

# **Schedule A**

## **General Conditions**

### **JSS LLI (CAT A2 Materials)**

#### **(Full IP – Full IRB Version)**

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## SECTION A - INTRODUCTION

### 1.0 Representations and Warranties

- 1.1 The Supplier represents and warrants to the Purchaser that:
- 1.1.1 the Maturity of the Solution, as a declared by the Supplier in Article 1.1 of the Articles of Agreement, is true;
  - 1.1.2 it has the power and authority to enter into and perform its obligations under the Subcontract;
  - 1.1.3 it has the knowledge, skills, resources, and rights necessary to carry out the Work in accordance with the Subcontract;
  - 1.1.4 it has complete copies of all documents referred to in the Subcontract;
  - 1.1.5 it has uploaded to the Approved Supplier Portal all documentation required as of Contract Award, including a current WorkSafeBC clearance letter (if Work is to be undertaken at the Purchaser's Premises) and proof of insurance, and shall update such documentation throughout the Term to ensure it remains current;
  - 1.1.6 except as indicated in Schedule E, no Deliverable or part thereof is subject to export controls imposed by its country of origin, is a Controlled Good, is subject to the International Traffic in Arms Regulations (ITAR) or is subject to economic sanctions imposed by the Government of Canada;
  - 1.1.7 it is duly incorporated and validly subsisting corporation in good standing under the laws of its jurisdiction of incorporation;
  - 1.1.8 the Subcontract constitutes a legal, valid and binding obligation of the Supplier, enforceable against it in accordance with its terms;
  - 1.1.9 it is aware that the Purchaser's cost of managing the Subcontract is predicated on the delivery of compliant Deliverables on the delivery dates; and
  - 1.1.10 it is aware that the Purchaser intends to rely on the Supplier's reporting (pursuant to Part 2 (PM) of the SOW) as to its progress and achievement of the Work.

### 2.0 Authorities and Representative

- 2.1 The Purchaser's Authorities, together with their contact details and responsibilities, are identified in Appendix C of the Articles of Agreement. The Purchaser may change the identity, contact details, and/or responsibilities of any of the Purchaser's Authorities by notice to the Supplier.
- 2.2 The Representative of the Supplier shall, on behalf of the Supplier, be responsible for all matters pertaining to the Supplier's performance of the Subcontract. The Supplier may change the identity and/or contact details of the Representative of the Supplier by notice to the Purchaser.

### 3.0 Term of Subcontract

- 3.1 The term of the Subcontract commences at Contract Award and shall expire when the Parties have discharged all of their respective obligations under the Subcontract, or when the Subcontract is otherwise terminated in accordance with its terms (the **Term**).

## SECTION B - WORK SCOPE

### 4.0 Statement of Requirements

- 4.1 The Supplier shall, subject to the exercise of the applicable Option by the Purchaser in accordance with Article 4.0 of the Articles of Agreement, supply the Deliverables, perform the Services and carry out any other Work:
- 4.1.1 in accordance with the Subcontract;
  - 4.1.2 in a professional, workmanlike manner and with the degree of skill and care ordinarily exercised by a prudent, competent and experienced Person providing similar goods and services; and
  - 4.1.3 in compliance with all Applicable Laws.
- 4.2 Except for those items listed in sections A and B of Appendix D of the Articles of Agreement, the Supplier shall supply everything necessary to perform the Work.

4.3 The Supplier shall:

4.3.1 ensure that all Deliverables supplied and Services performed are configured and compatible with each other; and

4.3.2 coordinate and integrate the Work with that of the Purchaser, other Suppliers to the Purchaser, Canada and the End User, in order to ensure that the Deliverables will be fully functional and integrated with the Ship's related equipment and systems, as set out in the Technical Requirements.

4.4 Any Major Supplier may request from the Supplier in writing, and the Supplier will provide to such Major Supplier upon such request, any Data Item or other information in connection with the Work that is pertinent to the Major Supplier's work on the Project and which the Purchaser would otherwise be entitled to share with its suppliers under the Subcontract. For certainty, the foregoing will not relieve the Purchaser of any of its obligations with respect to the Supplier's confidential information under the Subcontract.

**5.0 Certain Requirements for the Goods**

5.1 The Supplier represents and warrants that the information set out in Schedule E is correct, and shall ensure that the Goods:

5.1.1 are of Good Marine Quality;

5.1.2 are new and have never been in service;

5.1.3 conform to the latest issue of the applicable drawings, specifications and part numbers as at Contract Award;

5.1.4 are of current production or manufactured less than two (2) years before Contract Award;

5.1.5 are composed of standard equipment requiring no further research or development other than Work as may be done under the Subcontract;

5.1.6 with respect to any Software forming part of the Goods, will be a version or manufacturer's production model that is sufficiently updated to fulfil the Supplier's warranty obligations under the Subcontract;

5.1.7 do not contain any recycled, surplus, or remanufactured materials or components (refurbishment through certification as "equal" or "new quality" is not acceptable) with the exception of raw materials (e.g. steel, plastic, etc...);

5.1.8 have the Shelf Life Period indicated in Schedule E; and

5.1.9 have a supply support expectancy in North America of a minimum of ten (10) years following the expiry of the applicable Warranty Period (the **Support Period**).

5.2 The Supplier shall ensure that any Commissioning Materials and Spares supplied by the Supplier are compatible in form, fit and function with the Equipment for which they are intended.

5.3 Where it is practical to do so, the Supplier shall ensure that the manufacturer's name and part number are clearly stamped or etched on each of the Goods for positive identification purposes.

5.4 In addition to the foregoing, the Supplier shall identify each item of SPT and STTE to be supplied by the Supplier as the property of Canada by etching, stamping or attaching a plate (available from the Subcontracting Authority on request) thereto. Such etching, stamping or plate shall include (a) File No. 012JSS.W8472-150034, (b) Contract No. W847S-150034/001/JSS, and (c) a tool or equipment number allotted by the Purchaser to identify the individual item (the Supplier shall contact the Subcontracting Authority to confirm the required markings prior to proceeding). If any SPT or STTE which is not listed in Schedule E is subsequently acquired by the Supplier for the performance of any part of the Work as the Work progresses, they shall be added to Schedule E on a no cost, no schedule impact basis through a Change Request initiated by the Supplier.

5.5 Any minor part or parts, components, connectors, free end connectors, back shells or connecting shells, plugs, leads, cables, and other such items not mentioned in the Technical Requirements or not listed in Schedule E, but which are necessary for the satisfactory completion of the Work, shall be deemed to be part of the Goods to be supplied under the Subcontract and shall be deemed to be within the Subcontract Price. If such items are identified after Contract Award, they shall be added to Schedule E on a no cost, no schedule impact basis through a Change Request initiated by the Supplier.

5.6 The Supplier shall ensure that the Data Items delivered under the Subcontract contain the information required to use, operate, maintain, repair, overhaul, refit and dispose (subject to export control regulations) of the Goods in the normal course of use.

## **6.0 Subcontracting**

6.1 Except as provided in Section 6.2, the Supplier must obtain the Subcontracting Authority's written consent before Sub-subcontracting or permitting the Sub-subcontracting of any part of the Work.

6.2 The Supplier is not required to obtain consent for Sub-subcontracts:

6.2.1 with Pre-authorized Sub-suppliers;

6.2.2 to purchase "off-the-shelf" items;

6.2.3 to purchase any standard articles and materials that are ordinarily produced by manufacturers in the normal course of business, including goods that form part of the manufacturer's existing supply chain arrangements;

6.2.4 for any incidental services that would ordinarily be subcontracted in performing the Work;

6.2.5 for Personal Service Contracts;

6.2.6 for any portion of the Work to Sub-suppliers chosen by means of a reasonable and successful open competitive tender process designed and employed by the Supplier for the purpose of obtaining best value and best quality of goods and service; or

6.2.7 for any part or parts of the Work in one or more Sub-subcontracts up to a total value of \$250,000 CAD with the same entity or person for similar goods or services,

or to permit its Sub-suppliers to make purchases or further subcontract as permitted in this Section 6.2.

6.3 For greater certainty, the Supplier is not required to obtain consent for a given Sub-subcontract if any one of the circumstances listed in Section 6.2 applies to that given Sub-subcontract.

6.4 Even if the Purchaser consents to a Sub-subcontract, the Supplier is responsible for ensuring that any Sub-subcontracted Work is delivered in accordance with the Subcontract and shall be fully liable for any acts or omissions of any of its Sub-suppliers.

## **SECTION C - INTELLECTUAL PROPERTY**

### **7.0 Intellectual Property Rights**

#### **Ownership of IP Rights in Foreground Information**

7.1 All IP Rights in the Foreground Information belong to Canada or its licensors as soon as they come into existence. Subject to Section 7.4, the Supplier has no right in or to any such IP Rights in the Foreground Information. The Supplier hereby irrevocably transfers and assigns to Canada all right, title and interest in and to all IP Rights in any Foreground Information, free and clear of any of any liens, encumbrances, obligations or limitations thereon (including any restrictions on use) as and from their creation.

7.2 The Supplier shall:

7.2.1 incorporate the copyright symbol and one of the following notices, as appropriate, into all Foreground Information that is subject to copyright, regardless of the form or medium upon which it is recorded: "© Her Majesty the Queen in Right of Canada (year)" or "© Sa Majesté la Reine du chef du Canada (année)" (provided that for Software in object code such notice need only appear at the initial screen page upon accessing the Software and may be qualified as applying only to portions thereof which are Foreground Information);

7.2.2 execute any documents relating to the IP Rights in the Foreground Information as the Purchaser or Canada may reasonably require; and

7.2.3 at the Purchaser's or Canada's expense, provide the Purchaser or Canada (as applicable) with all reasonable assistance in the preparation of applications and in the prosecution of any applications for registration of any IP



Rights in the Foreground Information in any jurisdiction, including the assistance of the inventor in the case of inventions where the inventor is available to the Supplier and compellable by the Supplier, at the time of the Purchaser's or Canada's request.

- 7.3 The Supplier shall ensure all authors permanently waive their respective moral rights in any Foreground Information they create upon the creation of the Foreground Information. If requested by the Purchaser or Canada, during or after the Term, the Supplier shall provide a written permanent waiver of moral rights, in a form acceptable to the requestor, from every author that contributed to any Foreground Information if the author or the contract waiver is available to the Supplier, or the author is compellable by the Supplier, at the time of the Purchaser's or Canada's request. If the Supplier is the author of such Deliverables, the Supplier hereby permanently waives its moral rights in such Deliverables.
- 7.4 The Purchaser hereby grants to the Supplier a non-exclusive, fully-paid and royalty-free sublicense to use, copy and modify the Foreground Information solely for the purposes of performing its obligations under the Subcontract, with the right to sublicense it to Sub-suppliers solely for such purposes. The Supplier shall treat all Foreground Information as Confidential Information pursuant to Section 58.0 (Confidentiality).

#### Background Information License

- 7.5 The Supplier hereby grants to the Purchaser and Canada a fully-paid, royalty-free, perpetual, worldwide, non-exclusive license to use the Background Information, to the extent that it is reasonably necessary for the Purchaser and Canada to exercise fully all their rights in the Work and in the Foreground Information, such grant of license in the Background Information being limited solely to such use in connection with the Work to which such Background Information relates so long as such Work is installed on or used in connection with a Ship or another vessel owned or operated by the Department of National Defence (the **License**). However, nothing above-noted limits the Purchaser's or Canada's rights to Background Information that the Purchaser or Canada may otherwise hold. The only restrictions on the License are those set out in Sections 7.5 to 7.8 and any restrictions that may be agreed to in writing between the Purchaser, Canada and the Supplier. For greater certainty, the License cannot be restricted in any way by the Supplier providing any form of notice to the contrary, including the wording on any shrink-wrapped license or any other packaging attached to any Deliverable.
- 7.6 Notwithstanding the foregoing: (a) any disclosure of the Background Information by the Purchaser or Canada to third parties that is not already addressed by Section 7.7 below shall be subject to the Purchaser or Canada requiring the third parties to agree in writing not to use that information except as may be reasonably necessary for the Purchaser or Canada to exercise fully all their respective rights in the Work and in the Foreground Information as granted (as specified in Section 7.5), and not to further disclose that information to any other third party unless that third party has first agreed in writing to be bound by the same restrictions as to both use and disclosure of the Background Information; and (b) the License does not permit the Purchaser, Canada or any third parties to manufacture any additional or replacement Goods or component parts thereof except where permitted pursuant to Section 7.7.4 below.
- 7.7 For greater certainty, the License includes, but is not limited to:
- 7.7.1 the right to disclose the Background Information to third parties or their subcontractors bidding on or negotiating contracts for the benefit of the Purchaser or Canada as reasonably necessary for the use, design, training of personnel, commissioning, tests and trials, operation, maintenance, repair, overhaul, refit, disposal (subject to export control regulations), general support and modification of a Ship. The Purchaser or Canada, as applicable, shall require these third parties and subcontractors to agree in writing not to use that information except as may be necessary to bid, negotiate or carry out those contracts and not to further disclose that information to any other third party unless that third party has first agreed in writing to be bound by the same restrictions as to both use and disclosure of the Background Information;
  - 7.7.2 the right of Canada to disclose the Background Information on a confidential basis to other governments for information purposes;
  - 7.7.3 the right to reproduce, modify, improve, develop or translate the Background Information for the purposes listed in Section 7.7.1 above respecting a Ship, or have it done by a person hired by the Purchaser or Canada who has first agreed in writing not to use that Background Information except as may be necessary to carry out that contract and not to disclose that Background Information to any other third party unless that third party has first agreed in writing to be bound by the same restrictions as to both use and disclosure of the Background Information. Canada, or a

person designated by Canada, shall own the IP Rights associated with modification, improvement, development or translation (provided that Canada or such designated person shall only own copyright in the translation and no other IP Rights by translating Background Information); and

- 7.7.4 without restricting the scope of any license or other right in the Background Information that the Purchaser or Canada may otherwise hold in relation to any custom-designed or custom-manufactured part of the Work, the right to: (a) use and disclose to a contractor engaged by the Purchaser or Canada the Background Information for the use, operation, maintenance, repair or overhaul of the custom-designed or custom-manufactured parts of the Work in relation to a Ship; or (b) use and disclose to a contractor engaged by the Purchaser or Canada the Background Information for the manufacturing of spare parts for maintenance, repair or overhaul of any custom-designed or custom-manufactured part of the Work for a Ship by the Purchaser or Canada if those parts are not available on reasonable commercial terms to enable timely maintenance, repair or overhaul. The Purchaser or Canada, as applicable, shall require these contractors to agree not to use the Background Information except as may be necessary for the purposes stated in (a) or (b) above, as applicable, and not to disclose that Background Information to any other third party unless that third party has first agreed in writing to be bound by the same restrictions as to both use and disclosure of the Background Information.

