



C. ARTICLES OF AGREEMENT

C1. DEPARTMENTAL REPRESENTATIVE

Name of Departmental Representative
Name of Position
Name of Division
Name of Branch
130 Colonade Rd.
Ottawa, ON K1A 0K9
Telephone: Telephone #
Fax: Fax #
E-mail: Email address

DRAFT

**Long Form Contract
for Services**

Between:

**Her Majesty the Queen in Right of
Canada** (referred to herein as "Canada"), as
represented by the Minister of Health,
(referred to herein as the "Minister")

And:

(INSERT FULL LEGAL NAME OF
CONTRACTOR)

(INSERT ADDRESS OF CONTRACTOR)
(INSERT ADDRESS OF CONTRACTOR)
(referred to herein as the "Contractor")

For:

The Performance of the Work described in
Appendix "A" – Statement of Work

C2. TITLE		
C3. SECURITY The Contractor and its personnel requiring access to sensitive information, assets or sensitive work site(s) must, at all times during the performance of the contract, hold a security N/A issued by the Canadian and International Industrial Security Directorates of the Department of Public Works and Government Services Canada or PHAC integrated security services division.		
C4. CONTRACT PERIOD Start: _____ End: _____		
C5. CONTRACT NUMBER	C6. FINANCIAL CODE	C7. AMM REFERENCE 08-01
C8. CONTRACT DOCUMENTS <ol style="list-style-type: none"> 1. These Articles of Agreement (Section "C") 2. Security Requirement Checklist (Annex "B"), if applicable 2.3. Supplementary Conditions (Section "I") 3.4. General Conditions (Section "II") 4.5. Terms of Payment (Section "III") 5.6. Intellectual Property (Section "IV") 6.7. Statement of Work (Appendix "A") <p>In the event of discrepancies, inconsistencies or ambiguities in the wording of these documents, the wording of the document appearing first on the above list shall prevail over the wording of the document subsequently appearing on the list.</p>		
C9. CONTRACT AMOUNT Subject to the Terms of Payment (Section "IIP"), the other terms and conditions of this contract, and in consideration for the performance of the Work, Canada shall pay the Contractor an all inclusive amount not to exceed 0.00, as detailed in section I.		
C10. INVOICES One (1) copy of each invoice is to be sent monthly to the Departmental Representative showing: <ol style="list-style-type: none"> a. the contract title, number and financial code; b. the date; c. a description of the Work performed; d. timesheets (if payment is based on hourly/per diem rates); e. evidences of actual cost (Cost Reimbursable Elements); f. the amount of the progress payment being claimed; g. the amount for any tax (including GST/HST); h. a notification as to the adequacy of the contract amount if: <ul style="list-style-type: none"> • it is 75% committed, or; • 4 months prior to the Contract End Date, or • It is considered to be inadequate for the completion of the Work. 		
C11. GOVERNING LAWS This contract must be governed by and construed in accordance with the laws in force in Ontario, Canada.		
C12. INTELLECTUAL PROPERTY The Contractor Will Own Intellectual Property Rights as per Section "IV"		
C13. SIGNATURES This contract has been executed on behalf of the parties by their duly authorized representatives: AUTHORIZED REPRESENTATIVE OF THE CONTRACTOR: Signature _____ Date _____ Print Name and Position _____		Corporate Seal
AUTHORIZED REPRESENTATIVE OF THE MINISTER: Signature _____ Date _____ Type name and position _____		

SECTION "I" – SUPPLEMENTARY CONDITIONS

SC1 METHOD OF PAYMENT

Category	Per Diem
	0.00
	0.00
	0.00
	0.00
	0.00

Cost Reimbursable Elements	Budget
Miscellaneous expenses <i>reimbursed based on actual cost</i>	up to 0.00 including GST/HST
Travel and living expenses <i>reimbursed in accordance to TP4</i>	up to 0.00 including GST/HST

All Amounts are in Canadian dollars and exclude GST/HST unless specified otherwise.

SC2 Cost Breakdown:

SC2.1 Professional Services

For the Professional Services of Name and title of the resource (*name and title of the resource*), an all inclusive fixed per diem rate of \$0.00 for up to \$0.00 person-days, for a total estimated amount not to exceed \$0.00.

(If more than one individual is involved, repeat this clause as necessary, stating the name of each person.)

SC2.2 Translation Services (*optional*)

An all inclusive fixed unit price of \$0.00 per word for an estimated (0) words, resulting in a total estimated cost not to exceed \$0.00

SC2.3 Estimated GST / HST \$0.00

SC2.4 Travel and Living Expenses (*optional*)

Travel and living expenses are not to exceed (*inclusive of GST or HST*) \$0.00

Subject to the prior authorization of the Departmental Representative, Travel and Living Expenses incurred in the performance of the work will be reimbursed, with no allowance for overhead and/or profit, within the limits permitted by the current Treasury Board Travel Directive. (Consult Section III, clause MP4.)

SC2.5 Miscellaneous or Unforeseen Expenses (*optional*)

Subject to the prior authorization of the Departmental Representative, miscellaneous expenses incurred in the performance of the work will be reimbursed at cost with no allowance for overhead costs and profit.

Choose one of the following as applicable:

- estimated miscellaneous expenses are not to exceed (*inclusive of GST/HST*) \$0.00
(*To be used when the Contractor provides an estimate of such expenses*)

OR

- a provisional cost allowance (*inclusive of GST or HST*) \$0.00
(*This is used where the Department allocates an amount to cover such expenses. **Example:** The Department may have a need for the services of a particular specialist or expert where the per diem rate is to be negotiated only when such a need arises, or when the Department does not wish to give an estimate of the time or days that will be required.*)

SECTION "II" – GENERAL CONDITIONS

GC1. Interpretation

- 1.1. In the contract,
- 1.1.1. "Minister" includes a person acting for, or if the office is vacant, in place of the Minister and the Minister's successors in the office, and the Minister's or their lawful deputy and any of the Minister's or their representatives appointed for the purpose of the contract;
- 1.1.2. "Departmental Representative" means the officer or employee of Canada who is designated by the articles of agreement and includes a person authorized by the Departmental Representative to perform any of the Departmental Representative's functions under the contract;
- 1.1.3. "Work", unless otherwise expressed in the contract, means everything that is necessary to be done, furnished or delivered by the Contractor to perform the Contractor's obligations under the contract.

GC2. Date of Completion of Work and Description of Work

- 2.1. The Contractor shall, between start date and end date specified in section C4 - Contract Period of the Articles of Agreement, perform and complete with care, skill, diligence and efficiency the Work that is described in the Statement of Work (Appendix A).

