Contractor has:
  - (a) used its best efforts to minimize the delay and recover lost time;
  - (b) advised the Minister of the occurrence of the delay or of the likelihood of a delay occurring as soon as the Contractor has become aware of it;
  - (c) within fifteen (15) working days of the beginning of a delay or of the likelihood of a delay coming to the attention of the Contractor, advised the Minister of the full facts or matters giving rise to the delay, and provided to the Minister for approval (which approval shall not be unreasonably withheld) a clear "work-around" plan indicating in detail the steps that the Contractor proposes to take in order to minimize the impact of the event causing the delay; this plan shall include alternative sources of materials and labour, if the event causing the delay involves the supply of them; and
  - (d) carried out the work-around plan approved by the Minister.
5. In the event of an Excusable Delay, any delivery date or other date that is directly affected shall be postponed for a reasonable time not to exceed the duration of the Excusable Delay. The Parties shall amend the Contract, as appropriate, to reflect any such change in dates.

6. Notwithstanding subsection 5, the Minister may, after an Excusable Delay has continued for thirty (30) days or more, in the Minister's absolute discretion, terminate the Contract. In such a case, the Parties agree that neither will make any claim against the other for damages, costs, expected profits or any other loss arising out of the termination or the event that gave rise to the Excusable Delay. The Contractor agrees to repay immediately to Canada the portion of any advance payment that is unliquidated at the date of the termination. Subsections 32.4, 5 and 6 apply in the event of a termination under this subsection.
7. Except to the extent that Canada is responsible for the delay for reasons of failure to meet an obligation under the Contract, Canada shall not be liable for any costs or charges of any nature incurred by the Contractor or any of its subcontractors or agents as a result of an Excusable Delay.

**9624 12 (2001-05-25) Security and Protection of the Work**

1. The Contractor shall 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 where copyright or any other Intellectual Property Rights in such information (except a licence) vests in Canada under the Contract. The Contractor shall not disclose any such information to any person without the written permission of the Minister, except that the Contractor may disclose to a Subcontractor authorized in accordance with section 07 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 the Contractor by or on behalf of Canada shall be used solely for the purpose of the Contract and shall remain the property of Canada or the third party, as the case may be. Unless the Contract otherwise expressly provides, the Contractor shall deliver to Canada all such information, together with every copy, draft, working paper and note thereof that contains such information, upon completion or termination of the Contract or at such earlier time as the Minister may require.
2. Subject to the *Access to Information Act*, R.S. 1985, c. A-1 and to any right of Canada under this Contract to release or disclose, Canada shall 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.
3. The obligations of the Parties set out in this section do not apply to any information where the same information:
  - (a) is publicly available from a source other than the other Party; or
  - (b) 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
  - (c) is developed by a Party without use of the information of the other Party.
4. Wherever practical, the Contractor shall 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 Canada (PWGSC) Contract No. (fill in Contract number)", and Canada shall not be liable for any unauthorized use or disclosure of information that could have been so marked or identified and was not.
5. When 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 shall 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 the Minister.
6. Without limiting the generality of subsections 1 and 2, when the Contract, the Work, or any information referred to in subsection 1 is identified as TOP SECRET, SECRET, CONFIDENTIAL, or PROTECTED by Canada, the Minister shall be 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, and the Contractor shall comply with, and ensure that any such subcontractor complies with, all written instructions issued by the Minister dealing with the material so identified, including any requirement that employees of the Contractor or of any such subcontractor execute and deliver declarations relating to reliability screenings, security clearances and other procedures.

7. Any proposed change in the security requirements after the effective date of the Contract that would involve a significant increase in cost to the Contractor shall require an amendment to the Contract under the provisions of section 04.

**9624 13 (1994-01-04) Payment**

1. Notwithstanding any other provision of the Contract, no payment shall be made to the Contractor unless and until:
- (a) an invoice, inspection notes, certificates and any other documents required by the Contract have been submitted in accordance with the terms of the Contract and the instructions of the Minister;
  - (b) all such documents have been verified by the Minister;
  - (c) with respect to all parts of the Work in respect of which payment is claimed, the Contractor, where required to do so, establishes to the satisfaction of the Minister that such parts of the Work will be free from all claims, liens, attachments, charges or encumbrances; and
  - (d) in the case of payment in respect of finished work, the finished work has been inspected by Canada and accepted as being in accordance with the Contract.
2. The Minister shall notify the Contractor, within fifteen (15) days of receipt of an invoice, of any inadequacy of the invoice or of the supporting documentation, and where any such notice is given within that period the date for payment of the amount invoiced shall be postponed until the Contractor remedies the inadequacy to the satisfaction of the Minister.
3. Where a delay referred to in section 11 has occurred, the Minister may, at the Minister's discretion, withhold all or a portion of any payment due to the Contractor until a "work-around" plan approved by the Minister has been implemented in accordance with that section. Section 14 shall not apply to any amount withheld under this subsection.

**9624 14 (2000-12-01) Interest on Overdue Accounts**

1. For the purposes of this section:

"Average Rate" means the simple arithmetic mean of the Bank Rates in effect at 4:00 p.m. Eastern Standard Time each day during the calendar month which immediately precedes the calendar month in which payment is made, where the "Bank Rate" means the rate of interest established from time to time by the Bank of Canada as the minimum rate at which the Bank of Canada makes short term advances to members of the Canadian Payments Association.

"date of payment" means the date of the negotiable instrument drawn by the Receiver General for Canada and given for payment of an amount due and payable;

an amount is "due and payable" when it is due and payable by Canada to the Contractor in accordance with the terms of the Contract; and

an amount becomes "overdue" when it is unpaid on the first day following the day upon which it is due and payable.

2. Subject to the Contract, Canada shall be liable to pay to the Contractor simple interest at the Average Rate plus 3 percent per annum on any amount that is overdue, from the date such amount becomes overdue until the day prior to the date of payment, inclusive. Interest shall be paid without notice from the Contractor.
3. Canada shall not be liable to pay interest in accordance with this section if Canada is not responsible for the delay in paying the Contractor.
4. Canada shall not be liable to pay interest on overdue advance payments.

**9624 15 (1994-01-04) Changes in Taxes and Duties**

1. In this section, "bid" includes a proposal, tender or offer submitted by the Contractor in response to an invitation from the Minister.

2. Subject to subsection 3, in the event of any change (including a new imposition or repeal), on or after the date of submission of the bid, of any tax, customs or other duty, charge, or any similar imposition that is imposed under sales or excise tax legislation of the Government of Canada and which affects the Cost to the Contractor of the Work, the Contract Price shall be adjusted to reflect the increase or decrease in the Cost to the Contractor.
3. There shall be no adjustment under subsection 2 in respect of any change that would increase the Cost to the Contractor of the Work if public notice of the change was given before the bid submission date in sufficient detail to permit the Contractor to have calculated the effect on its Cost before that date.
4. The Contractor shall forward to the Minister a certified statement showing the increase or decrease in Cost to the Contractor that is directly attributable to the change in the imposition. The Minister may verify the increase or decrease in Cost by audit before or after the Contract Price is adjusted.
5. Notwithstanding subsections 2 to 4, no adjustment to the Contract Price in respect of the Work or a part thereof shall be made for a change in any imposition referred to in this section that occurs after the date required by the Contract for delivery of the Work or that part of the Work.

**9624 16 (1994-01-04) Inspection of the Work**

1. The Work and any and all parts thereof shall be subject to such inspection as the Technical or Inspection Authority determines to be appropriate, consistent with the relevant provisions of the Contract, if any, prior to acceptance by Canada. The Contracting Authority and the Technical or Inspection Authority, or their representatives, shall have access to the Work at any time during working hours where any part of the Work is being carried out and may make examinations and such tests of the Work as they may think fit. Should the Work or any part thereof not be in accordance with the requirements of the Contract, the Technical or Inspection Authority shall have the right to reject the Work and require its correction or replacement at the Contractor's expense. The Technical or Inspection Authority, as the case may be, shall inform the Contractor of the reasons for any such rejection.
2. The Contractor shall notify the Contracting Authority and the Technical or Inspection Authority prior to conducting any critical test, trial or examination of the Work required under the Contract, as to the specific time and location of such test, trial or examination.
3. The Contractor shall provide all assistance and facilities, test pieces, samples and documentation that the Technical or Inspection Authority may reasonably require for the carrying out of any such inspection, and the Contractor shall forward such test pieces and samples to such person or location as the Technical, Inspection or Contracting Authority may direct. Inspection by the Technical or Inspection Authority shall not relieve the Contractor from responsibility to meet the requirements of the Contract.

**9624 17 (1994-01-04) Title**

1. Except as otherwise provided in the Contract including the intellectual property provisions, and except as provided in subsection 2, title to the Work or any part thereof shall vest in Canada upon delivery and acceptance thereof by or on behalf of Canada.
2. Except as otherwise provided in the intellectual property provisions of the Contract, upon any payment being made to the Contractor for or on account of materials, work-in-process or finished work, either by way of progress payments or accountable advances or otherwise, title in and to all materials, parts, work-in-process and finished work so paid for shall vest in and remain in Canada unless already so vested under any other provision of the Contract.
3. Notwithstanding any vesting of title referred to in this section and except as otherwise provided in the Contract, the risk of loss or damage to the materials, parts, work-in-process or finished work or part thereof so vested shall remain with the Contractor until their delivery to Canada in accordance with the Contract. The Contractor shall be liable for any loss or damage to any part of the Work caused by the Contractor or any subcontractor after such delivery.
4. Any vesting of title referred to in subsection 2 shall not constitute acceptance by Canada of the materials, parts, work-in-process or finished work and shall not relieve the Contractor of its obligation to perform the Work in accordance with the Contract.
5. Where title to any materials, parts, work-in-process or finished work becomes vested in Canada, the Contractor shall, upon the Minister's request, establish to the Minister's satisfaction that the title is free

and clear of all claims, liens, attachments, charges or encumbrances and shall execute such conveyances thereof and other instruments necessary to perfect that title as the Minister may request.

6. If the Contract is a defence contract within the meaning of the *Defence Production Act*, R.S. 1985, c. D-1, title to the Work or to any materials, parts, work-in-process or finished work shall vest in Canada free and clear of all claims, liens, attachments, charges or encumbrances, and the Minister shall be entitled at any time to remove, sell or dispose of it or any part of it in accordance with section 20 of that Act.

**9624 18 (2001-05-25) Warranty**

1. In this section, "Equipment" includes any material, prototype, machinery, device, system, apparatus, tool, die, instrument and any equipment of all kinds required to be delivered under the Contract.
2. Notwithstanding inspection and acceptance of the Work by or on behalf of Canada and without restricting any other provision of the Contract or any condition, warranty or provision implied or imposed by law, the Contractor warrants that, for a period of twelve (12) months from the date of delivery, or if acceptance takes place on a later date, the date of acceptance, or for such other period as may be specified in the written agreement between the Parties, the Equipment shall be free from all defects in design, materials or workmanship, and shall conform with the requirements of the Contract, provided that with respect to Government Property not supplied by the Contractor, the Contractor's warranty shall extend only to its proper incorporation into the Work.
3. In the event of a defect or non-conformance in the Equipment or any part thereof during the warranty period defined in subsections 2 and 6, the Contractor, at the request of the Minister to do so, shall as soon as possible repair, replace or otherwise make good at its own option and expense the Equipment or any part thereof found to be defective or not in conformance with the requirements of the Contract.
4. The Equipment or any part thereof found to be defective or non-conforming shall be returned to the Contractor's plant for replacement, repair or making good; provided that, when in the opinion of the Minister it is not expedient to remove the Equipment from its location, the Contractor shall carry out any necessary repair or making good of the Equipment at that location, and shall be paid the fair and reasonable Cost (including reasonable travelling and living expenses) incurred in so doing, with no allowance therein by way of profit, less an amount equal to the Cost of rectifying the defect or non-conformance at the Contractor's plant.
5. Canada shall pay the transportation cost associated with returning any Equipment or part thereof to the Contractor's plant pursuant to subsection 4, and the Contractor shall pay the transportation cost associated with forwarding the replacement or returning the Equipment or part thereof when rectified to the delivery point specified in the Contract, or such lesser cost as may be required to transport the Equipment or part thereof to another location directed by the Technical Authority.
6. The warranty period set out in subsection 2 shall be extended by the duration of any period or periods during the life of the warranty, including any such extension, in which the Equipment is unavailable for use or cannot be used because of a defect or non-conformance referred to in this section, less the duration of any delay by Canada in informing the Contractor of the defect or non-conformance or in returning the Equipment or part thereof to the Contractor's plant. Upon returning the Equipment or part thereof to Canada, the Contractor shall advise the Minister in writing of the warranty period remaining, including any such extension.
7. The warranties set out in subsection 2 shall apply to any part of the Equipment repaired, replaced or otherwise made good pursuant to subsection 3, for the greater of:
  - (a) the warranty period remaining under subsection 6; or
  - (b) ninety (90) days or such other period as may be specified for that purpose in the written agreement between the Parties.

All of the provisions of subsections 3 to 6 of this section inclusive apply, with such minimum changes as the context may require, to any such part of the Equipment that is found during that period to be defective or not in conformance with the Contract.

**9624 19 (2004-12-10) Government Property**

1. Unless otherwise provided in the Contract, all Government Property shall be used by the Contractor solely for the purpose of the Contract and shall remain the property of Canada, and the Contractor



- shall maintain adequate accounting records of all Government Property, and, whenever feasible, shall mark the same as being the property of Canada.
2. The Contractor shall take reasonable and proper care of all Government Property while the same is in, on, or about the plant and premises of the Contractor or otherwise in its possession or subject to its control, and shall be responsible for any loss or damage resulting from its failure to do so other than loss or damage caused by ordinary wear and tear.
  3. All Government Property, except such as is installed or incorporated into the Work, shall, unless otherwise specifically provided in the Contract, be returned to Canada on demand.
  4. All scrap and all waste materials, articles or things that are Government Property shall, unless otherwise provided in the Contract, remain the property of Canada and shall be disposed of only as directed by the Minister.
  5. At the time of completion of the Contract, and if requested by the Contracting Authority, the Contractor shall provide an inventory of all Government Property relating to the Contract to both the Contracting Authority and the Technical Authority.

**9624 20 (1994-01-04) Indemnity Against Third-party Claims**

1. The Contractor shall indemnify and save harmless Canada, the Minister and their servants and agents from and against any damages, costs or expenses or any claim, action, suit or other proceeding which they or any of them may at any time incur or suffer as a result of or arising out of
  - (a) any injury to persons (including injuries resulting in death) or loss of or damage to property of others which may be or be alleged to be caused by or suffered as a result of the performance of the Work or any part thereof, except that Canada and the Minister shall not claim indemnity under this section to the extent that the injury, loss or damage has been caused by Canada, and
  - (b) any liens, attachments, charges or other encumbrances or claims upon or in respect of any materials, parts, work-in-process or finished work furnished to, or in respect of which any payment has been made by, Canada.
2. The Minister shall give notice to the Contractor of any claim, action, suit or proceeding referred to in subsection 1 and the Contractor shall, to the extent requested by the Attorney General of Canada, at its own expense participate in or conduct the defence of any such claim, action, suit or proceeding and any negotiations for settlement of the same, but the Contractor shall not be liable to indemnify Canada for payment of any settlement unless it has consented to the settlement.

**9624 21 (2005-06-10) Royalties and Infringement**

1. In this section, "Royalties" includes:
  - (a) license fees and all other payments analogous to royalties for, and also claims for damages based upon, the use or infringement of any patent, registered industrial design, trade mark, copyrighted work, trade secret, or other Intellectual Property Rights, and
  - (b) any costs or expenses incurred as a result of the exercise by any person of Moral Rights.
2. Subject to subsection 4, the Contractor shall indemnify and save harmless Canada, the Minister and their servants and agents against any claim, action, suit or other proceeding for the payment of Royalties, that results from or is alleged to result from the carrying out of the Contract or the use or disposal by Canada of anything furnished by the Contractor under the Contract.
3. Canada shall indemnify and save harmless the Contractor and its servants and agents against any claim, action, suit or other proceeding for the payment of Royalties, that results from or is alleged to result from
  - (a) the use by the Contractor in performing the Contract of equipment, Specifications or other information not prepared by the Contractor and supplied to the Contractor by or on behalf of Canada; or
  - (b) the Contractor complying with production drawings not prepared by the Contractor and supplied by or on behalf of Canada which direct an alteration of or modification to the Work,

provided that the Contractor notifies the Minister immediately of any such claim, action, suit or other proceeding, but Canada shall not be liable to indemnify or save harmless the Contractor for payment of any settlement unless Canada has consented to the settlement.

4. The Minister shall give notice to the Contractor of any claim, action, suit or proceeding referred to in subsection 2 and the Contractor shall, to the extent requested by the Attorney General of Canada, at its own expense participate in or conduct the defence of any such claim, action, suit or proceeding and any negotiations for settlement of the same, but the Contractor shall not be liable to indemnify or save harmless Canada for payment of any settlement unless it has consented to the settlement.
5. The Contractor shall notify the Minister 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 the Contract, and the basis thereof, and the parties to whom the same are payable, and shall promptly advise the Minister of any and all claims which would or might result in further or different payments by way of Royalties being made by the Contractor or any of its subcontractors.
6. Where and to the extent that the Minister so directs, the Contractor shall not pay and shall direct its subcontractors not to pay any Royalties in respect of the carrying out of the Contract.
7. After the giving of any direction provided for in subsection 6, and subject to compliance by the Contractor with the foregoing provisions, Canada shall indemnify the Contractor and its subcontractors from and against all claims, actions, suits or proceedings for payment of such Royalties as are covered by the direction.
8. The Contractor shall not be entitled to any payment in respect of any Royalties included in the Contract Price to which the indemnity provided in subsection 7 applies.

**9624 22 (2001-05-25) Disclosure of Foreground Information**

1. The Contractor shall promptly report and fully disclose to the Minister all Foreground Information that could be Inventions, and shall report and fully disclose to the Minister all other Foreground Information not later than the time of completion of the Work or such earlier time as the Minister or the Contract may require.
2. The Contractor shall, in each disclosure under this section, indicate the names of all subcontractors at any tier, if any, in which Intellectual Property Rights to any Foreground Information have vested or will vest.
3. Before and after final payment to the Contractor, the Minister shall have the right to examine all records and supporting data of the Contractor which the Minister reasonably deems pertinent to the identification of Foreground Information.

**9624 23 (2001-05-25) Contractor to Own Intellectual Property Rights in Foreground Information**

1. Subject to subsection 3 and section 27, and without affecting any Intellectual Property Rights or interests therein that have come into being prior to the Contract or that relate to information or data supplied by Canada for purposes of the Contract, all Intellectual Property Rights in the Foreground Information shall immediately, as soon as they come into existence, vest in and remain the property of the Contractor.
2. Notwithstanding the Contractor's ownership of the Intellectual Property Rights in Foreground Information that is a prototype, model or custom or customized system or equipment together with associated manuals and other operating and maintenance documents and tools, Canada shall have unrestricted ownership rights in those Deliverables, including the right to make them available for public use, whether for a fee or otherwise, and, except in the case of Software that is not necessary for the operation of the prototype, model or system or equipment, the right to sell them.
3. (a) Where the Work under the Contract involves the preparation of a database or other compilation using information or data supplied by Canada or personal information referred to in paragraph (b), then the Intellectual Property Rights that shall vest under subsection 1 shall be restricted to the Intellectual Property Rights in Foreground Information that is capable of being exploited without the use of the information or data supplied by Canada or such personal information. All Intellectual Property Rights in any database or other compilation, the Foreground Information in which cannot be exploited without the use of such information, data, or personal information, shall vest in Canada. The Contractor agrees that it shall not use or disclose any such information or data or personal information for any purpose other

than completing the Work under the Contract, and shall not dispose of it except by returning it to Canada. The Contractor shall comply with the general conditions of the Contract in regard to maintaining the confidentiality of such information, data or personal information. Unless the Contract otherwise expressly provides, the Contractor shall deliver to Canada all such information, data or personal information, together with every copy, draft, working paper and note thereof that contains such information, data, or personal information, upon the completion or termination of the Contract or at such earlier time as the Minister may require.

- (b) Notwithstanding subsection 1, if the Work under the Contract involves the collection of personal information as that term is defined in the *Privacy Act* (R.S., c. P-21), then all Intellectual Property Rights in and title to that personal information shall, immediately upon the collection of it by the Contractor, vest in Canada, and the Contractor shall have no right or interest in it.

**9624 24 (2001-05-25) License to Intellectual Property Rights in Foreground Information**

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 section 23, 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 the Foreground Information to other governments for information purposes only. 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.
2. The Contractor acknowledges that Canada may wish to award contracts for any of the purposes contemplated in subsection 1 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 section 23, includes the right to disclose the Foreground Information 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.
3. For greater certainty and without limiting the generality of subsections 1 and 2, Canada's right to modify, improve, translate, reproduce or further develop any Foreground Information pursuant to subsections 1 and 2:
  - (a) applies to Foreground Information that is Software, notwithstanding any terms to the contrary delivered by the Contractor with any Deliverables, including the wording on any shrink-wrapped license attached to any Deliverables; and
  - (b) 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.
4. Notwithstanding subsections 1, 2, and 3, if any Foreground Information arises solely from correction by the Contractor of errors in Background Information that is Software, or from minor modifications made by the Contractor to such Software, then the license set out in subsections 1, 2 and 3 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.
5. Where the Intellectual Property Rights in any Foreground Information are or will be owned by a subcontractor at any tier, the Contractor shall either obtain a license from that subcontractor that permits compliance with subsections 1, 2 and 3 or arrange for the subcontractor to convey directly to Canada the same rights by execution of the form provided for that purpose by the Minister, in which case the Contractor shall deliver that form to the Minister, duly completed and executed by the subcontractor, no later than the time of disclosure to Canada of that Foreground Information.
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 Work 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. If the request is refused, the response shall provide an explanation for the refusal. 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.

7. The Contractor may apply to the minister for whose department or agency the Work 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.

**9624 25 (2001-12-10) License to Intellectual Property Rights in Background Information**

1. Without restricting the scope of any license or other right in the Background Information that Canada may otherwise hold, the Contractor hereby grants to Canada a non-exclusive, perpetual, irrevocable, worldwide, fully-paid and royalty-free license to exercise such of the Intellectual Property Rights in any Background Information incorporated into the Work or necessary for the performance of the Work as may be required in order for Canada to exercise its license in the Intellectual Property Rights in the Foreground Information. The Contractor agrees, subject to subsection 4, to make any such Background Information (including, in the case of Software, source code) promptly available to Canada for any such purpose.
2. The Contractor acknowledges that Canada may wish to award contracts for a purpose contemplated in subsection 1 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 Background Information includes the right to disclose 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. Canada shall require bidders and the contractor not to use or disclose any Background Information except as may be necessary to bid for or to carry out that contract.
3. Where the Intellectual Property Rights in any Background Information are owned by a subcontractor at any tier, the Contractor shall either obtain a license from that subcontractor that permits compliance with subsections 1 and 2 or arrange for the subcontractor to convey directly to Canada the same rights by execution of the form provided for that purpose by the Minister, in which case the Contractor shall deliver that form to the Minister, duly completed and executed by the subcontractor, no later than the time of disclosure to Canada of that Background Information.
4. Notwithstanding subsection 1, 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. Furthermore, in the case of commercial off-the-shelf Software, the Contractor's obligation to make the source code promptly available to Canada for a purpose set out in subsection 1 shall apply only to source code that is within the control of or can be obtained by the Contractor or any subcontractor, and in that event the Contractor shall, if requested by Canada, make the source code available to Canada within reasonable delivery times and on reasonable other commercial terms.

