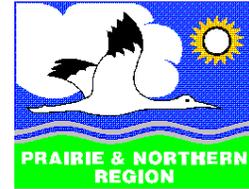




Environment Environnement
Canada Canada



Request for Proposal

Reference Number: K4E21-14-0027

Posting Date: **14 April 2014**
Closing Date: **29 April 2014**

Contracting Authority

Beth McCann
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Environment Canada, P&NR
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**Please provide the quotation on or before 12:00pm (MDT) on 29 April 2014. Proposals received after this date and time will be returned unopened.
Environment Canada reserves the right not to accept any proposals received.**

**TITLE****Truck Rental****OBJECTIVE**

Environment Canada (EC) is seeking to establish a short term contract for the rental of 4x4 trucks for the months of May, June and July 2014 for field work in Alberta and Saskatchewan.

REQUIREMENT:

1.1 Rental of 6 (six) full size, half-ton, standard box 4 X 4 trucks to be utilized for field work, within the provinces of Alberta and Saskatchewan. All vehicles are to be in excellent running condition. Luxury items such as leather seats are not required.

Minimum vehicle requirements:

Half-ton 4x4

1. minimum 4 doors (crew cab—4 door)
2. minimum 5 foot box length (or standard box length), open box
3. minimum 12 inch ground clearance
4. automatic transmission
5. Air Conditioning, Power Windows, Power Door Locks
6. Tow Package (Class 2 towing requirements-2 ATV and ATV trailer); 2 inch ball hitch; RV 7 or Round 7 trailer wire connection
7. "all-terrain" or "off-highway" tires
8. Mileage: minimum 3000 free kms per month for full month rentals
9. two programmed vehicle keys per vehicle

1.2 Dates: Contractors must be capable of supplying vehicles starting on 1 May, 2014 through to 31 July, 2014. Exact dates of delivery will be determined after contract award.

1.3 The rental period may be daily, weekly, or monthly dependent on operational requirements. Invoices are to be charged using the most economical combination of daily, weekly and monthly rates.

1.4 Vehicles will be used for field work on highways, grid roads, trails, and off-road. Most travel will be done on rough terrain and all vehicles must be suitable for such travel.

1.5 Vehicles will be operated by Government employees or Government volunteer agreements over the age of 21, with valid provincial licensing. All Government employees must show a valid Environment Canada Identification Card for receipt of vehicles.

**2. Title to Rented Motor Vehicle**

2.1 The title to motor vehicles supplied shall at all times remain with the Contractor.

3. Availability of Rental Vehicle

3.1 It is understood and agreed to by the Contractor that if a motor vehicle as described herein is not available, a substitute motor vehicle of equal or greater value acceptable to the Environment Canada employee will be provided by the Contractor at no additional charge.

4. Inspection – Rental

4.1 The Environment Canada employee reserves the right to inspect and reject the offered rented vehicle.

4.2 At delivery and on return to the marshalling location, the vehicles will be inspected for damage by both the Contractor and the driver.

4.3 The condition of each motor vehicle (damages, malfunction, loss and the like) discovered during the inspection shall be recorded on the Vehicle Inspection Report (to be provided by the Contractor) which shall be dated and signed by both parties.

5. Vehicle Warranty

5.1 The manufacturer's standard warranty shall apply for the rented vehicles.

6. Maintenance

6.1 All vehicles are expected to be in very good mechanical condition, must be clean and free of body damage (minor dents and scratches resulting from normal road use excluded), prior to acceptance. The acceptability of vehicles delivered with minor dents and scratches will be at the discretion of the Project authority.

6.2 In the event of a long term rental, the Contractor must notify the consignee in writing at the time of delivery, of future scheduled maintenance requirements. All periodic maintenance, i.e., greasing, oil change, tire inspections including rotation, and scheduled engine inspection must be undertaken by the Contractor and at no cost to Canada.

6.3 Tire repair and replacement due to flats and blowouts and replacement or repair of any damaged glass or plastic windows and any glass or plastic lenses due to normal wear and tear and road hazard must be undertaken by the Contractor and at no cost to Canada.

6.4 As a further clarification, Canada's sole responsibility will lie in being held responsible for damages as a result of accident. Canada considers nails or any other sharp objects that may be run over in roads or driveways and flying stones from other vehicles that may damage glass or lenses to be strictly road hazard and part of the normal wear and tear of operating a vehicle.



7. Normal Wear and Tear

- 7.1** For the purpose of this any agreement entered into, normal wear and tear will include:
- i. Tire wear, paint chips, and minor scratches, that do not extend to the base metal.
 - ii. Minor rock chips on windshield.
 - iii. All paint scratches and paint wear and minor dents to interior, top rails and tailgates of pickup trucks.
 - iv. Paint chips caused by stone thrown by the wheels of vehicles.
 - v. Frayed or stretched emergency brake cables.
 - vi. Interior wear of vehicles not including holes, burns, or tears of interior surfaces.
 - vii. Exterior wear of trucks including all paint scratches.
 - viii. Tire wear and damage.