The Supplier agrees to make the Background Information promptly available to the Purchaser and Canada for any purpose mentioned above.

- 7.8 The License does not pertain to Licensed Software, which is governed by the provisions set out in Section 7.16. For certainty, the Supplier is under no obligation to make the source code for Background Information available to the Purchaser or Canada, unless provided in the Subcontract for Custom Software.
- 7.9 The Supplier represents and warrants that it has the right to grant to the Purchaser and Canada the License and any other rights in and to the Background Information as provided in the Subcontract. If the IP Rights in any Background Information are owned by a third party, the Supplier must have a license from that third party that permits compliance with this Section 7.9 or arrange, without delay, for the third party to grant promptly the required license directly to the Purchaser and Canada.
- 7.10 During the performance of the Subcontract and for a period of six (6) years after the date of delivery and acceptance of the last fully completed Ship under the Build Prime Contract, or if the Build Prime Contract is not awarded to the Purchaser, the date this Subcontract has been terminated in accordance with its terms, should the Purchaser or Canada determine that additional Background Information pertaining to a Ship is necessary or desirable for the Purchaser or Canada to exercise their licenses under this Section 7.0, then, subject to the same terms for licensing of Background Information as described in this Section 7.0:
- 7.10.1 if the Supplier or any of its Affiliates who perform Work on a Ship: (a) owns it or has a license right therein that permits the Supplier to do so, then the Supplier shall provide same to the Purchaser and Canada on the terms of the Purchaser's and Canada's license described in this Section 7.0, for free if owned; or (b) if licensed to the Supplier or such an Affiliate on terms that do not permit sublicensing on the terms of the licenses granted to the Purchaser and Canada in this Section 7.0, then the Supplier shall provide to the Purchaser and Canada whatever rights as are available for sublicensing under such license agreement at cost with no mark-up; and
- 7.10.2 if Section 7.10.1 does not apply, then where it can reasonably be obtained from its Sub-suppliers without a requirement to make payments of additional license or other fees (unless the Purchaser or Canada agrees to pay such fees, in which case the Supplier shall use commercially reasonable efforts to minimize such fees) the Supplier shall obtain the same.

#### Notification of IP Rights

- 7.11 The Supplier shall provide notification of IP Rights on the Deliverables as follows:
- 7.11.1 *Foreground Information:* For Deliverables that contain only Foreground Information, the Deliverable shall include a single notice of IP Rights on each page/item of the Deliverable. This notification shall record that all IP Rights for the item are owned by Canada as per Contract No. W847S-150034/001/JSS, and shall state that the Deliverable contains no Background Information. An example of a notification that complies with this Section 7.11.1 is as follows:

“This [document] contains Intellectual Property Rights owned by Canada as per Contract No. W847S-150034/001/JSS, © Her Majesty the Queen in Right of Canada [year], or © Sa Majesté la Reine du chef du Canada [année], and contains no Background Information.”

7.11.2 *Background Information:* For Deliverables that contain only Background Information, the Deliverable shall include a single notice of IP Rights in or on each copy of the Deliverable. This notification shall record that no IP Rights are owned by Canada as per Contract No. W847S-150034/001/JSS, and shall state that the Deliverable contains only Background Information, and shall identify the Supplier (if applicable) and each applicable grantor to the Supplier of the rights in the Background Information. An example of a notification that complies with this Section 7.11.2 is as follows:

“This [document] does not contain Intellectual Property Rights owned by Canada as per Contract No. W847S-150034/001/JSS. It contains only Background Information, which has been licensed from [insert appropriate owner(s), such as the Supplier, other owner/grantor 1, other owner/grantor 2] under Contract No. W847S-150034/001/JSS.”

7.11.3 *Background Information and Foreground Information:* For Deliverables that consist of Background Information and Foreground Information, the Deliverable shall provide a notice of IP Rights in the vicinity of the title block or cover sheets, either on the Deliverable if a document or on documents accompanying the Deliverable if not. This notification shall identify the Supplier (if applicable) and each applicable grantor to the Supplier of the rights in the Background Information, and shall identify which Background Information rights are applicable and to which portions of the Deliverable as provided below:

“This [document] contains information owned by Canada and licensed from third parties under Contract No. W847S-150034/001/JSS [insert appropriate owner(s) such as the Supplier, other owner/grantor 1, other owner/grantor 2]. © Her Majesty the Queen in Right of Canada [year], or © Sa Majesté la Reine du chef du Canada [année].”

This notification shall be repeated in the footer of each page of the Deliverable or accompanying document verbatim, except that if the rights in the Background Information are as provided for in this Section 7.0, the Supplier or applicable grantor of the Background Information is not required to be identified in the footers, and therefore the notification in the footers may be as follows:

“This document contains information owned by Canada and licensed from third parties under Contract No. W847S-150034/001/JSS. © Her Majesty the Queen in Right of Canada [year], or © Sa Majesté la Reine du chef du Canada [année].”

7.11.4 *TKMSC Information Provided to the Supplier:* For any Restricted Information provided by or on behalf of the Purchaser or Canada that is solely comprised of or that contains TKMSC Information, any notification placed on or in the TKMSC Information shall not be removed or obscured in any manner and shall be reproduced in full in all copies and reproductions thereof.

7.11.5 *TKMSC Information in Deliverables:*

7.11.5.1 For any Deliverable which contains only TKMSC Information, the following notification shall be used on the front of the Deliverable and shall be repeated in the footer of each page of the Deliverable or accompanying document:

“Property of ThyssenKrupp Marine Systems Canada Inc., its subcontractors, or the ARGE EGV and its members. All use by any party other than Canada is subject to Public Works and Government Services (PWGSC) Contract No W8472-115312/001/JSS.”

7.11.5.2 For any Deliverable which contains TKMSC Information in addition to other information, the following notification shall be included on the front of the Deliverable and shall be repeated in the footer of each page of the Deliverable or accompanying document in addition to any other notification requirements otherwise provided for herein:

“Portions of this [document] are the property of ThyssenKrupp Marine Systems Canada Inc., its subcontractors, or the ARGE EGV and its members. All use by any party other than Canada is subject to Public Works and Government Services (PWGSC) Contract No. W8472-115312/001/JSS.”

- 7.12 Deliverables containing Background Information for which the Purchaser or Canada are not granted rights consistent with this Section 7.0 shall, in addition to having the appropriate notifications in Section 7.11 above, indicate what elements of the Deliverable contain that Background Information, such that:
- 7.12.1 where that Background Information is a readily-identifiable self-contained element, it shall be enclosed within a chain dotted line, and annotated with the owner's legal name and the applicable provisions of this Section 7.0 under which the rights are provided; or
- 7.12.2 where that Background Information is not as described in Section 7.12.1 above (for example, several different sources of Background Information are embedded within various elements of the Deliverable) then clear demarcation boundaries shall be provided at each interface where intellectual property ownership of that Background Information changes. The intellectual property owners' legal names and the applicable provisions of this Section 7.0 under which the rights are provided shall be annotated at either side of these demarcation boundaries.
- 7.13 The Supplier is not required to mark a Deliverable in respect of IP Rights other than as described in Section 7.11 or Section 7.12 above unless the Purchaser requests such marking as a Change pursuant to Section F (Changes), which it may do at any time prior to the end of the applicable Warranty Period, in which case the Purchaser shall provide the Deliverable back to the Supplier to perform such marking.
- 7.14 The Supplier is not required to mark under Section 7.11 or Section 7.12 Deliverables which are Software in object code unless the Software includes an about license or other txt file where such marking can be included, 3D models, or where it is otherwise objectively impossible to do so.
- 7.15 The markings as described in Section 7.11 and Section 7.12 shall be clearly distinguishable from markings used to identify document amendments or revised versions of items. The Supplier shall not knowingly mark any Deliverable containing Foreground Information as intellectual property of the Supplier on the cover of the Deliverable. The Supplier shall only mark the applicable portions that contain Foreground Information or Background Information. Any Deliverable improperly marked which identifies information as owned by the Supplier or any third party, which the Purchaser's upon reasonable determination should not be marked as such, may be rejected by the Purchaser upon delivery or at any time thereafter during the period referred to in Section 7.18 and shall be replaced by the Supplier at its sole cost unless it is determined that the Purchaser's determination was incorrect, in which case the Supplier's reasonable cost incurred to respond shall be paid by the Purchaser.

#### Software and Firmware

- 7.16 This Section 7.16 shall apply if the Deliverables include Licensed Software or Firmware, and shall prevail if there is any conflict or inconsistency with any other provisions in the Subcontract that apply to the subject matter of this Section 7.16.
- 7.16.1 The Supplier hereby grants to the Purchaser and Canada a non-exclusive, perpetual, irrevocable license to use and reproduce the Licensed Software and Firmware (the **Software License**) in accordance with this Section 7.16. The Purchaser acknowledges that ownership of the Licensed Software and Firmware belongs to the Supplier or its licensor and is not transferred to the Purchaser or Canada.
- 7.16.2 The Software License entitles the Purchaser and Canada to exercise all rights in respect of Licensed Software and Firmware in a manner consistent with meeting all the requirements, functions, features, capacities and purposes of the Technical Requirements in respect of the Licensed Software, whether or not such exercise of rights is expressly described in the Technical Requirements. As and where required to fulfill such requirement, the Software License shall entitle the Purchaser and Canada to access, install, copy (other than in respect of Firmware), deploy, test and use the Licensed Software in relation to the associated equipment or software or for any other purpose in connection with a Ship (including in and for lifeboats, sensors, training equipment or other mechanisms related to such Work), at any and all locations as may be required to meet such needs from time to time, all without requiring the Purchaser or Canada to purchase any additional licenses to software or components. For Licensed Software without associated equipment designated in the Technical Requirements, and unless otherwise stated in the

Technical Requirements or applicable SOW, the Software License allows Canada to use such Licensed Software, in whole or in part, within the department or agency for which the Work is performed, in association with any number of Devices.

- 7.16.3 The Software License is perpetual, regardless of any termination of the Subcontract for any reason, as long as the licenses have been paid for.
- 7.16.4 For Firmware and Licensed Software with associated equipment designated in Schedule E or the Technical Requirements, the Software License entitles the Purchaser and Canada to use the Firmware and such Licensed Software with such associated equipment on an irrevocable, royalty-free basis, and the Purchaser or Canada may transfer this license in the Firmware and such Licensed Software only to the party that they transfer the associated equipment to.
- 7.16.5 The Purchaser and Canada may continue to use the Software License notwithstanding changes in their respective environments, such as changes to the operating system, types of Devices, or other software products used by the Purchaser or Canada from time to time in addition to the Licensed Software and Firmware; provided, however, that the Supplier is not required to deliver a new or different version of the Licensed Software or Firmware, nor to deliver Licensed Software or Firmware capable of use in environments other than those specified in the license granted, to enable the Purchaser or Canada to continue to use the Licensed Software or Firmware in a different environment than the one(s) described in the Technical Requirements, except as may be required by Section 19.6. A decision by the Purchaser or Canada to use the Licensed Software or Firmware (a) in a different environment, or (b) with other equipment that is not the same as was provided by the Supplier (except if such other equipment is identified as compatible in the Software Documentation or Firmware documentation), shall be at the Purchaser or Canada's risk (as applicable), and the Supplier disclaims all representations and warranties in respect thereto.
- 7.16.6 Any conditions accompanying or enclosed with the Licensed Software or Firmware do not form part of the Subcontract and, therefore, are not part of Canada's or the Purchaser's license and do not affect the rights of the Parties in any way, unless otherwise agreed by the Purchaser and Canada in writing. In no event shall the Purchaser, Canada or any User be required to enter into any additional license agreement with respect to the Licensed Software, the Firmware or any portion of them. The Supplier acknowledges that any additional license agreement relating to the Licensed Software or Firmware signed by anyone other than the Subcontracting Authority (or, after the delivery of a Ship to Canada, a duly authorized representative of Canada) is void and of no effect.
- 7.16.7 The Purchaser and Canada are not bound by and do not accept any "shrink-wrap" or "click-wrap" conditions or any other conditions, express or implied, that are contained in or on the Software packaging or conditions that may accompany the Software in any manner, regardless of any notification to the contrary, unless otherwise agreed to by the Subcontracting Authority (or, after the delivery of the Ships to Canada, a duly authorized representative of Canada) in writing. The Purchaser and Canada shall not obtain licenses for Software pertaining to the Work from any third party, and the Supplier shall not request that the Purchaser or Canada enter into any such agreement.
- 7.16.8 The Supplier agrees that all data, know-how or other intellectual property created or owned by the Purchaser or Canada shall remain the Purchaser's or Canada's (as applicable), regardless of whether that data is created, processed, or stored using the Licensed Software or Firmware.
- 7.16.9 The Purchaser and Canada shall have the right, at their discretion, to modify Licensed Programs (to the extent they are able to do so without disassembling, recompiling or otherwise reverse engineering Licensed Programs which are provided in object code form) for the purposes and uses stated in the Subcontract, through the services of the Purchaser's or Canada's own employees or of independent contractors, as long as those contractors agree not to disclose or distribute any part of the Licensed Program to any other Person or otherwise violate the proprietary rights of the owner of the Licensed Program. The Purchaser or Canada (as applicable) shall be the owner of any modifications contemplated in this clause, but shall obtain no ownership interest in the Licensed Program, and any portion of the Licensed Program contained in those modifications shall remain subject to the conditions of the Purchaser's or Canada's license. The Supplier shall not incorporate any such modifications into its software for distribution to third parties unless the Purchaser or Canada has granted the necessary distribution rights to the Supplier under a written license agreement. The provisions of this Section 7.16.9 do not prevent the Supplier or its third-party licensors from independently developing modifications without reference to the modifications by the



Purchaser or Canada permitted under this Section 7.16.9. The Purchaser agrees, and confirms that Canada has agreed, not to disassemble, decompile or otherwise reverse engineer the Licensed Program or attempt to access or derive the source code thereof.