**9624 26 (2001-12-10) Right to License**

The Contractor represents and warrants that the Contractor has, or the Contractor shall obtain, without delay, the right to grant to Canada the license to exercise the Intellectual Property Rights in the Foreground Information and the Background Information as required by the Contract.

**9624 27 (2001-05-25) Transfer of Intellectual Property Rights in Foreground Information**

1. Until the Contractor completes the Work and discloses all of the Foreground Information in accordance with section 22, 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.
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 section 22, the Minister may, by notice given not later than ninety (90) 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 at any tier. In the case of Intellectual Property Rights in Foreground Information which have been sold or assigned to a party other than a subcontractor at any tier, the Contractor shall not be obligated to convey rights to Canada in accordance with this subsection, 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.

3. In the event of the issuance by the Minister of a notice under subsection 2, 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 Work 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 Rights in any jurisdiction, including without limitation the assistance of the inventor in the case of Inventions.

**9624 28 (2001-05-25) Sale, Assignment, Transfer or Licensing of Intellectual Property Rights in Foreground Information**

1. In any sale, assignment, transfer or license of Intellectual Property Rights in Foreground Information by the Contractor except a sale or license for end use of a product based on Foreground Information, the Contractor shall impose on the other Party all of its obligations to Canada in relation to the Intellectual Property Rights in the Foreground Information and any restrictions set out in the Contract on the use or disposition of the Intellectual Property Rights in the Foreground Information (and, if applicable, the Foreground Information), including the obligation to impose the same obligations and restrictions on any subsequent transferee, assignee or licensee.
2. The Contractor shall promptly notify Canada of the name, address and other pertinent information in regard to any transferee, assignee or licensee referred to in subsection 1, and shall ensure that such Party is required to do the same with regard to any subsequent transferee, assignee or licensee.
3. The Contractor shall not charge or permit any person to charge a royalty or other fee to Canada in respect of the Intellectual Property Rights in any Foreground Information for purposes of a contract or other arrangement with Canada. Where the contract or other arrangement is for a product based on Foreground Information or on any modification or improvement thereof, the Contractor shall grant to Canada a reasonable credit against its commercial price for that product to take into account Canada's financial contribution toward the development of the product, and in the case of a product owned by a transferee, assignee or licensee of the Intellectual Property Rights in any Foreground Information, the Contractor shall ensure that such Party is required to do the same.

**9624 29 (2001-05-25) Access to Information; Exception to Contractor Rights**

1. Subject to the *Access to Information Act*, R.S., c. A-1, and to any right of Canada under the Contract to release or disclose, Canada shall not release or disclose outside the Government of Canada any information delivered to Canada under the Contract that is confidential information or a trade secret of the Contractor or a subcontractor.
2. Notwithstanding subsection 1, nothing in these terms and conditions shall be construed as limiting Canada's right to exercise the Intellectual Property Rights in any Foreground Information or any Background Information, or to disclose any Foreground Information or any Background Information, to the extent that such information:
  - (a) is or becomes in the public domain, or to the extent that the Contractor 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;
  - (b) is or becomes known to Canada from a source other than the Contractor, except from any source that is known to Canada to be under an obligation to the Contractor not to disclose the information;
  - (c) is independently developed by or for Canada; or

- (d) is disclosed under compulsion of a legislative requirement or any order of a court or other tribunal having jurisdiction.

**9624 30 (2001-05-25) Waiver of Moral Rights**

1. The Contractor shall provide to Canada, at the completion of the Work or at such other time as the Minister may require, a written permanent waiver of Moral Rights, in a form acceptable to the Minister, from every author that contributed to any Foreground Information which is subject to copyright protection and which is deliverable to Canada under the terms of the Contract.
2. If the Contractor is an author of the Foreground Information referred to in subsection 1, the Contractor hereby permanently waives the Contractor's Moral Rights in that Foreground Information.

**9624 31 (2001-05-25) Suspension of the Work**

1. The Minister may at any time, by written notice, order the Contractor to suspend or stop all or part of the Work under the Contract for a period of up to one hundred eighty (180) days. The Contractor shall immediately comply with any such order in the manner that minimizes the cost of so doing. While such an order is in effect, the Contractor shall not remove any part of the Work from any premises without the prior written consent of the Contracting Authority. At any time prior to the expiration of the one hundred eighty (180) days, the Minister shall either rescind the order or terminate the Contract, in whole or in part, under section 32 or section 33.
2. When an order is made under subsection 1, unless the Minister terminates the Contract by reason of default by the Contractor or the Contractor abandons the Contract, the Contractor shall be entitled to be paid its additional costs incurred as a result of the suspension plus a fair and reasonable profit thereon.
3. When an order is made under subsection 1 and is rescinded:
  - (a) the Contractor shall as soon as practicable resume work in accordance with the Contract;
  - (b) if the suspension has affected the Contractor's ability to meet any delivery date under the Contract, the date for the performance of that part of the Work affected by the suspension shall be extended for a period equal to the period of suspension plus a period, if any, which in the opinion of the Minister following consultation with the Contractor is reasonably necessary for the Contractor to resume the Work; and
  - (c) subject to section 04, an equitable adjustment shall be made as necessary to affected terms and conditions of the Contract.

**9624 32 (2001-05-25) Default by the Contractor**

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, either immediately, or at the expiration of a cure period specified in the notice if the Contractor has not cured the default to the satisfaction of the Minister within that cure period.
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 Canada, upon giving notice to the Contractor, immediately terminate for default the whole or any part of the Contract.
3. Upon the giving of a notice provided for in subsection 1 or 2, the Contractor shall have no claim for further payment other than as provided in this section, but shall be liable to Canada for any amounts, including milestone payments, paid by Canada and for all losses and damages which may be suffered by Canada by reason of the default or occurrence upon which the notice was based, including any increase in the cost incurred by Canada in procuring the Work from another source. The Contractor agrees to repay immediately to Canada the portion of any advance payment that is unliquidated at the date of the termination. Nothing in this section affects any obligation of Canada under the law to mitigate damages.
4. Upon termination of the Contract under this section, the Minister may require the Contractor to deliver to Canada, in the manner and to the extent directed by the Minister, any completed parts of the Work which have not been delivered and accepted prior to the termination and any materials, parts,

equipment or work-in-process which the Contractor has acquired or produced specifically in the fulfilment of the Contract.

5. Subject to the deduction of any claim that Canada may have against the Contractor arising under the Contract or out of the termination, Canada shall pay or credit to the Contractor the value, determined on the basis of the Contract Price including the proportionate part of the Contractor's profit or fee included in the Contract Price, of all completed parts of the Work delivered to Canada pursuant to a direction under subsection 4 and accepted by Canada, and shall pay or credit to the Contractor the cost to the Contractor that the Minister considers reasonable in respect of all materials, parts, equipment or work-in-process delivered to Canada pursuant to a direction under subsection 4 and accepted by Canada, but in no event shall the aggregate of the amounts paid by Canada under the Contract to the date of termination and any amounts payable pursuant to this subsection exceed the Contract Price.
6. Title to all materials, parts, 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, 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, equipment or work-in-process that would not have been required to perform the Work or that exceed what would have been required to perform the Work.
7. Where, subsequent to issuance of a notice pursuant to subsection 1, the Minister is satisfied that grounds did not exist for a termination under this section, the notice shall be deemed a notice of termination for convenience issued under subsection 33.1.

**9624 33 (2004-05-14) Termination for Convenience**

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 section 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 (including the manufacture and procuring of materials for the fulfilment of the Contract) 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.
2. In the event of a termination notice being given pursuant to subsection 1, 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 including the unliquidated portion of any advance payment:
  - (a) on the basis of the Contract Price, for all completed work that is inspected and accepted in accordance with the Contract, whether completed before, or after 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 the terms of the Contract and with Contract Cost Principles 1031-2;
  - (c) the amount of any capital expenditures actually incurred only if they were specifically authorized under the Contract or approved in writing by the Minister for the purpose of the Contract, less any depreciation in respect thereof already taken into account in determining cost, to the extent that the capital expenditures are properly apportionable to the performance of the Contract;
  - (d) 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.

3. In paragraph 2.(c), "capital expenditures" includes the entry into leases of real property and equipment.
4. 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.
5. Notwithstanding anything in subsection 2, the total of the amounts to which the Contractor is entitled under paragraphs 2.(a) to (c) 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.
6. 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, unless otherwise authorized by the Minister, place purchase orders and subcontracts on terms that will enable the Contractor to terminate the same upon terms and conditions similar in effect to those provided in this section, and generally 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 section.
7. Title to all materials, parts, 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, 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, equipment or work-in-process that would not have been required to perform the Work or that exceed what would have been required to perform the Work.
8. 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 section, except to the extent that this section expressly provides.

**9624 34 (2001-05-25) Accounts and Audit**

1. The Contractor shall keep proper accounts and records of the Cost to the Contractor of the Work and of all expenditures or commitments made by the Contractor in connection therewith, and shall keep all invoices, receipts and vouchers relating thereto. The Contractor shall not, without the prior written consent of the Minister, dispose of any such accounts, records, invoices, receipts or vouchers until the expiration of six (6) years after final payment under this Contract, or until the settlement of all outstanding claims and disputes, whichever is later.
2. All such accounts and records as well as any invoices, receipts and vouchers shall at all times during the retention period referred to in subsection 1 be open to audit, inspection and examination by the authorized representatives of the Minister, who may make copies and take extracts thereof. The Contractor shall provide all facilities for such audits and inspections and shall furnish all such information as the representatives of the Minister may from time to time require with respect to such accounts, records, invoices, receipts and vouchers.

**9624 35 (2001-05-25) Notice**

Any notice shall be in writing and may be delivered by hand or by courier, by registered mail, or by facsimile or other electronic means that provides a paper record of the text of the notice, addressed to the Party for whom it is intended at the address in the Contract or at the last address of which the sender has received notice in accordance with this section. Any notice shall be deemed to be effective on the day it is received at that address.

**9624 36 (2001-05-25) Members of the House of Commons**

No member of the House of Commons shall be admitted to any share or part of the Contract or to any benefit arising from the Contract.

**9624 37 (2005-12-16) Conflict of Interest**

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, 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 this Contract.

**9624 38 (2001-05-25) No Bribe**

The Contractor represents and covenant 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.

**9624 39 (2001-05-25) Survival**

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 warranty, Government Property, indemnity against third-party claims, royalties and infringement, intellectual property rights and accounts and audit shall survive the expiry of the Contract or the termination of the Contract for default, for convenience, pursuant to subsection 11.6, 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.

**9624 40 (2001-05-25) Severability**

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.

**9624 41 (2001-05-25) Successors and Assigns**

The Contract shall enure to the benefit of, and shall be binding upon, the successors and permitted assignees of Canada and of the Contractor.

**9624 42 (2001-05-25) Entire Agreement**

The Contract constitutes the entire and sole agreement between the Parties with respect to the subject matter of the Contract and supersedes all previous negotiations, communications and other agreements, whether written or oral, relating to it, unless they are incorporated by reference in the Contract. There are no terms, covenants, representations, statements or conditions binding on the Parties other than those contained in the Contract.

**9624 43 (2001-05-25) Certification - Contingency Fees**

1. The Contractor certifies that it has not directly or indirectly paid or agreed to pay and covenants that it will not directly or indirectly pay a contingency fee for the solicitation, negotiation or obtaining of this Contract to any person other than an employee acting in the normal course of the employee's duties.
2. All accounts and records pertaining to payments of fees or other compensation for the solicitation, obtaining or negotiation of the Contract shall be subject to the Accounts and Audit provisions of the Contract.
3. If the Contractor certifies falsely under this section or is in default of the obligations contained therein, the Minister may either terminate this Contract for default in accordance with the termination for default provisions of the Contract or recover from the Contractor by way of reduction to the Contract Price or otherwise the full amount of the contingency fee.
4. In this section:

"contingency fee" means any payment or other compensation that is contingent upon or is calculated upon the basis of a degree of success in soliciting or obtaining a government contract or negotiating the whole or any part of its terms;

"employee" means a person with whom the Contractor has an employer/employee relationship;

"person" includes an individual or group of individuals, a corporation, a partnership, an organization and an association and, without restricting the generality of the foregoing, includes any individual who is required to file a return with the registrar pursuant to section 5 of the *Lobbyists Registration Act*, R.S. 1985, c. 44 (4<sup>th</sup> Supplement) as the same may be amended from time to time.

**9624 44 (2001-05-25) Specifications**

1. Where, pursuant to the terms of the Contract, Specifications furnished by the Contractor are subject to approval by the Minister or the Technical Authority, such approval shall not relieve the Contractor of its responsibility to complete the Work and to meet all requirements of the Contract. Any such approval shall not be unreasonably withheld.
2. The Contractor agrees to accept and be bound by the Inspection or Quality Assurance Authority's interpretation of the Specifications, insofar as such an interpretation is not inconsistent with any other part of the Contract.

**9624 45 (2006-08-15) Taxes**

1. Municipal Taxes  
Municipal Taxes are not applicable.
2. Provincial Taxes
  - (a) Excluding legislated exceptions, federal government departments and agencies are not required to pay any ad valorem sales tax levied by the province in which the taxable goods or services are delivered. This exemption has been provided to federal government departments and agencies under the authority of one of the following:
    - (i) Provincial Sales Tax (PST) Exemption Licence Numbers, for the provinces of:

Prince Edward Island	OP-10000-250
Ontario	11708174G
Manitoba	390-516-0
British Columbia	R005521
    - (ii) For Quebec, Saskatchewan, the Yukon Territory, the Northwest Territories and Nunavut, an Exemption Certification, which certifies that the goods or services purchased are not subject to the provincial/territorial sales and consumption taxes because they are being purchased by the federal government with Canada funds for the use of the federal government.
  - (b) Currently, in Alberta, the Yukon Territory, the Northwest Territories and Nunavut, there is no general PST. However, should a PST be introduced in the Northwest Territories, Nunavut, or Yukon Territory, the sales tax exemption certificate would be required on the purchasing document.
  - (c) Federal departments are required to pay the HST in the participating provinces of Newfoundland and Labrador, Nova Scotia and New Brunswick.
  - (d) The Contractor is not exempt from paying PST under the above Exemption Licence Numbers or Exemption Certification. The Contractor is required to pay the PST on taxable goods or services used or consumed in the performance of the Contract (as per appropriate provincial legislation), including material incorporated into real property.

**3. Changes to Taxes and Duties**

In the event of any change in any tax imposed under the *Excise Act*, R.S.C 1985, c. E-14, and *Excise Tax Act*, R.S.C. 1985, c. E-15, or any duties imposed under the Customs Tariff or any other federal or provincial sales, excise or other like duties, taxes, charges or impositions after the bid submission date and which affects the costs of the Work to the Contractor, the Contract price will be adjusted to reflect the increase or decrease in the cost to the Contractor.

**4. Goods and Services Tax/Harmonized Sales Tax**

The estimated Goods and Services Tax (GST) or Harmonized Sales Tax (HST), if applicable, is included in the total estimated cost on page 1 of the Contract. The GST or HST is not included in the Contract price but will be paid by Canada as provided in the Invoice Submission clause above. The Contractor agrees to remit to Canada Revenue Agency any amounts of GST and HST paid or due.

**9624 46 (2006-08-15) Invoice Submission**

Invoices must be submitted in the name of the Contractor. They must show the name and address of the client department, item/reference number, deliverable and/or description of Work, contract serial number, Client Reference Number (CRN), Procurement Business Number (PBN) and financial code(s). If applicable, the

method of shipment together with date, case numbers and part or reference numbers, item, quantity, unit of issue, unit price, and additional charges will be shown on the invoice. If applicable, fixed time labour rates and level of effort and, the amount invoiced (exclusive of the Goods and Services Tax {GST} or Harmonized Sales Tax {HST} as appropriate), will be shown separately.

GST or HST, if applicable, will be incorporated into all invoices and shown as a separate item on invoices. All items that are zero-rated, exempt or to which the GST or HST does not apply, are to be identified as such on all invoices. Invoices must be submitted for each delivery/shipment and must apply to one contract only. Each invoice must indicate whether it covers partial or final delivery.

**9624 47 (2006-08-15) Shipment Documentation**

For the shipment of goods, the transportation bill of lading must accompany the original invoice, except for "collect" shipments (if and when stipulated), in which event it must accompany the shipment. In addition, a packing slip must accompany each shipment, showing item, quantity, part or reference numbers, description of suppliers and contract reference numbers, including the Client Reference Number (CRN) and Procurement Business Number (PBN). If the goods have been inspected at the Contractor's plant, the signed inspection voucher must be attached to the packing slip normally enclosed in the packing note envelope.

**9624 48 (2006-08-15) Condition of Material**

Unless otherwise specified elsewhere in the Contract, materiel supplied shall be new and conform to the latest issue of the applicable drawing, specification and/or part number that is in effect on the solicitation closing date.

**9624 49 (2006-08-15) Transportation Charges**

If transportation charges are payable by Canada under the terms of the Contract and the Contractor makes the transportation arrangements, shipments must be made by the most direct and economical means consistent with normal shipping practice. The charges must be shown as a separate item on the invoice. The federal government's policy of underwriting its own risks precludes payment of insurance or valuation charges for transportation beyond the point at which title of goods passes to the federal government (determined by the FOB point or Incoterms). Where increased carrier liability is available without charge, the Contractor must obtain the increased liability for shipment.

**9624 50 (2006-08-15) Shipment into Canada**

Goods shipped into Canada from another country are to be consigned to destination, in bond, unless otherwise directed.



**Public Works and Government Services Canada**

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**9624 01 (2005-06-10) Interpretation**

1. In the Contract, unless the context otherwise requires,

"Background Information" means all Technical Information that is not Foreground Information and that is proprietary to or the confidential information of the Contractor, its subcontractors or any other supplier of the Contractor;

"Canada", "Crown", "Her Majesty" or "the Government" means Her Majesty the Queen in right of Canada;

"Commercial Exploitation in Competition with the Contractor" does not include exploitation by Canada or by any contractor where the good or service produced through such exploitation is for end use by Canada, nor does it include dissemination or distribution by Canada to persons or to other governments at or below cost of any good or service delivered under the Contract or produced through such exploitation;

"Contract" means the written agreement between the Parties, these general conditions, any supplemental general conditions specified in the written agreement, and every other document specified or referred to in any of them as forming part of the Contract, all as amended by agreement of the Parties from time to time;

"Contracting Authority" means the person designated as such in the Contract, or by notice to the Contractor, to act as the representative of the Minister in the management of the Contract;

"Contractor" means the person or entity whose name appears on the signature page of the written agreement and who is to supply goods or services to Canada under the Contract;

"Contract Price" means the amount expressed in the Contract to be payable to the Contractor for the Work;

"Cost" means cost determined in accordance with Contract Cost Principles 1031-2, as revised to the date of the bid solicitation;

"Deliverables" means any technical information, equipment, prototype, or any other thing developed under the Contract that are expressly required to be delivered by the Contractor in order to carry out its obligations under the Contract;

"Firmware" means any computer program stored in integrated circuits, read-only memory or other similar devices;

"Foreground Information" means any Invention first conceived, developed or reduced to practice as part of the Work under the Contract and all other Technical Information conceived, developed or produced as part of the Work under the Contract;

"Government Property" means all materials, parts, components, specifications, equipment, Software, articles and things supplied to the Contractor by or on behalf of Canada for the purposes of performing the Contract and anything acquired by the Contractor in any manner in connection with the Work the cost of which is paid by Canada under the Contract and, without restricting the generality of the foregoing, includes Government Issue as defined in the *Defence Production Act*, R.S. 1985, c. D-1, Government Furnished Equipment and Government Supplied Materiel;

"Inspection Authority" means the person designated as such in the Contract, or by notice to the Contractor, to act as the representative of the Minister for whose department or agency the Work is being carried out in matters concerning the inspection of the Work, and for purposes of section 16 includes a Quality Assurance Authority if such an authority is mentioned in the Contract;

"Intellectual Property Rights" 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;

"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, whether or not patentable;

"Minister" means the Minister of Public Works and Government Services and any other person duly authorized to act on behalf of that Minister;

"Moral Rights" has the same meaning as in the *Copyright Act*, R.S. 1985, c. C-42;

"Party" means Canada or the Contractor or any other signatory to the Contract and "Parties" means all of them;

"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, and includes modifications to any of the foregoing;

"Specifications" means the functional or technical description of the Work set out or referred to in the Contract, including drawings, samples and models, and further includes, except to the extent /inconsistent with anything set out or referred to in the Contract, any such description set out or referred to in any brochure, product literature or other documentation furnished by the Contractor in relation to the Work or any part thereof;

"Subcontract" means a contract let by any subcontractor at any tier for the performance or supply of a part of the Work, and includes a purchase referred to in paragraph 7.2.(a) at any such tier, and the derivatives of the word shall be construed accordingly;

"Technical Authority" means the person designated in the Contract, or by notice to the Contractor, to act as the representative of the Minister for whose department or agency the Work is being carried out in matters concerning the technological content or the technical aspects of the Work;

"Technical Information" means all information of a scientific, technical or artistic nature relating to the Work, whether oral or recorded in any form or medium and whether or not subject to copyright, including but not limited 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 the Contract by Canada or the Contractor, such as internal financial or management information, unless it is a deliverable under the Contract;

"Work" means the whole of the activities, services, materials, equipment, Software, matters and things required to be done, delivered or performed by the Contractor in accordance with the terms of the Contract.

2. The headings used in these general conditions are inserted for convenience of reference only and shall not affect their interpretation.
3. If the Contract is a defence contract within the meaning of the *Defence Production Act*, R.S. 1985, c. D-1, it is subject to that Act and shall be governed accordingly.
4. In the Contract, words importing the singular number include the plural and vice versa, and words importing the masculine gender include the feminine gender and the neuter.

**9624 02 (1994-01-04) Powers of the Minister**

Every right, remedy, power and discretion vested in or acquired by Canada or the Minister under the Contract or by law shall be cumulative and non-exclusive.