8. Pick-Up and/or Delivery of Vehicles

8.1 The vehicles will be delivered by the Contractor on the date, time and at the location in Edmonton, Alberta as agreed upon and identified by the Consignee.

8.2 Delivery and/or pick up fees may apply.

8.3 If delivery is required prior to 8:00 a.m., the delivery must occur the day prior and cost of rental will not commence until actual date and time required.

9. Damage/Repair Charges

9.1 Prior to proceeding with any damage repairs, a written estimate of total costs must be submitted to the Project authority for authorization to proceed. Invoicing for all damage and repair charges to rented vehicles must be submitted separately and must include all supporting documentation, a copy of the authorization itemizing specific repair work, and complete material and labour costs required to complete the repairs.

9.2 Repair procedures/instructions are to be given to the consignee on acceptance of the vehicle. Prior authorization to proceed with repairs is to be obtained from the Contractor. The cost of the replacements which are made will be credited to the consignee's account by the Contractor once the paid invoice is received by the Contractor. Authorized repair locations must be available throughout Alberta and Saskatchewan.

10. Traffic Infractions / Tickets

Vehicles rented and driven by the Consignee will follow appropriate procedures for the payment of traffic infractions or tickets.

11. Contractor's Responsibilities

11.1 The Contractor will be responsible for:



- i. Delivery to the destination specified by the Departmental Representative.
- ii. Pick up and return of vehicle for servicing.
- iii. Vehicle licensing, permits or exemptions.
- iv. Full maintenance due to normal wear and tear.
- v. Replacement of tires and tire repairs.
- vi. Supply of another licensed vehicle of the same type and size to replace a specific vehicle when a unit is taken out of service for repairs. Down time will be considered when computing the charges.
- vii. The interiors of all vehicles must be cleaned and well maintained.
- viii. Provide Environment Canada with procedures/instructions for repair and/or accident processes.

12. Environment Canada Responsibilities

12.1 The consignee shall be responsible for:

- i. The supply of fuel.
- ii. The supply of oil between changes.
- iii. Return to the contractor, all vehicle parts replaced, including damaged or worn tires.
- iv. Notifying the Contractor as far in advance as possible of the requirement for vehicles.
At minimum, 24 hours' notice will be given.

13. Insurance

13.1 It is **mandatory** that all rental vehicles be covered for two million dollars (\$2,000,000.00) minimum insurance coverage for Public Liability and Property Damage.

14. Collision Damage Waiver/Loss Damage Waiver (CDW/LDW)

14.1 The daily rental rate shall **not** include costs for the CDW/LDW. The offerer must quote separate rates for CDW/LDW at the time of each rental for all identified users, and if applicable, indicate if there is an additional charge for identified users who are less than 25 years of age.

14.2 The deductible for CDW/LDW under this Request for Quotation, must not exceed \$400.00.

DEPARTMENTAL REPRESENTATIVE

TBD

The Departmental Representative will serve as point of contact for the contractor. All invoices will be sent to the above named Departmental Representative.

BASIS OF PAYMENT



a) The firm unit prices and/or rates include all costs for applicable vehicle licensing, permits, insurance, full maintenance due to normal wear and tear, replacement of tires and tire repairs, all warranty servicing, depreciation, and fuel where applicable.

b) All rates must be based on straight time. No shop time or down time is to be included in billing.

| DESCRIPTION | AMOUNT (\$) |
|----------------------------------|-------------|
| Daily Rate | TBD |
| Weekly Rate | TBD |
| Monthly Rate | TBD |
| CDW/LDW (per vehicle) | TBD |
| Rate/ KM ("over free") | TBD |
| Delivery/Pick Up Fee to Edmonton | TBD |

METHOD OF PAYMENT

Following review of no more than one invoice per month, payment will be made to a maximum of **\$TBD for the duration of the contract.**

Invoices must be broken down by vehicle identification number (VIN/license plate or Contractor identifier).

PROPOSAL EVALUATION AND CONTRACT AWARD

Proposals will be evaluated in accordance with the criteria set out in Annex "A", Bid Evaluation Criteria.

Selection of the contractor will be made on the basis of the best overall value to the Crown in terms of lowest overall bid price based on the sample rental scenario.

ENQUIRIES

All enquiries or issues concerning this Request for Proposal must be submitted in **writing only** to the Contracting Authority named on the front cover page of this RFP document **not later than three (3) working days prior to the bid closing date.**

To ensure consistency and quality of information to Bidders, the Contracting Authority will provide simultaneously to all bidders to which this solicitation has been sent the following:

- Any information with respect to significant enquiries received, and
- The replies to such enquiries without revealing their sources



All enquiries and other communications with government officials throughout the solicitation and evaluation period are to be directed only to the Contracting Authority named on the front cover of this RFP document. **Non-compliance with this condition during the bid solicitation and evaluation period may be sufficient reason for bid disqualification.**

Bidders must ensure that they follow the instructions in Annex "B" Financial Bid.