GC3. Successors and Assigns

- 3.1. The contract shall ensure to the benefit of and be binding upon the parties and their lawful heirs, executors, administrators, successors and permitted assigns.

GC4. Security

- 4.1. Subcontractors must obtain the equivalent level of screening or clearance as deemed required for the contractor.
- 4.2. All contracts and subcontracts with outside parties which contain security requirements are not to be awarded without prior written permission.

GC5. Assignment

- 5.1. The contract shall not be assigned in whole or in part by the Contractor without the prior written consent of the Minister and any assignment made without that consent is void and of no effect.
- 5.2. No assignment of the contract shall relieve the Contractor from any obligation under the contract or impose any liability upon Canada or the Minister.

GC6. Time of the Essence

- 6.1. Time is of the essence of the contract.
- 6.2. Any delay by the Contractor in performing the Contractor's obligations under the contract which is caused by an event beyond the control of the Contractor, and which could not have been avoided by the Contractor without incurring unreasonable costs through the use of work-around plans including alternative sources or other means, constitutes an excusable delay. Events may include, but are not restricted to: acts of God, acts of Canada, acts of local or provincial governments, fires, floods, epidemics, quarantine restrictions, strikes or labour unrest, freight embargoes and unusually severe weather.
- 6.3. The Contractor shall give notice to the Minister immediately after the occurrence of the event that causes the excusable delay. The notice shall state the cause and circumstances of the delay and indicate the portion of the Work affected by the delay. When requested to do so by the Departmental Representative, the Contractor shall deliver a description, in a form satisfactory to the Minister, of work-around plans

including alternative sources and any other means that the Contractor will utilize to overcome the delay and endeavour to prevent any further delay. Upon approval in writing by the Minister of the work-around plans, the Contractor shall implement the work-around plans and use all reasonable means to recover any time lost as a result of the excusable delay.

- 6.4. Unless the Contractor complies with the requirements of GC6.3, any delay that would constitute an excusable delay shall be deemed not to be an excusable delay.
- 6.5. Notwithstanding that the Contractor has complied with the requirements of GC6.3, Canada may exercise any right of termination contained in GC9.0.

GC7. Indemnification

- 7.1. The Contractor shall indemnify and save harmless Canada, the Minister and their employees, servants and agents from and against all claims, losses, damages, costs, expenses, actions and other proceedings, made, sustained, brought, prosecuted, threatened to be brought or prosecuted, in any manner based upon, occasioned by or attributable to any injury to or death of a person or damage to or loss of property arising from any willful or negligent act, omission or delay on the part of the Contractor, the Contractor's employees, servants, agents or subcontractors in performing the Work or as a result of the Work.
- 7.2. The Contractor shall indemnify and save harmless Canada, the Minister and their employees, servants and agents from all costs, charges and expenses whatsoever that Canada sustains or incurs in all claims, actions, suits and proceedings for the use of the invention claimed in a patent, or infringement or alleged infringement of any patent or any registered industrial design or any copyright or other intellectual property right resulting from the performance of the Contractor's obligations under the contract, and in respect of the use of or disposal by Canada of anything furnished pursuant to the contract.
- 7.3. The Contractor's liability to indemnify, save harmless or reimburse Canada under the contract shall not affect or prejudice Canada from exercising any other rights under law.
- 7.4. The Contractor agrees that Canada shall not be liable for, and agrees to protect, indemnify and save harmless Canada, the Minister and their employees, servants and agents with respect to, any injury or damage (including death) to the Contractor or to the person of any officer, servant or agent of the Contractor or for the loss of or damage to the property of the Contractor or its officers, servants or agents in any manner based upon, occasioned by, or in any way attributable to the performance of the said Work unless the injury, loss or damage is caused by the negligence of an employee, servant or agent of Canada while acting within the scope of his or her employment.

GC8. Notices

- 8.1. Where in the contract any notice, request, direction, or other communication is required to be given or made by either party, it shall be in writing and is effective if delivered in person, sent by registered mail, telegram, facsimile or electronic mail addressed to the party for whom it is intended at the address mentioned in the contract and any notice, request, direction or other communication shall be deemed to have been given by registered mail, when the postal receipt is acknowledged by the other party; by telegram, when transmitted by the carrier; and, by telex, facsimile or electronic mail, when transmitted. The address of either party may be changed by notice in the manner set out in this provision.

GC9. Termination or Suspension for Convenience

- 9.1. The Minister may, by giving notice to the Contractor, terminate or suspend the Work with respect to all or any part or parts of the Work not completed.
- 9.2. All Work completed by the Contractor to the satisfaction of Canada before the giving of notice shall be paid for by Canada in accordance with the provisions of the contract and, for all Work not completed before the giving of notice, Canada shall pay the Contractor's costs as determined under the provisions of the contract and, in addition, an amount representing a fair and reasonable fee in respect of the Work not completed.
- 9.3. In addition to the amount which the Contractor shall be paid under GC9.2, the Contractor shall be reimbursed for the Contractor's cost of, and incidental to, the cancellation of obligations incurred by the Contractor pursuant to the notice and obligations incurred by the Contractor or to which the Contractor is subject with respect to the Work.
- 9.4. Payment and reimbursement under the provisions of GC9.0 shall be made only to the extent that it is established to the satisfaction of the Minister that the costs and expenses were actually incurred by the Contractor and that the same are fair and reasonable and are properly attributable to the termination or suspension of the Work or the part of the Work terminated.
- 9.5. The Contractor shall not be entitled to be reimbursed any amount which, taken together with any amounts paid or becoming due to the Contractor under the contract, exceeds the contract price applicable to the Work or the particular part of the Work.
- 9.6. The Contractor shall have no claim for damages, compensation, loss of profit, allowance or otherwise by reason of or directly or indirectly arising out of any action taken or notice given by the Minister under the provisions of GC9.0, except as expressly provided.