**9624 03 (2004-05-14) Status of the Contractor**

1. The Contractor is engaged as an independent Contractor for the sole purpose of performing the Work. Neither the Contractor nor any of its personnel is engaged as an employee, servant or agent of Canada. The Contractor is responsible for all deductions and remittances required by law in relation to its employees including those required for Canada or Quebec Pension Plans, unemployment insurance, workers' compensation, or income tax.
2. Without restricting the terms and conditions of the Contract, and particularly section 20 of these general conditions, it is hereby understood and agreed that, except to the extent caused by or due to Canada, Canada shall not be liable for any losses, claims, damages, or expenses relating to any injury, disease, illness, disability or death of the Contractor or any employee, agent or representative of the Contractor caused or alleged to be caused as a result of performing the Contract. The Contractor agrees to fully protect and indemnify Canada and not to make any claims or demands against Canada in respect of any of the foregoing contingencies.

**9624 04 (1994-01-04) Amendments and Waivers**

1. No design change, modification to the Work, or amendment to the Contract shall be binding unless it is incorporated into the Contract by written amendment or design change memorandum executed by the authorized representatives of the Minister and of the Contractor.
2. While the Contractor may discuss any proposed changes or modifications to the scope of the Work with the Technical Authority, Canada shall not be liable for the cost of any such change or modification until it has been incorporated into the Contract in accordance with subsection 1.
3. No waiver shall be valid, binding or affect the rights of the Parties unless it is made in writing by, in the case of a waiver by Canada, the Contracting Authority and, in the case of a waiver by the Contractor, the authorized representative of the Contractor.

4. The waiver by a Party of a breach of any term or condition of the Contract shall not prevent the enforcement of that term or condition by that Party in the case of a subsequent breach, and shall not be deemed or construed a waiver of any subsequent breach.

**9624 05 (2004-12-10) Conduct of the Work**

1. The Contractor represents and warrants that:
- (a) it is competent to perform the Work; and
  - (b) it has the necessary qualifications, including knowledge, skill and experience, to perform the Work, together with the ability to use those qualifications effectively for that purpose.
2. Except for Government Property specifically provided for in the Contract, the Contractor shall supply everything necessary for the performance of the Work, including all the resources, facilities, labour and supervision, management, services, equipment, materials, drawings, technical data, technical assistance, engineering services, inspection and quality assurance procedures, and planning necessary to perform the Work.
3. The Contractor shall:
- (a) carry out the Work in a diligent and efficient manner;
  - (b) apply as a minimum quality assurance tests, inspections and controls consistent with those in general usage in the trade and that are reasonably calculated to ensure the degree of quality required by the Contract; and
  - (c) ensure that the Work:
    - (i) is of proper quality, material and workmanship;
    - (ii) is in full conformity with the Statement of Work; and
    - (iii) meets all other requirements of the Contract.
4. Notwithstanding acceptance of the Deliverables or any part thereof, the Contractor warrants that the Deliverables shall be of such quality as to clearly demonstrate that the Contractor has performed the Work in accordance with the undertaking in subsection 3.
5. The Contractor shall adhere to the Technical Authority's reasonable interpretation of the requirements of the Contract, insofar as such an interpretation is not inconsistent with any other part of the Contract.
6. Unless the Minister orders the Work or part thereof to be suspended pursuant to section 31, the Contractor shall not stop or suspend any part of the Work pending the settlement or resolution of any difference between the Parties arising out of the Contract.
7. The Contractor shall provide such reports on the performance of the Work as are required by the Contract and such other reports as may reasonably be required by the Minister or the Technical Authority.
8. The Contractor shall be fully responsible for performing the Work and Canada shall not be liable for any negative consequences or extra costs arising out of the Contractor's following any advice given by Canada, whether given without or upon invitation by the Contractor, unless the advice was provided to the Contractor in writing by the Contracting Authority and was accompanied by a statement specifically relieving the Contractor of any responsibility for negative consequences or extra costs that might arise from following the advice.

**9624 06 (1994-01-04) Compliance with Applicable Laws**

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 Contracting Authority at such times as the Contracting Authority may reasonably request.

**9624 07 (2004-12-10) Subcontracting**



1. Unless otherwise provided in the Contract, the Contractor shall obtain the consent of the Minister in writing prior to subcontracting or permitting the subcontracting of any portion of the Work at any tier.
2. Notwithstanding subsection 1, the Contractor may, without prior consent of the Minister:
  - (a) purchase "off-the-shelf" items and Software and such standard articles and materials as are ordinarily produced by manufacturers in the normal course of business;
  - (b) subcontract any of the Work, to any one or more subcontractors, up to a total value of:
    - (i) for contracts valued up to \$100,000 - 50 percent of the Contract value,
    - (ii) for contracts valued over \$100,000 - \$50,000 plus 10 percent of the value of the Contract in excess to \$100,000 up to a total value of \$100,000.
  - (c) authorize its subcontractors at any tier to make purchases or subcontract as permitted in paragraphs (a) and (b).

A Subcontract at any tier may not be let without consent under subsection (b) or (c) where the subcontractor would obtain title to intellectual property developed as part of the Work.

3. In any Subcontract other than a Subcontract referred to in paragraph 2.(a), the Contractor shall, unless the Minister otherwise consents in writing, ensure that the subcontractor is bound by terms and conditions compatible with and, in the opinion of the Minister, not less favourable to Canada than the terms and conditions of the Contract. Deviations in any Subcontract from the terms of the Contract, including any right of termination of the Contract, shall be entirely at the risk of the Contractor.
4. The Contractor is not obliged to seek consent to subcontracts specifically authorized in the Contract.
5. Any consent to a Subcontract shall not relieve the Contractor from its obligations under the Contract or be construed as authorizing any liability on the part of Canada or the Minister to a subcontractor.
6. When consent is required, the Contractor shall submit to the Contracting Authority a completed copy of the form required by the Minister, a copy of the proposed Subcontract, and any additional information required by the Contracting Authority.

**9624 08 (1994-01-04) Replacement of Personnel**

1. When specific persons have been named in the Contract as the persons who must perform the Work, the Contractor shall provide the services of the persons so named unless the Contractor is unable to do so for reasons beyond its control.
2. If at any time the Contractor is unable to provide the services of any specific person named in the Contract, it shall provide a replacement person with similar qualifications and experience.
3. The Contractor shall, at least thirty (30) days, where possible, in advance of the date upon which a replacement person is to commence work, provide notice in writing to the Technical Authority with copy to the Contracting Authority containing:
  - (a) the reason for the removal of the named person from the Work;
  - (b) the name, qualifications and experience of the proposed replacement person; and
  - (c) proof that the person has the required security clearance granted by Canada, if applicable.
4. Canada shall have twenty (20) days after receipt of the notice to the Technical Authority to review the proposed replacement person for purposes of acceptance. If the Contractor is not notified within this 20-day period, the proposal shall be considered as having been accepted.
5. In no event shall the Contractor allow performance of the Work by unauthorized replacement persons and acceptance of a replacement person by the Technical Authority and the Contracting Authority shall not relieve the Contractor from responsibility to meet the requirements of the Contract.
6. The Minister may order the removal from the Work of any such replacement person and the Contractor shall immediately remove the person from the Work and shall, in accordance with subsection 2 and paragraphs 3.(b) and (c), secure a further replacement.

7. The fact that the Minister does not order the removal of a replacement person from the Work shall not relieve the Contractor from its responsibility to meet the requirements of the Contract.

**9624 09 (1994-01-04) Assignment**

1. The Contract shall not be assigned, in whole or in part, by the Contractor without the prior consent in writing of the Minister and any purported assignment made without that consent is void and of no effect.
2. No assignment of the Contract shall relieve the Contractor from any obligation under the Contract or impose any liability upon Canada or the Minister, unless otherwise agreed to in writing by the Minister.

**9624 10 (1994-01-04) Time of the Essence**

Time is of the essence of the Contract.

**9624 11 (2001-05-25) Excusable Delay**

1. A delay in the performance by the Contractor of any obligation under the Contract which is caused solely by an event that
- (a) was beyond the reasonable control of the Contractor,
  - (b) could not reasonably have been foreseen,
  - (c) could not reasonably have been prevented by means reasonably available to the Contractor, and
  - (d) occurred without the fault or neglect of the Contractor
- shall, subject to subsections 2, 3 and 4, constitute an "Excusable Delay" provided that the Contractor invokes this section by notice under subsection 4.
2. If any delay in the Contractor's performance of any obligation under the Contract is caused by a delay of a subcontractor, such a delay may constitute an Excusable Delay for the Contractor, but only if the delay of the subcontractor meets the criteria set out in this section for an Excusable Delay by the Contractor and only to the extent that the delay has not been contributed to by the Contractor.
3. Notwithstanding subsection 1, any delay caused by lack of financial resources of the Contractor or an event that is a ground for termination provided for in subsection 32.2, or any delay in the Contractor fulfilling an obligation to deliver a bond, guarantee, letter of credit or other security relating to performance or the payment of money, shall not qualify as an Excusable Delay.
4. The Contractor shall not benefit from an Excusable Delay unless the Contractor has:
- (a) used its best efforts to minimize the delay and recover lost time;
  - (b) advised the Minister of the occurrence of the delay or of the likelihood of a delay occurring as soon as the Contractor has become aware of it;
  - (c) within fifteen (15) working days of the beginning of a delay or of the likelihood of a delay coming to the attention of the Contractor, advised the Minister of the full facts or matters giving rise to the delay, and provided to the Minister for approval (which approval shall not be unreasonably withheld) a clear "work-around" plan indicating in detail the steps that the Contractor proposes to take in order to minimize the impact of the event causing the delay; this plan shall include alternative sources of materials and labour, if the event causing the delay involves the supply of them; and
  - (d) carried out the work-around plan approved by the Minister.
5. In the event of an Excusable Delay, any delivery date or other date that is directly affected shall be postponed for a reasonable time not to exceed the duration of the Excusable Delay. The Parties shall amend the Contract, as appropriate, to reflect any such change in dates.
6. Notwithstanding subsection 5, the Minister may, after an Excusable Delay has continued for thirty (30) days or more, in the Minister's absolute discretion, terminate the Contract. In such a case, the Parties agree that neither will make any claim against the other for damages, costs, expected profits or any

other loss arising out of the termination or the event that gave rise to the Excusable Delay. The Contractor agrees to repay immediately to Canada the portion of any advance payment that is unliquidated at the date of the termination. Subsections 32.4, 5 and 6 apply in the event of a termination under this subsection.

7. Except to the extent that Canada is responsible for the delay for reasons of failure to meet an obligation under the Contract, Canada shall not be liable for any costs or charges of any nature incurred by the Contractor or any of its subcontractors or agents as a result of an Excusable Delay.

**9624 12 (2001-05-25) Security and Protection of the Work**

1. The Contractor shall 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 where copyright or any other Intellectual Property Rights in such information (except a licence) vests in Canada under the Contract. The Contractor shall not disclose any such information to any person without the written permission of the Minister, except that the Contractor may disclose to a Subcontractor authorized in accordance with section 07 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 the Contractor by or on behalf of Canada shall be used solely for the purpose of the Contract and shall remain the property of Canada or the third party, as the case may be. Unless the Contract otherwise expressly provides, the Contractor shall deliver to Canada all such information, together with every copy, draft, working paper and note thereof that contains such information, upon completion or termination of the Contract or at such earlier time as the Minister may require.
2. Subject to the *Access to Information Act*, R.S. 1985, c. A-1 and to any right of Canada under this Contract to release or disclose, Canada shall 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.
3. The obligations of the Parties set out in this section do not apply to any information where the same information:
  - (a) is publicly available from a source other than the other Party; or
  - (b) 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
  - (c) is developed by a Party without use of the information of the other Party.
4. Wherever practical, the Contractor shall 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 Canada (PWGSC) Contract No. (fill in Contract number)", and Canada shall not be liable for any unauthorized use or disclosure of information that could have been so marked or identified and was not.
5. When 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 shall 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 the Minister.
6. Without limiting the generality of subsections 1 and 2, when the Contract, the Work, or any information referred to in subsection 1 is identified as TOP SECRET, SECRET, CONFIDENTIAL, or PROTECTED by Canada, the Minister shall be 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, and the Contractor shall comply with, and ensure that any such subcontractor complies with, all written instructions issued by the Minister dealing with the material so identified, including any requirement that employees of the Contractor or of any such subcontractor execute and deliver declarations relating to reliability screenings, security clearances and other procedures.
7. Any proposed change in the security requirements after the effective date of the Contract that would involve a significant increase in cost to the Contractor shall require an amendment to the Contract under the provisions of section 04.

**9624 13 (1994-01-04) Payment**

1. Notwithstanding any other provision of the Contract, no payment shall be made to the Contractor unless and until:
  - (a) an invoice, inspection notes, certificates and any other documents required by the Contract have been submitted in accordance with the terms of the Contract and the instructions of the Minister;
  - (b) all such documents have been verified by the Minister;
  - (c) with respect to all parts of the Work in respect of which payment is claimed, the Contractor, where required to do so, establishes to the satisfaction of the Minister that such parts of the Work will be free from all claims, liens, attachments, charges or encumbrances; and
  - (d) in the case of payment in respect of finished work, the finished work has been inspected by Canada and accepted as being in accordance with the Contract.
2. The Minister shall notify the Contractor, within fifteen (15) days of receipt of an invoice, of any inadequacy of the invoice or of the supporting documentation, and where any such notice is given within that period the date for payment of the amount invoiced shall be postponed until the Contractor remedies the inadequacy to the satisfaction of the Minister.
3. Where a delay referred to in section 11 has occurred, the Minister may, at the Minister's discretion, withhold all or a portion of any payment due to the Contractor until a "work-around" plan approved by the Minister has been implemented in accordance with that section. Section 14 shall not apply to any amount withheld under this subsection.

**9624 14 (2000-12-01) Interest on Overdue Accounts**

1. For the purposes of this section:

"Average Rate" means the simple arithmetic mean of the Bank Rates in effect at 4:00 p.m. Eastern Standard Time each day during the calendar month which immediately precedes the calendar month in which payment is made, where the "Bank Rate" means the rate of interest established from time to time by the Bank of Canada as the minimum rate at which the Bank of Canada makes short term advances to members of the Canadian Payments Association.

"date of payment" means the date of the negotiable instrument drawn by the Receiver General for Canada and given for payment of an amount due and payable;

an amount is "due and payable" when it is due and payable by Canada to the Contractor in accordance with the terms of the Contract; and

an amount becomes "overdue" when it is unpaid on the first day following the day upon which it is due and payable.
2. Subject to the Contract, Canada shall be liable to pay to the Contractor simple interest at the Average Rate plus 3 percent per annum on any amount that is overdue, from the date such amount becomes overdue until the day prior to the date of payment, inclusive. Interest shall be paid without notice from the Contractor.
3. Canada shall not be liable to pay interest in accordance with this section if Canada is not responsible for the delay in paying the Contractor.
4. Canada shall not be liable to pay interest on overdue advance payments.

**9624 15 (1994-01-04) Changes in Taxes and Duties**

1. In this section, "bid" includes a proposal, tender or offer submitted by the Contractor in response to an invitation from the Minister.
2. Subject to subsection 3, in the event of any change (including a new imposition or repeal), on or after the date of submission of the bid, of any tax, customs or other duty, charge, or any similar imposition that is imposed under sales or excise tax legislation of the Government of Canada and which affects the Cost to the Contractor of the Work, the Contract Price shall be adjusted to reflect the increase or decrease in the Cost to the Contractor.

3. There shall be no adjustment under subsection 2 in respect of any change that would increase the Cost to the Contractor of the Work if public notice of the change was given before the bid submission date in sufficient detail to permit the Contractor to have calculated the effect on its Cost before that date.
4. The Contractor shall forward to the Minister a certified statement showing the increase or decrease in Cost to the Contractor that is directly attributable to the change in the imposition. The Minister may verify the increase or decrease in Cost by audit before or after the Contract Price is adjusted.
5. Notwithstanding subsections 2 to 4, no adjustment to the Contract Price in respect of the Work or a part thereof shall be made for a change in any imposition referred to in this section that occurs after the date required by the Contract for delivery of the Work or that part of the Work.

**9624 16 (1994-01-04) Inspection of the Work**

1. The Work and any and all parts thereof shall be subject to such inspection as the Technical or Inspection Authority determines to be appropriate, consistent with the relevant provisions of the Contract, if any, prior to acceptance by Canada. The Contracting Authority and the Technical or Inspection Authority, or their representatives, shall have access to the Work at any time during working hours where any part of the Work is being carried out and may make examinations and such tests of the Work as they may think fit. Should the Work or any part thereof not be in accordance with the requirements of the Contract, the Technical or Inspection Authority shall have the right to reject the Work and require its correction or replacement at the Contractor's expense. The Technical or Inspection Authority, as the case may be, shall inform the Contractor of the reasons for any such rejection.
2. The Contractor shall notify the Contracting Authority and the Technical or Inspection Authority prior to conducting any critical test, trial or examination of the Work required under the Contract, as to the specific time and location of such test, trial or examination.
3. The Contractor shall provide all assistance and facilities, test pieces, samples and documentation that the Technical or Inspection Authority may reasonably require for the carrying out of any such inspection, and the Contractor shall forward such test pieces and samples to such person or location as the Technical, Inspection or Contracting Authority may direct. Inspection by the Technical or Inspection Authority shall not relieve the Contractor from responsibility to meet the requirements of the Contract.

**9624 17 (1994-01-04) Title**

1. Except as otherwise provided in the Contract including the intellectual property provisions, and except as provided in subsection 2, title to the Work or any part thereof shall vest in Canada upon delivery and acceptance thereof by or on behalf of Canada.
2. Except as otherwise provided in the intellectual property provisions of the Contract, upon any payment being made to the Contractor for or on account of materials, work-in-process or finished work, either by way of progress payments or accountable advances or otherwise, title in and to all materials, parts, work-in-process and finished work so paid for shall vest in and remain in Canada unless already so vested under any other provision of the Contract.
3. Notwithstanding any vesting of title referred to in this section and except as otherwise provided in the Contract, the risk of loss or damage to the materials, parts, work-in-process or finished work or part thereof so vested shall remain with the Contractor until their delivery to Canada in accordance with the Contract. The Contractor shall be liable for any loss or damage to any part of the Work caused by the Contractor or any subcontractor after such delivery.
4. Any vesting of title referred to in subsection 2 shall not constitute acceptance by Canada of the materials, parts, work-in-process or finished work and shall not relieve the Contractor of its obligation to perform the Work in accordance with the Contract.
5. Where title to any materials, parts, work-in-process or finished work becomes vested in Canada, the Contractor shall, upon the Minister's request, establish to the Minister's satisfaction that the title is free and clear of all claims, liens, attachments, charges or encumbrances and shall execute such conveyances thereof and other instruments necessary to perfect that title as the Minister may request.
6. If the Contract is a defence contract within the meaning of the *Defence Production Act*, R.S. 1985, c. D-1, title to the Work or to any materials, parts, work-in-process or finished work shall vest in Canada free and clear of all claims, liens, attachments, charges or encumbrances, and the Minister shall be

entitled at any time to remove, sell or dispose of it or any part of it in accordance with section 20 of that Act.

**9624 18 (2001-05-25) Warranty**

1. In this section, "Equipment" includes any material, prototype, machinery, device, system, apparatus, tool, die, instrument and any equipment of all kinds required to be delivered under the Contract.
2. Notwithstanding inspection and acceptance of the Work by or on behalf of Canada and without restricting any other provision of the Contract or any condition, warranty or provision implied or imposed by law, the Contractor warrants that, for a period of twelve (12) months from the date of delivery, or if acceptance takes place on a later date, the date of acceptance, or for such other period as may be specified in the written agreement between the Parties, the Equipment shall be free from all defects in design, materials or workmanship, and shall conform with the requirements of the Contract, provided that with respect to Government Property not supplied by the Contractor, the Contractor's warranty shall extend only to its proper incorporation into the Work.
3. In the event of a defect or non-conformance in the Equipment or any part thereof during the warranty period defined in subsections 2 and 6, the Contractor, at the request of the Minister to do so, shall as soon as possible repair, replace or otherwise make good at its own option and expense the Equipment or any part thereof found to be defective or not in conformance with the requirements of the Contract.
4. The Equipment or any part thereof found to be defective or non-conforming shall be returned to the Contractor's plant for replacement, repair or making good; provided that, when in the opinion of the Minister it is not expedient to remove the Equipment from its location, the Contractor shall carry out any necessary repair or making good of the Equipment at that location, and shall be paid the fair and reasonable Cost (including reasonable travelling and living expenses) incurred in so doing, with no allowance therein by way of profit, less an amount equal to the Cost of rectifying the defect or non-conformance at the Contractor's plant.
5. Canada shall pay the transportation cost associated with returning any Equipment or part thereof to the Contractor's plant pursuant to subsection 4, and the Contractor shall pay the transportation cost associated with forwarding the replacement or returning the Equipment or part thereof when rectified to the delivery point specified in the Contract, or such lesser cost as may be required to transport the Equipment or part thereof to another location directed by the Technical Authority.
6. The warranty period set out in subsection 2 shall be extended by the duration of any period or periods during the life of the warranty, including any such extension, in which the Equipment is unavailable for use or cannot be used because of a defect or non-conformance referred to in this section, less the duration of any delay by Canada in informing the Contractor of the defect or non-conformance or in returning the Equipment or part thereof to the Contractor's plant. Upon returning the Equipment or part thereof to Canada, the Contractor shall advise the Minister in writing of the warranty period remaining, including any such extension.
7. The warranties set out in subsection 2 shall apply to any part of the Equipment repaired, replaced or otherwise made good pursuant to subsection 3, for the greater of:
  - (a) the warranty period remaining under subsection 6; or
  - (b) ninety (90) days or such other period as may be specified for that purpose in the written agreement between the Parties.

All of the provisions of subsections 3 to 6 of this section inclusive apply, with such minimum changes as the context may require, to any such part of the Equipment that is found during that period to be defective or not in conformance with the Contract.

**9624 19 (2004-12-10) Government Property**

1. Unless otherwise provided in the Contract, all Government Property shall be used by the Contractor solely for the purpose of the Contract and shall remain the property of Canada, and the Contractor shall maintain adequate accounting records of all Government Property, and, whenever feasible, shall mark the same as being the property of Canada.
2. The Contractor shall take reasonable and proper care of all Government Property while the same is in, on, or about the plant and premises of the Contractor or otherwise in its possession or subject to its control, and shall be responsible for any loss or damage resulting from its failure to do so other than loss or damage caused by ordinary wear and tear.

3. All Government Property, except such as is installed or incorporated into the Work, shall, unless otherwise specifically provided in the Contract, be returned to Canada on demand.
4. All scrap and all waste materials, articles or things that are Government Property shall, unless otherwise provided in the Contract, remain the property of Canada and shall be disposed of only as directed by the Minister.
5. At the time of completion of the Contract, and if requested by the Contracting Authority, the Contractor shall provide an inventory of all Government Property relating to the Contract to both the Contracting Authority and the Technical Authority.