GENERAL CONDITIONS

2035 01 (2008-05-12) Interpretation

In the Contract, unless the context otherwise requires:

"Articles of Agreement" means the clauses and conditions incorporated in full text or incorporated by reference from the *Standard Acquisition Clauses and Conditions* Manual to form the body of the Contract; it does not include these general conditions, any supplemental general conditions, annexes, the Contractor's bid or any other document;

"Canada", "Crown", "Her Majesty" or "the Government" means Her Majesty the Queen in right of Canada as represented by the Minister of Public Works and Government Services and any other person duly authorized to act on behalf of that minister or, if applicable, an appropriate minister to whom the Minister of Public Works and Government Services has delegated his or her powers, duties or functions and any other person duly authorized to act on behalf of that minister;

"Contract" means the Articles of Agreement, these general conditions, any supplemental general conditions, annexes and any other document specified or referred to as forming part of the Contract, all as amended by agreement of the Parties from time to time;

"Contracting Authority" means the person designated by that title in the Contract, or by notice to the Contractor, to act as Canada's representative to manage the Contract;

"Contractor" means the person, entity or entities named in the Contract to supply goods, services or both to Canada;

"Contract Price" means the amount stated in the Contract to be payable to the Contractor for the Work, exclusive of Goods and Services Tax and Harmonized Sales Tax;

"Cost" means cost determined according to Contract Cost Principles 1031-2 as revised to the date of the bid solicitation or, if there was no bid solicitation, the date of the Contract;

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



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

"Specifications" means the description of the essential, functional or technical requirements of the Work in the Contract, including the procedures for determining whether the requirements have been met;

"Work" means all the activities, services, goods, equipment, matters and things required to be done, delivered or performed by the Contractor under the Contract.

2035 02 (2008-05-12) Standard Clauses and Conditions

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

2035 03 (2008-05-12) Powers of Canada

All rights, remedies, powers and discretions granted or acquired by Canada under the Contract or by law are cumulative, not exclusive.

2035 04 (2008-05-12) Status of the Contractor

The Contractor is an independent contractor engaged by Canada to perform the Work. Nothing in the Contract is intended to create a partnership, a joint venture or an agency between Canada and the other Party or Parties. The Contractor must not represent itself as an agent or representative of Canada to anyone. Neither the Contractor nor any of its personnel is engaged as an employee or agent of Canada. The Contractor is responsible for all deductions and remittances required by law in relation to its employees.

2035 05 (2012-03-02) Conduct of the Work

1. The Contractor represents and warrants that:
 - a. it is competent to perform the Work;
 - b. it has everything necessary to perform the Work, including the resources, facilities, labour, technology, equipment, and materials; and
 - c. it has the necessary qualifications, including knowledge, skill, know-how and experience, and the ability to use them effectively to perform the Work.
2. The Contractor must:
 - a. perform the Work diligently and efficiently;
 - b. except for Government Property, supply everything necessary to perform the Work;
 - c. use, as a minimum, quality assurance procedures, inspections and controls generally used and recognized by the industry to ensure the degree of quality required by the Contract;
 - d. select and employ a sufficient number of qualified people;



- e. perform the Work in accordance with standards of quality acceptable to Canada and in full conformity with the Specifications and all the requirements of the Contract;
 - f. provide effective and efficient supervision to ensure that the quality of workmanship meets the requirements of the Contract.
3. The Work must not be performed by any person who, in the opinion of Canada, is incompetent, unsuitable or has conducted himself/herself improperly.
 4. All services rendered under the Contract must, at the time of acceptance, be free from defects in workmanship and conform to the requirements of the Contract. If the Contractor is required to correct or replace the Work or any part of the Work, it will be at no cost to Canada.
 5. Canada's facilities, equipment and personnel are not available to the Contractor to perform the Work unless the Contract specifically provides for it. The Contractor is responsible for advising the Contracting Authority in advance if it requires access to Canada's facilities, equipment or personnel to perform the Work. The Contractor must comply and ensure that its employees and subcontractors comply with all security measures, standing orders, policies or other rules in force at the site where the Work is performed.
 6. Unless the Contracting Authority orders the Contractor to suspend the Work or part of the Work pursuant to section 28, the Contractor must not stop or suspend the Work or part of the Work pending the settlement of any dispute between the Parties about the Contract.
 7. The Contractor must provide all reports that are required by the Contract and any other information that Canada may reasonably require from time to time.
 8. The Contractor is fully responsible for performing the Work. Canada will not be responsible for any negative consequences or extra costs if the Contractor follows any advice given by Canada unless the Contracting Authority provides the advice to the Contractor in writing and includes a statement specifically relieving the Contractor of any responsibility for negative consequences or extra costs that might result from following the advice.

2035 06 (2010-01-11) Subcontracts

1. Except as provided in subsection 2, the Contractor must obtain the Contracting Authority's written consent before subcontracting or permitting the subcontracting of any part of the Work. A subcontract includes a contract entered into by any subcontractor at any tier to perform any part of the Work.
2. The Contractor is not required to obtain consent for subcontracts specifically authorized in the Contract. The Contractor may also without the consent of the Contracting Authority:
 - a. purchase "off-the-shelf" items and any standard articles and materials that are ordinarily produced by manufacturers in the normal course of business;
 - b. subcontract any portion of the Work as is customary in the carrying out of similar contracts; and;
 - c. permit its subcontractors at any tier to make purchases or subcontract as permitted in paragraphs (a) and (b).