- 7.16.10 The Supplier shall provide the English language version of the Licensed Software and, if available at the time of delivery of the English version, the French version of the Licensed Software.
- 7.16.11 The Supplier shall ensure that Software Documentation contains enough detail to permit a properly trained User to access, install, copy, deploy, test and use all the licensed features of the Licensed Software delivered under the Subcontract, and access, deploy, test and use all the licensed features of the Firmware delivered under the Subcontract (except that the Supplier is not obliged to provide Software Documentation pertaining to Firmware unless it is customarily provided by the Supplier or available to the Supplier after diligent enquiry).
- 7.16.12 Copyright in the Software Documentation for Licensed Software and Firmware shall not be owned by or transferred to the Purchaser or Canada. However, the Purchaser and Canada shall own their copies of such Software Documentation for Licensed Software and have the right to use the Software Documentation for use by individuals using or supporting the Licensed Software and Firmware and may, for their own internal purposes, copy the Software Documentation for the Licensed Software, but not the Firmware, for use by individuals using or supporting the Licensed Software or Firmware, as long as the Purchaser or Canada (as applicable) includes any copyright or proprietary right notice that was part of the original document in any copy.
- 7.16.13 The Supplier shall update the Software Documentation until at least the end of the applicable Warranty Period to the most current release level consistent with the Software delivered under the Subcontract. The Supplier shall provide these updates to the Purchaser within ten (10) days of the update being available to the Supplier. These updates shall include supporting documentation for the said current release level to the Licensed Software or Firmware, including new versions and new releases that the Purchaser or Canada are entitled to receive under the Subcontract, and shall identify any problems resolved, enhancements made, or features added to the Software, together with (except for Firmware) installation instructions, all as available to the Supplier.
- 7.16.14 In addition to any acceptance procedures detailed elsewhere in the Subcontract, all Licensed Programs delivered and all related Services provided under the Subcontract are subject to inspection by the Purchaser and Canada. The Supplier shall test any Licensed Programs once Work is complete for their installation within a system. If any of the Licensed Programs being tested by the Supplier, the Purchaser or Canada are inconsistent with the Technical Requirements, or fail in any other way to meet the requirements of the Subcontract applicable to the Licensed Programs or their interface with neighboring software or systems and any associated databases or documentation, the Supplier shall correct them before submitting them for acceptance to the Purchaser. The Supplier shall ensure that the Licensed Software so installed passes inspection within thirty (30) days of its original delivery date to the Purchaser.
- 7.16.15 Risk of loss of or damage to the Licensed Software, Firmware or the Media, or to any part of them, shall pass to the Purchaser upon delivery to the Purchaser. Despite the foregoing, the Supplier shall be liable for loss or damage to the Licensed Software, Firmware or Media that is caused by the Supplier or any of its Sub-suppliers after delivery.

#### **Certain Intellectual Property Representations and Warranties**

- 7.17 The Supplier represents and warrants that:
- 7.17.1 the rights granted by the Supplier to the Purchaser and Canada under the Subcontract, taken together, constitute all rights necessary for the Purchaser to incorporate the Work into the Ships and for the Purchaser or Canada, as the case may be, to use, operate, maintain, repair, overhaul and dispose of (subject to any applicable export control regulations) the Work, in each case as contemplated by and in accordance with the Subcontract, or if not so provided therein, as contemplated by and in accordance with the OEM's documentation or recommendations applicable to each Deliverable;
- 7.17.2 none of the Supplier, the Purchaser or Canada shall infringe any third party's Intellectual Property Rights in performing or using the Work; and

7.17.3 neither the Purchaser nor Canada shall have any obligation to pay royalties of any kind to anyone in connection with the Work.

#### **IP Records**

- 7.18 During the performance of the Subcontract and for a period of six (6) years after the date of delivery and acceptance of the last fully completed Ship under the Build Prime Contract, or if the Build Prime Contract is not awarded to the Purchaser, the date this Subcontract has been terminated in accordance with its terms, the Supplier shall keep detailed records of the Foreground Information, including supporting data, details of its creation, ownership and about any sale or transfer of any right in the Foreground Information (the **Pertinent Information**). The Supplier shall report and fully disclose to the Purchaser and Canada all Foreground Information created, whether before or after the completion of the Subcontract, by marking it as described in Section 7.11.
- 7.19 During the period referred to in Section 7.18, the Purchaser and Canada shall have the right to examine, and the Supplier shall provide the Purchaser and Canada with access to, all records and supporting data in the Supplier's or its Sub-supplier's possession or control (a) containing Pertinent Information, and (b) which the Purchaser or Canada deems reasonably pertinent to the identification of Background Information, each as required by the Purchaser or Canada to fully exercise their respective rights in the Foreground Information. Upon delivery and acceptance of the Work, the Supplier shall provide the Purchaser with a list stating which parts of the Work consist of Foreground Information and Background Information, in accordance with the Intellectual Management Plan (see Part 2 (PM) of the SOW).
- 7.20 For any Intellectual Property that was developed or created as part of the Work, the Purchaser and Canada shall be entitled to assume that it is Foreground Information if the Supplier's records do not list that Intellectual Property or do not indicate that it was developed or created by the Supplier, or by someone on behalf of the Supplier, other than the Purchaser or Canada.

#### **IP Related Claims**

- 7.21 If there is an IP Infringement Claim, the Party first learning of the IP Infringement Claim shall promptly notify the other Party in accordance with Part 2 (PM) of the SOW, and the Supplier shall:
- 7.21.1 take whatever steps are necessary to allow the Purchaser and Canada to continue to use the allegedly infringing part of the Work; or
- 7.21.2 modify or replace the Work to avoid the infringement, while ensuring that the Work continues to meet all the requirements of the Subcontract.
- 7.22 If the Supplier determines that neither of the alternatives described in Section 7.21 above can reasonably be achieved, or if the Supplier fails to take either of these steps within a reasonable amount of time, the Purchaser or Canada may take whatever steps are reasonably necessary to acquire the rights to use the allegedly infringing part(s) of the Work itself, in which case the Supplier shall reimburse the Purchaser or Canada (as applicable) for all the costs they incur to do so.
- 7.23 The Supplier acknowledges that the Deliverables will be used by Canada. If a third party claims that any Deliverable supplied under the Subcontract infringes any Intellectual Property Right, the Supplier, if requested to do so by either the Purchaser or Canada, shall defend both the Purchaser and Canada against that claim at its own expense and will pay all Damages payable as a result of that infringement. Alternatively, the Purchaser or Canada (as required by the Canadian *Department of Justice Act*) may take conduct of any suit or proceeding brought against the Purchaser or Canada in connection with an IP Infringement Claim. In either case, the Party that does not have conduct of the IP Infringement Claim (and Canada) shall have the right to participate fully in the defence and any settlement negotiations. Both Parties agree not to settle any such claim unless the other Party first approves the settlement in writing, and the Purchaser confirms that Canada has agreed to the same.
- 7.24 If either Party has rights to claim against a third party in respect of a claim against the Purchaser, Canada or the Supplier concerning Intellectual Property infringement or royalties related to the Work, the Party shall, at the other Party's or Canada's request, as the case may be, either exercise such rights to assist in the defence of the claim or shall subrogate its claim and provide all reasonable assistance to permit the other Party or Canada, as the case may be, to bring an action against the third party pursuant to such rights. Both Parties agree not to settle any such claims unless the other Party first approves the settlement in writing, and the Purchaser confirms that Canada has agreed to the same.

### Other IP Terms

- 7.25 The Purchaser may supply to the Supplier information for performance of or in connection with the Work which is not Foreground Information, and the information may include Intellectual Property of third parties. The Purchaser grants to the Supplier a license to use all such information solely for the purposes of the Subcontract and to the extent that it is reasonably necessary for the Supplier to perform its Subcontract obligations. Section 58.0 (Confidentiality) shall apply to any such information.
- 7.26 Any personal information, as defined in the *Privacy Act* (Canada) collected by the Supplier in the execution of the Work under the Subcontract becomes the property of the Purchaser or Canada, as applicable, immediately upon collection and must be used only for the performance of the Work. The Supplier has no right in any such personal information, and shall maintain the confidentiality of such personal information as required in the Subcontract. If the Work under the Subcontract involves the preparation of data or other compilation using personal information supplied by the Purchaser or Canada, the Intellectual Property Rights in the data containing personal information shall belong to the Purchaser or Canada, as applicable.

### 8.0 TKMSC Information

- 8.1 This Section 8.0 will apply if the Supplier receives any TKMSC Information in connection with the Subcontract.
- 8.2 The Supplier acknowledges that the TKMSC Information is confidential and proprietary to ThyssenKrupp Marine Systems Canada Inc. and its partners, and shall only access or use the TKMSC Information during the Term of the Subcontract and solely for the purpose of performing the Subcontract.
- 8.3 The Supplier confirms that it has executed and delivered to the Purchaser an End Use Certificate from the Federal Republic of Germany and a non-disclosure agreement, in accordance with Part 9 (SEC) of the SOW, with respect to the TKMSC Information.
- 8.4 If, in order to perform the Work, the Supplier needs to disclose the TKMSC Information to a Sub-supplier (including, for certainty, Persons who provide managerial, technical or consulting services to the Supplier in an employee-like role), the Supplier shall first obtain the Security Authority's prior written consent to such disclosure, and subject to obtaining such approval, shall, prior to disclosure of any TKMSC Information to such proposed recipient:
- 8.4.1 have the proposed recipient execute and deliver to the Security Authority an End Use Certificate from the Federal Republic of Germany and a non-disclosure agreement, in accordance with Part 9 (SEC) of the SOW, with respect to the TKMSC Information;
  - 8.4.2 require the proposed recipient to be bound to provisions consistent with those contained in this Section 8.0 and the confidentiality provisions contained in Section 58.0 (Confidentiality); and
  - 8.4.3 ensure that any access to and use of the TKMSC Information by any Sub-supplier will be solely for the purpose of performing the Sub-subcontract and only for the duration of the Sub-subcontract.
- 8.5 If, in order to perform the Work, the Supplier needs to disclose the TKMSC Information to bidders (defined as recipients of requests for proposals (*RFP*) or requests for quotes (*RFQ*) issued by the Supplier for portions of the Work), the Supplier shall first obtain the Security Authority's prior written consent to such disclosure, and subject to obtaining such approval shall, prior to disclosure of any TKMSC Information to such bidder:
- 8.5.1 have the bidder execute and deliver to the Security Authority an End Use Certificate from the Federal Republic of Germany and a non-disclosure agreement, in accordance with Part 9 (SEC) of the SOW, with respect to the TKMSC Information; and
  - 8.5.2 ensure that any access to and use of the TKMSC Information by any bidder will be solely for the purpose of preparing a response to the RFP or RFQ and only for duration of the RFP or RFQ until a contract is awarded or the RFP or RFQ is cancelled.
- 8.6 If a successful bidder becomes a Sub-supplier, the obligations of Section 8.4 above shall apply. For all other bidders, the Supplier shall require that such bidders return to the Supplier, so that the Supplier may return to Purchaser or destroy, all TKMSC Information, and any copies, extracts or summaries thereof, in accordance Section 58.0 (Confidentiality).



- 8.7 The Supplier shall only disclose that portion of the TKMSC Information that is necessary for the Sub-supplier to complete its specific Work or for the bidder to prepare and submit its bid in response to the applicable RFP or RFQ.
- 8.8 The Supplier must mark all Restricted Information, Deliverables and Foreground Information which is or contains TKMSC Information as required in Section 7.11. The Supplier shall not remove or obscure any notifications of IP Rights that are in or on the TKMSC Information, and shall require that any Sub-suppliers or bidders that receive the TKMSC Information do not remove or obscure any notifications of IP Rights that are in or on the TKMSC Information.
- 8.9 Where the Supplier discloses any TKMSC Information to a Sub-supplier or bidder, even if it does so in compliance with this Section 8.0, it shall be fully responsible for any matters or things done or provided by any Sub-supplier or bidder under the Subcontract in respect of the TKMSC Information, including compliance by each Sub-supplier and bidder with all of the provisions respecting the use, possession and return or destruction of the TKMSC Information.
- 8.10 The return or destruction of TKMSC Information shall be subject to Section 58.0 (Confidentiality).

#### **SECTION D - CONTINUITY OF SUPPLY**

##### **9.0 Continuity of Supply**

- 9.1 The Purchaser may, during the Support Period, desire to place orders for additional Deliverables or Services, or both. In such circumstances, the Supplier shall ensure that:
  - 9.1.1 the additional Goods, either in their original form, or in a mechanical, electrical and functional interchangeable form, are made available to the Purchaser and conform to the issue of the applicable drawing(s), specifications and/or part numbers specified in any order;
  - 9.1.2 the additional Services are provided and performed in accordance with the associated SOW;
  - 9.1.3 the additional Data Items are prepared and delivered in accordance with the associated SOW, SDRL and DID(s); and
  - 9.1.4 the additional Deliverables otherwise conform to the requirements of the order.
- 9.2 The Supplier shall offer all proposals for additional Deliverables or Services, or both, on a Fair and Reasonable Basis and certify the same in any such proposals.