**9624 20 (1994-01-04) Indemnity Against Third-party Claims**

1. The Contractor shall indemnify and save harmless Canada, the Minister and their servants and agents from and against any damages, costs or expenses or any claim, action, suit or other proceeding which they or any of them may at any time incur or suffer as a result of or arising out of
  - (a) any injury to persons (including injuries resulting in death) or loss of or damage to property of others which may be or be alleged to be caused by or suffered as a result of the performance of the Work or any part thereof, except that Canada and the Minister shall not claim indemnity under this section to the extent that the injury, loss or damage has been caused by Canada, and
  - (b) any liens, attachments, charges or other encumbrances or claims upon or in respect of any materials, parts, work-in-process or finished work furnished to, or in respect of which any payment has been made by, Canada.
2. The Minister shall give notice to the Contractor of any claim, action, suit or proceeding referred to in subsection 1 and the Contractor shall, to the extent requested by the Attorney General of Canada, at its own expense participate in or conduct the defence of any such claim, action, suit or proceeding and any negotiations for settlement of the same, but the Contractor shall not be liable to indemnify Canada for payment of any settlement unless it has consented to the settlement.

**9624 21 (2005-06-10) Royalties and Infringement**

1. In this section, "Royalties" includes:
  - (a) license fees and all other payments analogous to royalties for, and also claims for damages based upon, the use or infringement of any patent, registered industrial design, trade mark, copyrighted work, trade secret, or other Intellectual Property Rights, and
  - (b) any costs or expenses incurred as a result of the exercise by any person of Moral Rights.
2. Subject to subsection 4, the Contractor shall indemnify and save harmless Canada, the Minister and their servants and agents against any claim, action, suit or other proceeding for the payment of Royalties, that results from or is alleged to result from the carrying out of the Contract or the use or disposal by Canada of anything furnished by the Contractor under the Contract.
3. Canada shall indemnify and save harmless the Contractor and its servants and agents against any claim, action, suit or other proceeding for the payment of Royalties, that results from or is alleged to result from
  - (a) the use by the Contractor in performing the Contract of equipment, Specifications or other information not prepared by the Contractor and supplied to the Contractor by or on behalf of Canada; or
  - (b) the Contractor complying with production drawings not prepared by the Contractor and supplied by or on behalf of Canada which direct an alteration of or modification to the Work,provided that the Contractor notifies the Minister immediately of any such claim, action, suit or other proceeding, but Canada shall not be liable to indemnify or save harmless the Contractor for payment of any settlement unless Canada has consented to the settlement.
4. The Minister shall give notice to the Contractor of any claim, action, suit or proceeding referred to in subsection 2 and the Contractor shall, to the extent requested by the Attorney General of Canada, at its own expense participate in or conduct the defence of any such claim, action, suit or proceeding and

any negotiations for settlement of the same, but the Contractor shall not be liable to indemnify or save harmless Canada for payment of any settlement unless it has consented to the settlement.

5. The Contractor shall notify the Minister 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 the Contract, and the basis thereof, and the parties to whom the same are payable, and shall promptly advise the Minister of any and all claims which would or might result in further or different payments by way of Royalties being made by the Contractor or any of its subcontractors.
6. Where and to the extent that the Minister so directs, the Contractor shall not pay and shall direct its subcontractors not to pay any Royalties in respect of the carrying out of the Contract.
7. After the giving of any direction provided for in subsection 6, and subject to compliance by the Contractor with the foregoing provisions, Canada shall indemnify the Contractor and its subcontractors from and against all claims, actions, suits or proceedings for payment of such Royalties as are covered by the direction.
8. The Contractor shall not be entitled to any payment in respect of any Royalties included in the Contract Price to which the indemnity provided in subsection 7 applies.

**9624 22 (2001-05-25) Disclosure of Foreground Information**

1. The Contractor shall promptly report and fully disclose to the Minister all Foreground Information that could be Inventions, and shall report and fully disclose to the Minister all other Foreground Information not later than the time of completion of the Work or such earlier time as the Minister or the Contract may require.
2. The Contractor shall, in each disclosure under this section, indicate the names of all subcontractors at any tier, if any, in which Intellectual Property Rights to any Foreground Information have vested or will vest.
3. Before and after final payment to the Contractor, the Minister shall have the right to examine all records and supporting data of the Contractor which the Minister reasonably deems pertinent to the identification of Foreground Information.

**9624 23 (2001-05-25) Contractor to Own Intellectual Property Rights in Foreground Information**

1. Subject to subsection 3 and section 27, and without affecting any Intellectual Property Rights or interests therein that have come into being prior to the Contract or that relate to information or data supplied by Canada for purposes of the Contract, all Intellectual Property Rights in the Foreground Information shall immediately, as soon as they come into existence, vest in and remain the property of the Contractor.
2. Notwithstanding the Contractor's ownership of the Intellectual Property Rights in Foreground Information that is a prototype, model or custom or customized system or equipment together with associated manuals and other operating and maintenance documents and tools, Canada shall have unrestricted ownership rights in those Deliverables, including the right to make them available for public use, whether for a fee or otherwise, and, except in the case of Software that is not necessary for the operation of the prototype, model or system or equipment, the right to sell them.
3. (a) Where the Work under the Contract involves the preparation of a database or other compilation using information or data supplied by Canada or personal information referred to in paragraph (b), then the Intellectual Property Rights that shall vest under subsection 1 shall be restricted to the Intellectual Property Rights in Foreground Information that is capable of being exploited without the use of the information or data supplied by Canada or such personal information. All Intellectual Property Rights in any database or other compilation, the Foreground Information in which cannot be exploited without the use of such information, data, or personal information, shall vest in Canada. The Contractor agrees that it shall not use or disclose any such information or data or personal information for any purpose other than completing the Work under the Contract, and shall not dispose of it except by returning it to Canada. The Contractor shall comply with the general conditions of the Contract in regard to maintaining the confidentiality of such information, data or personal information. Unless the Contract otherwise expressly provides, the Contractor shall deliver to Canada all such information, data or personal information, together with every copy, draft, working paper and note thereof that contains such information, data, or personal information, upon the completion or termination of the Contract or at such earlier time as the Minister may require.



- (b) Notwithstanding subsection 1, if the Work under the Contract involves the collection of personal information as that term is defined in the *Privacy Act* (R.S., c. P-21), then all Intellectual Property Rights in and title to that personal information shall, immediately upon the collection of it by the Contractor, vest in Canada, and the Contractor shall have no right or interest in it.

**9624 24 (2001-05-25) License to Intellectual Property Rights in Foreground Information**

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 section 23, 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 the Foreground Information to other governments for information purposes only. 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.
2. The Contractor acknowledges that Canada may wish to award contracts for any of the purposes contemplated in subsection 1 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 section 23, includes the right to disclose the Foreground Information 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.
3. For greater certainty and without limiting the generality of subsections 1 and 2, Canada's right to modify, improve, translate, reproduce or further develop any Foreground Information pursuant to subsections 1 and 2:
  - (a) applies to Foreground Information that is Software, notwithstanding any terms to the contrary delivered by the Contractor with any Deliverables, including the wording on any shrink-wrapped license attached to any Deliverables; and
  - (b) 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.
4. Notwithstanding subsections 1, 2, and 3, if any Foreground Information arises solely from correction by the Contractor of errors in Background Information that is Software, or from minor modifications made by the Contractor to such Software, then the license set out in subsections 1, 2 and 3 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.
5. Where the Intellectual Property Rights in any Foreground Information are or will be owned by a subcontractor at any tier, the Contractor shall either obtain a license from that subcontractor that permits compliance with subsections 1, 2 and 3 or arrange for the subcontractor to convey directly to Canada the same rights by execution of the form provided for that purpose by the Minister, in which case the Contractor shall deliver that form to the Minister, duly completed and executed by the subcontractor, no later than the time of disclosure to Canada of that Foreground Information.
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 Work 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. If the request is refused, the response shall provide an explanation for the refusal. 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.
7. The Contractor may apply to the minister for whose department or agency the Work 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.

**9624 25 (2001-12-10) License to Intellectual Property Rights in Background Information**

1. Without restricting the scope of any license or other right in the Background Information that Canada may otherwise hold, the Contractor hereby grants to Canada a non-exclusive, perpetual, irrevocable, worldwide, fully-paid and royalty-free license to exercise such of the Intellectual Property Rights in any Background Information incorporated into the Work or necessary for the performance of the Work as may be required in order for Canada to exercise its license in the Intellectual Property Rights in the Foreground Information. The Contractor agrees, subject to subsection 4, to make any such Background Information (including, in the case of Software, source code) promptly available to Canada for any such purpose.
2. The Contractor acknowledges that Canada may wish to award contracts for a purpose contemplated in subsection 1 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 Background Information includes the right to disclose 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. Canada shall require bidders and the contractor not to use or disclose any Background Information except as may be necessary to bid for or to carry out that contract.
3. Where the Intellectual Property Rights in any Background Information are owned by a subcontractor at any tier, the Contractor shall either obtain a license from that subcontractor that permits compliance with subsections 1 and 2 or arrange for the subcontractor to convey directly to Canada the same rights by execution of the form provided for that purpose by the Minister, in which case the Contractor shall deliver that form to the Minister, duly completed and executed by the subcontractor, no later than the time of disclosure to Canada of that Background Information.
4. Notwithstanding subsection 1, 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. Furthermore, in the case of commercial off-the-shelf Software, the Contractor's obligation to make the source code promptly available to Canada for a purpose set out in subsection 1 shall apply only to source code that is within the control of or can be obtained by the Contractor or any subcontractor, and in that event the Contractor shall, if requested by Canada, make the source code available to Canada within reasonable delivery times and on reasonable other commercial terms.

**9624 26 (2001-12-10) Right to License**

The Contractor represents and warrants that the Contractor has, or the Contractor shall obtain, without delay, the right to grant to Canada the license to exercise the Intellectual Property Rights in the Foreground Information and the Background Information as required by the Contract.

**9624 27 (2001-05-25) Transfer of Intellectual Property Rights in Foreground Information**

1. Until the Contractor completes the Work and discloses all of the Foreground Information in accordance with section 22, 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.
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 section 22, the Minister may, by notice given not later than ninety (90) 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 at any tier. In the case of Intellectual Property Rights in Foreground Information which have been sold or assigned to a party other than a subcontractor at any tier, the Contractor shall not be obligated to convey rights to Canada in accordance with this subsection, 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.

3. In the event of the issuance by the Minister of a notice under subsection 2, 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 Work 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 Rights in any jurisdiction, including without limitation the assistance of the inventor in the case of Inventions.

**9624 28 (2001-05-25) Sale, Assignment, Transfer or Licensing of Intellectual Property Rights in Foreground Information**

1. In any sale, assignment, transfer or license of Intellectual Property Rights in Foreground Information by the Contractor except a sale or license for end use of a product based on Foreground Information, the Contractor shall impose on the other Party all of its obligations to Canada in relation to the Intellectual Property Rights in the Foreground Information and any restrictions set out in the Contract on the use or disposition of the Intellectual Property Rights in the Foreground Information (and, if applicable, the Foreground Information), including the obligation to impose the same obligations and restrictions on any subsequent transferee, assignee or licensee.
2. The Contractor shall promptly notify Canada of the name, address and other pertinent information in regard to any transferee, assignee or licensee referred to in subsection 1, and shall ensure that such Party is required to do the same with regard to any subsequent transferee, assignee or licensee.
3. The Contractor shall not charge or permit any person to charge a royalty or other fee to Canada in respect of the Intellectual Property Rights in any Foreground Information for purposes of a contract or other arrangement with Canada. Where the contract or other arrangement is for a product based on Foreground Information or on any modification or improvement thereof, the Contractor shall grant to Canada a reasonable credit against its commercial price for that product to take into account Canada's financial contribution toward the development of the product, and in the case of a product owned by a transferee, assignee or licensee of the Intellectual Property Rights in any Foreground Information, the Contractor shall ensure that such Party is required to do the same.

**9624 29 (2001-05-25) Access to Information; Exception to Contractor Rights**

1. Subject to the *Access to Information Act*, R.S., c. A-1, and to any right of Canada under the Contract to release or disclose, Canada shall not release or disclose outside the Government of Canada any information delivered to Canada under the Contract that is confidential information or a trade secret of the Contractor or a subcontractor.
2. Notwithstanding subsection 1, nothing in these terms and conditions shall be construed as limiting Canada's right to exercise the Intellectual Property Rights in any Foreground Information or any Background Information, or to disclose any Foreground Information or any Background Information, to the extent that such information:
  - (a) is or becomes in the public domain, or to the extent that the Contractor 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;
  - (b) is or becomes known to Canada from a source other than the Contractor, except from any source that is known to Canada to be under an obligation to the Contractor not to disclose the information;
  - (c) is independently developed by or for Canada; or
  - (d) is disclosed under compulsion of a legislative requirement or any order of a court or other tribunal having jurisdiction.

**9624 30 (2001-05-25) Waiver of Moral Rights**

1. The Contractor shall provide to Canada, at the completion of the Work or at such other time as the Minister may require, a written permanent waiver of Moral Rights, in a form acceptable to the Minister,

from every author that contributed to any Foreground Information which is subject to copyright protection and which is deliverable to Canada under the terms of the Contract.

2. If the Contractor is an author of the Foreground Information referred to in subsection 1, the Contractor hereby permanently waives the Contractor's Moral Rights in that Foreground Information.

**9624 31 (2001-05-25) Suspension of the Work**

1. The Minister may at any time, by written notice, order the Contractor to suspend or stop all or part of the Work under the Contract for a period of up to one hundred eighty (180) days. The Contractor shall immediately comply with any such order in the manner that minimizes the cost of so doing. While such an order is in effect, the Contractor shall not remove any part of the Work from any premises without the prior written consent of the Contracting Authority. At any time prior to the expiration of the one hundred eighty (180) days, the Minister shall either rescind the order or terminate the Contract, in whole or in part, under section 32 or section 33.
2. When an order is made under subsection 1, unless the Minister terminates the Contract by reason of default by the Contractor or the Contractor abandons the Contract, the Contractor shall be entitled to be paid its additional costs incurred as a result of the suspension plus a fair and reasonable profit thereon.
3. When an order is made under subsection 1 and is rescinded:
  - (a) the Contractor shall as soon as practicable resume work in accordance with the Contract;
  - (b) if the suspension has affected the Contractor's ability to meet any delivery date under the Contract, the date for the performance of that part of the Work affected by the suspension shall be extended for a period equal to the period of suspension plus a period, if any, which in the opinion of the Minister following consultation with the Contractor is reasonably necessary for the Contractor to resume the Work; and
  - (c) subject to section 04, an equitable adjustment shall be made as necessary to affected terms and conditions of the Contract.

**9624 32 (2001-05-25) Default by the Contractor**

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, either immediately, or at the expiration of a cure period specified in the notice if the Contractor has not cured the default to the satisfaction of the Minister within that cure period.
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 Canada, upon giving notice to the Contractor, immediately terminate for default the whole or any part of the Contract.
3. Upon the giving of a notice provided for in subsection 1 or 2, the Contractor shall have no claim for further payment other than as provided in this section, but shall be liable to Canada for any amounts, including milestone payments, paid by Canada and for all losses and damages which may be suffered by Canada by reason of the default or occurrence upon which the notice was based, including any increase in the cost incurred by Canada in procuring the Work from another source. The Contractor agrees to repay immediately to Canada the portion of any advance payment that is unliquidated at the date of the termination. Nothing in this section affects any obligation of Canada under the law to mitigate damages.
4. Upon termination of the Contract under this section, the Minister may require the Contractor to deliver to Canada, in the manner and to the extent directed by the Minister, any completed parts of the Work which have not been delivered and accepted prior to the termination and any materials, parts, equipment or work-in-process which the Contractor has acquired or produced specifically in the fulfilment of the Contract.
5. Subject to the deduction of any claim that Canada may have against the Contractor arising under the Contract or out of the termination, Canada shall pay or credit to the Contractor the value, determined on the basis of the Contract Price including the proportionate part of the Contractor's profit or fee included in the Contract Price, of all completed parts of the Work delivered to Canada pursuant to a

direction under subsection 4 and accepted by Canada, and shall pay or credit to the Contractor the cost to the Contractor that the Minister considers reasonable in respect of all materials, parts, equipment or work-in-process delivered to Canada pursuant to a direction under subsection 4 and accepted by Canada, but in no event shall the aggregate of the amounts paid by Canada under the Contract to the date of termination and any amounts payable pursuant to this subsection exceed the Contract Price.

6. Title to all materials, parts, 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, 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, equipment or work-in-process that would not have been required to perform the Work or that exceed what would have been required to perform the Work.
7. Where, subsequent to issuance of a notice pursuant to subsection 1, the Minister is satisfied that grounds did not exist for a termination under this section, the notice shall be deemed a notice of termination for convenience issued under subsection 33.1.

**9624 33 (2004-05-14) Termination for Convenience**

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 section 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 (including the manufacture and procuring of materials for the fulfilment of the Contract) 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.
2. In the event of a termination notice being given pursuant to subsection 1, 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 including the unliquidated portion of any advance payment:
  - (a) on the basis of the Contract Price, for all completed work that is inspected and accepted in accordance with the Contract, whether completed before, or after 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 the terms of the Contract and with Contract Cost Principles 1031-2;
  - (c) the amount of any capital expenditures actually incurred only if they were specifically authorized under the Contract or approved in writing by the Minister for the purpose of the Contract, less any depreciation in respect thereof already taken into account in determining cost, to the extent that the capital expenditures are properly apportionable to the performance of the Contract;
  - (d) 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.
3. In paragraph 2.(c), "capital expenditures" includes the entry into leases of real property and equipment.
4. 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.

5. Notwithstanding anything in subsection 2, the total of the amounts to which the Contractor is entitled under paragraphs 2.(a) to (c) 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.
6. 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, unless otherwise authorized by the Minister, place purchase orders and subcontracts on terms that will enable the Contractor to terminate the same upon terms and conditions similar in effect to those provided in this section, and generally 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 section.
7. Title to all materials, parts, 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, 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, equipment or work-in-process that would not have been required to perform the Work or that exceed what would have been required to perform the Work.
8. 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 section, except to the extent that this section expressly provides.

**9624 34 (2001-05-25) Accounts and Audit**

1. The Contractor shall keep proper accounts and records of the Cost to the Contractor of the Work and of all expenditures or commitments made by the Contractor in connection therewith, and shall keep all invoices, receipts and vouchers relating thereto. The Contractor shall not, without the prior written consent of the Minister, dispose of any such accounts, records, invoices, receipts or vouchers until the expiration of six (6) years after final payment under this Contract, or until the settlement of all outstanding claims and disputes, whichever is later.
2. All such accounts and records as well as any invoices, receipts and vouchers shall at all times during the retention period referred to in subsection 1 be open to audit, inspection and examination by the authorized representatives of the Minister, who may make copies and take extracts thereof. The Contractor shall provide all facilities for such audits and inspections and shall furnish all such information as the representatives of the Minister may from time to time require with respect to such accounts, records, invoices, receipts and vouchers.

**9624 35 (2001-05-25) Notice**

Any notice shall be in writing and may be delivered by hand or by courier, by registered mail, or by facsimile or other electronic means that provides a paper record of the text of the notice, addressed to the Party for whom it is intended at the address in the Contract or at the last address of which the sender has received notice in accordance with this section. Any notice shall be deemed to be effective on the day it is received at that address.

**9624 36 (2001-05-25) Members of the House of Commons**

No member of the House of Commons shall be admitted to any share or part of the Contract or to any benefit arising from the Contract.

**9624 37 (2005-12-16) Conflict of Interest**

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, 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 this Contract.

**9624 38 (2001-05-25) No Bribe**

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.

**9624 39 (2001-05-25) Survival**

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 warranty, Government Property, indemnity against third-party claims, royalties and infringement, intellectual property rights and accounts and audit shall survive the expiry of the Contract or the termination of the Contract for default, for convenience, pursuant to subsection 11.6, 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.

**9624 40 (2001-05-25) Severability**

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.

**9624 41 (2001-05-25) Successors and Assigns**

The Contract shall enure to the benefit of, and shall be binding upon, the successors and permitted assignees of Canada and of the Contractor.

**9624 42 (2001-05-25) Entire Agreement**

The Contract constitutes the entire and sole agreement between the Parties with respect to the subject matter of the Contract and supersedes all previous negotiations, communications and other agreements, whether written or oral, relating to it, unless they are incorporated by reference in the Contract. There are no terms, covenants, representations, statements or conditions binding on the Parties other than those contained in the Contract.

**9624 43 (2001-05-25) Certification - Contingency Fees**

1. The Contractor certifies that it has not directly or indirectly paid or agreed to pay and covenants that it will not directly or indirectly pay a contingency fee for the solicitation, negotiation or obtaining of this Contract to any person other than an employee acting in the normal course of the employee's duties.
2. All accounts and records pertaining to payments of fees or other compensation for the solicitation, obtaining or negotiation of the Contract shall be subject to the Accounts and Audit provisions of the Contract.
3. If the Contractor certifies falsely under this section or is in default of the obligations contained therein, the Minister may either terminate this Contract for default in accordance with the termination for default provisions of the Contract or recover from the Contractor by way of reduction to the Contract Price or otherwise the full amount of the contingency fee.

4. In this section:

"contingency fee" means any payment or other compensation that is contingent upon or is calculated upon the basis of a degree of success in soliciting or obtaining a government contract or negotiating the whole or any part of its terms;

"employee" means a person with whom the Contractor has an employer/employee relationship;

"person" includes an individual or group of individuals, a corporation, a partnership, an organization and an association and, without restricting the generality of the foregoing, includes any individual who is required to file a return with the registrar pursuant to section 5 of the *Lobbyists Registration Act*, R.S. 1985, c. 44 (4<sup>th</sup> Supplement) as the same may be amended from time to time.

**9624 44 (2001-05-25) Specifications**

1. Where, pursuant to the terms of the Contract, Specifications furnished by the Contractor are subject to approval by the Minister or the Technical Authority, such approval shall not relieve the Contractor of its responsibility to complete the Work and to meet all requirements of the Contract. Any such approval shall not be unreasonably withheld.
2. The Contractor agrees to accept and be bound by the Inspection or Quality Assurance Authority's interpretation of the Specifications, insofar as such an interpretation is not inconsistent with any other part of the Contract.