3. In any subcontract other than a subcontract referred to in paragraph 2.(a), the Contractor must, unless the Contracting Authority agrees in writing, ensure that the subcontractor is bound by conditions compatible with and, in the opinion of the Contracting Authority, not less favourable to Canada than the conditions of the Contract.
4. Even if Canada consents to a subcontract, the Contractor is responsible for performing the Contract and Canada is not responsible to any subcontractor. The Contractor is responsible for any matters or things done or provided by any subcontractor under the Contract and for paying any subcontractors for any part of the Work they perform.

2035 07 (2008-05-12) Specifications

1. All Specifications provided by Canada or on behalf of Canada to the Contractor in connection with the Contract belong to Canada and must be used by the Contractor only for the purpose of performing the Work.
2. If the Contract provides that Specifications furnished by the Contractor must be approved by Canada, that approval will not relieve the Contractor of its responsibility to meet all requirements of the Contract.

2035 08 (2008-05-12) Replacement of Specific Individuals

1. If specific individuals are identified in the Contract to perform the Work, the Contractor must provide the services of those individuals unless the Contractor is unable to do so for reasons beyond its control.
2. If the Contractor is unable to provide the services of any specific individual identified in the Contract, it must provide a replacement with similar qualifications and experience. The replacement must meet the criteria used in the selection of the Contractor and be acceptable to Canada. The Contractor must, as soon as possible, give notice to the Contracting Authority of the reason for replacing the individual and provide:
 - a. the name, qualifications and experience of the proposed replacement; and
 - b. proof that the proposed replacement has the required security clearance granted by Canada, if applicable.
3. The Contractor must not, in any event, allow performance of the Work by unauthorized replacement persons. The Contracting Authority may order that a replacement stop performing the Work. In such a case, the Contractor must immediately comply with the order and secure a further replacement in accordance with subsection 2. The fact that the Contracting Authority does not order that a replacement stop performing the Work does not relieve the Contractor from its responsibility to meet the requirements of the Contract.

2035 09 (2008-05-12) Time of the Essence

It is essential that the Work be performed within or at the time stated in the Contract.

2035 10 (2008-05-12) Excusable Delay

1. A delay in the performance by the Contractor of any obligation under the Contract that is caused by an event that



- a. is beyond the reasonable control of the Contractor,
- b. could not reasonably have been foreseen,
- c. could not reasonably have been prevented by means reasonably available to the Contractor, and
- d. occurred without the fault or neglect of the Contractor,

will be considered an "Excusable Delay" if the Contractor advises the Contracting Authority of the occurrence of the delay or of the likelihood of the delay as soon as the Contractor becomes aware of it. The Contractor must also advise the Contracting Authority, within fifteen (15) working days, of all the circumstances relating to the delay and provide to the Contracting Authority for approval a clear work around plan explaining in detail the steps that the Contractor proposes to take in order to minimize the impact of the event causing the delay.

2. Any delivery date or other date that is directly affected by an Excusable Delay will be postponed for a reasonable time that will not exceed the duration of the Excusable Delay.
3. However, if an Excusable Delay has continued for thirty (30) days or more, the Contracting Authority may, by giving notice in writing to the Contractor, terminate the Contract. In such a case, the Parties agree that neither will make any claim against the other for damages, costs, expected profits or any other loss arising out of the termination or the event that contributed to the Excusable Delay. The Contractor agrees to repay immediately to Canada the portion of any advance payment that is unliquidated at the date of the termination.
4. Unless Canada has caused the delay by failing to meet an obligation under the Contract, Canada will not be responsible for any costs incurred by the Contractor or any of its subcontractors or agents as a result of an Excusable Delay.
5. If the Contract is terminated under this section, the Contracting Authority may require the Contractor to deliver to Canada, in the manner and to the extent directed by the Contracting Authority, any completed parts of the Work not delivered and accepted before the termination and anything that the Contractor has acquired or produced specifically to perform the Contract. Canada will pay the Contractor:
 - a. the value, of all completed parts of the Work delivered to and accepted by Canada, based on the Contract Price, including the proportionate part of the Contractor's profit or fee included in the Contract Price; and
 - b. the Cost to the Contractor that Canada considers reasonable in respect of anything else delivered to and accepted by Canada.

The total amount paid by Canada under the Contract to the date of termination and any amounts payable under this subsection must not exceed the Contract Price.

2035 11 (2008-05-12) Inspection and Acceptance of the Work

1. All the Work is subject to inspection and acceptance by Canada. Inspection and acceptance of the Work by Canada do not relieve the Contractor of its responsibility for defects or other failures to meet the requirements of the Contract. Canada will have the right to reject any Work that is not



in accordance with the requirements of the Contract and require its correction or replacement at the Contractor's expense.