GC10. Termination Due to Default of Contractor

- 10.1. The Minister may, by notice to the Contractor, terminate all or any part of the Work if:
- 10.1.1. the Contractor becomes bankrupt or insolvent, or a receiving order is made against the Contractor, or an assignment is made for the benefit of creditors, or if an order is made or resolution passed for the winding up of the Contractor, or if the Contractor takes the benefit of any statute for the time being in force relating to bankrupt or insolvent debtors; or
- 10.1.2. the Contractor fails to perform any of the Contractor's obligations under the contract, or, in the Minister's view, so fails to make progress as to endanger performance of the contract in accordance with its terms.
- 10.2. In the event that the Minister terminates the Work in whole or in part under GC10.1, the Minister may arrange, upon such terms and conditions and in such manner as the Minister deems appropriate, for all or part of the Work to be completed that was so terminated, and the Contractor shall be liable to Canada for any excess costs relating to the completion of the Work.
- 10.3. Upon termination of the Work under GC10.1, the Minister may require the Contractor to deliver and transfer title to Canada, in the manner and to the extent directed by the Minister, any finished Work which has not been delivered and accepted prior to such termination and any materials or Work-in-process which the Contractor has specifically acquired or produced for the fulfilment of the contract. Canada shall pay the Contractor for all finished Work delivered pursuant to the direction of, and accepted by, the Minister, the cost to the Contractor of the finished Work plus the proportionate part of any fee fixed by the contract and shall pay or reimburse the Contractor the fair and reasonable cost to the Contractor of all materials or Work-in-process delivered pursuant to the direction. Canada may withhold from the amounts due to the Contractor the sums that the

Minister determines to be necessary to protect Canada against excess costs for the completion of the Work.

- 10.4. The Contractor shall not be entitled to be reimbursed any amount which, taken together with any amounts paid or becoming due to the Contractor under the contract, exceeds the contract price applicable to the Work or the particular part of the Work.
- 10.5. If, after the Minister issues a notice of termination under GC10.1, it is determined by the Minister that the default of the Contractor is due to causes beyond the control of the Contractor, the notice of termination shall be deemed to have been issued pursuant to GC9.1 and the rights and obligations of the parties shall be governed by GC9.0.

GC11. Records to be Kept by Contractor

- 11.1. The Contractor shall keep proper accounts and records of the cost of the Work and of all expenditures or commitments made by the Contractor including invoices, original receipts and vouchers, which shall at reasonable times be open to audit and inspection by the authorized representatives of the Minister who may make copies and take extracts.
- 11.2. The Contractor shall afford facilities for audit and inspection and shall furnish the authorized representatives of the Minister with such information as the Minister or they may from time to time require with reference to the documents referred to in GC11.1.
- 11.3. The Contractor shall not dispose of the documents referred to in GC11.1 without the written consent of the Minister, but shall preserve and keep them available for audit and inspection for the period of time specified elsewhere in the contract or, in the absence of such specification, for a period of six years following completion of the Work.

GC12. Conflict of Interest

- 12.1. The Contractor agrees that its signature on the contract certifies that the government's rules on conflict of interest, summarized below, have been discussed with the Contractor, and that the Contractor complies in every respect with the rules.
- The government has adopted a policy to ensure that hiring and contracting of suppliers of goods and services must meet the highest ethical standards. The Minister wishes to make it clear that these standards will be scrupulously observed. The relevant portion of the policy precludes appointment not only of a Minister's immediate family, that is, Minister's spouse, parents, children, brothers and sisters, but also any member of the immediate family of his or her spouse, the immediate families of other Ministers and of party colleagues in the House of Commons and the Senate. It applies, as well, to organizations outside of government in which such family members are employed in senior positions of authority including membership on boards of directors. The Contractor agrees that its signature on this contract certifies that it is aware of and will comply in every respect with this aspect of the government rules on conflict of interest.
- 12.2. No individual, to whom the post employment provisions of the federal *Conflict of Interest Act* or the *Values and Ethics Code for the Public Service* apply, shall derive a direct benefit from this contract unless that individual is in compliance with the applicable post employment provisions.

The Contractor declares that the Contractor has no pecuniary interest in the business of any third party that would cause a conflict of interest or seem to cause a conflict of interest in carrying out the Work. Should such an interest be acquired during the life of the contract, the Contractor shall declare it immediately to the Departmental Representative.

GC13. Contractor Status

- 13.1. This is a contract for the performance of a service and the Contractor is engaged under the contract as an independent Contractor for the sole purpose of providing a service. Neither the Contractor nor any of the Contractor's personnel

is engaged by the contract as an employee, servant or agent of Canada. The Contractor agrees to be solely responsible for any and all payments and/or deductions required to be made including those required for Canada or Quebec pension plans, employment insurance, worker's compensation, or income tax.

GC14. Warranty by Contractor

- 14.1. The Contractor warrants that the Contractor is competent to perform the Work required under the contract in that the Contractor has the necessary qualifications including the knowledge, skill and ability to perform the Work.
- 14.2. The Contractor warrants that the Contractor shall provide a quality of service at least equal to that which contractors generally would expect of a competent contractor in a like situation.

GC15. Member of Parliament

- 15.1. No Member of Parliament shall be admitted to any share or part of this contract or to any benefit to arise from this contract.

GC16. Protection of Work

- 16.1. The Contractor shall keep confidential all information provided to the Contractor by or on behalf of Canada in connection with the Work, including any information that is confidential or proprietary to third parties, and all information conceived, developed or produced by the Contractor as part of the Work where copyright or any other intellectual property rights in such information (except a licence) vests in Canada under the contract. The Contractor shall not disclose any such information to any person without the written permission of the Minister, except that the Contractor may disclose to subcontractor information necessary for the performance of the subcontract, on the condition that the subcontractor agrees that it will be used solely for the purposes of such subcontract. Information provided to the Contractor by or on behalf of Canada shall be used solely for the purpose of the contract and shall remain the property of Canada or the third party, as the case may be. Unless the contract otherwise expressly provides, the Contractor shall deliver to Canada all such information, together with every copy, draft, working paper and note thereof that contains such information, upon completion or termination of the contract or at such earlier time as the Minister may require. This section does not apply to any information that:
- 16.1.1. is publicly available from a source other than the Contractor; or
- 16.1.2. is or becomes known to the Contractor from a source other than Canada, except any source that is known to the Contractor to be under an obligation to Canada not to disclose the information.
- 16.2. When the contract, the Work, or any information referred to in GC16.1 is identified as TOP SECRET, SECRET, CONFIDENTIAL or PROTECTED by Canada,
- 16.2.1. the Contractor shall, at all times, take all measures reasonably necessary for the safeguarding of the material so identified, including any other instructions issued by the Minister; and
- 16.2.2. the Minister shall be entitled to inspect the Contractor's premises and the premises of a subcontractor at any tier for security purposes at any time during the term of the contract, and the Contractor shall comply with, and ensure that any subcontractor complies with, all written instructions issued by the Minister dealing with the material so identified, including any requirement that employees of the Contractor or of any subcontractor execute and deliver declarations relating to reliability screenings, security clearances and other procedures.