**Public Works and Government Services Canada**

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**9676 01 (2004-05-14) Interpretation**

1. In the contract, unless the context otherwise requires,
  - "Canada", "Crown", "Her Majesty" or "the Government" means Her Majesty the Queen in right of Canada;
  - "Contract" means the written agreement between the Parties, these general conditions, any supplemental general conditions specified in the written agreement and every other document specified or referred to in any of them as forming part of the Contract, all as amended by agreement of the Parties from time to time;
  - "Contracting Authority" means the person designated as such in the Contract, or by notice to the Contractor, to act as the representative of the Minister in the management of the Contract;
  - "Contractor" means the person or entity whose name appears on the signature page of the written agreement and who is to supply goods or services to Canada under the Contract;
  - "Contract Price" means the amount expressed in the Contract to be payable to the Contractor for the Work;
  - "Cost" means cost determined in accordance with Contract Cost Principles 1031-2, as revised to the date of the bid solicitation;

"Government Property" means all materials, parts, components, Specifications, equipment, software, articles and things supplied to the Contractor by or on behalf of Canada for the purposes of performing the Contract and anything acquired by the Contractor in any manner in connection with the Work the cost of which is paid by Canada under the Contract and, without restricting the generality of the foregoing, includes Government Issue as defined in the *Defence Production Act*, R.S.C. 1985, c. D-1, Government Furnished Equipment and Government Supplied Material;

"Inspection Authority" means the person designated as such in the Contract, or by notice to the Contractor, to act as the representative of the Minister for whose department or agency the Work is being carried out in matters concerning the inspection of the Work, and for purposes of section 16 includes a Quality Assurance Authority if such an authority is mentioned in the Contract;

"Minister" means the Minister of Public Works and Government Services and any other person duly authorized to act on behalf of that Minister;

"Moral Rights" has the same meaning as in the *Copyright Act*, R.S.C. 1985, c. C-42;

"Party" means Canada or the Contractor or any other signatory to the Contract and "Parties" means all of them;

"Specifications" means the functional or technical description of the Work set out or referred to in the Contract, including drawings, samples and models, and further includes, except to the extent inconsistent with anything set out or referred to in the Contract, any such description set out or referred to in any brochure, product literature or other documentation furnished by the Contractor in relation to the Work or any part thereof;

"Subcontract" includes a contract let by any subcontractor at any tier for the performance or supply of a part of the Work, and the derivatives of the word shall be construed accordingly;

"Technical Authority" includes Project Authority and means the person designated in the Contract, or by notice to the Contractor, to act as the representative of the Minister for whose department or agency the Work is being carried out in matters concerning the technical aspects of the Work;

"Work" means the whole of the activities, services, materials, equipment, software, matters and things required to be done, delivered or performed by the Contractor in accordance with the terms of the Contract.

2. The headings used in these general conditions are inserted for convenience of reference only and shall not affect their interpretation.
3. If the Contract is a defence contract within the meaning of the *Defence Production Act*, R.S.C. 1985, c. D-1, it is subject to that Act and shall be governed accordingly.
4. In the Contract, words importing the singular number include the plural and vice versa, and words importing the masculine gender include the feminine gender and the neuter.

#### **9676 02 (1994-01-04) Powers of the Minister**

Every right, remedy, power and discretion vested in or acquired by Canada or the Minister under the Contract or by law shall be cumulative and non-exclusive.

#### **9676 03 (2004-05-14) Status of the Contractor**

1. The Contractor is engaged as an independent Contractor for the sole purpose of performing the Work. Neither the Contractor nor any of its personnel is engaged as an employee, servant or agent of Canada. The Contractor is responsible for all deductions and remittances required by law in relation to its employees including those required for Canada or Quebec Pension Plans, unemployment insurance, workers' compensation, or income tax.
2. Without restricting the terms and conditions of the Contract, and particularly section 19 of these general conditions, it is hereby understood and agreed that, except to the extent caused by or due to Canada, Canada shall not be liable for any losses, claims, damages, or expenses relating to any injury, disease, illness, disability or death of the Contractor or any employee, agent or representative of the Contractor caused or alleged to be caused as a result of performing the Contract. The Contractor agrees to fully protect and indemnify Canada and not to make any claims or demands against Canada in respect of any of the foregoing contingencies.

**9676 04 (1994-01-04) Amendments and Waivers**

1. No design change, modification to the Work, or amendment to the Contract shall be binding unless it is incorporated into the Contract by written amendment or design change memorandum executed by the authorized representatives of the Minister and of the Contractor.
2. While the Contractor may discuss any proposed changes or modifications to the scope of the Work with the Technical Authority, Canada shall not be liable for the cost of any such change or modification until it has been incorporated into the Contract in accordance with subsection 1.
3. No waiver shall be valid, binding or affect the rights of the Parties unless it is made in writing by, in the case of a waiver by Canada, the Contracting Authority and, in the case of a waiver by the Contractor, the authorized representative of the Contractor.
4. The waiver by a Party of a breach of any term or condition of the Contract shall not prevent the enforcement of that term or condition by that Party in the case of a subsequent breach, and shall not be deemed or construed a waiver of any subsequent breach.

**9676 05 (2001-05-25) Conduct of the Work**

1. The Contractor represents and warrants that:
  - (a) it is competent to perform the Work; and
  - (b) it has the necessary qualifications, including knowledge, skill and experience to perform the Work, together with the ability to use those qualifications effectively for that purpose.
2. Except for Government Property specifically provided for in the Contract, the Contractor shall supply everything necessary for the performance of the Work, including all the resources, facilities, labour and supervision, management, services, equipment, materials, drawings, technical data, technical assistance, engineering services, inspection and quality assurance procedures, and planning necessary to perform the Work.
3. The Contractor shall:
  - (a) carry out the Work in a diligent and efficient manner;
  - (b) select and employ on the Work a sufficient number of properly qualified personnel, provide efficient and effective inspection and quality control procedures and provide administration and other support to its employees to the extent necessary to properly carry out the work;
  - (c) perform the Work in accordance with standards of quality acceptable to the Minister and in full conformity with the Specifications and all the requirements of the Contract; and
  - (d) provide effective and efficient supervision to ensure that the quality of workmanship is as stated in the Contract.
4. The Work shall not be performed by any person who, in the opinion of the Minister or the Technical Authority, is incompetent or has been conducting himself/herself improperly.
5. The Contractor warrants that all services performed under this Contract will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this Contract. If the Contractor is required to correct or replace the Work or any portion thereof, it shall be at no cost to Canada, and any work corrected or replaced by the Contractor pursuant to this subsection shall be subject to all provisions of this Contract to the same extent as Work initially performed.
6. The Contractor shall adhere to the Technical Authority's reasonable interpretation of the requirements of the Contract insofar as such an interpretation is not inconsistent with any other part of the Contract.
7. Unless the Minister orders the Work or part thereof to be suspended pursuant to section 22, the Contractor shall not stop or suspend any part of the Work pending the settlement or resolution of any difference between the Parties arising out of the Contract.
8. The Contractor shall provide such reports on the performance of the Work as are required by the Contract and such other reports as may reasonably be required by the Minister or the Technical Authority.

9. The Contractor shall be fully responsible for performing the Work and Canada shall not be liable for any negative consequences or extra costs arising out of the Contractor's following any advice given by Canada, whether given without or upon invitation by the Contractor, unless the advice was provided to the Contractor in writing by the Contracting Authority and was accompanied by a statement specifically relieving the Contractor of any responsibility for negative consequences or extra costs that might arise from following the advice.

**9676 06 (1994-01-04) Compliance with Applicable Laws**

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 Contracting Authority at such times as the Contracting Authority may reasonably request.

**9676 07 (1994-01-04) Subcontracting**

1. Unless otherwise provided in the Contract, the Contractor shall obtain the consent of the Minister in writing prior to subcontracting or permitting the subcontracting of any portion of the Work at any tier.
2. Notwithstanding subsection 1, the Contractor may, without prior consent of the Minister, subcontract such portions of the Work as is customary in the carrying out of similar contracts.
3. In any subcontract, the Contractor shall, unless the Minister otherwise consents in writing, ensure that the subcontractor is bound by terms and conditions compatible with and, in the opinion of the Minister, not less favourable to Canada than the terms and conditions of the Contract. Deviations in any subcontract from the terms of the Contract, including any right of termination of the Contract, shall be entirely at the risk of the Contractor.
4. The Contractor is not obliged to seek consent to subcontracts specifically authorized in the Contract.
5. Any consent to a Subcontract shall not relieve the Contractor from its obligations under the Contract or be construed as authorizing any liability on the part of Canada or the Minister to a subcontractor.

**9676 08 (1994-01-04) Replacement of Personnel**

1. When specific persons have been named in the Contract as the persons who must perform the Work, the Contractor shall provide the services of the persons so named unless the Contractor is unable to do so for reasons beyond its control.
2. If, at any time, the Contractor is unable to provide the services of any specific person named in the Contract, it shall provide a replacement person who is of similar ability and attainment.
3. The Contractor shall, before replacing any specific person named in the Contract, provide notice in writing to the Minister containing:
  - (a) the reason for the removal of the named person from the Work;
  - (b) the name, qualifications and experience of the proposed replacement person; and
  - (c) proof that the person has the required security clearance granted by Canada, if applicable.
4. The Contractor shall not, in any event, allow performance of the Work by unauthorized replacement persons and acceptance of a replacement person by the Technical Authority and the Contracting Authority shall not relieve the Contractor from responsibility to meet the requirements of the Contract.
5. The Minister may order the removal from the Work of any such replacement person and the Contractor shall immediately remove the person from the Work and shall, in accordance with subsection 2 and paragraphs 3.(b) and (c), secure a further replacement.
6. The fact that the Minister does not order the removal of a replacement person from the Work shall not relieve the Contractor from its responsibility to meet the requirements of the Contract.

**9676 09 (1994-01-04) Assignment**

1. The Contract shall not be assigned, in whole or in part, by the Contractor without the prior consent in writing of the Minister and any purported assignment made without that consent is void and of no effect.
2. No assignment of the Contract shall relieve the Contractor from any obligation under the Contract or impose any liability upon Canada or the Minister, unless otherwise agreed to in writing by the Minister.

**9676 10 (1994-01-04) Time of the Essence**

Time is of the essence of the Contract.

**9676 11 (1994-01-04) Excusable Delay**

1. A delay in the performance by the Contractor of any obligation under the Contract which is caused solely by an event that
  - (a) was beyond the reasonable control of the Contractor,
  - (b) could not reasonably have been foreseen,
  - (c) could not reasonably have been prevented by means reasonably available to the Contractor, and
  - (d) occurred without the fault or neglect of the Contractorshall, subject to subsections 2, 3 and 4, constitute an "Excusable Delay" provided that the Contractor invokes this section by notice under subsection 4.
2. If any delay in the Contractor's performance of any obligation under the Contract is caused by a delay of a Subcontractor, such a delay may constitute an Excusable Delay for the Contractor, but only if the delay of the Subcontractor meets the criteria set out in this section for an Excusable Delay by the Contractor and only to the extent that the delay has not been contributed to by the Contractor.
3. Notwithstanding subsection 1, any delay caused by lack of financial resources of the Contractor or an event that is a ground for termination provided for in subsection 2 of section 23, or any delay in the Contractor fulfilling an obligation to deliver a bond, guarantee, letter of credit or other security relating to performance or the payment of money, shall not qualify as an Excusable Delay.
4. The Contractor shall not benefit from an Excusable Delay unless the Contractor has:
  - (a) used its best efforts to minimize the delay and recover lost time;
  - (b) advised the Minister of the occurrence of the delay or of the likelihood of a delay occurring as soon as the Contractor has become aware of it;
  - (c) within fifteen (15) working days of the beginning of a delay or of the likelihood of a delay coming to the attention of the Contractor, advised the Minister of the full facts or matters giving rise to the delay, and provided to the Minister for approval (which approval shall not be unreasonably withheld) a clear "work-around" plan indicating in detail the steps that the Contractor proposes to take in order to minimize the impact of the event causing the delay; this plan shall include alternative sources of materials and labour, if the event causing the delay involves the supply of them; and
  - (d) carried out the work-around plan approved by the Minister.
5. In the event of an Excusable Delay, any delivery date or other date that is directly affected shall be postponed for a reasonable time not to exceed the duration of the Excusable Delay. The Parties shall amend the Contract, as appropriate, to reflect any such change in dates.
6. Notwithstanding subsection 5, the Minister may, after an Excusable Delay has continued for thirty (30) days or more, in the Minister's absolute discretion terminate the Contract. In such a case, the Parties agree that neither will make any claim against the other for damages, costs, expected profits or any other loss arising out of the termination or the event that gave rise to the Excusable Delay. The Contractor agrees to repay immediately to Canada the portion of any advance payment that is unliquidated at the date of the termination. Subsections 4, 5 and 6 of section 23 apply in the event of a termination under this subsection.

- 7 Except to the extent that Canada is responsible for the delay for reasons of failure to meet an obligation under the Contract, Canada shall not be liable for any costs or charges of any nature incurred by the Contractor or any of its subcontractors or agents as a result of an Excusable Delay.

**9676 12 (2001-05-25) Security and Protection of the Work**

1. The Contractor shall 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 where copyright or any other intellectual property rights in such information (except a licence) vests in Canada under the Contract. The Contractor shall not disclose any such information to any person without the written permission of the Minister, except that the Contractor may disclose to a subcontractor authorized in accordance with section 07 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 the Contractor by or on behalf of Canada shall be used solely for the purpose of the Contract and shall remain the property of Canada or the third party, as the case may be. Unless the Contract otherwise expressly provides, the Contractor shall deliver to Canada all such information, together with every copy, draft, working paper and note thereof that contains such information, upon completion or termination of the Contract or at such earlier time as the Minister may require.
2. Subject to the *Access to Information Act*, R.S.C. 1985, c. A-1 and to any right of Canada under this Contract to release or disclose, Canada shall 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.
3. The obligations of the Parties set out in this section do not apply to any information where the same information:
  - (a) is publicly available from a source other than the other Party; or
  - (b) 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
  - (c) is developed by a Party without use of the information of the other Party.
4. Wherever practical, the Contractor shall mark or identify any proprietary information delivered to Canada under the Contract as "Property of (Contractor's name), permitted Government uses defined under Department of Public Works and Government Services (PWGSC) Contract No. (fill in Contract number)", and Canada shall not be liable for any unauthorized use or disclosure of information that could have been so marked or identified and was not.
5. When 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 shall 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 the Minister.
6. Without limiting the generality of subsections 1 and 2, when the Contract, the Work, or any information referred to in subsection 1 is identified as TOP SECRET, SECRET, CONFIDENTIAL, or PROTECTED by Canada, the Minister shall be 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, and the Contractor shall comply with, and ensure that any such subcontractor complies with, all written instructions issued by the Minister dealing with the material so identified, including any requirement that employees of the Contractor or of any such subcontractor execute and deliver declarations relating to reliability screenings, security clearances and other procedures.
7. Any proposed change in the security requirements after the effective date of the Contract that would involve a significant increase in cost to the Contractor shall require an amendment to the Contract under the provisions of section 04.

**9676 13 (1994-01-04) Payment**

1. Notwithstanding any other provision of the Contract, no payment shall be made to the Contractor unless and until:

- (a) an invoice, inspection notes, certificates and any other documents required by the Contract have been submitted in accordance with the terms of the Contract and the instructions of the Minister;
  - (b) all such documents have been verified by the Minister;
  - (c) with respect to all parts of the Work in respect of which payment is claimed, the Contractor, where required to do so, establishes to the satisfaction of the Minister that such parts of the Work will be free from all claims, liens, attachments, charges or encumbrances; and
  - (d) in the case of payment in respect of finished work, the finished work has been inspected by Canada and accepted as being in accordance with the Contract, including the Specifications.
2. The Minister shall notify the Contractor, within fifteen (15) days of receipt of an invoice, of any inadequacy of the invoice or of the supporting documentation, and where any such notice is given within that period the date for payment of the amount invoiced shall be postponed until the Contractor remedies the inadequacy to the satisfaction of the Minister.
3. Where a delay referred to in section 11 has occurred, the Minister may, at the Minister's discretion, withhold all or a portion of any payment due to the Contractor until a "work-around" plan approved by the Minister has been implemented in accordance with that section. Section 14 shall not apply to any amount withheld under this subsection.

**9676 14 (2000-12-01) Interest on Overdue Accounts**

1. For the purposes of this section:

"Average Rate" means the simple arithmetic mean of the Bank Rates in effect at 4:00 p.m. Eastern Standard Time each day during the calendar month which immediately precedes the calendar month in which payment is made, where the "Bank Rate" means the rate of interest established from time to time by the Bank of Canada as the minimum rate at which the Bank of Canada makes short term advances to members of the Canadian Payments Association.

"date of payment" means the date of the negotiable instrument drawn by the Receiver General for Canada and given for payment of an amount due and payable;

an amount is "due and payable" when it is due and payable by Canada to the Contractor in accordance with the terms of the Contract; and

an amount becomes "overdue" when it is unpaid on the first day following the day upon which it is due and payable.
2. Subject to the Contract, Canada shall be liable to pay to the Contractor simple interest at the Average Rate plus 3 percent per annum on any amount that is overdue, from the date such amount becomes overdue until the day prior to the date of payment, inclusive. Interest shall be paid without notice from the Contractor.
3. Canada shall not be liable to pay interest in accordance with this section if Canada is not responsible for the delay in paying the Contractor.
4. Canada shall not be liable to pay interest on overdue advance payments.

**9676 15 (1994-01-04) Changes in Taxes and Duties**

1. In this section, "bid" includes a proposal, tender or offer submitted by the Contractor in response to an invitation from the Minister.
2. Subject to subsection 3, in the event of any change (including a new imposition or repeal), on or after the date of submission of the bid, of any tax, customs or other duty, charge, or any similar imposition that is imposed under sales or excise tax legislation of the Government of Canada and which affects the Cost to the Contractor of the Work, the Contract Price shall be adjusted to reflect the increase or decrease in the Cost to the Contractor.
3. There shall be no adjustment under subsection 2 in respect of any change that would increase the Cost to the Contractor of the Work if public notice of the change was given before the bid submission date in sufficient detail to permit the Contractor to have calculated the effect on its Cost before that date.

4. The Contractor shall forward to the Minister a certified statement showing the increase or decrease in Cost to the Contractor that is directly attributable to the change in the imposition. The Minister may verify the increase or decrease in Cost by audit before or after the Contract Price is adjusted.
5. Notwithstanding subsections 2 to 4, no adjustment to the Contract Price in respect of the Work or a part thereof shall be made for a change in any imposition referred to in this section that occurs after the date required by the Contract for delivery of the Work or that part of the Work.

**9676 16 (1994-01-04) Inspection of the Work**

The Work and any and all parts thereof shall be subject to such inspection as the Technical or Inspection Authority determines to be appropriate, consistent with the relevant provisions of the Contract, if any, prior to acceptance by Canada. The Contracting Authority and the Technical or Inspection Authority, or their representatives, shall have access to the Work at any time during working hours where any part of the Work is being carried out and may make examinations and such tests of the Work as they may think fit. Should the Work or any part thereof not be in accordance with the requirements of the Contract, the Technical or Inspection Authority shall have the right to reject the Work and require its correction or replacement at the Contractor's expense. The Technical or Inspection Authority shall inform the Contractor of the reasons for any such rejection. Inspection by the Technical or Inspection Authority shall not relieve the Contractor from responsibility to meet the requirements of the Contract.

**9676 17 (1994-01-04) Title**

1. Except as otherwise provided in the Contract, and except as provided in subsection 2, title to the Work or any part thereof shall vest in Canada upon delivery and acceptance thereof by or on behalf of Canada.
2. Upon any payment being made to the Contractor in respect of the Work or any portion of the Work, either by way of progress payments or accountable advances or otherwise, title to the Work so paid for shall vest in and remain in Canada unless already so vested under any other provision of the Contract.
3. Notwithstanding any vesting of title referred to in this section and except as otherwise provided in the Contract, the risk of loss or damage to the Work or part thereof so vested shall remain with the Contractor until its delivery to Canada in accordance with the Contract.
4. Any vesting of title referred to in subsection 2 shall not constitute acceptance by Canada of the Work and shall not relieve the Contractor of its obligation to perform the Work in accordance with the Contract.
5. If the Contract is a defence Contract within the meaning of the *Defence Production Act*, R.S.C. 1985, c. D-1, title to the Work or to any materials, parts, work-in-process or finished work shall vest in Canada free and clear of all claims, liens, attachments, charges or encumbrances, and the Minister shall be entitled at any time to remove, sell or dispose of it or any part of it in accordance with section 20 of that Act.

**9676 18 (2004-12-10) Government Property**

1. Unless otherwise provided in the Contract, all Government Property shall be used by the Contractor solely for the purpose of the Contract and shall remain the property of Canada, and the Contractor shall maintain adequate accounting records of all Government Property, and, whenever feasible, shall mark the same as being the property of Canada.
2. The Contractor shall take reasonable and proper care of all Government Property while the same is in, on, or about the plant and premises of the Contractor or otherwise in its possession or subject to its control, and shall be responsible for any loss or damage resulting from its failure to do so other than loss or damage caused by ordinary wear and tear.
3. All Government Property, except such as is installed or incorporated into the Work, shall, unless otherwise specifically provided in the Contract, be returned to Canada on demand.
4. At the time of completion of the Contract, and if requested by the Contracting Authority, the Contractor shall provide an inventory of all Government Property relating to the Contract to both the Contracting Authority and the Technical Authority.

**9676 19 (1994-01-04) Indemnity Against Third-Party Claims**



1. The Contractor shall indemnify and save harmless Canada, the Minister and their servants and agents from and against any damages, costs or expenses or any claim, action, suit or other proceeding which they or any of them may at any time incur or suffer as a result of or arising out of
  - (a) any injury to persons (including injuries resulting in death) or loss of or damage to property of others which may be or be alleged to be caused by or suffered as a result of the performance of the Work or any part thereof, except that Canada and the Minister shall not claim indemnity under this section to the extent that the injury, loss or damage has been caused by Canada, and
  - (b) any liens, attachments, charges or other encumbrances or claims upon or in respect of any materials, parts, work-in-process or finished work furnished to, or in respect of which any payment has been made by, Canada.
2. The Minister shall give notice to the Contractor of any claim, action, suit or proceeding referred to in subsection 1 and the Contractor shall, to the extent requested by the Attorney General of Canada, at its own expense participate in or conduct the defence of any such claim, action, suit or proceeding and any negotiations for settlement of the same, but the Contractor shall not be liable to indemnify Canada for payment of any settlement unless it has consented to the settlement.