2. The Contractor must provide representatives of Canada access to all locations where any part of the Work is being performed at any time during working hours. Representatives of Canada may make examinations and such tests of the Work as they may think fit. The Contractor must provide all assistance and facilities, test pieces, samples and documentation that the representatives of Canada may reasonably require for the carrying out of the inspection. The Contractor must forward such test pieces and samples to such person or location as Canada specifies.
3. The Contractor must inspect and approve any part of the Work before submitting it for acceptance or delivering it to Canada. The Contractor must keep accurate and complete inspection records that must be made available to Canada on request. Representatives of Canada may make copies and take extracts of the records during the performance of the Contract and for up to three (3) years after the end of the Contract.

2035 12 (2008-05-12) Invoice Submission

1. Invoices must be submitted in the Contractor's name. The Contractor must submit invoices for each delivery or shipment; invoices must only apply to the Contract. Each invoice must indicate whether it covers partial or final delivery.
2. Invoices must show:
 - a. the date, the name and address of the client department, item or reference numbers, deliverable and/or description of the Work, contract number, Client Reference Number (CRN), Procurement Business Number (PBN), and financial code(s);
 - b. details of expenditures in accordance with the Basis of Payment, exclusive of Goods and Services Tax (GST) or Harmonized Sales Tax (HST) (such as item, quantity, unit of issue, unit price, fixed time labour rates and level of effort, subcontracts, as applicable);
 - c. deduction for holdback, if applicable;
 - d. the extension of the totals, if applicable; and
 - e. if applicable, the method of shipment together with date, case numbers and part or reference numbers, shipment charges and any other additional charges.
3. If applicable, the GST or HST must be specified on all invoices as a separate item. All items that are zero-rated, exempt or to which the GST or HST does not apply, must be identified as such on all invoices.
4. By submitting an invoice, the Contractor certifies that the invoice is consistent with the Work delivered and is in accordance with the Contract.

2035 13 (2012-07-16) Taxes

1. Municipal Taxes

Municipal Taxes do not apply.



2. Provincial Taxes

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

Prince Edward Island OP-10000-250

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

3. Changes to Taxes and Duties

If there is any change to any tax or duty payable to any level of government in Canada after the bid submission date that affects the costs of the Work to the Contractor, the Contract Price will be adjusted to reflect the increase or decrease in the cost to the Contractor. However, there will be no adjustment for any change that increases the cost of the Work to the Contractor if public notice of the change was given before bid submission date in sufficient detail to have permitted the Contractor to calculate the effect of the change on its cost. There will be no adjustment if the change takes effect after the date required by the Contract for delivery of the Work.

4. GST or HST

The estimated GST or HST, if applicable, is included in the total estimated cost on page 1 of the Contract. The GST or HST is not included in the Contract Price but will be paid by Canada as provided in the Invoice Submission section above. The Contractor agrees to remit to Canada Revenue Agency any amounts of GST and HST paid or due.

5. Tax Withholding of 15 Percent



Pursuant to the [Income Tax Act](#), 1985, c. 1 (5th Supp.) and the [Income Tax Regulations](#), Canada must withhold 15 percent of the amount to be paid to the Contractor in respect of services provided in Canada if the Contractor is a non-resident unless the Contractor obtains a valid waiver. The amount withheld will be held on account for the Contractor in respect to any tax liability which may be owed to Canada.

2035 14 (2010-01-11) Transportation Costs

If transportation costs are payable by Canada under the Contract and the Contractor makes the transportation arrangements, shipments must be made by the most direct and economical means consistent with normal shipping practice. The costs must be shown as a separate item on the invoice.

2035 15 (2010-01-11) Transportation Carriers' Liability

The federal government's policy of underwriting its own risks precludes payment of insurance or valuation charges for transportation beyond the point at which ownership of goods passes to the federal government (determined by the FOB point or Incoterms). Where increased carrier liability is available without charge, the Contractor must obtain the increased liability for shipment.

2035 16 (2012-07-16) Payment Period

1. Canada's standard payment period is thirty (30) days. The payment period is measured from the date an invoice in acceptable form and content is received in accordance with the Contract or the date the Work is delivered in acceptable condition as required in the Contract, whichever is later. A payment is considered overdue on the 31st day following that date and interest will be paid automatically in accordance with the section 17.
2. If the content of the invoice and its substantiating documentation are not in accordance with the Contract or the Work is not in acceptable condition, Canada will notify the Contractor within fifteen (15) days of receipt. The 30-day payment period begins upon receipt of the revised invoice or the replacement or corrected Work. Failure by Canada to notify the Contractor within fifteen (15) days will only result in the date specified in subsection 1 to apply for the sole purpose of calculating interest on overdue accounts.

2035 17 (2008-12-12) Interest on Overdue Accounts

1. For the purpose of this section:

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

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

"date of payment" means the date of the negotiable instrument drawn by the Receiver General for Canada to pay any amount under the Contract;



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

2. Canada will pay to the Contractor simple interest at the Average Rate plus 3 percent per year on any amount that is overdue, from the date that amount becomes overdue until the day before the date of payment, inclusive. The Contractor is not required to provide notice to Canada for interest to be payable.
3. Canada will pay interest in accordance with this section only if Canada is responsible for the delay in paying the Contractor. Canada will not pay interest on overdue advance payments.