GC17. Certification - Contingency Fees

- 17.1. The Contractor certifies that it has not directly or indirectly paid or agreed to pay and covenants that it will not directly or indirectly pay a contingency fee for the solicitation, negotiation or obtaining of this contract to any person other than an employee acting in the normal course of the employee's duties.
- 17.2. All accounts and records pertaining to payments of fees or other compensation for the solicitation, obtaining or negotiation of the contract shall be subject to the accounts and audit provisions of this contract.
- 17.3. If the Contractor certifies falsely under this section or is in default of the obligations contained in this section, the Minister may either terminate this contract in accordance with the default provisions of this contract or recover from the Contractor by way of reduction to the contract price or otherwise the full amount of the contingency fee.
- 17.4. In this section:
- 17.4.1. "contingency fee" means any payment or other compensation that is contingent upon or is calculated upon the basis of a degree of success in soliciting or obtaining a government contract or negotiating the whole or any part of its terms;
- 17.4.2. "employee" means a person with whom the Contractor has an employer/employee relationship;
- 17.4.3. "person" includes an individual or group of individuals, a corporation, a partnership, an organization and an association and, without restricting the generality of the foregoing, includes any individual who is required to file a return with the registrar pursuant to section 5 of the Lobbyist Registration Act, R.S.C. 1985, c. 44 (4th supp.) as the same may be amended from time to time.

GC18. Work Force Reduction Programs

- 18.1. The Contractor acknowledges and agrees that any person, including the Contractor, carrying out this contract, shall make available to the Departmental Representative any details of the status of the person with respect to cash out benefits as well as details of any pension payments under work force reduction programs.
- 18.2. The Contractor shall, if asked in writing and where necessary, sign or cause to have signed on behalf of any person, a waiver of privacy with respect to any and all information in relation to any such benefits and payments.

GC19. Amendments

- 19.1. No amendment of the contract nor waiver of any of the terms and provisions shall be deemed valid unless effected by a written amendment.

GC20. Replacement Personnel

- 20.1. The Contractor shall provide the services of the persons named in the proposal which is referenced in the Statement of Work and any additional persons necessary to perform the work and provide the services required under this contract, unless the Contractor is unable to do so for reasons beyond the Contractor's control.
- 20.2. Should the Contractor, at any time, be unable to provide their services, the Contractor shall be responsible for providing replacements who shall be of similar ability and attainment and who shall be acceptable to the Departmental Representative. In such case the Contractor shall notify the Departmental Representative in writing and provide:
- 20.2.1. the reason for the removal of the named person from the project;
- 20.2.2. the name of the proposed replacement;
- 20.2.3. an outline of the qualifications and experience of the proposed replacement;
- 20.2.4. an accepted security clearance certificate, if applicable.
- 20.3. The notice shall be sent at least seven (7) days in advance of the date upon which the replacement is to commence work.

- Any change in the terms and conditions of this contract which result from a replacement of personnel shall be effected by a contract amendment.
- 20.4. Notwithstanding the foregoing, the Contractor is required to perform the work and provide the services in accordance with the terms of this contract.

GC21. Criminal Code of Canada

- 21.1. The contractor certifies that the company has never been convicted of an offence under the following sections of the Criminal Code of Canada:
- 21.1.1. Section 121, Frauds on the government;
- 21.1.2. Section 124, Selling or purchasing office; or
- 21.1.3. Section 418, Selling defective stores to Canada.
- 21.2. It is a term of this contract that the contractor and any of the contractor's employees assigned to the performance of the contract are in compliance with Section 748 of the Criminal Code of Canada which prohibits anyone who has been convicted of an offence under:
- 21.2.1. Section 121, Frauds on the government;
- 21.2.2. Section 124, Selling or purchasing office; or
- 21.2.3. Section 418, Selling defective stores to Canada, from holding public office, contracting with the government or receiving a benefit from a government contract, unless the Governor in Council has restored (in whole or in part) these capacities to the individual or the individual has received a pardon.

GC22. Inspection/Acceptance

- 22.1. All the work performed under this contract shall be subject to inspection by the Departmental Representative, prior to acceptance. Should the work or any portion of the work not be in accordance with the requirements of the contract, the Departmental Representative shall have the right to reject it or require its correction.

GC23. Non-Residents

- 23.1. If the Contractor is not a Canadian Resident, the Contractor agrees that, pursuant to the provisions of the Income Tax Act, Canada is empowered to withhold an amount of fifteen (15) percent of the price to be paid to the Contractor, if the Contractor is a non-resident contractor as defined in said Act. This amount will be held on account with respect to any liability for taxes which may be owed to Canada.

GC24. Title

- 24.1. Except as otherwise provided in the contract including the intellectual property provisions, and except as provided in subsection 24.2, title to the Work or any part thereof shall vest in Canada upon delivery and acceptance thereof by or on behalf of Canada.
- 24.2. Except as otherwise provided in the intellectual property provisions of the contract, upon any payment being made to the Contractor for or on account of materials, parts, work-in-process or finished work, either by way of progress payments or accountable advances or otherwise, title in and to all materials, parts, work-in-process and finished work so paid for shall vest in and remain in Canada unless already so vested under any other provision of the contract.
- 24.3. Notwithstanding any vesting of title referred to in this section and except as otherwise provided in the contract, the risk of loss or damage to the materials, parts, work-in-process or finished work or part thereof so vested shall remain with the Contractor until their delivery to Canada in accordance with the contract. The Contractor shall be liable for any loss or damage to any part of the Work caused by the Contractor or any subcontractor after such delivery.
- 24.4. Any vesting of title referred to in subsection 24.2 shall not constitute acceptance by Canada of the materials, parts, work-

in-process or finished work, and shall not relieve the Contractor of its obligation to perform the Work in accordance with the contract.

- 24.5. Where title to any materials, parts, work-in-process or finished work becomes vested in Canada, the Contractor shall, upon the Minister's request, establish to the Minister's satisfaction that the title is free and clear of all claims, liens, attachments, charges or encumbrances and shall execute such conveyances thereof and other instruments necessary to perfect that title as the Minister may request.

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

GC25. Entire Agreement

- 25.1. The contract constitutes the entire agreement between the parties with respect to the subject matter of the contract and supersedes all previous negotiations, communications and other agreements relating to it unless they are incorporated by reference in the contract.