##### **10.0 Discontinuance of the Goods**

- 10.1 During the Support Period, the Supplier shall use reasonable commercial efforts to identify any Deliverable not of its own design and/or manufacture that may be discontinued. In the event the Supplier becomes aware of such discontinuance, the Supplier shall, in accordance with Part 2 (PM) of the SOW, advise the Purchaser.

#### **SECTION E - QUALITY ASSURANCE AND CLASSIFICATION SOCIETY**

##### **11.0 Quality Assurance**

- 11.1 The Supplier shall comply with Part 5 (QA) of the SOW, including by preparing and delivering a Quality Plan in accordance with Part 5 (QA) of the SOW and ISO 10005 (Quality Management - Guidelines for Quality Plans). Once the Quality Plan has been assessed by the Purchaser as conforming to the requirements of the Subcontract, the Supplier shall implement and act in accordance with it.
- 11.2 During the performance of the Work, the Supplier and any Key Sub-suppliers shall, if applicable, either hold the following certifications or follow appropriate quality programs to the extent necessary to meet the requirements (as of Contract Award) of such certifications:
  - 11.2.1 ISO 9001 (Quality Management);
  - 11.2.2 ISO 14001 (Environmental Management Systems); and
  - 11.2.3 OHSAS 18001 (Occupational Health and Safety Management Systems).

- 11.3 For the design, development or maintenance of Software (if part of the Work), the Supplier shall interpret the requirements of ISO 9001 Quality Management Systems - Requirements, according to the guidelines of the latest issue at the date of Contract Award of ISO/IEC 90003 Software Engineering - Guidelines for the application of ISO 9001 to computer software.
- 11.4 If the Supplier receives a notice of default from the Purchaser pursuant to Section 36.1.2 for breaching an obligation or failing to comply with a requirement under this Section E, Part 5 (QA) of the SOW or the conforming Quality Plan, the Supplier shall, until otherwise notified by the Purchaser, retain an Independent QC Inspector to endorse that the Deliverables conform to the requirements of the Subcontract prior to delivering such Deliverables to the Purchaser.

## **12.0 Classification Society and Regulatory Bodies**

- 12.1 The Supplier shall ensure that the Work complies with any applicable standards, certifications, policies or requirements of the Classification Society and any other applicable Regulatory Bodies.
- 12.2 The Supplier shall identify and obtain any certifications or other approvals that are required in order to deliver the Work. Without limiting the foregoing, if specified in Part 3 (ENG) of the SOW, the Supplier shall submit the Work to the Classification Society for approval, and shall deliver Class certification or approval in respect of such Work before delivering the applicable Work to the Purchaser.
- 12.3 The Supplier shall authorize the Classification Society to release to the Purchaser and Canada, upon the written request by either, any and all correspondence in connection with the Work that is exchanged between the Classification Society and the Supplier or between the Classification Society and a Sub-supplier, in a timely manner as the Work progresses (and in any event not later than forty-five (45) days after the Purchaser's or Canada's request). The Supplier shall incorporate this requirement into any Sub-subcontracts where the nature of the Work requires correspondence with the Classification Society.

## **SECTION F - CHANGES**

### **13.0 Changes**

- 13.1 The Purchaser may, without invalidating the Subcontract, make Changes to the Work, and the Supplier may request a Change, in accordance with this Section F.
- 13.2 The Supplier shall not proceed with a Change without either a Change Order signed by both the Subcontracting Authority and the Representative of the Supplier, or a Change Direction signed by the Subcontracting Authority, and shall not be entitled to any payment for a Change without one of the foregoing.
- 13.3 The Supplier shall use all reasonable commercial efforts to minimize the effect of a Change on the delivery dates or timelines for the achievement of the Work.
- 13.4 If a Change Order or Change Direction amends an Option, the Option shall be adjusted accordingly to ensure the Purchaser maintains the benefit of the Option.
- 13.5 If the Purchaser wishes to change or substitute a Good before exercising the applicable Option, any amount agreed to be paid to the Supplier may be applied to the cost of procurement of such changed or substituted Good.

### **14.0 Changes Requested by Supplier**

- 14.1 The Supplier may request a Change by preparing and delivering a Change Request to the Subcontracting Authority in accordance with Part 2 (PM) of the SOW.
- 14.2 The Supplier shall prepare and offer all Change Requests on a Fair and Reasonable Basis and shall certify the same in any Change Requests.
- 14.3 If the Purchaser agrees to a Change Request, the Purchaser will issue a Change Order reflecting the terms of the Change Request, and the Subcontract will be amended to reflect the terms of the Change Order with effect as of the date the Change Order is signed by both Parties.

### **15.0 Changes Requested by the Purchaser**

- 15.1 The Purchaser may request a Change by delivering a notice to the Supplier setting out the scope of the requested Change.

- 15.2 Upon receiving such notice from the Purchaser, the Supplier shall, within ten (10) Business Days (subject to Section 15.6), prepare and deliver a Change Request to the Subcontracting Authority in accordance with Part 2 (PM) of the SOW, in which it shall propose the terms upon which is it prepared to carry out the Change requested by the Purchaser.
- 15.3 The Supplier shall prepare and offer all Change Requests on a Fair and Reasonable Basis and shall certify the same in any Change Requests.
- 15.4 If the Purchaser:
- 15.4.1 agrees with the Change Request, it will prepare and deliver to the Supplier a Change Order reflecting the terms of the Change Request, and upon receipt of the Change Order, the Supplier shall execute and return it within five (5) Business Days; or
  - 15.4.2 does not agree with the Change Request, or if the Supplier fails to comply with Section 15.4.1, then the Purchaser may, by issuing a Change Direction, direct the Supplier to undertake the Change described in the Change Direction, in which case, for a Change that increases the Supplier's cost to perform the Work, the Purchaser will pay the Supplier for its additional Direct Costs for carrying out the Changes pending resolution, and the delivery dates or timelines for the achievement of the Work affected by the Change will be adjusted by the Purchaser by a reasonable amount.
- 15.5 Subject to Section 15.6, no payment shall be made to the Supplier for the preparation, submission, negotiation or clarification of any Change Requests.
- 15.6 If the Purchaser asks the Supplier to prepare a Change Request under Section 15.1 concerning a significant change in the scope of the Work, and the Supplier's Costs to prepare such Change Request will exceed ten thousand dollars (\$10,000 CAD), then:
- 15.6.1 the Purchaser shall reimburse the Supplier for the Costs it reasonably incurs to prepare the Change Request (so long as the Supplier has first provided the Subcontracting Authority with a written estimate of such Costs, the Subcontracting Authority has approved such estimate in writing, and the Supplier's actual Costs are in line with such approved estimate); and
  - 15.6.2 the timeline stipulated in Section 15.2 for submitting the Change Request shall be extended by a reasonable amount of time having regard to the nature and complexity of the particular Change requested by the Purchaser.

#### **SECTION G - IDENTIFICATION, PACKAGING AND SHIPPING DOCUMENTATION**

##### **16.0 Identification, Marking and Labelling**

16.1 The Supplier shall identify, mark and label the Goods in accordance with Part 12 (LOG) of the SOW.

##### **17.0 Packaging and Protection**

17.1 The Supplier shall pack and protect the Goods in accordance with Part 12 (LOG) of the SOW.

##### **18.0 Shipping Documentation**

18.1 The Supplier shall provide the shipping documentation as required by Part 12 (LOG) of the SOW.

18.2 The Supplier shall, in accordance with Part 10 (HSE) of the SOW, clearly indicate on all consignments of the Goods all safety precautions required for their handling as required by Applicable Law.

#### **SECTION H - DELIVERY**

##### **19.0 Delivery of Goods**

19.1 Following the successful completion of each FAT (or equivalent test) required under the Subcontract and the Rectification of any Defects (if any), the Supplier shall, in accordance with Part 5 (QA) of the SOW, advise the Quality Authority and the Subcontracting Authority that the Goods are Ready For Shipping at the Supplier's facilities beginning from a stated date (such date being the **Ready For Shipping Date**).

- 19.2 The Supplier shall ensure that the Ready For Shipping Date for a given Good is no later than the end of the applicable Manufacturing Lead Time for that Good.
- 19.3 Upon receipt of a COI for Goods, the Supplier shall proceed to package and mark those Goods specified in the COI and deliver them in accordance with the Shipping Terms within the COI Period for Goods.
- 19.4 The Purchaser may change the Shipping Terms for any Good or Goods from Delivery at Place (DAP) Point of Delivery per INCOTERMS 2010 to Free Carrier (FCA) Point of Pick Up per INCOTERMS 2010 by notice to the Representative of the Supplier delivered concurrently with, or at any time prior to, the delivery of a COI for Goods in respect of such Good or Goods. In such circumstances, the Subcontract Price will be adjusted in accordance with section G6.0 (Adjustments to Subcontract Price) of Schedule G.
- 19.5 If any Deliverable or part thereof is to be imported into Canada, the Supplier shall obtain all necessary export licenses from the country of origin and shall be responsible for meeting all importation regulations, in each case within sufficient time to allow it to deliver the Deliverables when required under the Subcontract.
- 19.6 If the Deliverables include Software as a standalone Deliverable (as opposed to being embedded in the Equipment):
- 19.6.1 The Supplier shall deliver the Software on the Media of the Purchaser's choice from among those the Supplier makes available to its other customers (for example, CD-ROM or Internet download). The Purchaser or Canada may distribute such Software on their own choice of Media. The Purchaser shall own the Media once it has been delivered to and accepted by or on behalf of the Purchaser.
  - 19.6.2 The Supplier shall ensure that the Media is: (a) compatible with the computer systems, as detailed in the Subcontract, on which the Licensed Programs or Custom Software will be installed, and (b) free from computer viruses at the time of delivery.
  - 19.6.3 The Supplier shall ensure that the Software does not contain any Disabling Codes, unless such Disabling Codes are disclosed in advance and all such passwords, authorization codes or similar information that are necessary for the Purchaser or Canada to exercise all of their rights hereunder are provided to the Purchaser with the Software.
  - 19.6.4 If it is determined that a Disabling Code is contained within the Software, the Supplier shall immediately remove or disable, or have removed or disabled, such codes and, in the interim, the Supplier shall provide to the Purchaser, in advance, on an ongoing basis, all the information respecting Disabling Codes required by the Purchaser or Canada to continue to use the Software, all at no additional cost to the Purchaser or Canada.

## **20.0 Delivery of Data Items and Services**

- 20.1 The Supplier shall deliver the Data Items, in "soft" or electronic format, in accordance with the requirements set out in Part 1 (INTRO) of the SOW and Schedule D2. If any Data Items are only commercially available in hard copy, the Supplier shall provide them in scanned Adobe PDF searchable format.
- 20.2 The Supplier shall perform any required Services at the locations specified in the Subcontract (if applicable) and in accordance with any timelines specified in the Subcontract. With respect to any Services to be performed at the Purchaser's Premises, the Supplier shall, upon receipt of a COI for Services, commence the specified Services within the COI Period for Services.
- 20.3 If the Supplier or any of its Sub-suppliers perform any Services at the Purchaser's Premises, the Supplier shall (and shall cause any applicable Sub-suppliers to):
- 20.3.1 provide a current WCB Clearance Letter in accordance with Part 2 (PM) of the SOW;
  - 20.3.2 comply with the Purchaser's health, safety and environment requirements in accordance with Part 10 (HSE) of the SOW; and
  - 20.3.3 comply with the Purchaser's security clearance requirements in accordance with Part 9 (SEC) of the SOW.

## 21.0 Delays

- 21.1 If the Supplier anticipates not being able to deliver a Deliverable or perform a Service when required under the Subcontract, it shall notify the Purchaser by submitting a Red Flag Report and Recovery Plan in accordance with Part 2 (PM) of the SOW.
- 21.2 A delay in the performance by the Supplier of any obligation under the Subcontract that is caused by an event that:
- 21.2.1 is beyond the reasonable control of the Supplier;
  - 21.2.2 could not reasonably have been foreseen and prevented by means reasonably available to the Supplier; and
  - 21.2.3 occurred without the fault or neglect of the Supplier or anyone for whom it is responsible,
- will be considered an **Excusable Delay**.
- 21.3 For greater certainty, an “event beyond the reasonable control of the Supplier”, for the purposes of Section 21.2.1, includes:
- 21.3.1 a delay caused by the Purchaser’s failure to perform its obligations under the Subcontract;
  - 21.3.2 a delay caused by another supplier to the Purchaser; and
  - 21.3.3 a delay caused by a strike, walk-out, work stoppage, lockout, stoppage of labour, deliberate work slowdown or other labour disturbance,
- but does not include a lack of financial resources of the Supplier.
- 21.4 A delay by a Sub-supplier will only constitute an Excusable Delay for the Supplier if each of the following applies:
- 21.4.1 the Sub-supplier’s delay meets the criteria set out in this Section 21.0 for an Excusable Delay by the Supplier;
  - 21.4.2 the Sub-supplier’s delay has not been caused by the Supplier; and
  - 21.4.3 the event giving rise to the Sub-supplier’s delay occurred after the Supplier engaged such Sub-supplier.
- 21.5 Subject to Section 21.6, any delivery date or other date or obligation that is directly affected by an Excusable Delay shall be postponed for a period of time reasonably necessary having regard to the impact of the event on the Work, or until the Parties reach agreement on a Recovery Plan pursuant to Section 21.7.
- 21.6 The Supplier shall not have the benefit of Section 21.5 unless it notifies the Subcontracting Authority of the Excusable Delay by preparing and delivering a Red Flag Report and Recovery Plan for each occurrence in accordance with Part 2 (PM) of the SOW, and unless it has used, and continues to use, all reasonable commercial efforts to minimize its impact.
- 21.7 If negotiations are required with respect to the Recovery Plan, the Parties shall negotiate in good faith with the common intention of minimizing the impact of the Excusable Delay on the Subcontract. When a Recovery Plan has been agreed upon, the Parties shall amend the Subcontract to reflect such agreement.
- 21.8 The Purchaser shall provide reasonable schedule relief and pay the Costs incurred by the Supplier to implement the jointly agreed Recovery Plan to respond to an Excusable Delay if: (a) the Excusable Delay was caused by the circumstances described in Section 21.3.1 or 21.3.2; or (b) Canada has accepted such Costs as payable to respond to the Excusable Delay under the Prime Contract. In all other cases, such Costs shall be paid by the Supplier.