2035 18 (2008-05-12) Compliance with Applicable Laws

1. The Contractor must comply with all laws applicable to the performance of the Contract. The Contractor must provide evidence of compliance with such laws to Canada at such times as Canada may reasonably request.
2. The Contractor must obtain and maintain at its own cost all permits, licenses, regulatory approvals and certificates required to perform the Work. If requested by the Contracting Authority, the Contractor must provide a copy of any required permit, license, regulatory approvals or certificate to Canada.

2035 19 (2008-05-12) Ownership

1. Unless provided otherwise in the Contract, the Work or any part of the Work belongs to Canada after delivery and acceptance by or on behalf of Canada.
2. However if any payment is made to the Contractor for or on account of any Work, either by way of progress or milestone payments, that work paid for by Canada belongs to Canada upon such payment being made. This transfer of ownership does not constitute acceptance by Canada of the Work or any part of the Work and does not relieve the Contractor of its obligation to perform the Work in accordance with the Contract.
3. Despite any transfer of ownership, the Contractor is responsible for any loss or damage to the Work or any part of the Work until it is delivered to Canada in accordance with the Contract. Even after delivery, the Contractor remains responsible for any loss or damage to any part of the Work caused by the Contractor or any subcontractor.
4. Upon transfer of ownership to the Work or any part of the Work to Canada, the Contractor must, if requested by Canada, establish to Canada's satisfaction that the title is free and clear of all claims, liens, attachments, charges or encumbrances. The Contractor must execute any conveyances and other instruments necessary to perfect the title that Canada may require.

2035 20 (2008-05-12) Copyright

In this section, "Material" means anything that is created by the Contractor as part of the Work under the Contract, that is required by the Contract to be delivered to Canada and in which copyright subsists. "Material" does not include anything created by the Contractor before the date of the Contract.

Copyright in the Material belongs to Canada and the Contractor must include the copyright symbol and either of the following notice on the Material: © Her Majesty the Queen in right of Canada (year) or © Sa Majesté la Reine du chef du Canada (année).



The Contractor must not use, copy, divulge or publish any Material except as is necessary to perform the Contract. The Contractor must execute any conveyance and other documents relating to copyright in the Material as Canada may require.

The Contractor must provide at the request of Canada a written permanent waiver of moral rights, in a form acceptable to Canada, from every author that contributed to the Material. If the Contractor is the author of the Material, the Contractor permanently waives its moral rights in the Material.

2035 21 (2008-05-12) Translation of Documentation

The Contractor agrees that Canada may translate in the other official language any documentation delivered to Canada by the Contractor that does not belong to Canada under section 20. The Contractor acknowledges that Canada owns the translation and that it is under no obligation to provide any translation to the Contractor. Canada agrees that any translation must include any copyright notice and any proprietary right notice that was part of the original. Canada acknowledges that the Contractor is not responsible for any technical errors or other problems that may arise as a result of the translation.

2035 22 (2008-05-12) Confidentiality

1. The Contractor must keep confidential all information provided to the Contractor by or on behalf of Canada in connection with the Work, including any information that is confidential or proprietary to third parties, and all information conceived, developed or produced by the Contractor as part of the Work when copyright or any other intellectual property rights in such information belongs to Canada under the Contract. The Contractor must not disclose any such information without the written permission of Canada. The Contractor may disclose to a subcontractor any information necessary to perform the subcontract as long as the subcontractor agrees to keep the information confidential and that it will be used only to perform the subcontract.
2. The Contractor agrees to use any information provided to the Contractor by or on behalf of Canada only for the purpose of the Contract. The Contractor acknowledges that all this information remains the property of Canada or the third party, as the case may be. Unless provided otherwise in the Contract, the Contractor must deliver to Canada all such information, together with every copy, draft, working paper and note that contains such information, upon completion or termination of the Contract or at such earlier time as Canada may require.
3. Subject to the [Access to Information Act](#), R.S., 1985, c. A-1, and to any right of Canada under the Contract to release or disclose, Canada must not release or disclose outside the Government of Canada any information delivered to Canada under the Contract that is proprietary to the Contractor or a subcontractor.
4. The obligations of the Parties set out in this section do not apply to any information if the information:
 - a. is publicly available from a source other than the other Party; or
 - b. is or becomes known to a Party from a source other than the other Party, except any source that is known to be under an obligation to the other Party not to disclose the information; or
 - c. is developed by a Party without use of the information of the other Party.