SECTION "III" – TERMS OF PAYMENT

TP1. Payment

- 1.1. Payments under this contract, except advance payments, shall be conditional upon performance, completion and delivery of the Work, or any part of the Work to the satisfaction of the Minister but subject to the submission to the Departmental Representative of a claim for payment.
- 1.2. Subject to parliamentary appropriation of funds and to TP1.1, payment by the Minister for the Work shall be made:
 - 1.2.1. in the case of an advance payment, within thirty (30) days of the signing of this contract by both parties or within thirty (30) days of receipt of an invoice requesting payment, whichever is later,
 - 1.2.2. in the case of progress payment, within thirty (30) days following the date of receipt of a duly completed Work or progress report or within thirty (30) days of receipt of an invoice requesting payment, whichever is later, and
 - 1.2.3. in the case of a final payment, within thirty (30) days following the date of receipt of the completed Work or within thirty (30) days of receipt of an invoice requesting payment whichever is later.
- 1.3. For purposes of this contract, a full day is any period of seven and one half (7.5) hours within any twenty-four (24) hour period.
- 1.4. If the Contractor is engaged in the performance of the Work for any period that exceeds or is less than a full day, the Contractor will be paid a pro-rata portion of the firm daily rate that corresponds to the number of hours during which the Contractor was so engaged.
- 1.5. If Canada has any objections to the form of the invoice or the substantiating documentation, within fifteen (15) days of its receipt, Canada shall notify the Contractor of the nature of the objection.
- 1.6. "Form of the invoice" means an invoice which contains or is accompanied by such substantiating documentation as Canada requires. Failure by Canada to act within fifteen (15) days only results in the date specified in TP1.1 of the clause to apply for the sole purpose of calculating interest on overdue accounts.
- 1.7. Notwithstanding any other provision of the contract, no payment shall be made to the Contractor unless and until, with respect to all parts of the Work in respect of which payment is claimed, the Contractor, where required to do so, establishes to the satisfaction of the Minister that such parts of the Work will be free from all claims, liens, attachments, charges or encumbrances.

TP2. Interest on Overdue Accounts

- 2.1. For the purposes of this section:
 - (a) "average rate" means the simple arithmetic mean of the bank rates in effect at 4:00 p.m. Eastern Standard Time each day during the calendar month which immediately precedes the calendar month in which payment is made, where the "bank rate" means the rate of interest established from time to time by the Bank of Canada as the minimum rate at which the Bank of Canada makes short term advances to members of the Canadian Payments Association;
 - (b) "date of payment" means the date of the negotiable instrument drawn by the Receiver General for Canada and given for payment of an amount due and payable;
 - (c) an amount is "due and payable" when it is due and payable by Canada to the Contractor in accordance with the terms of the contract; and
 - (d) an amount becomes "overdue" when it is unpaid on the first day following the day upon which it is due and payable.
- 2.2. Canada shall be liable to pay to the Contractor simple interest at the average rate plus three (3) percent per annum on any

amount that is overdue, from the date such amount becomes overdue until the day prior to the date of payment, inclusive. Interest shall be paid without notice from the Contractor except in respect of payment which is less than 15 days overdue. No interest will be payable or paid in respect of payment made within such 15 days unless the Contractor so requests after payment has become due.

- 2.3. Canada shall not be liable to pay interest in accordance with this clause if Canada is not responsible for the delay in paying the Contractor.
- 2.4. Canada shall not be liable to pay interest on overdue advance payments.

TP3. Appropriation

- 3.1. In accordance with section 40 of the Financial Administration Act, payment under the Contract is subject to there being an appropriation for the particular service for the fiscal year in which any commitment hereunder would come in course of payment.

TP4. Travel and Living Expenses

Travel and living expenses incurred by the Contractor are entirely subject to the content of the current Treasury Board Travel Directive (http://www.tbs-sct.gc.ca/pubs_pol/hrpubs/tbm_113/td-dv-1_e.html) and the Treasury Board Secretariat Special Travel Authorities, Section 7, "Persons on contract" (http://www.tbs-sct.gc.ca/pubs_pol/hrpubs/TBM_113/sta1_e.asp#_Toc65556472 and http://www.tbs-sct.gc.ca/pubs_pol/hrpubs/TBM_113/STA_e.asp).

Travel and living expenses are considered to be part of the total cost of the Contract. Expenses which exceed the Directive will not be paid. Prior authorization from the Departmental Representative for projected travel and living expenses is required.

4.1. General

- 4.1.1. Travel and living expenses are to be claimed at actual cost but are not to exceed current Treasury Board Secretariat guidelines.
- 4.1.2. A statement indicating the names of travellers; places visited; dates and length of visits; and purpose of travel must be submitted with each claim for travel and living expenses.
- 4.1.3. Insurance for all methods of travel; accidents; illness; cancellations; immunizations; and other obligations are the sole responsibility of the Contractor.

4.2. Method of Transportation

- 4.2.1. **Air travel.** The standard for air travel is economy class only. Upgrades to Business or First class are the sole financial responsibility of the Contractor.
- 4.2.2. **Rail Travel.** The standard for rail travel is the next higher class after the full economy class.
- 4.2.3. **Rental vehicle.** The standard for rental vehicles is mid size. Vehicle rental must be pre-approved by the Departmental Representative.
- 4.2.4. **Private vehicle.** The Contractor may claim only for distances necessarily driven solely on government business, using the most direct, safe and practical road routes. The rate per kilometre which is payable is specified in the current Treasury Board Secretariat Travel Directive. Insurance is the responsibility of the Contractor. PHAC will not assume responsibility for deductible amounts related to comprehensive or collision coverage.

4.3. Meal, accommodation, transportation and other allowances

- 4.3.1. For same day travel, with no overnight stay, the applicable meals allowance is paid, as specified in the current Treasury Board Secretariat Travel Directive. Receipts are not required.

- 4.3.2. For same day travel, with no overnight stay, the applicable transportation allowance is paid, as specified in the current Treasury Board Secretariat Travel Directive. Original receipts are required.
- 4.3.3. For travel of two (2) or more consecutive days, the applicable meal allowances, and the incidental expenses allowances per day are paid, as specified in the current Treasury Board Secretariat Travel Directive. Receipts are not required.
- 4.3.4. For travel of two (2) or more consecutive days, the applicable travel and accommodation allowances per day are paid, as specified in the current Treasury Board Secretariat Travel Directive. Original receipts are required, except when private, non-commercial accommodation is used.
- 4.3.5. Meal allowances are not paid in respect of meals included in a fare (e.g. airplane or club-car ticket), or provided free of charge in a government mess, or included as part of the cost of an event or other function.
- 4.3.6. Professional fees, or similar equivalent costs cannot be claimed for travel time.
- 4.3.7. Original receipts and vouchers for accommodation and transportation are required to be submitted with each claim, except when private, non-commercial accommodation is used. Photocopies are not claimable.
- 4.3.8. Luxury accommodation is not permitted.
- 4.3.9. Entertainment is not an allowable expense.