**9676 20 (1994-01-04) Royalties and Infringement**

1. In this section, "Royalties" includes
  - (a) license fees and all other payments analogous to royalties for, and also claims for damages based upon, the use or infringement of any patent, registered industrial design, trade mark, copyrighted work, trade secret, or other intellectual property right, and
  - (b) any costs or expenses incurred as a result of the exercise by any person of Moral Rights.
2. Subject to subsection 4, the Contractor shall indemnify and save harmless Canada, the Minister and their servants and agents against any claim, action, suit or other proceeding for the payment of Royalties, that results from or is alleged to result from the carrying out of the Contract or the use or disposal by Canada of anything furnished by the Contractor under the Contract.
3. Canada shall indemnify and save harmless the Contractor and its servants and agents against any claim, action, suit or other proceeding for the payment of Royalties, that results from or is alleged to result from the use by the Contractor in performing the Contract of equipment, Specifications or other information not prepared by the Contractor and supplied to the Contractor by or on behalf of Canada, provided that the Contractor notifies the Minister immediately of any such claim, action, suit or other proceeding, but Canada shall not be liable to indemnify or save harmless the Contractor for payment of any settlement unless Canada has consented to the settlement.
4. The Minister shall give notice to the Contractor of any claim, action, suit or proceeding referred to in subsection 2 and the Contractor shall, to the extent requested by the Attorney General of Canada, at its own expense participate in or conduct the defence of any such claim, action, suit or proceeding and any negotiations for settlement of the same, but the Contractor shall not be liable to indemnify and save harmless Canada for payment of any settlement unless it has consented to the settlement.
5. The Contractor shall notify the Minister 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 the Contract, and the basis thereof, and the parties to whom the same are payable, and shall promptly advise the Minister of any and all claims which would or might result in further or different payments by way of Royalties being made by the Contractor or any of its subcontractors.
6. Where and to the extent that the Minister so directs, the Contractor shall not pay and shall direct its subcontractors not to pay any Royalties in respect of the carrying out of the Contract.
7. After the giving of any direction provided for in subsection 6, and subject to compliance by the Contractor with the foregoing provisions, Canada shall indemnify the Contractor and its subcontractors from and against all claims, actions, suits or proceedings for payment of such Royalties as are covered by the direction.
8. The Contractor shall not be entitled to any payment in respect of any Royalties included in the Contract Price to which the indemnity provided in subsection 7 applies.

**9676 21 (2001-05-25) Copyright**

1. In this section,  
  
"Material" means anything that is created or developed by the Contractor as part of the Work under the Contract, and in which copyright subsists, but does not include computer programs and related software documentation.
2. Copyright in the Material shall vest in Canada and the Contractor shall incorporate in all Material the copyright symbol and either of the following notices, as appropriate:  
  
© HER MAJESTY THE QUEEN IN RIGHT OF Canada (year)  
  
or  
  
© SA MAJESTÉ LA REINE DU CHEF DU CANADA (year)
3. At the completion of the Contract, or at such other time as the Contract or the Minister may require, the Contractor shall fully and promptly disclose to the Minister all Material created or developed under the Contract.
4. Where copyright in any Material vests in Canada under the Contract, the Contractor shall execute such conveyances and other documents relating to title or copyright as the Minister may require.
5. The Contractor shall not use, copy, divulge or publish any Material except as is necessary to perform the Contract.
6. At the request of the Minister, the Contractor shall provide to Canada, at the completion of the Work or at such other time as the Minister may require, a written permanent waiver of Moral Rights, in a form acceptable to the Minister, from every author that contributed to the Material.
7. If the Contractor is an author of the Material, the Contractor hereby permanently waives the Contractor's Moral Rights in respect of the Material.

**9676 22 (1994-01-04) Suspension of the Work**

1. The Minister may at any time, by written notice, order the Contractor to suspend or stop all or part of the Work under the Contract for a period of up to one hundred eighty (180) days. The Contractor shall immediately comply with any such order in the manner that minimizes the cost of so doing. While such an order is in effect, the Contractor shall not remove any part of the Work from any premises without the prior written consent of the Contracting Authority. At any time prior to the expiration of the one hundred eighty (180) days, the Minister shall either rescind the order or terminate the Contract, in whole or in part, under section 23 or section 24 .
2. When an order is made under subsection 1, unless the Minister terminates the Contract by reason of default by the Contractor or the Contractor abandons the Contract, the Contractor shall be entitled to be paid its additional costs incurred as a result of the suspension plus a fair and reasonable profit thereon.
3. When an order is made under subsection 1 and is rescinded:
  - (a) the Contractor shall as soon as practicable resume work in accordance with the Contract;
  - (b) if the suspension has affected the Contractor's ability to meet any delivery date under the Contract, the date for the performance of that part of the Work affected by the suspension shall be extended for a period equal to the period of suspension plus a period, if any, which in the opinion of the Minister following consultation with the Contractor is reasonably necessary for the Contractor to resume the Work; and
  - (c) subject to section 04, an equitable adjustment shall be made as necessary to affected terms and conditions of the Contract.

**9676 23 (1994-01-04) Default by the Contractor**

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, either immediately, or at the expiration of a cure period specified in the notice if the Contractor has not cured the default to the satisfaction of the Minister within that cure period.

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 Canada, upon giving notice to the Contractor, immediately terminate for default the whole or any part of the Contract.
3. Upon the giving of a notice provided for in subsection 1 or 2, the Contractor shall have no claim for further payment other than as provided in this section, but shall be liable to Canada for any amounts, including milestone payments, paid by Canada and for all losses and damages which may be suffered by Canada by reason of the default or occurrence upon which the notice was based, including any increase in the cost incurred by Canada in procuring the Work from another source. The Contractor agrees to repay immediately to Canada the portion of any advance payment that is unliquidated at the date of the termination. Nothing in this section affects any obligation of Canada under the law to mitigate damages.
4. Upon termination of the Contract under this section, the Minister may require the Contractor to deliver to Canada, in the manner and to the extent directed by the Minister, any completed parts of the Work which have not been delivered and accepted prior to the termination and any material, equipment or work-in-process which the Contractor has acquired or produced specifically in the fulfilment of the Contract.
5. Subject to the deduction of any claim that Canada may have against the Contractor arising under the Contract or out of the termination, Canada shall pay or credit to the Contractor the value, determined on the basis of the Contract Price including the proportionate part of the Contractor's profit or fee included in the Contract Price, of all completed parts of the Work delivered to Canada pursuant to a direction under subsection 4 and accepted by Canada, and shall pay or credit to the Contractor the Cost to the Contractor that the Minister considers reasonable in respect of all material, equipment or work-in-process delivered to Canada pursuant to a direction under subsection 4 and accepted by Canada, but in no event shall the aggregate of the amounts paid by Canada under the Contract to the date of termination and any amounts payable pursuant to this subsection exceed the Contract Price.
6. Title to all material, 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 material, 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 material, equipment or work-in-process that would not have been required to perform the Work or that exceed what would have been required to perform the Work.
7. Where, subsequent to issuance of a notice pursuant to subsection 1, the Minister is satisfied that grounds did not exist for a termination under this section, the notice shall be deemed a notice of termination for convenience issued under subsection 1 of section 24.

**9676 24 (2004-05-14) Termination for Convenience**

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 section sometimes referred to as a "termination notice"), terminate the Contract as regards 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.
2. In the event of a termination notice being given pursuant to subsection 1, 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 including the unliquidated portion of any advance payment:
  - (a) on the basis of the Contract Price, for all completed work that is inspected and accepted in accordance with the Contract, whether completed before, or after 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 the terms of the Contract and with Contract Cost Principles 1031-2;

- (c) the amount of any capital expenditures actually incurred only if they were specifically authorized under the Contract or approved in writing by the Minister for the purpose of the Contract, less any depreciation in respect thereof already taken into account in determining cost, to the extent that the capital expenditures are properly apportionable to the performance of the Contract;
- (d) 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.
3. In paragraph 2.(c), "capital expenditures" includes the entry into leases of real property and equipment.
4. 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.
5. Notwithstanding anything in subsection 2, the total of the amounts to which the Contractor is entitled under paragraphs 2.(a) to (c) 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.
6. 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, unless otherwise authorized by the Minister, place purchase orders and subcontracts on terms that will enable the Contractor to terminate the same upon terms and conditions similar in effect to those provided in this section, and generally 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 section.
7. Title to all material, 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 material, 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 material, equipment or work-in-process that would not have been required to perform the Work or that exceed what would have been required to perform the Work.
8. 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 section, except to the extent that this section expressly provides.

**9676 25 (1994-01-04) Accounts and Audit**

1. The Contractor shall keep proper accounts and records of the cost to the Contractor of the Work and of all expenditures or commitments made by the Contractor in connection therewith, and shall keep all invoices, receipts and vouchers relating thereto. The Contractor shall not, without the prior written consent of the Minister, dispose of any such accounts, records, invoices, receipts or vouchers until the expiration of six (6) years after final payment under this Contract, or until the settlement of all outstanding claims and disputes, whichever is later.
2. All such accounts and records as well as any invoices, receipts and vouchers shall at all times during the retention period referred to in subsection 1 be open to audit, inspection and examination by the authorized representatives of the Minister, who may make copies and take extracts thereof. The Contractor shall provide all facilities for such audits and inspections and shall furnish all such information as the representatives of the Minister may from time to time require with respect to such accounts, records, invoices, receipts and vouchers.

**9676 26 (1994-01-04) Notice**

Any notice shall be in writing and may be delivered by hand or by courier, by registered mail, or by facsimile or other electronic means that provides a paper record of the text of the notice, addressed to the Party for whom it is intended at the address in the Contract or at the last address of which the sender has received notice in accordance with this section. Any notice shall be deemed to be effective on the day it is received at that address.

**9676 27 (1994-01-04) Members of the House of Commons**

No member of the House of Commons shall be admitted to any share or part of the Contract or to any benefit arising from the Contract.

**9676 28 (2005-12-16) Conflict of Interest**

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, 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 this Contract.

**9676 29 (1994-06-01) No Bribe**

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.

**9676 30 (1994-01-04) Survival**

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 Government Property, indemnity against third party claims, royalties and infringement, intellectual property rights and accounts and audit shall survive the expiry of the Contract or the termination of the Contract for default, for convenience, pursuant to subsection 6 of section 11, 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.

**9676 31 (1994-01-04) Severability**

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.

**9676 32 (1994-01-04) Successors and Assigns**

The Contract shall enure to the benefit of, and shall be binding upon, the successors and permitted assignees of Canada and of the Contractor.

**9676 33 (1994-01-04) Entire Agreement**

The Contract constitutes the entire and sole agreement between the parties with respect to the subject matter of the Contract and supersedes all previous negotiations, communications and other agreements, whether written or oral, relating to it, unless they are incorporated by reference in the Contract. There are no terms, covenants, representations, statements or conditions binding on the parties other than those contained in the Contract.

**9676 34 (1994-06-06) Certification - Contingency Fees**

1. The Contractor certifies that it has not directly or indirectly paid or agreed to pay and covenants that it will not directly or indirectly pay a contingency fee for the solicitation, negotiation or obtaining of this Contract to any person other than an employee acting in the normal course of the employee's duties.
2. All accounts and records pertaining to payments of fees or other compensation for the solicitation, obtaining or negotiation of the Contract shall be subject to the Accounts and Audit provisions of the Contract.
3. If the Contractor certifies falsely under this section or is in default of the obligations contained therein, the Minister may either terminate this Contract for default in accordance with the termination for default provisions of the Contract or recover from the Contractor by way of reduction to the Contract Price or otherwise the full amount of the contingency fee.

## 4. In this section:

"contingency fee" means any payment or other compensation that is contingent upon or is calculated upon the basis of a degree of success in soliciting or obtaining a government contract or negotiating the whole or any part of its terms;

"employee" means a person with whom the Contractor has an employer/employee relationship;

"person" includes an individual or group of individuals, a corporation, a partnership, an organization and an association and, without restricting the generality of the foregoing, includes any individual who is required to file a return with the registrar pursuant to section 5 of the *Lobbyist Registration Act*, R.S. 1985 c.44 (4<sup>th</sup> Supplement) as the same may be amended from time to time.

**9676 35 (2006-08-15) Taxes**

## 1. Municipal Taxes

Municipal Taxes are not applicable.

## 2. Provincial Taxes

(a) Excluding legislated exceptions, federal government departments and agencies are not required to pay any ad valorem sales tax levied by the province in which the taxable goods or services are delivered. This exemption has been provided to federal government departments and agencies under the authority of one of the following:

(i) Provincial Sales Tax (PST) Exemption Licence Numbers, for the provinces of:

Prince Edward Island	OP-10000-250
Ontario	11708174G
Manitoba	390-516-0
British Columbia	R005521

(ii) For Quebec, Saskatchewan, the Yukon Territory, the Northwest Territories and Nunavut, an Exemption Certification, which certifies that the goods or services purchased are not subject to the provincial/territorial sales and consumption taxes because they are being purchased by the federal government with Canada funds for the use of the federal government.

(b) Currently, in Alberta, the Yukon Territory, the Northwest Territories and Nunavut, there is no general PST. However, should a PST be introduced in the Northwest Territories, Nunavut, or Yukon Territory, the sales tax exemption certificate would be required on the purchasing document.

(c) Federal departments are required to pay the HST in the participating provinces of Newfoundland and Labrador, Nova Scotia and New Brunswick.

(d) The Contractor is not exempt from paying PST under the above Exemption Licence Numbers or Exemption Certification. The Contractor is required to pay the PST on taxable goods or services used or consumed in the performance of the Contract (as per appropriate provincial legislation), including material incorporated into real property.

## 3. Changes to Taxes and Duties

In the event of any change in any tax imposed under the *Excise Act*, R.S.C 1985, c. E-14, and *Excise Tax Act*, R.S.C. 1985, c. E-15, or any duties imposed under the Customs Tariff or any other federal or provincial sales, excise or other like duties, taxes, charges or impositions after the bid submission date and which affects the costs of the Work to the Contractor, the Contract price will be adjusted to reflect the increase or decrease in the cost to the Contractor.

## 4. Goods and Services Tax/Harmonized Sales Tax

The estimated Goods and Services Tax (GST) or Harmonized Sales Tax (HST), if applicable, is included in the total estimated cost on page 1 of the Contract. The GST or HST is not included in the Contract price but will be paid by Canada as provided in the Invoice Submission clause above. The Contractor agrees to remit to Canada Revenue Agency any amounts of GST and HST paid or due.

**9676 36 (2006-08-15) Invoice Submission**

Invoices must be submitted in the name of the Contractor. They must show the name and address of the client department, item/reference number, deliverable and/or description of Work, contract serial number, Client Reference Number (CRN), Procurement Business Number (PBN) and financial code(s). If applicable, the method of shipment together with date, case numbers and part or reference numbers, item, quantity, unit of issue, unit price, and additional charges will be shown on the invoice. If applicable, fixed time labour rates and level of effort and, the amount invoiced (exclusive of the Goods and Services Tax {GST} or Harmonized Sales Tax {HST} as appropriate), will be shown separately.

GST or HST, if applicable, will be incorporated into all invoices and shown as a separate item on invoices. All items that are zero-rated, exempt or to which the GST or HST does not apply, are to be identified as such on all invoices. Invoices must be submitted for each delivery/shipment and must apply to one contract only. Each invoice must indicate whether it covers partial or final delivery.





**Public Works and Government Services Canada**

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**CCC50 01 (2000-05-12) Interpretation**

1. Unless the context otherwise requires,

"Agreement" means the particular Agreement or Contract of which, in any specific case, these general conditions are made a part;

"Allied Firm" means any firm or corporation which directly or indirectly controls or is controlled by or is affiliated with the Contractor, and includes any individual directly or indirectly controlling the Contractor or any such firm or corporation;

"Contract" means and includes the Agreement, these general conditions and any supplemental general conditions, Specifications, labour conditions, schedules and other documents (if any) referred to in the Agreement as constituting the Contract;

"Contract Price" means the amount expressed in the Agreement to be payable to the Contractor for the Work, regardless of whether the Contract is for a stipulated price or is on a cost-plus basis;

"the Corporation" means Canadian Commercial Corporation;

"Equipment" includes machinery, apparatus, jigs, tools, dies, gauges, instruments and equipment of all kinds;

"Finished Work" means the supplies and/or services and/or projects and/or work called for by the Contract, as and when completed in accordance therewith;

"Government Issue" means any materials, parts, components, equipment, Specifications, articles and things which may be supplied to the Contractor by or on behalf of Her Majesty for the purposes of the Work;

"herein", "hereby", "hereof", "hereunder", and similar expressions, refer to the Contract as a whole;

"Inspector" means the person (if any) designated as such in the Agreement or in the supplemental general conditions (if any) and/or any person for the time being acting on behalf of Her Majesty or the Corporation as the Inspector under the Contract;

"Specifications" means the Specifications, plans, drawings, designs and/or models (if any) referred to in the Agreement and/or furnished to the Contractor for the carrying out of the Contract;

"Supplemental General Conditions" means any other general conditions forming part of the Contract;

"Work" means the work done or required to be done by the Contractor in order to carry out the Contract and, where the context permits, includes services, Finished Work, work in process and all parts, materials, components, articles and things required or used or intended to be used to carry out the Contract.

The singular number includes the plural and vice versa.

2. In the event of any inconsistencies, the provisions of the Agreement and/or of these general conditions shall prevail over the Specifications (if any) and the provisions of the Agreement and of the supplemental general conditions (if any) shall prevail over these general conditions.

**CCC50 02 (1991-06-01) Powers of the Corporation**

The Corporation is the agent of Her Majesty for all purposes of the Contract.

**CCC50 03 (2000-05-12) Assignment and Subletting**

1. The Contractor shall not assign or sublet the Contract or any of the Work without the prior written consent of the Corporation and any assignment or subletting made without such consent shall be of no effect provided that (unless the Contract or the Corporation directs otherwise) the Contractor may sublet such portions of the Work as are usually sublet in similar cases. The Contractor shall promptly furnish to the Corporation full particulars of all subcontracts. No assignment or subletting shall relieve the Contractor from any of its obligations under the Contract or impose any liability upon Her Majesty or the Corporation to an assignee or subcontractor.

2. Subject to the foregoing, the Contract shall enure to the benefit of and shall be binding upon the successors and assigns of Her Majesty and of the Contractor, respectively.

**CCC50 04 (1991-06-01) Conduct of the Work**

1. The Contractor shall diligently carry out the work, shall provide efficient supervision and inspection thereof and shall be responsible for seeing that the Work is of proper quality, material and workmanship and satisfies the requirements of the Contract.
2. The nature and spirit of the Contract is to provide for the Work therein enumerated to be fully completed in every detail for the purpose designed; and the Contractor agrees to furnish any and every thing necessary for such purpose, notwithstanding any omission in the drawings or Specifications.
3. The Contractor shall apply to the Corporation for any explanation which the Contractor may require in regard to the meaning and intent of any clause in the Specifications and Contract, and shall be held responsible for any errors or losses consequent upon failure to obtain such explanation.
4. Drawings and Specifications are intended to complement each other, so that if anything is shown on the drawings but not mentioned in the Specifications, or vice versa, it is to be furnished and built as though specifically set forth in both. If any discrepancies are discovered in the drawings, or any conflict between the drawings and the Specifications, the same shall be referred to the Corporation before proceeding with the Work. Figured dimensions on drawings are to have precedence.
5. Materials used must conform to the Specifications whether shown on the Corporation's or the Contractor's drawings or not.
6. Approval by the Corporation of the Contractor's drawings shall not relieve the Contractor of responsibility for corrections thereof, nor for results arising from error or omission.
7. No materials or parts shall be used or processed and no Finished Work shall be submitted for acceptance or shall be delivered unless or until approved by the Contractor's inspection staff and, wherever practicable, marked with an approval stamp satisfactory to the Inspector. The Contractor shall keep proper and adequate inspection records which shall at all times be open to examination by the Inspector who may make copies thereof and take extracts therefrom.
8. The Corporation and the Inspector shall have access to the Work at all times and may make such tests of the Work as they may think fit. The Contractor shall provide all assistance and facilities, test pieces and samples which the Corporation or the Inspector may require for the carrying out of any such tests.
9. The Contractor shall not stop or suspend work pending the settlement or determination (by arbitration or otherwise) of any differences arising under the Contract.

**CCC50 05 (1991-06-01) Inspector, the Final Judge of the Work**

The Inspector shall be the final judge of the Work and of its quality and workmanship. The Inspector shall have full power to reject or refuse to accept any Finished Work or parts or materials or work in process which the Inspector considers are not in accordance with the requirements of the Contract. The Inspector shall also be the sole judge as to the meaning of the Specifications, if any.

**CCC50 06 (1991-06-01) Making Good Rejected Work**

The Contractor shall forthwith at its own expense make good any work which the Inspector may have refused to accept or, alternatively, at the option of the Corporation, all amounts previously paid to the Contractor in respect of Work rejected or not accepted shall forthwith be repaid by the Contractor.

**CCC50 07 (1991-06-01) Acceptance and Delivery**

Final acceptance by the Inspector of any Finished Work shall be deemed to be delivery to and acceptance by Her Majesty of the Work so accepted and such acceptance shall be a condition precedent to delivery. Provided always that if the Agreement provides for a particular place or manner of delivery, such delivery shall not be complete unless or until made in accordance therewith. Upon delivery, title to the Work delivered shall vest in Her Majesty if not already so vested. The right of the Inspector to refuse final acceptance of any of the Work shall not be affected by any prior inspection, approval or acceptance of any parts, materials or work in process or any other Finished Work.

**CCC50 08 (1991-06-01) Warranty**

Without restricting any other term of the Contract or any warranty stipulated or implied by law, the Contractor shall, at its own expense, replace any articles, parts or materials included in the Work (not including any Government Issue) which at any time within eighteen (18) months from the delivery thereof become defective as a result of faulty or inefficient manufacture, materials or workmanship.

**CCC50 09 (1991-06-01) Government Issue**

1. All items comprised in any Government Issue shall be used by the Contractor solely for the purposes of the Contract and shall always be and remain the property of Her Majesty and, wherever feasible, the Contractor shall mark the same as being Her Majesty's property.
2. Any items of Government Issue found to be damaged or defective shall be replaced by Her Majesty upon the Inspector certifying in writing to the Corporation that the damage or defect is not due to the fault or negligence of the Contractor. If the Inspector certifies that more than five (5) per cent of the total Government Issue of the same kind or type is damaged or defective (otherwise than as a result of the fault or negligence of the Contractor), Her Majesty shall reimburse the Contractor for any loss incurred by the Contractor which is directly attributable to such damaged or defective items in excess of five (5) percent.
3. All Government Issue (except such as are installed or incorporated in the Work) shall be returned to the Corporation upon demand, in the same condition as when supplied to the Contractor; provided that the Contractor shall not be responsible for any loss or damage resulting from ordinary wear and tear or from causes beyond the Contractor's reasonable control.

**CCC50 10 (1991-06-01) Scrap, etc.**

All scrap and waste materials derived from any Government Issue, or from any other materials, articles or things which are the property of Her Majesty, shall, unless otherwise specifically provided herein, remain the property of Her Majesty and shall be disposed of only as prescribed by the Corporation.