5. Wherever possible, the Contractor must mark or identify any proprietary information delivered to Canada under the Contract as "Property of (Contractor's name), permitted Government uses defined under Public Works and Government Services (PWGSC) Contract No. (fill in Contract Number)". Canada will not be liable for any unauthorized use or disclosure of information that could have been so marked or identified and was not.
6. If the Contract, the Work, or any information referred to in subsection 1 is identified as TOP SECRET, SECRET, CONFIDENTIAL, or PROTECTED by Canada, the Contractor must at all times take all measures reasonably necessary for the safeguarding of the material so identified, including those set out in the *PWGSC Industrial Security Manual* and its supplements and any other instructions issued by Canada.
7. If the Contract, the Work, or any information referred to in subsection 1 is identified as TOP SECRET, SECRET, CONFIDENTIAL, or PROTECTED, by Canada, representatives of Canada are entitled to inspect the Contractor's premises and the premises of a subcontractor at any tier for security purposes at any time during the term of the Contract. The Contractor must comply with, and ensure that any subcontractor complies with, all written instructions issued by Canada dealing with the material so identified, including any requirement that employees of the Contractor or of any subcontractor execute and deliver declarations relating to reliability screenings, security clearances and other procedures.

2035 23 (2008-05-12) Government Property

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

2035 24 (2008-05-12) Liability

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

**2035 25 (2008-05-12) Intellectual Property Infringement and Royalties**

1. The Contractor represents and warrants that, to the best of its knowledge, neither it nor Canada will infringe any third party's intellectual property rights in performing or using the Work, and that Canada will have no obligation to pay royalties of any kind to anyone in connection with the Work.
2. If anyone makes a claim against Canada or the Contractor concerning intellectual property infringement or royalties related to the Work, that Party agrees to notify the other Party in writing immediately. If anyone brings a claim against Canada, according to [Department of Justice Act](#), R.S., 1985, c. J-2, the Attorney General of Canada must have the regulation and conduct of all litigation for or against Canada, but the Attorney General may request that the Contractor defend Canada against the claim. In either case, the Contractor agrees to participate fully in the defence and any settlement negotiations and to pay all costs, damages and legal costs incurred or payable as a result of the claim, including the amount of any settlement. Both Parties agree not to settle any claim unless the other Party first approves the settlement in writing.
3. The Contractor has no obligation regarding claims that were only made because:
 - a. Canada modified the Work or part of the Work without the Contractor's consent or used the Work or part of the Work without following a requirement of the Contract; or
 - b. Canada used the Work or part of the Work with a product that the Contractor did not supply under the Contract (unless that use is described in the Contract or the manufacturer's specifications); or
 - c. the Contractor used equipment, drawings, specifications or other information supplied to the Contractor by Canada (or by someone authorized by Canada); or
 - d. the Contractor used a specific item of equipment or software that it obtained because of specific instructions from the Contracting Authority; however, this exception only applies if the Contractor has included the following language in its own contract with the supplier of that equipment or software: "[Supplier name] acknowledges that the purchased items will be used by the Government of Canada. If a third party claims that equipment or software supplied under this contract infringes any intellectual property right, [supplier name], if requested to do so by either [Contractor name] or Canada, will defend both [Contractor name] and Canada against that claim at its own expense and will pay all costs, damages and legal fees payable as a result of that infringement." Obtaining this protection from the supplier is the Contractor's responsibility and, if the Contractor does not do so, it will be responsible to Canada for the claim.
4. If anyone claims that, as a result of the Work, the Contractor or Canada is infringing its intellectual property rights, the Contractor must immediately do one of the following:
 - a. take whatever steps are necessary to allow Canada to continue to use the allegedly infringing part of the Work; or
 - b. modify or replace the Work to avoid intellectual property infringement, while ensuring that the Work continues to meet all the requirements of the Contract; or
 - c. take back the Work and refund any part of the Contract Price that Canada has already paid.



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

2035 26 (2008-05-12) Amendment and Waivers

1. To be effective, any amendment to the Contract must be done in writing by the Contracting Authority and the authorized representative of the Contractor.
2. While the Contractor may discuss any proposed modifications to the Work with other representatives of Canada, Canada will not be responsible for the cost of any modification unless it has been incorporated into the Contract in accordance with subsection 1.
3. A waiver will only be valid, binding or affect the rights of the Parties if it is made in writing by, in the case of a waiver by Canada, the Contracting Authority and, in the case of a waiver by the Contractor, the authorized representative of the Contractor.
4. The waiver by a Party of a breach of any condition of the Contract will not be treated or interpreted as a waiver of any subsequent breach and therefore will not prevent that Party from enforcing of that term or condition in the case of a subsequent breach.

2035 27 (2008-05-12) Assignment

1. The Contractor must not assign the Contract without first obtaining the written consent of the Contracting Authority. Any assignment made without that consent is void and will have no effect. The assignment will be effective upon execution of an assignment agreement signed by the Parties and the assignee.
2. Assignment of the Contract does not relieve the Contractor from any obligation under the Contract and it does not impose any liability upon Canada.