SECTION "IV" – INTELLECTUAL PROPERTY

IP1. Contractor to Own Intellectual Property Rights**1.1. Interpretation**

In the contract,

- 1.1.1 "Background Information" means all Technical Information that is not Foreground Information and that is proprietary to or the confidential information of the Contractor, its subcontractors or any other supplier of the Contractor
- 1.1.2 "Commercial Exploitation in Competition with the Contractor" does not include exploitation by Canada or by any contractor where the good or service produced through such exploitation is for end use by Canada, nor does it include dissemination or distribution by Canada to persons or to other governments at or below cost of any good or service delivered under the contract or produced through such exploitation;
- 1.1.3 "Firmware" means any computer program stored in integrated circuits, read-only memory or other similar devices;
- 1.1.4 "Foreground Information" means any Invention first conceived, developed or reduced to practice as part of the Work under the contract and all other Technical Information conceived, developed or produced as part of the Work under the Contract;
- 1.1.5 "Intellectual Property Right" means any intellectual property right recognized by the law, including any intellectual property right protected through legislation (such as that governing patents, copyright, industrial design, integrated circuit topography, or plant breeders' rights) or arising from protection of information as a trade secret or as confidential information;
- 1.1.6 "Invention" means any new and useful art, process, machine, manufacture or composition of matter, or any new and useful improvement in any art, process, machine, manufacture or composition of matter, whether or not patentable;
- 1.1.7 "Software" means any computer program whether in source or object code (including Firmware), any computer program documentation recorded in any form or medium, and any computer database, and includes modifications to any of the foregoing;
- 1.1.8 "Technical Information" means all information of a scientific, technical or artistic nature relating to the Work, whether oral or recorded in any form or medium and whether or not subject to copyright, including but not limited to any Inventions, designs, methods, processes, techniques, know-how, models, prototypes, patterns, samples, schematics, experimental or test data, reports, drawings, plans, specifications, photographs, collections of information, manuals and any other documents, and Software. Technical Information does not include data concerned with the administration of the contract by Canada or the Contractor, such as internal financial or management information, unless it is a deliverable under the contract.

1.2. Disclosure of Foreground Information

- 1.2.1 The Contractor shall promptly report and fully disclose to the Minister all Foreground Information that could be Inventions, and shall report and fully disclose to the Minister all other Foreground Information not later than the time of completion of the Work or at such earlier time as the Minister or the Contract may require.

- 1.2.2 The Contractor shall, in each disclosure under this section, indicate the names of all subcontractors at any tier, if any, in which Intellectual Property Rights to any Foreground Information have vested or will vest.
- 1.2.3 Before and after final payment to the Contractor, the Minister shall have the right to examine all records and supporting data of the Contractor which the Minister reasonably deems pertinent to the identification of Foreground Information.

1.3. Contractor to Own Intellectual Property Rights in Foreground Information

- 1.3.1 Subject to subsection IP1.3.3 and section IP1.7 (Transfer of Intellectual Property Rights), and without affecting any Intellectual Property Rights or interests therein that have come into being prior to the contract or that relate to information or data supplied by Canada for purposes of the contract, all Intellectual Property Rights in the Foreground Information shall immediately, as soon as they come into existence, vest in and remain the property of the Contractor.
- 1.3.2 Notwithstanding the Contractor's ownership of the Intellectual Property Rights in Foreground Information that is a prototype, model or custom or customized system or equipment together with associated manuals and other operating and maintenance documents and tools, Canada shall have unrestricted ownership rights in those deliverables, including the right to make them available for public use, whether for a fee or otherwise, and, except in the case of Software that is not necessary for the operation of the prototype, model or system or equipment, the right to sell them.
- 1.3.3 (i) Where the Work under the contract involves the preparation of a database or other compilation using information or data supplied by Canada or personal information referred to in paragraph (ii), then the Intellectual Property Rights that shall vest under subsection 1.3.1 shall be restricted to the Intellectual Property Rights in Foreground Information that is capable of being exploited without the use of the information or data supplied by Canada or such personal information. All Intellectual Property Rights in any database or other compilation, the Foreground Information in which cannot be exploited without the use of such information, data, or personal information, shall vest in Canada. The Contractor agrees that it shall not use or disclose any such information or data or personal information for any purpose other than completing the Work under the contract, and shall not dispose of it except by returning it to Canada. The Contractor shall comply with the General Conditions of the contract in regard to maintaining the confidentiality of such information, data or personal information. Unless the contract otherwise expressly provides, the Contractor shall deliver to Canada all such information, data or personal information, together with every copy, draft, working paper and note thereof that contains such information, data, or personal information, upon the completion or termination of the contract or at such earlier time as the Minister may require.
(ii) Notwithstanding subsection 1.3.1, if the Work under the contract involves the collection of personal