**CCC50 11 (1991-06-01) Care of Crown Property; Insurance**

1. The Contractor shall take reasonable and proper care of any and all property owned by Her Majesty which is from time to time in the Contractor's custody or control and shall be responsible for any loss thereof or damage thereto resulting from its failure to do so, other than loss or damage caused by fire or by ordinary wear and tear.
2. Unless otherwise provided elsewhere in the Contract, no insurance shall be carried by the Contractor on any property owned by Her Majesty provided that if the Contract is for a stipulated price, this subsection 2 shall not prevent the Contractor from carrying insurance upon property the title to which becomes vested in Her Majesty by virtue of section 19 of these general conditions.

**CCC50 12 (1991-06-01) Time of the Essence; Extensions**

Time shall be deemed to be of the essence of the Contract; provided that the time for completing any of the Work which has been or is likely to be delayed by reason of force majeure or other cause beyond the reasonable control of the Contractor shall be extended by a period equal to the length of the delay so caused, provided that prompt notice in writing of the occurrence causing or likely to cause such delay is given to the Corporation.

**CCC50 13 (1991-06-01) Accounts**

The Contractor shall keep proper and detailed accounts and records of the cost of the Work and invoices, receipts and vouchers relating thereto. If any part of the Work is performed by an Allied Firm in Canada, the Contractor shall also cause such Allied Firm to keep similar accounts, records, invoices, receipts and vouchers with respect to the cost of the work performed by such Allied Firm. All such accounts, records, invoices, receipts and vouchers shall be open to audit and inspection by the authorized representatives of the Corporation at any time until the expiration of six (6) years from the end of the calendar year in which the Contract is terminated or completed. The Corporation's authorized representatives may make copies thereof and take extracts therefrom. The Contractor shall afford all facilities for such audits and inspections and shall furnish the Corporation and its authorized representatives with all such information as it or they may from time to time require with reference to such accounts, records, invoices, receipts and vouchers.

**CCC50 14 (1991-06-01) Secrecy and Protection of Work**

1. The Contract and the Specifications and all information issued, used or disclosed in connection with the Work are confidential. The Contractor shall not use the same for any purpose other than the

Contract without the written authority of the Corporation and shall, at all times, take and cause to be taken all measures necessary for the protection of the same and of the Government Issue, if any, against espionage, sabotage and fire.

2. The Contract and the Specifications and information aforesaid may be classified as to the degree of precaution necessary for their safeguarding. If so classified,
  - (a) the measures to be taken by the Contractor for their safeguarding shall include those set out in any instructions issued in that regard by or on behalf of the Corporation;
  - (b) if so directed by the Corporation, the Contractor shall dispense with the services in connection with the work of any person employed or engaged thereon; and
  - (c) the Contractor shall permit the Corporation at all times, through such agency as he may see fit, to take and to maintain on or about the premises of the Contractor where the Work or any part thereof is being carried on, such guards or other protective measures as in the opinion of the Corporation may be advisable.

**CCC50 15 (1991-06-01) Patent Claims and Royalties**

1. The Contractor shall indemnify the Corporation against all claims, actions, suits and proceedings for the infringement or alleged infringement of any patent based upon the use of any invention protected by such patent in carrying out the Contract, and for royalties or other payments which may be payable in connection with such patent.
2. Upon notification from the Corporation that any such claim, action, suit or proceeding has been made or commenced, the Contractor shall, unless otherwise instructed by the Corporation, conduct at its own expense all negotiations for the settlement of the same.

**CCC50 16 (1992-04-01) Canadian Labour and Materials**

CANCELLED.

**CCC50 17 (1991-06-01) Conditions Precedent to Payment**

No payment shall be made to the Contractor unless or until : (a) invoices, inspection notes and all other documents prescribed from time to time by the Corporation or by the Inspector are prepared, signed and submitted in accordance with the terms of the Contract or as instructed from time to time by the Corporation; and (b) the Contractor establishes to the satisfaction of the Corporation (if so required) that all materials, parts, work in process and/or Finished Work in respect of which payment is being made are free and clear from all claims, liens, attachments, charges or encumbrances.

**CCC50 18 (1991-06-01) Indemnity Against Claims**

The Contractor shall indemnify and save harmless Her Majesty and the Corporation from and against any and all claims, damages, loss, costs and expenses which they or either of them may at any time incur or suffer as a result of or arising out of: (a) any injury to persons (including injuries resulting in death) or loss of or damage to property which may be or be alleged to be caused by or suffered as a result of the carrying out of the Work or any part thereof; and/or (b) any liens, attachments, charges or other encumbrances or claims upon or in respect of any materials, parts, work in process and/or Finished Work delivered, to, or in respect of which any payment has been made by Her Majesty or the Corporation.

**CCC50 19 (1991-06-01) Title on Progress Payments, etc.**

Upon any payment being made to the Contractor for or on account of materials, parts and/or work in process acquired by the Contractor for the purposes of the Work, either by way of progress payments or accountable advances or otherwise, title in and to such materials, parts and/or work in process shall vest and remain in Her Majesty both before and after completion of the Work, unless already so vested under any other provision of the Contract, but the Contractor shall nevertheless remain responsible therefor until delivery of the Finished Work.

**CCC50 20 (1991-06-01) Further Assurance**

Wherever it is herein provided that title to any parts, materials, work in process and/or Finished Work becomes vested in Her Majesty, the Contractor shall execute such conveyances thereof and/or other instruments of further assurance as the Corporation may request.

**CCC50 21 (1991-06-01) Suspension of Work and Changes in Specifications**

The Corporation may at any time and from time to time order a suspension of the Work, in whole or in part and/or make modifications of, changes in and/or additions to the Specifications. All directions given by the Corporation with respect to the foregoing shall be complied with by the Contractor. If any such suspension, modification, change or addition shall result in an increase or decrease in the cost of the Work, the Contract Price shall be adjusted accordingly, provided that the Contractor shall, in no event, be entitled to compensation for any loss of anticipated profits (except that in the event of any change which results in a substantial part of the Work theretofore performed by the Contractor having to be discarded, the Contractor shall be entitled to payment of an amount representing a fair and reasonable profit in respect of such discarded Work) and provided further that, unless the Contract is on a cost-plus basis, minor increases or decreases in cost shall be disregarded.

**CCC50 22 (1991-06-01) Default by Contractor**

1. If the Contractor is in default for a period of fifteen (15) days in carrying out the terms of the Contract as a result of events or occurrences for which it is responsible or which are within its control, or if the Contractor becomes bankrupt or insolvent, or has a receiving order made against it, or makes an assignment for the benefit of creditors, or if an order is made or resolution passed for the winding up of the Contractor, or if the Contractor takes the benefit of any statute for the time being in force relating to bankrupt or insolvent debtors, the Corporation may at its option, upon giving notice in writing to the Contractor,
  - (a) terminate the Contract as to Work not theretofore completed; or
  - (b) take the Work out of the Contractor's hands and employ such means as the Corporation may see fit to complete the Work in whole or in part.
2. Upon the giving of such notice, the Contractor shall have no claim for any further payment, save as hereinafter in section 22 provided, but shall remain liable for all loss and damage which may be suffered by Her Majesty by reason of the default or occurrence upon which such notice was based.
3. If the Work is taken over by the Corporation,
  - (a) all plant, equipment, materials, articles and rights available to the Contractor for the purposes of the Work may be utilized by the Corporation or its authorized representatives as fully as they might have been used and exercised by the Contractor; and
  - (b) unless the Contract is a cost-plus Contract, upon completion of the Work, or such part of it as the Corporation shall see fit to complete, the Contractor shall be entitled to credit, on the basis of the Contract Price, for such of the Work as shall have been so completed by the Corporation and the amount for which the Contractor is so entitled to credit shall be applied against the cost to Her Majesty of completing the Work so completed and the loss or damage for which the Contractor is liable as above provided, and any excess or deficiency shall be paid by Her Majesty to the Contractor or by the Contractor to Her Majesty, as the case may be.

**CCC50 23 (1994-06-01) No Bribe, etc.**

The Contractor warrants that no bribe, gift or other inducement has been paid, promised or offered to any official or employee of Her Majesty for, or with a view to, the obtaining of the Contract by the Contractor.

**CCC50 24 (1991-06-01) Labour and Health Conditions**

The Contractor shall comply with all labour conditions, and with all health conditions and requirements, from time to time applicable to the Work.

**CCC50 25 (1991-06-01) Members of the House of Commons**

No member of the House of Commons shall be admitted to any share or part of the Contract or to any benefit to arise therefrom.

**CCC50 26 (1991-06-01) Notice**

Any notice to the Contractor hereunder shall be effectively given if sent by letter or by telegram, postage prepaid or with charges prepaid, as the case may be, addressed to the Contractor at its address as given in the Agreement or, if no address is so given, at its address as shown by the records of the Corporation. Any notice

so given shall be deemed to have been received by the Contractor at the time when in the ordinary course such letter or telegram should have reached its destination.

**CCC50 27 (1998-02-16) Arbitration**

In the event of any dispute between the parties with respect to anything arising out of the Contract (save in respect of any matter as to which the decision of the Corporation or of the Inspector or other person is final or any matter with regard to which any other manner of settlement is herein expressly provided), the matter in dispute shall be referred for decision to a single arbitrator or, if the parties cannot agree upon a single arbitrator, to two arbitrators, one to be selected by the Corporation and the other by the Contractor. In case the two arbitrators so selected cannot agree, they shall select a third and the decision of any two of the three shall be binding. In case the two arbitrators so selected cannot agree upon the selection of the third arbitrator, the third arbitrator shall be appointed by the Federal Court upon a reference being made to such Court. A party who has not appointed an arbitrator after the other party has appointed one shall do so within five (5) days after being notified in writing by such other party to do so, and in default of appointment such other party's arbitrator may act as sole arbitrator whose decision shall be binding. If the arbitrator of either party shall fail to proceed with the consideration of the matters in dispute within five (5) days after being required in writing by the other party's arbitrator to do so, such other party's arbitrator, if a third arbitrator has not been appointed, shall be at liberty to act as sole arbitrator whose decision shall be binding, or the other two arbitrators, if a third has been appointed, may forthwith appoint an arbitrator in lieu of the one who has failed to proceed, and the decision of two of such three arbitrators shall be binding. The costs of the arbitration shall be in the discretion of the arbitrators; provided, however, that no party shall be obliged to pay more than its own costs and the costs of the third arbitrator.

**CCC50 28 (2004-12-10) Termination**

1. Notwithstanding anything in the Contract contained, the Corporation may, by giving notice to the Contractor (hereinafter sometimes referred to as a "termination notice"), terminate the Contract (save and except the provisions of this section and of section 13 of these General Conditions) as regards all or any part or parts of the Work not theretofore completed. Upon a termination notice being given, the Contractor shall cease Work (including the manufacturing and/or procuring of materials for the fulfilment of the Contract) in accordance with and to the extent specified in such notice. The Corporation 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.
2. In the event of a termination notice being given under the provisions of this section, and subject as hereinafter provided,
  - (a) all Finished Work, whether completed before the giving of such notice or completed thereafter pursuant to such notice, shall be paid for (subject to acceptance in accordance with the provisions of the Contract) on the basis of the Contract Price;
  - (b) in respect of Work not completed before the giving of such notice, and not completed thereafter pursuant to such notice, the Contractor shall be entitled to be reimbursed the actual cost to the Contractor of such uncompleted Work, and to receive, in addition, an amount representing a fair and reasonable profit in respect of Work done thereon. Cost shall be determined in accordance with the provisions of the Contract Cost Principles 1031-2, subject to any modifications thereof which the Corporation may consider to be appropriate in the circumstances;
  - (c) subject as provided in paragraph (d) of this subsection 2, the Contractor shall be entitled to be reimbursed the amount of any capital expenditures specifically authorized by the Contract or approved by the Corporation for the purposes of the Contract (and actually made or incurred) to the extent that the same (less any depreciation in respect thereof already taken into account in determining cost) were reasonably and properly incurred by the Contractor in respect of and are properly apportionable to the performance of the Contract and not included in the amounts paid or payable to the Contractor in respect of Finished Work;
  - (d) if the Contract is exclusively a Contract for the making of capital expenditures in respect of additional equipment and/or plant additions, the foregoing paragraphs (a) to (c) inclusive of this subsection 2 shall not apply, but Her Majesty shall pay or reimburse the Contractor for the reasonable and proper cost to the Contractor (not previously paid by Her Majesty) of
    - (i) all additional equipment which prior to the giving of the termination notice shall have been purchased, acquired or manufactured by the Contractor, or contracted for and for which the Contractor is obligated to make payments; and

- (ii) all additional equipment in process of manufacture by the Contractor as at the date of the giving of such notice and all Work in connection with the construction of the plant addition up to the said date, including the cost of materials and parts contracted for by the Contractor for the purposes of such manufacture or construction and for which the Contractor is obligated to make payment.
3. Provided always that no reimbursement shall be made in respect of Work which has been or may be rejected after inspection as not complying with the requirements of the Contract.
  4. The Contractor shall not be entitled to be reimbursed any amount which taken together with any amounts paid or due or becoming due to the Contractor under the Contract, shall exceed the Contract Price applicable to the Work or the particular part thereof.
  5. Notwithstanding the provisions of any of the foregoing subsections 1 to 4 inclusive, the amounts which the Contractor shall be entitled to be reimbursed in the event of the giving of a termination notice under this section 28 shall include, subject as hereinafter provided, the costs of the Contractor of an incidental to the cancellation of obligations incurred by the Contractor pursuant to the termination notice, the cost of preparing the necessary accounts and statements with respect to Work performed to the effective date of such termination and/or commitments made by the Contractor with respect to the terminated portions of the Work, wages which the Contractor is obligated under any laws and regulations for the time being in force, to pay to employees whose services are no longer required by reason of such termination, the costs of and incidental to the taking of an inventory of materials, components, work in process and Finished Work on hand at the effective date of the termination and other costs and expenses of and incidental to the termination, in whole or in part, of operations under the Contract; provided always that payment and reimbursement under the provisions of this subsection shall be made only to the extent that it is established to the satisfaction of the Corporation that the costs and expenses aforesaid were actually incurred by the Contractor and that the same are reasonable and are properly attributable to the termination of the Work or the part thereof so terminated.
  6. In case of disagreement as to the amount which the Contractor is entitled to be reimbursed, the matter shall be referred to the Federal Court.
  7. As far as practicable, the Contractor shall place purchase orders and subcontracts on terms that will enable the Contractor to terminate the same upon conditions and terms similar in effect to those provided in this section, and generally the Contractor shall co-operate with the Corporation and do everything reasonably within its power at all times to minimize and reduce the amount of Her Majesty's obligations in the event of termination hereunder.
  8. Title to all materials, parts, plant, equipment and/or work in process in respect of which reimbursement is made to the Contractor as herein provided shall, upon such reimbursement being made, pass to and vest in Her Majesty unless already so vested under any other provision of the Contract and such materials, parts, plant, equipment and/or work in process shall be delivered to the order of the Corporation, but the materials thus taken over will in no case be in excess of what would have been required for performing the Contract in full if no termination notice had been given.
  9. If the Corporation is satisfied that by reason of any action taken under the provisions of this section exceptional hardship has resulted to the Contractor, then the Corporation may, in its absolute discretion, grant such allowance (not to include in any case, however, an allowance or compensation for loss of profit) to the Contractor as, in the opinion of the Corporation, is warranted by the circumstances.
  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 notice given by the Corporation under or pursuant to the provisions of this section except to the extent in this section expressly provided.

**CCC50 29 (1991-06-01) Foreign Exchange**

Unless otherwise provided in the Contract or agreed to by the Corporation, the Contractor shall not be entitled to any increase in the Contract Price by reason of foreign exchange fluctuations.

**CCC50 30 (1994-06-06) Certification - Contingency Fees**

1. The Contractor certifies that it has not directly or indirectly paid or agreed to pay and covenants that it will not directly or indirectly pay a contingency fee for the solicitation, negotiation or obtaining of this Contract to any person other than an employee acting in the normal course of the employee's duties.



2. All accounts and records pertaining to payments of fees or other compensation for the solicitation, obtaining or negotiation of the Contract shall be subject to the Accounts and Audit provisions of the Contract.
3. If the Contractor certifies falsely under this section or is in default of the obligations contained therein, the Minister may either terminate this Contract for default in accordance with the termination for default provisions of the Contract or recover from the Contractor by way of reduction to the Contract Price or otherwise the full amount of the contingency fee.
4. In this section:  
  
"contingency fee" means any payment or other compensation that is contingent upon or is calculated upon the basis of a degree of success in soliciting or obtaining a government contract or negotiating the whole or any part of its terms;  
  
"employee" means a person with whom the Contractor has an employer/employee relationship;  
  
"person" includes an individual or group of individuals, a corporation, a partnership, an organization and an association and, without restricting the generality of the foregoing, includes any individual who is required to file a return with the registrar pursuant to section 5 of the Lobbyist Registration Act R.S. 1985 c.44 (4<sup>th</sup> Supplement) as the same may be amended from time to time.

**CCC50 31 (2000-12-01) Interest on Overdue Accounts**

1. For the purposes of this section:  
  
"Average Rate" means the simple arithmetic mean of the Bank Rates in effect at 4:00 p.m. Eastern Standard Time each day during the calendar month which immediately precedes the calendar month in which payment is made, where the "Bank Rate" means the rate of interest established from time to time by the Bank of Canada as the minimum rate at which the Bank of Canada makes short term advances to members of the Canadian Payments Association.  
  
"date of payment" means the date of the negotiable instrument drawn by the Receiver General for Canada and given for payment of an amount due and payable;  
  
an amount is "due and payable" when it is due and payable by Canada to the Contractor in accordance with the terms of the Contract; and  
  
an amount becomes "overdue" when it is unpaid on the first day following the day upon which it is due and payable.
2. Subject to the Contract, Canada shall be liable to pay to the Contractor simple interest at the Average Rate plus 3 percent per annum on any amount that is overdue, from the date such amount becomes overdue until the day prior to the date of payment, inclusive. Interest shall be paid without notice from the Contractor.
3. Canada shall not be liable to pay interest in accordance with this section if Canada is not responsible for the delay in paying the Contractor.
4. Canada shall not be liable to pay interest on overdue advance payments.



**Public Works and Government Services Canada**

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**TRA-95 01 (1998-02-16) Interpretation**

1. In the contract, unless the context otherwise requires,

"Canada", "Crown", "Her Majesty" or "the Government" means Her Majesty the Queen in right of Canada;

"Contract" means the written agreement between the Parties, these general conditions, any supplemental general conditions specified in the written agreement and every other document specified or referred to in any of them as forming part of the Contract, all as amended by agreement of the Parties;

"Contract Price" means the amount expressed in the Contract to be payable to the Contractor for the Work;

"Contracting Authority" means the person designated as such in the Contract, or by notice to the Contractor, to act as the representative of the Minister in the management of the Contract;

"Contractor" means the person or entity whose name appears on the signature page of the written agreement and who is to supply services to Canada under the Contract;

"Government Property" means all materials, parts, components, specifications, equipment, software, documentation, articles and things supplied to the Contractor on behalf of Canada for the purposes of performing the Contract and anything acquired by the Contractor in any manner in connection with the Work the cost of which is paid by Canada under the Contract;

"Minister" means the Minister of Public Works and Government Services and any other person duly authorized to act on behalf of that Minister;

"Moral Rights" has the same meaning as in the *Copyright Act*, R.S.C. 1985, c. C-42;

"Party" means Canada or the Contractor or any other signatory to the Contract and "Parties" means all of them;

"Project Authority" means the person designated as such in the Contract, or by notice to the Contractor, to act as the representative of the Minister for whose department or agency the Work is being carried out;

"Subcontract" includes a contract let by any subcontractor at any tier for the performance or supply of a part of the Work, and includes a purchase referred to in subsection section 08.1 at any such tier, and the derivatives of the word shall be construed accordingly;

"Work" means the whole of the activities, services, documents, software, matters and things required to be done, delivered or performed by the Contractor in accordance with the terms of the Contract.

2. The headings used in these general conditions are inserted for convenience of reference only and shall not affect their interpretation.
3. In the Contract, words importing the singular number include the plural and vice versa, and words importing the masculine gender include the feminine gender and the neuter.

#### **TRA-95 02 (1995-12-15) Powers of the Minister**

Every right, remedy, power and discretion vested in or acquired by Canada or the Minister under the Contract or by law shall be cumulative and non-exclusive.

#### **TRA-95 03 (2004-05-14) Status of the Contractor**

1. The Contractor is engaged as an independent Contractor for the sole purpose of performing the Work. Neither the Contractor nor its personnel is engaged as an employee, servant or agent of Canada. The Contractor is responsible for all deductions and remittances required by law in relation to its employees including those required for Canada or Quebec Pension Plans, unemployment insurance, workers' compensation, or income tax.
2. Without restricting the terms and conditions of the Contract, and particularly section 19 of these general conditions, it is hereby understood and agreed that, except to the extent caused by or due to Canada, Canada shall not be liable for any losses, claims, damages, or expenses relating to any injury, disease, illness, disability or death of the Contractor or any employee, agent or representative of the Contractor caused or alleged to be caused as a result of performing the Contract. The Contractor agrees to fully protect and indemnify Canada and not to make any claims or demands against Canada in respect of any of the foregoing contingencies.

#### **TRA-95 04 (1995-12-15) Amendments**

No modification to the Work, or amendment to the Contract shall be binding unless it is incorporated into the Contract by written amendment executed by the authorized representatives of the Minister and of the Contractor.

#### **TRA-95 05 (2000-12-01) Conduct of the Work**

1. The Contractor represents and warrants that:
  - (a) it is qualified to perform the Work; and
  - (b) it has the necessary qualifications, including knowledge, skill and experience to perform the Work, together with the ability to use those qualifications effectively for that purpose.
2. Except for Government Property specifically provided for in the Contract, the Contractor shall supply everything necessary for the performance of the Work, including all the resources, facilities, labour and supervision, management, services, equipment, inspection and quality assurance procedures, and planning necessary to perform the Work.

3. The Contractor shall ensure the safety of workers and carry out the Work in a diligent and efficient manner in accordance with established industry practice and laws for the health and safety of workers related to the performance of the Work.
4. The Work shall not be performed by any person who, in the opinion of the Minister or the Project Authority, is incompetent or has been conducting himself/herself improperly.
5. The Contractor warrants that all services performed under this Contract are, at the time of acceptance, in accordance with the requirements of the present Contract. If the Contractor is required to correct or replace the Work or any portion thereof, it shall be at no cost to Canada and any Work corrected or replaced by the Contractor in accordance with this subsection shall be subject to all provisions of this Contract to the same extent as Work initially performed.
6. Unless the Minister orders the Work or a part thereof to be suspended pursuant to section 22, the Contractor shall not stop or suspend any part of the Work pending the settlement or resolution of any difference between the Parties arising out of the Contract.
7. The Contractor shall be responsible for pick-up and delivery of the Work. Unless otherwise indicated, the Work shall be picked up and delivered during normal working hours.
8. The Work shall be submitted on a prescribed electronic medium and software, following the layout and format of the original text, and, unless otherwise provided in the Contract, shall contain no heading, advertising or information whatsoever that could identify the Contractor. No handwritten corrections shall be accepted.
9. All French translations shall include all the French accents on the prescribed electronic medium and software. The Contractor shall normally reproduce any charts (including figures), unless otherwise indicated. The word count includes figures, and figures shall be reproduced.
10. Any diskette submitted shall be formatted in such a way that it can be used without modification. The layout of the original shall be followed in every respect. The Contractor shall supply the diskettes.