## SECTION I - TITLE AND RISK OF LOSS

### 22.0 Transfer of Title

- 22.1 Title to the Goods, Data Items and other documentation delivered under the Subcontract shall pass to the Purchaser upon the earlier of: (a) delivery of the given item to the Purchaser in accordance with the Subcontract; or (b) any payment being made to the Supplier for or on account of the given item.
- 22.2 Upon transfer of title in accordance with Section 22.1, the Supplier shall, if requested by the Purchaser, establish to the Purchaser’s satisfaction that the title is free and clear of all claims, liens, attachments, charges or encumbrances. The Supplier shall execute, and cause its Sub-suppliers to execute, any conveyances and other instruments necessary to perfect the title that the Purchaser may require.

22.3 Despite any law in force in any province or territory of Canada, the Purchaser and Canada are each entitled, at any time, to remove, sell or dispose of any Goods or Data Items that the Supplier has been paid for and any Issued Property.

22.4 The transfer of title does not constitute acceptance of a Deliverable.

### **23.0 Encumbrances on Title**

23.1 The Supplier shall not permit nor allow any right, lien or encumbrance to be placed upon the Work or any Issued Property, or any part thereof, including any work-in-progress, to the extent caused by the Supplier or a Sub-supplier. If any right, lien or encumbrance is so placed, the Supplier shall promptly take whatever steps or proceedings are necessary to have such right, lien or encumbrance removed.

23.2 If a statutory lien is filed against any Good, whether in the custody of the Supplier or a Sub-supplier, and the Supplier has failed to have the lien claim withdrawn, set aside, removed or discharged within thirty (30) days, the Purchaser shall have the right to make payment directly to a Sub-supplier in order to have the lien removed, and to withhold any amount so paid from any payment due to the Supplier. If the Supplier has commenced a bona fide dispute with respect to the lien of which the Purchaser has been advised, the Purchaser must consult with the Supplier and give due consideration to its concerns before making the payment.

### **24.0 Transfer of Risk of Loss**

24.1 Despite any transfer of title, the risk of loss of or damage to the Goods shall transfer to the Purchaser in accordance with the Shipping Terms (except that the Supplier shall remain responsible after delivery for any loss of or damage to the Goods caused by the Supplier or any of its Sub-suppliers).

## **SECTION J - ACCEPTANCE**

### **25.0 Acceptance**

25.1 All Work is subject to acceptance by the Purchaser and (if applicable) Class or other applicable Regulatory Bodies.

25.2 Acceptance of the Work shall be determined in accordance with this Section J. The acknowledgement of delivery of, or payment for, any Work by or on behalf of the Purchaser shall not constitute acceptance of such Work, and the acceptance of any Work by the Purchaser or anyone else shall not relieve the Supplier of its obligation to deliver Work meeting the requirements of the Subcontract or its warranty obligations.

25.3 The Supplier shall prepare and submit to the Purchaser, for the Purchaser's review and assessment, an Acceptance Test Plan in accordance with Part 3 (ENG) of the SOW, and once the Acceptance Test Plan has been assessed by the Purchaser as conforming to the requirements of the Subcontract, all Acceptance Events shall be planned and carried out in accordance with the Acceptance Test Plan.

25.4 Goods: Acceptance of a Good by the Purchaser shall occur upon:

25.4.1 delivery of the Good to the Purchaser as specified in the Subcontract;

25.4.2 delivery of a Certificate of Conformance by the Supplier prepared in accordance with Part 5 (Quality Assurance) of the SOW;

25.4.3 successful completion of all Acceptance Events as evidenced by the delivery of the Acceptance Methods relating to the Good;

25.4.4 Rectification of Defects (if any) in the Good; and

25.4.5 delivery of all Data Items identified in Part 4 (ILS) of the SOW relating to the Good.

25.5 Data Items: Acceptance of a Data Item by the Purchaser shall occur once the Purchaser has assessed the Data Item as conforming to the requirements of the Subcontract and advised the Supplier in writing that the Data Item conforms to the requirements of the Subcontract.

25.6 Services: Acceptance of a Service by the Purchaser shall occur once the Supplier has notified the Subcontracting Authority that it has completed the Service and the Purchaser has confirmed in writing that the Service has been completed in accordance with the applicable Subcontract requirements.



**26.0 Rejection of Defective Work**

- 26.1 The Purchaser may reject any Work or part thereof that is Defective at any time prior to Acceptance thereof or the end of the applicable Warranty Period.
- 26.2 Section 33.0 (Defect Rectification) shall apply to any Work that is rejected pursuant to Section 26.1, and the Supplier shall not be entitled to payment for any Defective Work until such work is Rectified in accordance with the Subcontract.

**SECTION K - STORAGE, CARE, PROTECTION AND MAINTENANCE**

**27.0 Storage, Care, Protection and Maintenance**

- 27.1 Subject to Section 27.2, the Supplier shall store, maintain, protect and preserve the Goods at its facilities (or those of its Sub-suppliers) until it delivers such Goods to the Purchaser in accordance with the Subcontract.
- 27.2 If the Purchaser has not requested the delivery of a given Good by providing a COI for Goods in respect of that Good by the end of the applicable Storage Period, the Supplier may proceed to deliver that Good in accordance with the Shipping Terms, unless the Parties agree otherwise by way of a Change Order.
- 27.3 Notwithstanding the delivery of the Goods to the Purchaser, the Supplier shall continue to be responsible for their maintenance until they are Accepted by the Purchaser.

**28.0 Issued Property**

- 28.1 The Supplier shall take reasonable and proper care of any Issued Property while it is in its possession or subject to its control, and is responsible for any loss or damage resulting from its failure to do so, other than ordinary wear and tear.
- 28.2 The Supplier shall only use Issued Property for the purpose of the Subcontract. All such property remains the property of the Purchaser or Canada (as applicable) and, unless it is installed or incorporated in the Work, must be returned to the Purchaser or Canada (as applicable) on demand.

**SECTION L - ACCESS, INSPECTION AND PROGRESS REPORTING**

**29.0 Access**

- 29.1 At the Purchaser's request, and upon reasonable notice, the Supplier shall provide the Purchaser, Canada, their respective consultants and any applicable Regulatory Bodies (collectively, the **Interested Persons**) with access to any Work at the Supplier's or its Affiliate's facilities at any time during working hours and on a non-interference basis.
- 29.2 The Supplier shall also ensure that the Interested Persons have access, upon reasonable notice, to any Work at a Sub-supplier's facilities to the extent available to the Supplier, and at minimum while any Acceptance Event or inspection is being conducted (except that Regulatory Bodies shall have access to any Work at a Sub-supplier's facilities, upon reasonable notice, at any time during working hours).
- 29.3 At the Purchaser's request, and upon reasonable notice, the Supplier shall permit the Interested Persons to examine any designs, drawings, models or specifications completed or under preparation by it or its Sub-suppliers in connection with the Subcontract.
- 29.4 The Supplier shall ensure its personnel and its Sub-supplier's personnel (if applicable), provide such assistance, explanations and other information as may be reasonably requested by the Interested Persons for the purpose of reviewing, inspecting or testing the Work.
- 29.5 If any direct discussions between the Supplier or a Sub-supplier and a consultant to the Purchaser or Canada are required which involve the disclosure of confidential information by the Supplier or its Sub-supplier to such consultant, then, at the Supplier's written request made to the Subcontracting Authority, the Purchaser shall first deliver to the Supplier a non-disclosure agreement substantially in the form of Attachment F to Schedule H (Purchaser's Forms) signed by such consultant(s) prior to such discussions, except that, in respect of the disclosure of such information to an accounting firm in order that the Purchaser or Canada may exercise their audit rights under the Subcontract, the Purchaser's obligation shall only be to use reasonable efforts to obtain such non-disclosure agreement. Nothing herein restricts or otherwise affects the Purchaser's or Canada's license to Background Information pursuant to Section 7.0 (Intellectual Property Rights).

29.6 The rights of access under this Section 29.0 include the right to take photographs of the Work (such photographs are subject to inspection and censor by the Supplier or applicable Sub-supplier to ensure they depict only the Work and are not for public release unless approved in writing by the Supplier or applicable Sub-supplier).

### 30.0 Inspections / Testing

30.1 All Work supplied or performed under the Subcontract is subject to review, inspection and testing by Interested Persons, upon reasonable notice to the Supplier.

30.2 The Supplier shall prepare and deliver to the Purchaser an Inspection and Test Plan (**ITP**) in accordance with Part 5 (QA) of the SOW. Once the ITP has been assessed by the Purchaser as conforming to the requirements of the Subcontract, all inspections, tests and hold points shall be planned and carried out in accordance with such ITP.

30.3 The Supplier shall, in accordance with the notification requirements in Part 5 (QA) of the SOW, notify the QA Authority and the Subcontracting Authority of any Hold, Witness or Review event in advance of each event so that the Purchaser or Canada may make arrangements to attend.

30.4 Any review, inspection, test, return of comments, audit, failure to discover a Defect, concurrence (express or implied) or acceptance of any Work (including taking title to any Work) by the Purchaser or anyone else shall not relieve the Supplier of its obligation to deliver Work meeting the requirements of the Subcontract.

### 31.0 Project Reviews, Progress Reporting and Duty to Notify

31.1 The Supplier shall, in accordance with Part 2 (PM) of the SOW, present Project Reviews, complete data input sheets, and prepare and deliver Data Items relating to the progress of the Work.

31.2 The Supplier shall, in accordance with Part 2 (PM) of the SOW, immediately advise the Subcontracting Authority of any significant incidents in connection with the Work (a **Significant Event Advice**), including: (a) an accident involving harm to personnel or to facilities; (b) any event that materially impacts, or could reasonably be expected to materially impact cost or quality, including any indication of labour problems which may bring about a strike, lockout or work slowdown; (c) any liens or other encumbrances placed on the Work; (d) any actual or threatened legal proceedings by a third party that could materially affect the Work; or (e) an event that creates media interest in respect to the Project. To the extent known at the time, the Supplier must indicate the nature of the incident, its possible effect on the conduct and performance of the Work and the respective contractual obligations of the Supplier and the Purchaser, and any proposed solutions, preventive actions or work around or damage control plans.

## SECTION M - WARRANTIES AND DEFECT RECTIFICATION

### 32.0 Warranty

32.1 Despite any inspection, review or acceptance of the Work by or on behalf of the Purchaser or Canada, and without restricting any other provision of the Subcontract, the Supplier warrants that, for the applicable Warranty Period, the Goods and any other Work shall be free from all Defects and shall conform to the Technical Requirements and all other requirements of the Subcontract (the **Warranty**).

32.2 The Purchaser may assign its rights under the Warranty to Canada or any entity designated by Canada, at no additional cost.

32.3 In addition to the foregoing, the Supplier shall identify and provide copies of all applicable warranties, guarantees, and similar rights in respect of the Goods and Data Items that are provided by the original equipment manufacturer (if not the Supplier) and any other Sub-suppliers (collectively, the **Original Warranties**), in accordance with Part 2 (PM) of the SOW, and shall:

32.3.1 ensure that all Original Warranties are freely assignable to the Purchaser and Canada, without additional cost to either;

32.3.2 at the Purchaser's request, assign such Original Warranties to the Purchaser or Canada (as directed in writing by the Purchaser); and

32.3.3 at the Purchaser's or Canada's request, assist with the exercise or enforcement of any rights held under an Original Warranty.



- 32.4 The Warranty and any applicable Original Warranties are in lieu of, and the Purchaser hereby waives, all implied warranties relating the Goods including, those relating to merchantability or fitness for a particular purpose or function, whether arising out of statute, law, equity, course of dealing, usage of trade or otherwise, but in doing so, the Purchaser does not waive any other express rights or warranties provided for under this Subcontract.
- 32.5 The Warranty and any applicable Original Warranties, together with the provisions of Section 33.0 (Defect Rectification) below, collectively constitute the Purchaser's sole and exclusive remedies under this Subcontract in respect of a Defect identified during the Warranty Period.
- 32.6 The Supplier represents and warrants that the terms of the Warranty, including the length of the Warranty Period, are no less favourable to the Purchaser than the Supplier's standard warranty terms.