- information as that term is defined in the *Privacy Act* (R.S.C., c. P-21), then all Intellectual Property Rights in and title to that personal information shall, immediately upon the collection of it by the Contractor, vest in Canada, and the Contractor shall have no right or interest in it.
- 1.4. ***License to Intellectual Property Rights in Foreground Information***
- 1.4.1 In consideration of Canada's contribution to the cost of development of the Foreground Information, the Contractor hereby grants to Canada a non-exclusive, perpetual, irrevocable, world-wide, fully-paid and royalty-free license to exercise all Intellectual Property Rights in the Foreground Information that vest in the Contractor pursuant to section IP1.3, for any public purpose except Commercial Exploitation in Competition with the Contractor. Canada's license to the Intellectual Property Rights in the Foreground Information also includes the right to disclose the Foreground Information to other governments for information purposes only. The Intellectual Property Rights arising from any modification, improvement, development or translation of the Foreground Information that is effected by or for Canada in the exercise of this license shall vest in Canada, or in such person as Canada shall decide.
- 1.4.2 The Contractor acknowledges that Canada may wish to award contracts for any of the purposes contemplated in subsection 1.4.1 and that such contract awards may follow a competitive process. The Contractor agrees that Canada's license in relation to the Intellectual Property Rights in the Foreground Information that vest in the Contractor pursuant to section IP1.3, includes the right to disclose the Foreground Information to bidders for such contracts, and to sub-license or otherwise authorize the use of that information by any contractor engaged by Canada solely for the purpose of carrying out such a contract. Canada shall require the bidder or the Contractor not to use or disclose any Foreground Information except as may be necessary to bid for or to carry out that contract.
- 1.4.3 For greater certainty and without limiting the generality of subsections 1.4.1 and 1.4.2, Canada's right to modify, improve, translate, reproduce or further develop any Foreground Information pursuant to subsections 1.4.1 and 1.4.2:
- (a) applies to Foreground Information that is Software, notwithstanding any terms to the contrary delivered by the Contractor with any deliverable, including the wording on any shrink-wrapped license attached to any deliverable; and
 - (b) includes the right to reproduce and use Foreground Information that is Software, or any modified or improved or translated or further developed form of it, on any and all computer systems owned, leased or operated by Canada anywhere in the world.
- 1.4.4 Notwithstanding subsections 1.4.1, 1.4.2 and 1.4.3, if any Foreground Information arises solely from correction by the Contractor of errors in Background Information that is Software, or from minor modifications made by the Contractor to such Software, then the license set out in subsections 1.4.1, 1.4.2 and 1.4.3 shall not apply to that Foreground Information and, unless otherwise agreed, the license that applies to such Background Information shall apply to that Foreground Information.
- 1.4.5 Where the Intellectual Property Rights in any Foreground Information are or will be owned by a subcontractor at any tier, the Contractor shall either obtain a license from that subcontractor that permits compliance with subsections 1.4.1, 1.4.2 and 1.4.3 or arrange for the subcontractor to convey directly to Canada the same rights by execution of the form provided for that purpose by the Minister, in which case the Contractor shall deliver that form to the Minister, duly completed and executed by the subcontractor, no later than the time of disclosure to Canada of that Foreground Information.
- 1.4.6 If the Contractor wishes to make use of any Canada-owned information that was supplied for purposes of the Contract, for the commercial exploitation or further development of any of the Foreground Information, then the Contractor may make a written request for a license to exercise the required Intellectual Property Rights in that Canada-owned information, to the Minister for whose department or agency the Work is being or was carried out. The Contractor shall give that Minister an explanation as to why such a license is required. That Minister shall respond in writing to the request within a reasonable period of time. If the request is refused, the response shall provide an explanation for the refusal. Should that Minister agree to grant such a license, it shall be on terms and conditions to be negotiated between the Contractor and that Minister. It is understood that those terms may include payment of compensation to Canada.
- 1.4.7 The Contractor may apply to the Minister for whose department or agency the Work is being or was carried out for a license to commercially exploit a translation of the Foreground Information which is effected by or for Canada, subject to the same restrictions and obligations as apply under the Contract to commercial exploitation of the Foreground Information that was translated. Any such license shall be on terms and conditions to be negotiated between the Contractor and that Minister. It is understood that those terms may include payment of compensation to Canada.
- 1.5. ***License to Intellectual Property Rights in Background Information***
- 1.5.1 Without restricting the scope of any license to exercise the Intellectual Property Rights in the Background Information that Canada may otherwise hold, the Contractor hereby grants to Canada a non-exclusive, perpetual, irrevocable, world-wide, fully-paid and royalty-free license to exercise such of the Intellectual Property Rights in any Background Information incorporated into the Work or necessary for the performance of the Work as may be required for the following purposes:
- (a) for the use, operation, maintenance, repair or overhaul of the Work;
 - (b) in the manufacturing of spare parts for maintenance, repair or overhaul of any custom part of the Work by Canada if those parts are not reasonably available to enable timely maintenance, repair or overhaul;
 - (c) for disclosure to any contractor engaged by Canada (or bidder for such a contract) to be used solely for a purpose set out in paragraph (a) or (b), but only if the Contractor is unable or unwilling to carry out the maintenance, repair or overhaul or provide the spare parts on reasonable commercial terms and within reasonable delivery times;

- and the Contractor agrees to make any such Background Information (including, in the case of Software, source code) promptly available to Canada for any such purpose.
- 1.5.2 Without restricting the scope of any license to exercise the Intellectual Property Rights in the Background Information that Canada may otherwise hold, the Contractor hereby further grants to Canada a non-exclusive, perpetual, irrevocable, world-wide, fully-paid and royalty-free license to exercise such of the Intellectual Property Rights in the Background Information incorporated into the Work or necessary for the performance of the Work as are necessary in order for Canada to modify, improve or further develop the Foreground Information. Canada's rights under this subsection shall not include the right to reproduce the whole or part of any deliverable under the contract that does not incorporate Foreground Information, save that Canada may reproduce any drawings, plans, designs, or other Background Information that are subject to copyright or industrial design protection, for purposes of modification, improvement or further development of the Foreground Information by or for Canada. The Contractor agrees to make any such Background Information (including, in the case of Software, source code) promptly available to Canada for any such purpose.
- 1.5.3 Notwithstanding subsections 1.5.1 and 1.5.2, the license set out therein shall not apply to any Software that is subject to detailed license conditions that are set out elsewhere in the contract.
- 1.5.4 The Contractor acknowledges that, subject to paragraph c) of subsection 1.5.1, Canada may wish to award contracts for any of the purposes contemplated in subsections 1.5.1 and 1.5.2 and that such contract awards may follow a competitive process. The Contractor agrees that Canada's license in relation to the Intellectual Property Rights in Background Information includes the right to disclose the Background Information to bidders such contracts, and to sub-license or otherwise authorize the use of that information by any contractor engaged by Canada solely for the purpose of carrying out such a contract. Canada shall require bidders and the contractor not to use or disclose any Background Information except as may be necessary to bid for or to carry out that contract.
- 1.5.5 Where the Intellectual Property Rights in any Background Information are owned by a subcontractor at any tier, the Contractor shall either obtain a license from that subcontractor that permits compliance with 1.5.1 and 1.5.2, or arrange for the subcontractor to convey directly to Canada the same rights by execution of the form provided for that purpose by the Minister, in which case the Contractor shall deliver that form to the Minister, duly completed and executed by the subcontractor, no later than the time of disclosure to Canada of that Background Information.
- 1.5.6 Without restricting the scope of any license to exercise the Intellectual Property Rights in the Background Information that Canada may otherwise hold, the Contractor hereby grants to Canada a non-exclusive, perpetual, irrevocable, world-wide, fully-paid and royalty-free license to exercise such of the Intellectual Property Rights in any Background Information incorporated into the Work or necessary for the performance of the Work as may be required in order for Canada to exercise its license in the Intellectual Property Rights in the Foreground Information. The Contractor agrees to make any such such Background Information (including, in the case of Software, source code) promptly available to Canada for any such purpose.
- 1.5.7 The Contractor acknowledges that Canada may wish to award contracts for any of the purposes contemplated in subsection 1.5.6 and that such contract awards may follow a competitive process. The Contractor agrees that Canada's license in relation to the Intellectual Property Rights in the Background Information includes the right to disclose the Background Information to bidders on such contracts, and to sub-license or otherwise authorize the use of that information by any contractor engaged by Canada solely for the purpose of carrying out such a contract. Canada shall require bidders and the contractor not to use or disclose any Background Information except as may be necessary to bid for or to carry out that contract.
- 1.5.8 Where the Intellectual Property Rights in any Background Information are owned by a subcontractor at any tier, the Contractor shall either obtain a license from that subcontractor that permits compliance with subsections 1.5.6 and 1.5.7 or arrange for the subcontractor to convey directly to Canada the same rights by execution of the form provided for that purpose by the Minister, in which case the Contractor shall deliver that form to the Minister, duly completed and executed by the subcontractor, no later than the time of disclosure to Canada of that Background Information.
- 1.5.9 Notwithstanding subsection 1.5.6, the license set out therein shall not apply to any Software that is subject to detailed license conditions that are set out elsewhere in the contract.
- 1.6. **Right to License**
- 1.6.1 The Contractor represents and warrants that the Contractor has, or the Contractor undertakes to obtain, the right to grant to Canada the license to exercise the Intellectual Property Rights in the Foreground Information and Background Information as required by the contract.
- 1.7. **Transfer of Intellectual Property Rights in Foreground Information**
- 1.7.1 Until the Contractor completes the Work and discloses all of the Foreground Information in accordance with section IP1.2 (Disclosure of Foreground Information), the Contractor shall not, without the prior written permission of the Minister, sell, assign or otherwise transfer title to the Intellectual Property Rights in any Foreground Information, or license or otherwise authorize the use of the Intellectual Property Rights in any of the Foreground Information by any person.
- 1.7.2 If Canada terminates the Contract in whole or in part for default, or if the Contractor fails to disclose any Foreground Information in accordance with section IP1.2, the Minister may, by notice given not later than 90 days from the date of termination or from the date Canada learns of the failure to disclose, as the case may be, require the Contractor to convey to Canada all of the Intellectual Property Rights in the Foreground Information or, in the case of a notice based on failure to disclose, all of the Intellectual Property Rights in the Foreground Information not disclosed. In the case of either notice, the rights to be conveyed shall include the Intellectual Property Rights in any Foreground Information that have vested or are to vest in a subcontractor at any tier. In the case of Intellectual Property Rights in Foreground Information which have been sold or assigned to a party other than a