**TRA-95 06 (1995-12-15) Inspection of the Work**

The Work and any and all parts thereof shall be subject to such inspection as the Contracting Authority determines to be appropriate, consistent with the relevant provisions of the Contract, if any, prior to acceptance by Canada. The Contracting Authority, or his representative, shall have access to the Work at any time during working hours where any part of the Work is being carried out. Should the Work or any part thereof not be in accordance with the requirements of the Contract, the Contracting Authority shall have the right to reject the Work and require its correction or replacement at the Contractor's expense. The Contracting Authority shall inform the Contractor of the reasons for any such rejection. Inspection by the Contracting Authority shall not relieve the Contractor from its responsibility to meet the requirements of the Contract.

**TRA-95 07 (2001-05-25) Compliance with Applicable Laws**

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 Contracting Authority at such times as the Contracting Authority may reasonably request.

**TRA-95 08 (1995-12-15) Subcontracting**

1. Unless otherwise provided in the Contract, the Contractor may subcontract such portion of the Work as is customary in the carrying out of similar contracts.
2. In any subcontract, the Contractor shall, unless the Minister otherwise consents in writing, ensure that the subcontractor is bound by terms and conditions compatible with and, in the opinion of the Minister, not less favourable to Canada than the terms and conditions of the Contract. Deviations in any Subcontract from the terms of the Contract, including any right of termination of the Contract, shall be entirely at the risk of the Contractor.
3. Any consent to a Subcontract shall not relieve the Contractor from its obligations under the Contract or be construed as authorizing any liability on the part of Canada or the Minister to a subcontractor.

**TRA-95 09 (1995-12-15) Replacement of Personnel**

1. When specific persons have been named in the Contract as the persons who shall perform the Work, the Contractor shall provide the services of the persons so named unless the Contractor is unable to do so for reasons beyond its control.
2. If, at any time, the Contractor is unable to provide the services of any specific person named in the Contract, it shall provide a replacement person with the same qualifications and experience.
3. Before replacing any person named in the Contract, the Contractor shall give notice to the Minister in writing of:
  - (a) the reason for the removal of the named person from the Work;
  - (b) the name, qualifications and experience of the proposed replacement person; and
  - (c) proof that the person has the required security clearance granted by Canada, if applicable.
4. The Contractor shall not, in any event, allow performance of the Work by unauthorized replacement persons; acceptance of a replacement person by the Contracting Authority shall not relieve the Contractor from its responsibility to meet the requirements of the Contract.
5. The Minister may order the removal from the Work of any such replacement person and the Contractor shall immediately remove the person from the Work and shall, in accordance with subsection 2 and paragraphs 3.(b) and (c), secure a further replacement.

**TRA-95 10 (1995-12-15) Assignment**

1. The Contract shall not be assigned, in whole or in part, by the Contractor without the prior consent in writing of the Minister and any purported assignment made without that consent is void and of no effect.
2. No assignment of the Contract shall relieve the Contractor from any obligation under the Contract or impose any liability upon Canada or the Minister, unless otherwise agreed to in writing by the Minister.

**TRA-95 11 (1995-12-15) Time is of the Essence**

1. Time is of the essence of the Contract.
2. When the performance of the Work or any part of it is delayed or likely to be delayed owing solely to an event that:
  - (a) was beyond the reasonable control of the Contractor,
  - (b) could not reasonably have been foreseen,
  - (c) could not reasonably have been prevented by means reasonably available to the Contractor, and
  - (d) occurred without the fault or neglect of the Contractor,

the Minister may extend the time for completing the Work by a period equal to the length of the delay so caused provided that prompt notice of the occurrence causing or likely to cause such delay is given by the Contractor to the Minister.

**TRA-95 12 (2000-05-12) Security and Protection of the Work**

1. The Contractor shall, during the entire period of the Contract, have a valid security clearance issued by the Canadian and International Industrial Security Division (CIISD) at the level required by Canada for performance of all or part of the Work. Classified documents are to be delivered solely to those persons holding an appropriate security clearance, and the Contractor shall ensure that all employees designated to perform the Work, or who have access to the Work, have a valid security clearance issued by the CIISD at a level appropriate to the classification of the Work, for the full term of the Contract.
2. Before being permitted to receive classified documents, the Contractor shall have a valid security clearance at the appropriate level issued by the CIISD for its facilities for the full term of the Contract, and unless it receives authorization in writing to the contrary from the Project Authority, the Contractor

shall not remove any classified documents from the authorized work premises and shall ensure that its employees are aware of and comply with this requirement.

3. The Contractor shall stamp the appropriate security classification on the Work produced by the Contractor under the Contract, and shall neither keep or reproduce classified documents or translations of these, nor reveal their contents. Upon completion of the Work, all classified documents provided by Canada or produced by the Contractor under the Contract, as well as all the rough drafts, draft notes, working documents and research notes, shall be returned to the Project Authority. All such documents shall be submitted in person or sent by courier, enclosed in two envelopes, the inside envelope being marked at the required security level, and the outer one bearing only the addresses of the addressee and sender.
4. These clauses shall be included in all subcontracts requiring access to classified documents.

**TRA-95 13 (2000-05-12) Payment**

1. For all payments claimed, the Contractor shall submit an invoice to the Contracting Authority. The invoice shall contain the following information: Contractor's name and address, contract number, requisition(s) for services number(s), Client Reference Number, volume of services provided (words/hours), rate, total amount claimed and Goods and Services Tax (GST) or the Harmonized Sales Tax (HST), as appropriate.
2. The GST and HST shall not be included in the Contract Price for the Work. Where applicable, the GST or HST will be included in all invoices and payment claims, and will be covered by Canada. The Contractor shall agree to return to Canada Customs and Revenue Agency any amount it receives from Canada in GST or HST payments, under the Contract.
3. Notwithstanding any other provision of the Contract, no payment shall be made to the Contractor unless and until:
  - (a) an invoice, inspection notes, certificates and any other documents required by the Contract have been submitted in accordance with the terms of the Contract and the instructions of the Minister;
  - (b) all such documents have been verified by the Minister;
  - (c) with respect to all parts of the Work in respect of which payment is claimed, the Contractor, where required to do so, establishes to the satisfaction of the Minister that such parts of the Work will be free from all claims, liens, attachments, charges or encumbrances; and
  - (d) in the case of payment in respect of finished work, the finished work has been inspected by Canada and accepted as being in accordance with the Contract.
4. The Minister shall notify the Contractor, within fifteen (15) days of receipt of an invoice, of any inadequacy of the invoice or of the supporting documentation, and where such notice is given within that period the date for payment of the amount invoiced shall be postponed until the Contractor remedies the inadequacy to the satisfaction of the Minister.
5. The amount claimed by the Contractor under the Contract may be audited by Canada before or after payment of that amount has been made to the Contractor. Any payment made prior to the inspection shall be considered as an interim payment only, and that amount shall be amended accordingly, on the basis of the findings of the audit. Where an overpayment has been made, that amount shall be immediately repaid to Canada by the Contractor.

**TRA-95 14 (2004-12-10) Method of Payment**

Payment by Canada for the Work shall be made (a) within thirty (30) days following the date on which all the completed work, or parts thereof in the case of progress payments, has been delivered to the location designated in the Contract; or (b) within thirty days following the date on which an invoice and substantiating documentation are received according to the terms of the Contract; whichever date is the later.

**TRA-95 15 (2000-12-01) Interest on Overdue Accounts**

1. For the purposes of this section:

"Average Rate" means the simple arithmetic mean of the Bank Rates in effect at 4:00 Eastern Standard Time each day during the calendar month which immediately precedes the calendar month

in which payment is made, where the "Bank Rate" means the rate of interest established from time to time by the Bank of Canada as the minimum rate at which the Bank of Canada makes short term advances to members of the Canadian Payments Association.

"date of payment" means the date of the negotiable instrument drawn by the Receiver General for Canada and given for payment of an amount due and payable;

an amount is "due and payable" when it is due and payable by Canada to the Contractor in accordance with the terms of the Contract; and

an amount becomes "overdue" when it is unpaid on the first day following the day upon which it is due and payable.

2. Subject to the Contract, Canada shall be liable to pay to the Contractor simple interest at the Average Rate plus 3 percent per annum on any amount that is overdue, from the date such amount becomes overdue until the day prior to the date of payment, inclusive. Interest shall be paid without notice from the Contractor.
3. Canada shall not be liable to pay interest in accordance with this section if Canada is not responsible for the delay in paying the Contractor.
4. Canada shall not be liable to pay interest on overdue advance payments.

**TRA-95 16 (1995-12-15) Title**

1. Except as otherwise provided in the Contract and except as provided in subsection 2, title to the Work or any part thereof shall vest in Canada upon delivery and acceptance thereof by or on behalf of Canada.
2. Upon any payment being made to the Contractor for work or any part thereof, either by way of progress payments or accountable advances or otherwise, title to Work so paid for shall vest in and remain in Canada unless already so vested under any other provision of the Contract.
3. Notwithstanding any vesting of title referred to in this section and except as otherwise provided in the Contract, the risk of loss or damage to Work or any part thereof so vested shall remain with the Contractor until its delivery to Canada in accordance with the Contract.
4. Any vesting of title referred to in subsection 2 shall not constitute acceptance by Canada of the Work, and shall not relieve the Contractor of its obligation to perform the Work in accordance with the Contract.

**TRA-95 17 (2004-12-10) Government Property**

1. Unless otherwise provided for in the Contract, all Government Property shall be used by the Contractor solely for the purpose of the Contract and shall remain the property of Canada.
2. The Contractor shall take reasonable and proper care of all Government Property while the same is in or on premises of the Contractor or otherwise in its possession or subject to its control, and shall be responsible for any loss or damage resulting from its failure to do so other than loss or damage caused by ordinary wear and tear.
3. All Government Property, except such as is installed or incorporated into the Work, shall, unless otherwise specifically provided in the Contract, be returned to Canada.
4. At the time of completion of the Contract, and if requested by the Contracting Authority, the Contractor shall provide an inventory of all Government Property relating to the Contract to both the Contracting Authority and the Project Authority.

**TRA-95 18 (1995-12-15) Unauthorized Codes**

1. The Contractor guarantees that the diskettes provided to Canada under the Contract have no viruses or unauthorized codes, whether or not through fault or negligence on the part of the Contractor.
2. Without limiting the applicability of section 19, in a case where Canada suffers damage because of the presence of viruses or unauthorized codes, the Contractor shall reimburse Canada for all the expenses incurred by Canada to return its systems to their initial condition.



**TRA-95 19 (1995-12-15) Indemnity Against Third-party Claims**

1. The Contractor shall indemnify and save harmless Canada, the Minister and their servants or agents from and against any damages, costs or expenses or any claim, action, suit or other proceeding which they or any of them may at any time incur or suffer as a result of or arising out of
  - (a) any injury to persons (including injuries resulting in death) or loss of or damage to property of others which may be or be alleged to be caused by or suffered as a result of the performance of the Work or any part thereof, except that Canada and the Minister shall not claim indemnity under this section to the extent that the injury, loss or damage has been caused by Canada, and
  - (b) any liens, attachments, charges or other encumbrances or claims upon or in respect of any work-in-process or finished work furnished to, or in respect of which any payment has been made by, Canada.
2. The Minister shall give notice to the Contractor of any claim, action, suit or proceeding referred to in subsection 1 and the Contractor shall, to the extent requested by the Attorney General of Canada, at its own expense participate in or conduct the defence of any such claim, action, suit, or proceeding and any negotiations for settlement of the same, but the Contractor shall not be liable to indemnify Canada for payment of any settlement unless it has consented to the settlement.

**TRA-95 20 (1995-12-15) Royalties and Infringement**

1. In this section, "Royalties" includes
  - (a) fees and all other payments analogous to royalties for, and also claims for damages based upon, the use or infringement of any patent, registered industrial design, trade mark, copyrighted work, trade secret, or other intellectual property right, and
  - (b) any costs or expenses incurred as a result of the exercise by any person of Moral Rights.
2. The Contractor shall indemnify and save harmless Canada, the Minister and their servants or agents against any claim, action, suit or other proceeding for the payment of Royalties, that results from or is alleged to result from the carrying out of the Contract or the use or disposal by Canada of anything furnished by the Contractor under the Contract.
3. Canada shall indemnify and save harmless the Contractor and its servants and agents against any claim, action, suit or other proceeding for the payment of Royalties, that results from or is alleged to result from the use by the Contractor in performing the Contract of material or information not prepared by the Contractor and supplied to the Contractor by or on behalf of Canada, provided that the Contractor notifies the Minister immediately of any such claim, action, suit or other proceeding but Canada shall not be liable to indemnify or save harmless the Contractor for payment of any settlement unless Canada has consented to the settlement.
4. The Minister shall give notice to the Contractor of any claim, action, suit or proceeding referred to in subsection 2 and the Contractor shall, to the extent requested by the Attorney General of Canada, at its own expense participate in or conduct the defence of any such claim, action, suit or proceeding and any negotiations for settlement of the same, but the Contractor shall not be liable to indemnify and save harmless Canada for payment of any settlement unless it has consented to the settlement.

**TRA-95 21 (1995-12-15) Copyright**

1. Copyright in the Work shall vest in Canada.
2. The drafts, preliminary versions, technical documents and other linguistic or terminological research documents developed to execute the obligations that are the subject of the Contract all belong to Canada. The Contractor shall not divulge them nor use them otherwise than to provide the services that are the subject of the Contract. The Contractor may not, except to the extent that the performance of the Contract requires it, divulge or publish any information concerning matters mentioned in this section.
3. At the request of the Minister, the Contractor shall provide to Canada, at the completion of the Contract or at any other such time as the Minister may require, a written permanent waiver of Moral Rights, in a form acceptable to the Minister, from every author that contributed to the Work.

4. If the Contractor is the author of the Work, the Contractor hereby permanently waives the Contractor's Moral Rights in respect of the Work.

**TRA-95 22 (1995-12-15) Suspension of the Work**

1. The Minister may at any time, by written notice, order the Contractor to suspend or stop all or part of the Work under the Contract. The Contractor shall immediately comply with any such order in the manner that minimizes the cost of so doing. At any time during the period of the suspension or stopping of the Work, the Minister may either rescind the order or terminate the Contract, in whole or in part, under section 23 or terminate it under section 24.
2. When an order is made under subsection 1, unless the Minister terminates the Contract by reason of default by the Contractor or the Contractor abandons the Contract, the Contractor shall be entitled to be paid its additional costs incurred as a result of the suspension plus a fair and reasonable profit thereon.
3. When an order is made under subsection 1 and is rescinded:
  - (a) the Contractor shall as soon as practicable resume work in accordance with the Contract;
  - (b) if the suspension has affected the Contractor's ability to meet any delivery date under the Contract, the date for the performance of that part of the Work affected by the suspension shall be extended for a period equal to the period of suspension plus a period, if any, which in the opinion of the Minister following consultation with the Contractor is reasonably necessary for the Contractor to resume the Work; and
  - (c) subject to section 04, an equitable adjustment shall be made as necessary to affected terms and conditions of the Contract.

**TRA-95 23 (1995-12-15) Default by the Contractor**

1. Where the Contractor is in default in carrying out 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, either immediately or at the expiration of a cure period specified in the notice if the Contractor has not cured the default to the satisfaction of the Minister within that cure period.
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 Canada, upon giving notice to the Contractor, immediately terminate for default the whole or any part of the Contract.
3. Upon the giving of a notice provided for in subsection 1 or 2, the Contractor shall have no claim for further payment other than as provided in this section, but shall be liable to Canada for any amounts, including milestone payments, paid by Canada and for all losses and damages which may be suffered by Canada by reason of the default or occurrence upon which the notice was based, including any increase in the cost incurred by Canada in procuring the Work from another source or calling upon its internal resources. The Contractor agrees to repay immediately to Canada the portion of any advance payment that is unliquidated at the date of the termination. Nothing in this section affects any obligation of Canada under the law to mitigate damages.
4. Upon termination of the Contract under this section, the Minister may require the Contractor to deliver to Canada, in the manner and to the extent directed by the Minister, any completed parts of the Work which have not been delivered and accepted prior to the termination and any materials or work-in-process which the Contractor has produced specifically in the fulfilment of the Contract.
5. Subject to the deduction of any claim that Canada may have against the Contractor arising under the Contract or out of the termination, Canada shall pay or credit to the Contractor the value, determined on the basis of the Contract Price, including the proportionate part of the Contractor's profit or fee included in the Contract Price, of all completed parts of the Work delivered to Canada pursuant to a direction under subsection 4 and accepted by Canada, and shall pay or credit to the Contractor the cost to the Contractor that the Minister considers reasonable in respect of all materials and work-in-process delivered to Canada pursuant to a direction under subsection 4 and accepted by Canada, but in no event shall the aggregate of the amounts paid by Canada under the Contract to the date of termination and any amounts payable pursuant to this subsection exceed the Contract Price.

6. Titles to all materials, 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, 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 those that would not have been required to perform the Work or that exceed what would have been required to perform the Work.
7. Where, subsequent to issuance of an order pursuant to subsection 1, the Minister is satisfied that grounds did not exist for a termination under this section, the notice shall be deemed a notice of termination for convenience issued under subsection section 24.1.

**TRA-95 24 (1995-12-15) Termination for Convenience**

1. Notwithstanding anything contained in this Contract, the Minister may, at any time prior to the completion of the Work, by giving notice to the Contractor (in this section sometimes referred to as a "termination notice"), terminate the Contract as regards 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 any 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.
2. In the event of a termination notice being given pursuant to subsection 1, 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 including the unliquidated portion of any advance payment:
  - (a) on the basis of the Contract Price, for all completed Work that is inspected and accepted in accordance with the Contract, whether completed before, or after 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 the terms of the Contract;
  - (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, 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 Contract or approved in writing by the Minister for the purpose of the Contract.
3. 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.
4. Notwithstanding anything in subsection 2, the total of the amounts to which the Contractor is entitled under paragraphs 2.(a) and (b), together with any other amounts paid or 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 the Work that is reasonably attributable to the proportion of the Work performed to the effective date of the termination.
5. In the subcontracting of any of the Work, the Contractor shall, unless otherwise authorized by the Minister, place subcontracts on terms that will enable the Contractor to terminate the same upon terms and conditions similar in effect to those provided in this section, and generally 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 section.
6. Title to all 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 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 work-in-process that would not have been required to perform the Work or that exceed what would have been required to perform the Work.

7. 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 or termination notice given by the Minister under this section, except to the extent that this section expressly provides.

**TRA-95 25 (1995-12-15) Accounts and Audit**

1. The Contractor shall keep proper accounts and records of the cost to the Contractor of the Work and of all expenditures or commitments made by the Contractor in connection therewith, and shall keep all invoices, receipts and vouchers relating thereto. The Contractor shall not, without the prior written consent of the Minister, dispose of any such accounts, records, invoices, receipts or vouchers until the expiration of 6 years after final payment under this Contract, or until the settlement of all outstanding claims and disputes, whichever is later.
2. All such accounts and records as well as any invoices, receipts and vouchers shall at all times during the retention period referred to in subsection 1 be open to audit, inspection and examination by the authorized representatives of the Minister, who may make copies and take extracts thereof. The Contractor shall provide all facilities for such audits and inspections and shall furnish all such information as the representatives of the Minister may from time to time require with respect to such accounts, records, invoices, receipts and vouchers.

**TRA-95 26 (1995-12-15) Notice**

Any notice shall be in writing and may be delivered by hand or by courier, by registered mail, or by facsimile or any other electronic means that provides a paper record of the text of the notice, addressed to the Party for whom it is intended at the address in the Contract or at the last address of which the sender has received notice in accordance with this section. Any notice shall be deemed to be effective on the day that it is received at that address.

**TRA-95 27 (1995-12-15) Members of the House of Commons**

No member of the House of Commons shall be admitted to any share or part of the Contract or to any benefit arising from the Contract.

**TRA-95 28 (2005-12-16) Conflict of Interest**

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, 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 this Contract.
2. No employee of the Government of Canada shall be a party to the Contract, nor shall derive any benefit whatsoever therefrom, unless the employee has been so authorized in writing by the Minister who has jurisdiction over the employee.

**TRA-95 29 (1995-12-15) Corruption and Conflict of Interest**

1. The Contractor represents and covenants that it has no financial interest in any third-party business that might affect its objectivity in providing the services that are the subject of the Contract.
2. 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.

**TRA-95 30 (1995-12-15) Contingency Fees**

1. The Contractor attests that it has not paid or agreed to pay any covenants that it will not directly or indirectly pay a contingency fee for the solicitation, negotiation or obtaining of this Contract to any person other than an employee acting in the normal course of the employee's duties.
2. All accounts and records pertaining to payments of fees or other compensation for solicitation, obtaining or negotiation of the Contract shall be subject to the Accounts and Audit provisions of the Contract.
3. If the Contractor certifies falsely under this section or is in default of the obligations contained therein, the Minister may either terminate this Contract for default in accordance with the termination for default

provisions of the Contract, or recover from the Contractor by way of reduction to the Contract Price or otherwise the full amount of the contingency fee.

4. In this section:

"contingency fee": means any payment or other compensation that is contingent upon or is calculated upon the basis of a degree of success in soliciting or obtaining a government contract, or negotiating the whole or any part of its terms;

"employee": means any person with whom the Contractor has an employer/employee relationship;

"person": includes an individual or a group, a corporation, a partnership, an organization and an association and, without limiting the generality of the preceding, any individual who is required to submit to the registrar a return under section 5 of the Lobbyists Registration Act, R.S.C. 1985, c. 44 (4<sup>th</sup> supplement) and of any amendment that might be made to it from time to time.

**TRA-95 31 (1995-12-15) Survival**

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 Government Property, indemnity against third-party claims, royalties and infringement, intellectual property rights and accounts and audit shall survive the expiry of the Contract or the termination of the Contract for default, for convenience, 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.

**TRA-95 32 (1995-12-15) Severability**

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.

**TRA-95 33 (1995-12-15) Successors and Assigns**

The Contract shall ensure to the benefit of, and shall be binding upon, the successors and permitted assignees of Canada and of the Contractor.

**TRA-95 34 (1995-12-15) Entire Agreement**

The Contract constitutes the entire and sole agreement between the Parties with respect to the subject matter of the Contract and supersedes all previous negotiations, communications and other agreements, whether written or oral, relating to it, unless they are incorporated by reference in the Contract. There are no terms, covenants, representations, statements or conditions binding on the Parties other than those contained in the Contract.