### **33.0 Defect Rectification**

- 33.1 Subject to Section 33.2, if a Defect in any part of the Work is identified prior to the expiry of the applicable Warranty Period, the Purchaser may issue a Non-Conformance Report to the Supplier.
- 33.2 For Defects in the Goods identified during the Warranty Period, the Supplier shall not be liable for Defects caused solely by:
- 33.2.1 the failure of the Purchaser or Canada to comply with the Supplier's or applicable OEM's reasonable instructions for the operation, maintenance and repair of the Goods or portion of them to which such instructions applied;
  - 33.2.2 alterations to the Goods which are not approved by the Supplier (provided that approval is not unreasonably withheld);
  - 33.2.3 Defects arising from the negligence of any person during the Warranty Period, except the negligence of the Supplier or its representatives; and
  - 33.2.4 normal wear and tear, accidental damage or acts of God,
- in each case so long as the Supplier or one of its Sub-suppliers is not responsible.
- 33.3 Upon receipt of a Non-Conformance Report, the Supplier shall, within the timeframe stipulated therein (which timeframes shall be reasonable in light of the nature of the Defect or Defects):
- 33.3.1 With respect to Defects in Deliverables (other than Software) or Services, complete such Rectification of the Defect as is necessary to eliminate the Defect, and such Rectification shall be made to both delivered and to-be-delivered Deliverables (as applicable) in order to maintain Compatibility of the Work.
  - 33.3.2 With respect to any Defects in Software:
    - 33.3.2.1 set out in such detail as may be available, the nature of the Defect and the circumstances in which it manifests itself;
    - 33.3.2.2 state whether the Supplier is able to confirm the existence of the Defect and, where a Defect is acknowledged, propose a remedy which may in the first instance constitute a Software correction, an up-issue or amendment to the Software and/or Data Item(s) relating to the Software in accordance with Part 3 (ENG) of the SOW, or other interim solution to enable the Software to function safely and correctly;
    - 33.3.2.3 where an interim solution is offered, the Supplier shall, within a reasonable period of time from being advised of the Defect, provide the Purchaser with a revised or corrected version of the Software or and/or associated Data Item(s); and
    - 33.3.2.4 replace, where possible, all lost or corrupted data caused by the Defect as soon as practicable in the circumstances.
  - 33.3.3 With regard to all Defects:
    - 33.3.3.1 re-conduct, at its own cost and risk, all tests and trials as are necessary in the circumstances in respect of the Rectified Work as soon as practicable after the Rectification is complete;
    - 33.3.3.2 ensure that the Compatibility of the Work obligation is satisfied with respect to all Deliverables; and

- 33.3.3.3 conduct an analysis of the Defect to determine its root cause and take all reasonable measures to ensure that it does not re-occur.
- 33.4 Defective Work shall be returned to the Supplier's facilities for Rectification. However, if, in the Purchaser's reasonable opinion, it is not expedient to remove the Defective Work from its location, the Supplier shall carry out the necessary Rectification at such location. The Supplier is responsible for all costs associated with the Rectification, removal, transportation, re-installation and re-testing (as the case may be) of the Defective Work. Notwithstanding the foregoing, if the Supplier is required to Rectify the Defective Work at its then current location (i.e. not at its own facilities or those of a Sub-supplier), and such location is not within Canada or Canadian waters, then the Purchaser shall pay the Supplier's (or Sub-supplier's, as applicable) associated travel and living expenses in accordance with Part E of Schedule G.
- 33.5 When the Defects have been corrected by the Supplier and the related Work has been re-inspected and the corrective actions accepted by the Purchaser, the Subcontracting Authority will notify the Supplier that the corrective actions have been accepted.
- 33.6 If the Supplier objects to a Non-Conformance Report, the Supplier shall, within ten (10) Business Days of receipt of the Non-Conformance Report and in accordance with Part 2 (PM) of the SOW, deliver an Objection Advice to the Purchaser, failing which the Supplier shall be deemed to have agreed with the contents of the Non-Conformance Report.
- 33.7 The Supplier shall Rectify all other Deliverables pertaining to or affected by any correction or replacement under this Section 33.0, including by updating or revising any affected Data Items, at no cost to the Purchaser.
- 33.8 If the Supplier fails to fulfill any obligation described in this Section 33.0 within a reasonable amount of time of receiving notice from the Purchaser to do so, the Purchaser shall have the right to Rectify or to have Rectified the applicable Defect at the Supplier's expense, not to exceed the reasonable cost of such Rectification.
- 33.9 The Warranty Period shall be automatically extended by the duration of any period or periods where the Work is unavailable for use or cannot be used because of a Defect identified during the original Warranty Period. The Warranty applies to any part of the Work Rectified pursuant to this Section 33.0, for the greater of:
- 33.9.1 the Warranty Period remaining, including the extension; or
- 33.9.2 ninety (90) days or such other period as may be specified for that purpose by agreement between the Parties.

#### **SECTION N - CLAIMS AGAINST THE PURCHASER**

##### **34.0 Claims**

- 34.1 If the Supplier believes it has grounds for a Claim against the Purchaser, the Supplier shall, in accordance with Part 2 (PM) of the SOW, deliver a Claims Advice within thirty (30) days of the date the Supplier knew of the potential for a Claim.
- 34.2 Within thirty (30) days of delivering a Claim Advice, the Supplier shall, in accordance with Part 2 (PM) of the SOW, deliver all documents in its possession or control at that time supporting each Claims Advice.
- 34.3 The Supplier shall not make any Claim against the Purchaser unless such Claim is declared within the timeframes prescribed in Section 34.1 and supported in accordance with the requirements of Section 34.2.

#### **SECTION O - TERMINATION AND REMEDIES**

##### **35.0 Termination for Convenience**

- 35.1 At any time before the completion of the Work, the Purchaser may, by giving written notice to the Supplier, terminate the Subcontract or part of the Subcontract for convenience. Once such a notice of termination for convenience is given, the Supplier shall comply with the requirements of the termination notice. If the Subcontract is terminated in part only, the Supplier shall proceed to complete any part of the Work that is not affected by the termination notice. The termination will take effect immediately or, as the case may be, at the time specified in the termination notice.
- 35.2 If a termination notice is given pursuant to Section 35.1, the Supplier will be entitled to be paid for costs that have been reasonably and properly incurred to perform the Work, to the extent that the Supplier has not already been paid or reimbursed by the Purchaser. The Supplier will be paid:

- 35.2.1 on the basis of the Subcontract Price, for all completed Work that is Accepted in accordance with the Subcontract, whether completed before or after the termination in accordance with the instructions contained in the termination notice;
  - 35.2.2 the Cost to the Supplier plus a fair and reasonable profit (based on the Rates or Mark-ups, as applicable, set out in Schedule G) for all Work terminated by the termination notice before completion; and
  - 35.2.3 all Costs incidental to the termination of the Work incurred by the Supplier but not including the cost of severance payments or damages to employees whose services are no longer required, except wages that the Supplier is obligated by statute to pay.
- 35.3 The Purchaser may reduce the payment in respect of any part of the Work, if upon inspection, it does not meet the requirements of the Subcontract.
- 35.4 The total of the amounts, to which the Supplier is entitled to be paid under this Section 35.0, together with any amounts paid, due or becoming due to the Supplier shall not exceed the Subcontract Price. The Supplier will have no claim for damages, compensation, loss of profit, or allowance arising out of any termination notice given by the Purchaser under this Section 35.0, except to the extent that this section expressly provides.

### **36.0 Termination for Default**

- 36.1 The Purchaser may immediately terminate the Subcontract, or any part of the Subcontract, upon written notice of termination for default to the Supplier in the following circumstances:
- 36.1.1 if any representation or certification made or given by the Supplier in Section 1.1.2, 1.1.3, 1.1.6, 1.1.7, or 53.1 is incorrect;
  - 36.1.2 if the Supplier is in default in carrying out any of its material obligations, or otherwise breaches a material provision applicable to it under the Subcontract, and the Supplier has not remedied such default or breach within ten (10) Business Days of receiving written notice of the default or breach from the Purchaser; or
  - 36.1.3 if the Supplier 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 if a receiver is appointed under a debt instrument, a receiving order is made against the Supplier, or an order is made or a resolution passed for the winding up of the Supplier, in each case to the extent permitted by the applicable legislation.
- 36.2 If the Purchaser gives notice of termination under Section 36.1, the Supplier shall have no claim for further payment except as provided in Section 36.3, and the Supplier shall be liable to the Purchaser for any amounts paid by the Purchaser and for Damages suffered by the Purchaser because of the default or occurrence upon which the notice or termination was based, including any increase in the cost reasonably incurred by the Purchaser in procuring the Work from another source.
- 36.3 Upon termination of the Subcontract under this Section 36.0, the Purchaser may require the Supplier to deliver to the Purchaser any completed parts of the Work that had not been delivered and Accepted before the termination and anything the Supplier has acquired or produced specifically to perform the Subcontract. In such a case, subject to the deduction of any claim that the Purchaser may have against the Supplier arising under the Subcontract or out of the termination, the Purchaser shall pay or credit to the Supplier the value of all completed parts of the Work delivered to and Accepted by the Purchaser, based on the Subcontract Price and subject to the other terms of the Subcontract. Title to everything for which such payment is made to the Supplier shall, once payment is made, pass to the Purchaser unless it already belongs to the Purchaser or Canada under any other provision of the Subcontract.
- 36.4 Upon termination under this Section 36.0, the Purchaser and/or Canada, or their agents, shall have the immediate right to enter the Supplier's facilities where the Work is situated or being performed, without first obtaining a court order, to take possession of the property of the Purchaser and/or Canada, including, but not limited to, work-in-process located at the facilities, and to perform any further work required to enable the property to be removed from other facilities.
- 36.5 If the Subcontract or part of the Subcontract is terminated under this Section 36.0, but it is later determined that grounds did not exist for a termination under Section 36.0, the notice of termination given under this Section 36.0 shall be considered a notice of termination for convenience issued under Section 35.0 (Termination for Convenience).

### **37.0 Survival**

37.1 Any obligations and duties which by their nature extend beyond the expiration or termination of the Subcontract shall survive the expiration or termination of the Subcontract, including all warranties (subject to the applicable Warranty Period) and indemnities.

### **38.0 Assignment of Sub-Subcontracts**

38.1 The Supplier shall ensure that any Key Sub-subcontracts are fully assignable, at no additional cost, to the Purchaser and further assignable from the Purchaser to Canada (and its successors and their respective servants, agents, contractors and permitted assigns).

38.2 If the Purchaser terminates the Subcontract, the Supplier shall, at the Purchaser's election, assign and otherwise transfer absolutely to the Purchaser all rights, title and interest held by the Supplier, permanently and irrevocably, in and to any Key Sub-subcontracts, including interest in any and all monies, monetary credits or deposits which have been paid to a Sub-supplier under or in respect of any Key Sub-subcontract.

### **39.0 Indemnity**

39.1 Each Party (the **Indemnifying Party**) shall indemnify, defend and hold harmless the other Party (the **Indemnified Party**) and the other Party's Affiliates, directors, officers, customers, agents, employees and contractors (collectively with the Indemnified Party, the **Indemnified Persons**) from and against any third party Claims asserted against, or Damages suffered by, any Indemnified Person as a result of, in respect of, connected with, or arising out of:

39.1.1 any incorrectness or breach of any representation or warranty made by the Indemnifying Party in the Subcontract;

39.1.2 any breach or non-fulfillment by the Indemnifying Party of any covenant, condition or obligation of the Indemnifying Party contained in the Subcontract;

39.1.3 the negligence or willful misconduct of the Indemnifying Party or its employees, agents, representatives or Sub-suppliers; and/or

39.1.4 with respect to the Supplier's obligation to indemnify the Purchaser and its Indemnified Persons, product liability claims relating to the Work, including any death or bodily injury to any Person, destruction or damage to property, or contamination of the environment and any associated clean-up costs.

39.2 The Indemnified Party hereby accepts each indemnity in favour of the other Indemnified Persons as agent and trustee for and on their behalf, the Purchaser may enforce an indemnity in favour of the other Indemnified Persons on behalf of each such Person.

### **40.0 Exclusion of Liability**

40.1 Notwithstanding anything else in the Subcontract, neither Party shall be liable to the other for any indirect, special or consequential damages (including for loss of revenue or profit, loss of future business opportunities or loss of reputation).

40.2 For certainty, Section 40.1 does not exclude liability for third party Claims, and each Party agrees that it is fully liable for any Damages that it causes to any third party, including Canada and the Purchaser's other suppliers, in connection with the Subcontract.

### **41.0 Additional Rights and Remedies**

41.1 Unless expressly stated otherwise, the rights and remedies under the Subcontract are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise. No single or partial exercise by a Party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that Party may be entitled.

## **SECTION P - ISSUES MANAGEMENT, DISPUTES, GOVERNING LAW AND JURISDICTION**

### **42.0 Issues Management**

42.1 If an issue arises between the Parties, then, in such circumstances, the affected Party shall, in accordance with Part 2 (PM) of the SOW, enter the Issue onto the Action Item and Issues Database.

#### 43.0 Disputes

- 43.1 The Parties agree to discuss and cooperate with each other to attempt to resolve any Disputes. Should the Parties be unable to resolve a Dispute, they shall follow the following procedures:
- 43.1.1 Disputes shall in the first instance be resolved by the Subcontracting Authority and the Representative of the Supplier (together with their respective procurement and/or commercial directors, or equivalent) within fifteen (15) Business Days or such additional time as may be agreed to by the Parties.
- 43.1.2 Failing resolution under Section 43.1.1 above, the Purchaser's President and the Subcontractor's highest corporate officer in, or responsible for its operations in, Canada shall attempt to resolve the Dispute within an additional fifteen (15) Business Days or such additional time as may be agreed to by the Parties.
- 43.1.3 Failing resolution under Section 43.1.2 above, the Parties may submit the Dispute to such higher levels of authority within their organizations as the Parties may agree.
- 43.2 Notwithstanding the above procedure, either Party may seek a decision through the courts at any time during the Dispute.
- 43.3 While a Dispute is being resolved, the Parties shall nevertheless continue the timely performance of their obligations so that no Dispute shall in any way adversely affect the performance of the Work.