- subcontractor at any tier, the Contractor shall not be obligated to convey rights to Canada in accordance with this subsection, but shall pay to Canada on demand an amount equal to the consideration which the Contractor received from the sale or assignment of the Intellectual Property Rights in that Foreground Information or, in the case of a sale or assignment that was not at arm's length, the fair market value of the Intellectual Property Rights in that Foreground Information, in each case including the value of future royalties or license fees.
- 1.7.3 In the event of the issuance by the Minister of a notice under subsection 1.7.2, the Contractor shall, at its own expense and without delay, execute such conveyances or other documents relating to title to the Intellectual Property Rights as the Minister may require, and the Contractor shall, at Canada's expense, afford the Minister all reasonable assistance in the preparation of applications and in the prosecution of any applications for, or any registration of, any Intellectual Property Right in any jurisdiction, including without limitation the assistance of the inventor in the case of Inventions.
- 1.8. ***Sale, Assignment, Transfer or Licensing of Intellectual Property Rights in Foreground Information***
- 1.8.1 In any sale, assignment, transfer or license of Intellectual Property Rights in Foreground Information by the Contractor, except a sale or license for end use of a product based on Foreground Information, the Contractor shall impose on the other party all of its obligations to Canada in relation to the Intellectual Property Rights in the Foreground Information and any restrictions set out in the contract on the use or disposition of the Intellectual Property Rights in the Foreground Information (and, if applicable, the Foreground Information), including the obligation to impose the same obligations and restrictions on any subsequent transferee, assignee or licensee.
- 1.8.2 The Contractor shall promptly notify Canada of the name, address and other pertinent information in regard to any transferee, assignee or licensee referred to in subsection 1.8.1, and shall ensure that such party is required to do the same with regard to any subsequent transferee, assignee or licensee.
- 1.8.3 The Contractor shall not charge or permit any person to charge a royalty or other fee to Canada in respect of the Intellectual Property Rights in any Foreground Information for purposes of a contract or other arrangement with Canada. Where the contract or other arrangement is for a product based on Foreground Information or on any modification or improvement thereof, the Contractor shall grant to Canada a reasonable credit against its commercial price for that product to take into account Canada's financial contribution toward the development of the product, and in the case of a product owned by a transferee, assignee or licensee of the Intellectual Property Rights in any Foreground Information, the Contractor shall ensure that such party is required to do the same.
- 1.9. ***Access to Information; Exception to Contractor Rights***
- 1.9.1 Subject to the *Access to Information Act*, R.S.C., c. A-1 and to any right of Canada under the contract, Canada shall not release or disclose outside the Government of Canada any information delivered to Canada under the contract that is confidential information or a trade secret of the Contractor or a subcontractor.
- 1.9.2 Notwithstanding subsection 1.9.1 nothing in these terms and conditions shall be construed as limiting Canada's right to exercise the Intellectual Property Rights in any Foreground Information or any Background Information, or to disclose any Foreground Information or any Background Information, to the extent that such information:
- (a) is or becomes in the public domain, or to the extent that the Contractor does not benefit from or ceases to benefit from any intellectual property rights protection for such information under legislation or at law (other than under the terms of the contract), for any reason including as a result of Canada's use or disclosure of deliverables under the contract for any purpose whatever that is not expressly excluded under the contract;
 - (b) is or becomes known to Canada from a source other than the Contractor, except from any source that is known to Canada to be under an obligation to the Contractor not to disclose the information;
 - (c) is independently developed by or for Canada; or
 - (d) is disclosed under compulsion of a legislative requirement or any order of a court or other tribunal having jurisdiction.
- 1.10. ***Waiver of Moral Rights***
- 1.10.1 The Contractor shall obtain a written permanent waiver of Moral Rights in a form acceptable to the Minister, from every author that contributes to any Foreground Information which is subject to copyright protection and which is deliverable to Canada under the terms of the contract. At the request of the Minister (be it at the completion of the Work or at any other time as the Minister may require), the Contractor shall provide the written waiver(s) of Moral Rights to the Minister.
- 1.10.2 If the Contractor is an author of the Foreground Information referred to in subsection 1.10.1, the Contractor hereby permanently waives the Contractor's moral rights in that Foreground Information.

APPENDIX "A" – STATEMENT OF WORK (SOW)