#### 44.0 Governing Law and Jurisdiction

- 44.1 The Subcontract shall be governed and interpreted by the laws of British Columbia and laws of Canada applicable therein. The applicability of the UN Convention on Contracts for the International Sale of Goods and the *International Sale of Goods Act* (British Columbia) are hereby expressly waived by the Parties and shall not apply to the Subcontract.
- 44.2 Each Party irrevocably attorns and submits to the exclusive jurisdiction of the Supreme Court of British Columbia with respect to any Dispute between the Parties, except that either Party is at liberty to join the other Party in an action or proceeding initiated by a third party (including Canada) in the Federal Court of Canada, in which case the Federal Court of Canada will also have jurisdiction to resolve any Dispute between the Parties related to the action brought or proceeding initiated by a third party.

### SECTION Q - FINANCIAL ARRANGEMENTS

#### 45.0 Subcontract Price

- 45.1 In consideration of the Work, the Purchaser shall pay the Supplier the Subcontract Price (as calculated pursuant to Part B of Schedule G), plus any Applicable Taxes.
- 45.2 If the Purchaser does not exercise Option 3 (Build Phase - Main Equipment - Ship 1) within twenty-four (24) months of Contract Award, the Supplier shall reimburse any amounts paid by the Purchaser in respect of Option 1 (Design Services and Vendor Furnished Information) or for obtaining the Options.

#### 46.0 Limitation of Price

- 46.1 The Subcontract Price shall be the entire compensation owing to the Supplier for the Work and includes all costs and expenses incurred by the Supplier whatsoever in performing the Work.

#### 47.0 Method of Payment and Payment Claims

- 47.1 The Purchaser shall pay the Supplier the Subcontract Price in accordance with the method(s) of payment set out in Part C of Schedule G and the payment claims process set out in Part F of Schedule G.
- 47.2 The Purchaser has the right to satisfy any payments owing by it to the Supplier by way of set-off against any amount from time to time owing by the Supplier to the Purchaser, including the amount of any claim for indemnification pursuant to Section 39.0 (Indemnity).
- 47.3 The Purchaser shall pay to the Supplier simple interest at the Average Rate plus three percent (3%) per year on any payments it is required to make to the Supplier under the Subcontract that are Overdue, beginning from the date that amount becomes Overdue until the day before the Date of Payment, inclusive.

**48.0 Price Certification**

48.1 Not used.

**49.0 Discretionary Audit**

49.1 Not used.

**SECTION R - INSURANCE**

**50.0 Insurance**

50.1 The Supplier shall comply with the insurance requirements specified below and shall maintain the required insurance coverage for the Term. Compliance with this Section R does not release the Supplier from or reduce its liability under the Subcontract.

50.2 The Supplier is responsible for deciding if additional insurance coverage is necessary to fulfill its obligations under the Subcontract and to ensure compliance with any Applicable Law. Any additional insurance coverage is at the Supplier's expense, and for its own benefit and protection.

50.3 The Supplier shall deliver a Certificate of Insurance evidencing the insurance coverage and confirming that an insurance policy complying with the requirements is in force in accordance with Part 2 (PM) of the SOW. Coverage must be placed with an insurer licensed to carry out business in Canada.

**50.4 Worker's Compensation Insurance**

The Supplier shall maintain its account in good standing with the applicable provincial or territorial Workers' Compensation Board for the duration of any Work undertaken at the Purchaser's Premises. If the Supplier is assessed any additional levy, extra assessment or super-assessment by a Worker's Compensation Board, as a result of an accident causing injury or death to an employee of the Supplier or Sub-supplier, or due to unsafe working conditions, then such levy or assessment must be paid by the Supplier at its sole cost.

**50.5 Commercial General Liability**

50.5.1 The Supplier shall obtain Commercial General Liability Insurance, and maintain it in force throughout the Term, in an amount usual for a contract of this nature, but for not less than five million dollars (\$5,000,000 CAD) per accident or occurrence and in the annual aggregate.

50.5.2 The Commercial General Liability policy must include the following:

(a) Additional Insured: Canada and the Purchaser are added as an additional insured, but only with respect to liability arising out of the Supplier's performance of the Subcontract. The interest of Canada should read as follows:

"Canada, as represented by Public Works and Government Services Canada";

(b) Bodily Injury and Property Damage to third parties arising out of the operations of the Supplier;

(c) Products and Completed Operations: coverage for bodily injury or property damage arising out of goods or products manufactured, sold, handled, or distributed by the Supplier and/or arising out of operations that have been completed by the Supplier;

(d) Personal Injury: while not limited to, the coverage must include Violation of Privacy, Libel and Slander, False Arrest, Detention or Imprisonment and Defamation of Character;

(e) Cross Liability/Separation of Insured's: without increasing the limit of liability, the policy must protect all insured parties to the full extent of coverage provided. Further, the policy must apply to each insured in the same manner and to the same extent as if a separate policy had been issued to each;

(f) Blanket Contractual Liability: the policy must, on a blanket basis or by specific reference to the Subcontract, extend to assumed liabilities with respect to contractual provisions;

(g) Employees and, if applicable, volunteers must be included as additional insured;

(h) Employers' Liability (or confirmation that all employees are covered by Worker's Compensation (WorkSafeBC) or a similar program);



- (i) Broad Form Property Damage including Completed Operations;
- (j) Notice of Cancellation: the insurer will endeavor to provide the Subcontracting Authority thirty (30) calendar days written notice of policy cancellation;
- (k) If the policy is written on a claims-made basis, coverage must be in place for a period of at least twelve (12) months after the completion or termination of the Subcontract;
- (l) Sudden and Accidental Pollution Liability (minimum one hundred and twenty (120) hours: to protect the Supplier for liabilities arising from damages caused by accidental pollution incidents;
- (m) Litigation Rights: pursuant to subsection 5(d) of the Department of Justice Act, S.C. 1993, c. J-2, s.1, if a suit is instituted for or against Canada which the insurer would, but for this clause, have the right to pursue or defend on behalf of Canada as an additional named insured under the insurance policy, the insurer must promptly contact the Attorney General of Canada to agree on the legal strategies by sending a letter, by registered mail or by courier, with an acknowledgement of receipt.

For the province of Quebec, send to:

Director Business Law Directorate,  
Quebec Regional Office (Ottawa),  
Department of Justice,  
284 Wellington Street, Room SAT6042,  
Ottawa, Ontario, K1A 0H8

For other provinces and territories, send to:

Senior General Counsel,  
Civil Litigation Section,  
Department of Justice  
234 Wellington Street, East Tower  
Ottawa, Ontario K1A 0H8

50.6 A copy of the letter must be sent to the Subcontracting Authority. Canada and the Purchaser reserve the right to co-defend any action brought against Canada or the Purchaser. All expenses incurred by Canada and the Purchaser to co-defend such actions will be at Canada's or the Purchaser's expense. If Canada or the Purchaser decides to co-defend any action brought against it, and Canada or the Purchaser does not agree to a proposed settlement agreed to by the Supplier's insurer and the plaintiff(s) that would result in the settlement or dismissal of the action against Canada or the Purchaser, then Canada or the Purchaser will be responsible to the Supplier's insurer for any difference between the proposed settlement amount and the amount finally awarded or paid to the plaintiffs (inclusive of costs and interest) on behalf of Canada or the Purchaser.

#### 50.7 Errors and Omissions

50.7.1 The Supplier shall obtain Errors and Omissions Liability (a.k.a. Professional Liability) insurance, and maintain it in force throughout the Term, in an amount usual for a contract of this nature but for not less than five million dollars (\$5,000,000 CAD) per loss and in the annual aggregate, inclusive of defence costs.

50.7.2 If the policy is written on a claims-made basis, coverage must be in place for a period of at least twelve (12) months after the completion or termination of the Subcontract.

50.7.3 The following endorsement must be included

"Notice of Cancellation: The Insurer will endeavour to provide the Subcontracting Authority thirty (30) calendar days' written notice of cancellation."

### **SECTION S - INDUSTRIAL AND REGIONAL BENEFITS REQUIREMENTS**

#### **51.0 Industrial and Regional Benefits**

51.1 The Supplier shall comply with Schedule B6 (Industrial and Regional Benefits) and Part 11 (IRB) of the SOW.

51.2 If the Supplier fails to comply with its IRB Commitments, the Purchaser shall have the remedies set out in section 19 (Performance Guarantees) of Schedule B6 (Industrial and Regional Benefits).

## SECTION T - SECURITY

### 52.0 Security Requirements

- 52.1 The Supplier shall comply with Part 9 (SEC) of the SOW and:
- 52.1.1 the terms of any Security Requirements Check List issued by PSPC's Canadian Industrial Security Directorate (the **CISD**) in connection with the Subcontract, either prior to Contract Award or at any time during the Term;
  - 52.1.2 any security clauses issued by the CISD for inclusion in the Subcontract (which shall take priority if there is any conflict or inconsistency between such clauses and the provisions of this Section 52.0); and
  - 52.1.3 the most recent versions of the Industrial Security Manual and the Industrial COMSEC Material Control Manual issued by the CISD from time to time, to the extent applicable to the Work or any part thereof.
- 52.2 If the Supplier requires access to PROTECTED information during the performance of the Subcontract at the Supplier's facilities, the Supplier must hold a valid Designated Organization Screening (**DOS**) with approved Document Safeguarding Capabilities at the level of PROTECTED B, issued by the CISD.
- 52.3 If any of the Supplier's personnel require access to PROTECTED information, assets or work site(s) during the performance of the Subcontract, they must each hold a valid RELIABILITY STATUS granted or approved by the CISD.
- 52.4 Until the security screening of the Supplier and its personnel required by the Subcontract has been completed to the satisfaction of the CISD, such Persons may not have access to PROTECTED information or assets, and may not enter any sites where such information or assets are kept, without an escort.
- 52.5 Supplier personnel who require access to unclassified NATO UNCLASSIFIED information or assets are not required to hold a personnel security clearance; however, the Supplier must ensure that the NATO Unclassified information is not releasable to third parties and that the 'need to know' principle is applied to personnel accessing this information.
- 52.6 The Supplier shall not utilize its information technology systems to electronically process, produce or store PROTECTED information unless and until the CISD has issued written approval. After approval has been granted or approved, these tasks may be performed at the level of PROTECTED B.
- 52.7 The Supplier shall be responsible for ensuring that that any Sub-supplier or Sub-supplier personnel who require access to PROTECTED information, assets or sites comply with the terms of this Section 52.0.
- 52.8 The terms "PROTECTED", "PROTECTED B", "RELIABILITY STATUS" and "NATO UNCLASSIFIED", and any other requirements under this Section 52.0., are to be interpreted in accordance with the CISD's Industrial Security Manual, as may be revised from time to time, available as of Contract Award at <https://www.tpsgc-pwgsc.gc.ca/esc-src/msi-ism/index-eng.html>.
- 52.9 The Supplier shall not award any Sub-subcontracts that contain security requirements without the prior written permission of PSPC. The Supplier shall submit any such proposed Sub-subcontracts to the Purchaser for further submission by the Purchaser to PSPC.

### 53.0 Controlled Goods

- 53.1 If the Subcontract involves examining, possessing and/or transferring Controlled Goods, the Supplier represents and warrants that: (a) it has identified all such Controlled Goods in Schedule E, and (b) it is either registered in, exempt from or excluded from Canada's Controlled Goods Program (the **CGP**).
- 53.2 If any Sub-supplier proposes to examine, possess and/or transfer Controlled Goods and is not registered in, exempt from or excluded from the CGP, the Supplier shall require the Sub-supplier to submit the required application(s) for registration or exemption to the CGP within seven (7) Business Days from the receipt of written notification of the Sub-subcontract award.
- 53.3 No examination, possession or transfer of Controlled Goods must be performed until the Supplier has provided proof, satisfactory to the Purchaser, that the Supplier (and any applicable Sub-suppliers) are registered, exempt or excluded under the CGP.



- 53.4 The Supplier shall, and shall cause any applicable Sub-supplier to, maintain registration in, exemption from or exclusion from the CGP for the Term and in any event for so long as they are in a position to examine, possess or transfer Controlled Goods.

## **SECTION U - MISCELLANEOUS**

### **54.0 Defence Subcontract**

- 54.1 The Subcontract is a “defence subcontract” within the meaning of the *Defence Production Act*, R.S.C. 1985, c. D-1, and must be governed accordingly.

- 54.2 Title to any “government issue” (as defined in the *Defence Production Act*) or building furnished or made available to the Supplier or its Sub-suppliers or obtained or constructed by the Supplier or its Sub-suppliers with money provided by Canada belongs to Canada free and clear of all claims, liens, attachments, charges or encumbrances and Canada is entitled, at any time, to access, remove, sell or dispose of the government issue or building in accordance with section 20 of the *Defence Production Act*.

- 54.3 The Subcontract concerns a Canadian defence requirement and therefore is eligible to be assigned a “U.S. Priority Rating” for any materials/services imported from the United States which may be required in the performance of the Work. Therefore, if the Supplier is a Canadian entity, it shall:

54.3.1 make an application to the Defence Priorities and Allocations Officer, Public Works and Government Services Canada (PWGSC), either by e-mail at [NCR.ACQBDefencePriorities@pwgsc.gc.ca](mailto:NCR.ACQBDefencePriorities@pwgsc.gc.ca) or by facsimile: 819-956-1459, quoting Contract No. W847S-150034/001/JSS; and

54.3.2 include this clause in any Sub-subcontracts with Canadian Sub-suppliers.

Failure to comply with the above may impact on the Supplier's delivery commitments. Therefore, the Supplier is responsible for any breach of the Subcontract that arises from such a failure.

### **55.0 Canada's Integrity Regime**

- 55.1 The Supplier: (a) confirms that it has read and understands Canada's Ineligibility and Suspension Policy (which as of Contract Award can be found at <http://www.tpsgc-pwgsc.gc.ca/ci-if/politique-policy-eng.html>); (b) confirms that it has executed and delivered to the Purchaser a Certificate of Good Conduct regarding Canada's Ineligibility and Suspension Policy as part of the Supplier's Proposal; (c) confirms that the certifications it made in the Certificate of Good Conduct remain true; and (d) shall comply with the terms of the Certificate of Good Conduct throughout the Term.

- 55.2 If, during the Term, Canada determines that the Supplier is ineligible or suspends the Supplier based upon Canada's Ineligibility and Suspension Policy, the Purchaser may immediately terminate the Subcontract for default under Section 36.0 (Termination for Default), without prior notice.

### **56.0 Public Announcements**

- 56.1 The Supplier shall not, without the Purchaser's prior written consent, make any public announcements, including news releases, article or advertisements, or engage in any communication with the media, relating to the Project or the Subcontract.

- 56.2 Section 56.1 does not prohibit the Supplier from making any public disclosures required by law; however, the Supplier shall give the Purchaser prior advice of such disclosures including the content of such disclosures.

### **57.0 Documents Furnished to the Supplier**

- 57.1 Any drawing, document or other information not contained or incorporated by reference in the Subcontract Documents, and which is provided to the Supplier by or on behalf of the Purchaser or Canada, is for informational purposes only and is not evidence of any interpretation to be given to the Subcontract requirements. The Purchaser does not make any representations or warranties concerning such drawings, documents or other information, and any use of the same by the Supplier shall not relieve the Supplier of any of its responsibilities under the Subcontract.

## 58.0 Confidentiality

- 58.1 The Supplier shall keep confidential all information provided to the Supplier or any Sub-supplier by or on behalf of the Purchaser or Canada in connection with the Work, including (if applicable) Restricted Information, any information that is confidential or proprietary to third parties, and all information conceived, developed or produced by the Supplier as part of the Work when copyright or any other intellectual property rights in such information belong to the Purchaser or Canada, as the case may be, under the Subcontract (collectively, **Confidential Information**). The Supplier shall not disclose any Confidential Information without the Subcontracting Authority's written permission, except that, subject to any restrictions or additional requirements contained in the Subcontract, the Supplier may disclose to a Sub-supplier any Confidential Information necessary to perform the applicable Sub-subcontract as long as the Sub-supplier agrees to keep the information confidential and that it will be used only to perform the Sub-subcontract.
- 58.2 The Supplier agrees to use any information provided to the Supplier by or on behalf of the Purchaser or Canada during the Term of this Subcontract or in the course of any other Project Subcontracts only for the purpose of such subcontracts and only in accordance with the terms of such subcontracts. The Supplier acknowledges that all such information remains the property of the Purchaser, Canada or the third party, as the case may be. Further, any use of Restricted Information shall at all times remain subject to Section 7.0 (Intellectual Property Rights) and Section 8.0 (TKMSC Information), as applicable.
- 58.3 Subject to any right of the Purchaser under the Subcontract to release or disclose information, the Purchaser shall not release or disclose, other than to Canada, any information delivered to the Purchaser under the Subcontract that is confidential or proprietary to the Supplier or a Sub-supplier. The Purchaser confirms that, subject to the Canadian *Access to Information Act* and to any right of Canada under the Subcontract to release or disclose information, Canada has agreed not to release or disclose any information delivered to Canada that is confidential or proprietary to the Supplier or a Sub-supplier.
- 58.4 Excluding at all times: (a) the TKMSC Information, which remains subject to Section 8.0 (TKMSC Information); (b) Controlled Information; and (c) any Licensed Intellectual Property that is Restricted Information unless the Purchaser has notified the Supplier that the applicable license rights do not restrict disclosure of that Restricted Information when publicly available, the obligations of the Parties set out in this Section 58.0 do not apply to any information if the information:
- 58.4.1 is publicly available from a source other than the other Party;
- 58.4.2 is or becomes known to a Party from a source other than the other Party, except any source that is known to be under an obligation to the other Party not to disclose the information; or
- 58.4.3 is developed by a Party without use of the information of the other Party.
- 58.5 The Supplier shall mark or identify any proprietary information delivered to the Purchaser under the Subcontract as proprietary to Canada, the Purchaser, the Supplier or a third party (as the case may be), as and to the extent required in Section C (Intellectual Property). The Purchaser and Canada shall not be liable for any unauthorized use or disclosure of information that should have been so marked or identified and was not.
- 58.6 If the Subcontract, the Work, or any Confidential Information is identified as TOP SECRET, SECRET, CONFIDENTIAL, or PROTECTED by the Purchaser or Canada, the Supplier must at all times take all measures reasonably necessary for the safeguarding of the material so identified, including those set out in the PSPC Industrial Security Manual and its supplements and any other instructions issued by the Purchaser or Canada.
- 58.7 If the Subcontract, the Work, or any Confidential Information is identified as TOP SECRET, SECRET, CONFIDENTIAL, or PROTECTED, by Canada or the Purchaser, representatives of Canada are entitled to inspect the Supplier's facilities (and the facilities of any Sub-supplier who receives such information), for security purposes at any time during the Term. The Supplier must comply with, and ensure that any applicable Sub-suppliers comply with, all written instructions issued by the Purchaser or Canada dealing with the material so identified, including any requirement that employees of the Supplier or of any Sub-supplier execute and deliver declarations relating to reliability screenings, security clearances and other procedures.
- 58.8 At the written request of the Purchaser, or upon the expiry or termination of the Subcontract, subject to (a) the rules concerning the return or destruction of any Restricted Information as set out in Sections 58.9 to 58.12 below and (b) any obligations under the Subcontract to retain information, the Supplier shall promptly deliver to or as directed by the

Purchaser, or destroy or delete (at its option), all documents and materials constituting or containing Confidential Information, and neither the Supplier nor any Sub-suppliers shall retain copies of any such documents or material, except that they are under no obligation to delete back-up or archival computer records on systems where it is onerous to do so, provided that access to such information is prevented using appropriate access prevention.

- 58.9 Subject to Sections 58.6, 58.7, 58.10, 58.11 and 58.12, and any obligations under the Subcontract to retain information, at the written request of the Purchaser, or upon the expiry or termination of the Subcontract, if the Supplier has not already destroyed such information as permitted herein, the Supplier shall immediately deliver to or as directed by the Purchaser all hard copies of all Restricted Information that have been provided to the Supplier or that have come into the Supplier's possession or are under the Supplier's control, or have been made in the performance of the Subcontract or that have been disclosed to or have been made by any Sub-suppliers or bidders (as defined in Section 8.5), as well as all drafts, working papers, summaries and notes that contain any of the Restricted Information so disclosed, and the Supplier, and any applicable Sub-suppliers and bidders, must immediately delete all electronic records of such Restricted Information, except that they are under no obligation to delete back-up or archival computer records on systems where it is onerous to do so, provided that access to such information is prevented using appropriate access prevention. If any Restricted Information is held on isolated systems (i.e., not connected to any network), then such information should be deleted.
- 58.10 Subject to compliance with the requirements below, the Supplier is entitled, and is entitled to permit its Sub-suppliers, to destroy and not return Restricted Information as follows:
- 58.10.1 Controlled Information: Controlled Information shall only be destroyed if the destruction is in compliance with the PSPC Industrial Security Manual and its supplements and destroyed using a Type II Shredder in compliance with the instructions provided in the online RCMP security equipment guide ([http://www.rcmp-grc.gc.ca/physec-secmat/res-lim/pubs/seg/html/home\\_e.htm](http://www.rcmp-grc.gc.ca/physec-secmat/res-lim/pubs/seg/html/home_e.htm)) and any other instructions issued by the Purchaser or Canada that are generally applicable to that type of information. The destruction may only be performed by the Supplier or a Sub-supplier if the Supplier or Sub-supplier is registered under the PSPC Contract Security Program. Otherwise, the destruction must be performed by a CISC-approved third party supplier of document destruction services.
- 58.10.2 Licensed Intellectual Property and TKMSC Information: Licensed Intellectual Property and TKMSC Information comprised of documentation shall only be destroyed if the destruction is conducted using a Type IIIA Shredder in compliance with the instructions provided in the online RCMP security equipment guide ([http://www.rcmp-grc.gc.ca/physec-secmat/res-lim/pubs/seg/html/home\\_e.htm](http://www.rcmp-grc.gc.ca/physec-secmat/res-lim/pubs/seg/html/home_e.htm)). The destruction may only be performed by: (a) the Supplier or a Sub-supplier if the Supplier or Sub-supplier is registered under the PSPC Contract Security Program or, if not so registered, for (i) TKMSC Information, by the Supplier or a Sub-supplier that has executed an End User Certification and is otherwise bound in accordance with Section 8.0 (TKMSC Information), or (ii) for Licensed Intellectual Property, the Supplier or a Sub-supplier that is subject to provisions no less protective of Canada's Licensed Intellectual Property than are the provisions of this Section 58.0; or (b) a CISC-approved third party supplier of document destruction services.
- 58.11 If the Supplier, after using best efforts, cannot comply with the destruction requirements for Restricted Information, the Supplier shall contact the Subcontracting Authority to arrange for return of the Restricted Information to or as directed by the Purchaser (the cost of which shall be paid for by the Purchaser subject to the Supplier obtaining the Subcontracting Authority's prior written approval).
- 58.12 If the Parties have or intend to enter into a future Project Subcontract, any Restricted Information that the Supplier is entitled to retain for the purpose of performing such Project Subcontract shall be identified by notice from the Subcontracting Authority to the Supplier.
- 58.13 Where the Supplier discloses any Confidential Information to a Sub-supplier or bidder, even if it does so in compliance with this Section 58.0, it shall be fully responsible for any matters or things done or provided by any Sub-supplier or bidder under the Subcontract in respect of the Confidential Information, including compliance by each Sub-supplier and bidder with all of the provisions respecting the use, possession and return or destruction of Confidential Information.

**59.0 Notices**

- 59.1 Any notice required or permitted to be given pursuant to the Subcontract must be in writing. Notices to the Purchaser must be delivered to the Subcontracting Authority and notices to the Supplier must be delivered to the Representative of the Supplier.
- 59.2 A notice shall be deemed to have been validly given when delivered in person (including by courier), by prepaid registered mail or by e-mail to the address or e-mail address given for the Subcontracting Authority or Representative of the Supplier in the Articles of Agreement (as may be changed in accordance with Section 2.0 (Authorities and Representative)). Notices delivered in person, by courier or by prepaid registered mail shall be deemed delivered on the date they are received at the proper address for notices, and notices by e-mail shall be deemed delivered on the next Business Day following the sending date, except that the sending Party bears the risk of the notice not being received due to technical problems.

**60.0 Independent Contractor**

- 60.1 The Supplier is an independent contractor for all purposes in connection with the Subcontract, without express or implied authority to bind the Purchaser by contract or otherwise. Neither the Supplier nor its employees, agents, representatives or Sub-suppliers are agents or employees of the Purchaser.

**61.0 Third Party Beneficiary**

- 61.1 Canada is a third party beneficiary of the Subcontract and may enforce or otherwise rely on any of the rights granted to it hereunder in its own name. Alternatively, the Purchaser may enforce such rights on Canada's behalf as an agent for Canada.

**62.0 Amendments**

- 62.1 Unless otherwise provided in the Subcontract, the Subcontract may only be amended by a written agreement executed by the Subcontracting Authority (on behalf of the Purchaser) and the Supplier. Amendments as a result of a Change will only be effected in accordance with Section F (Changes).

**63.0 Waivers**

- 63.1 Any waiver by a Party of any provision of the Subcontract is effective only if in writing and signed by, in the case of a waiver by the Purchaser, the Subcontracting Authority and, in the case of a waiver by the Supplier, the Representative of the Supplier. The failure or delay by a Party in enforcing, or insisting upon strict performance of, any provision of the Subcontract does not constitute a waiver of such provision or in any way affect the enforceability of the Subcontract (or any of its provisions) or deprive a Party of the right, at any time or from time to time, to enforce or insist upon strict performance of that provision or any other provision of the Subcontract.

**64.0 Assignment**

- 64.1 The Supplier may not assign the Subcontract, or any part of the Subcontract, without the prior written consent of the Purchaser (such consent not to be unreasonably denied or delayed), and any purported assignment without such written consent shall be ineffective. For the purposes of the Subcontract, an assignment includes a change of Control of the Supplier. The Purchaser may, upon notice to the Supplier, assign the Subcontract to: (a) an Affiliate of the Purchaser; (b) a Person taking an assignment of the applicable prime contract with Canada from the Purchaser; or (c) Canada, and its successors and their respective servants, agents, contractors and permitted assigns.

**65.0 Binding Effect**

- 65.1 The Subcontract enures to the benefit of and binds the Parties and their respective successors and permitted assigns.

**66.0 Independent Legal Advice**

- 66.1 Each Party acknowledges that it has received or been given the opportunity to receive independent legal advice before executing the Subcontract.

**67.0 Whole Agreement**

- 67.1 The Subcontract constitutes the entire agreement between the Parties and supersedes all prior agreements, understandings, negotiations and discussions relating to the subject matter thereof, whether oral or written. There are no

representations, warranties, covenants, conditions or other agreements, express or implied, collateral, statutory or otherwise, between the Parties relating to the subject matter hereof, except as specifically set forth in the Subcontract.

**68.0 Counterparts**

- 68.1 The Subcontract and all documents contemplated by or delivered under or in connection with the Subcontract may be executed and delivered in any number of counterparts with the same effect as if all Parties had all signed and delivered the same document and all counterparts shall be construed together to be an original and shall constitute one and the same agreement.
- 68.2 Any Party may deliver an executed copy of the signature pages of the Subcontract by e-mail or other form of electronic transmission. The Parties acknowledge that signature pages of the Subcontract sent electronically shall be treated as originals, fully binding and with full legal force and effect and the Parties waive any rights to object to such treatment. Each Party shall immediately dispatch by delivery to the other Party an originally executed copy of the Subcontract, but failure to do so shall not affect the validity, enforceability or binding effect of the Subcontract.