2035 28 (2008-05-12) Suspension of the Work

1. The Contracting Authority may at any time, by written notice, order the Contractor to suspend or stop the Work or part of the Work under the Contract for a period of up to one hundred eighty (180) days. The Contractor must immediately comply with any such order in a way that minimizes the cost of doing so. While such an order is in effect, the Contractor must not remove any part of the Work from any premises without first obtaining the written consent of the Contracting Authority. Within these one hundred eighty (180) days, the Contracting Authority must either cancel the order or terminate the Contract, in whole or in part, under section 29 or section 30.
2. When an order is made under subsection 1, unless the Contracting Authority terminates the Contract by reason of default by the Contractor or the Contractor abandons the Contract, the Contractor will be entitled to be paid its additional costs incurred as a result of the suspension plus a fair and reasonable profit.
3. When an order made under subsection 1 is cancelled, the Contractor must resume work in accordance with the Contract as soon as practicable. If the suspension has affected the Contractor's ability to meet any delivery date under the Contract, the date for performing the



part of the Work affected by the suspension will be extended for a period equal to the period of suspension plus a period, if any, that in the opinion of the Contracting Authority, following consultation with the Contractor, is necessary for the Contractor to resume the Work. Any equitable adjustments will be made as necessary to any affected conditions of the Contract.

2035 29 (2008-05-12) Default by the Contractor

1. If the Contractor is in default in carrying out any of its obligations under the Contract, the Contracting Authority may, by giving written notice to the Contractor, terminate for default the Contract or part of the Contract. The termination will take effect immediately or at the expiration of a cure period specified in the notice, if the Contractor has not cured the default to the satisfaction of the Contracting Authority within that cure period.
2. If the Contractor becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, or takes the benefit of any statute relating to bankrupt or insolvent debtors, or if a receiver is appointed under a debt instrument or a receiving order is made against the Contractor, or an order is made or a resolution passed for the winding down of the Contractor, the Contracting Authority may, to the extent permitted by the laws of Canada, by giving written notice to the Contractor, immediately terminate for default the Contract or part of the Contract.
3. If Canada gives notice under subsection 1 or 2, the Contractor will have no claim for further payment except as provided in this section. The Contractor will be liable to Canada for all losses and damages suffered by Canada because of the default or occurrence upon which the notice was based, including any increase in the cost incurred by Canada in procuring the Work from another source. The Contractor agrees to repay immediately to Canada the portion of any advance payment that is unliquidated at the date of the termination.
4. Upon termination of the Contract under this section, the Contracting Authority may require the Contractor to deliver to Canada, in the manner and to the extent directed by the Contracting Authority, any completed parts of the Work, not delivered and accepted before the termination and anything the Contractor has acquired or produced specifically to perform the Contract. In such a case, subject to the deduction of any claim that Canada may have against the Contractor arising under the Contract or out of the termination, Canada will pay or credit to the Contractor:
 - a. the value, of all completed parts of the Work delivered to and accepted by Canada, based on the Contract Price, including the proportionate part of the Contractor's profit or fee included in the Contract Price; and
 - b. the cost to the Contractor that Canada considers reasonable in respect of anything else delivered to and accepted by Canada.

The total amount paid by Canada under the Contract to the date of the termination and any amount payable under this subsection must not exceed the Contract Price.

5. Title to everything for which payment is made to the Contractor will, once payment is made, pass to Canada unless it already belongs to Canada under any other provision of the Contract.
6. If the Contract is terminated for default under subsection 1, but it is later determined that grounds did not exist for a termination for default, the notice will be considered a notice of termination for convenience issued under subsection 1 of section 30.

**2035 30 (2008-05-12) Termination for Convenience**

1. At any time before the completion of the Work, the Contracting Authority may, by giving notice in writing to the Contractor, terminate for convenience the Contract or part of the Contract. Once such a notice of termination for convenience is given, the Contractor must comply with the requirements of the termination notice. If the Contract is terminated in part only, the Contractor must 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.
2. If a termination notice is given pursuant to subsection 1, the Contractor will be entitled to be paid, for costs that have been reasonably and properly incurred to perform the Contract to the extent that the Contractor has not already been paid or reimbursed by Canada. The Contractor will be paid:
 - a. on the basis of the Contract Price, for all completed work that is inspected and accepted in accordance with the Contract, whether completed before, or after the termination in accordance with the instructions contained in the termination notice;
 - b. the Cost to the Contractor plus a fair and reasonable profit for all work terminated by the termination notice before completion; and
 - c. all costs incidental to the termination of the Work incurred by the Contractor but not including the cost of severance payments or damages to employees whose services are no longer required, except wages that the Contractor is obligated by statute to pay.
3. Canada may reduce the payment in respect of any part of the Work, if upon inspection, it does not meet the requirements of the Contract.
4. The total of the amounts, to which the Contractor is entitled to be paid under this section, together with any amounts paid, due or becoming due to the Contractor must not exceed the Contract Price. The Contractor will have no claim for damages, compensation, loss of profit, allowance arising out of any termination notice given by Canada under this section except to the extent that this section expressly provides. The Contractor agrees to repay immediately to Canada the portion of any advance payment that is unliquidated at the date of the termination.

2035 31 (2008-05-12) Accounts and Audit

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



examination by the representatives of Canada, who may make copies and take extracts. The Contractor must provide all reasonably required facilities for any audit and inspection and must furnish all the information as the representatives of Canada may from time to time require to perform a complete audit of the Contract.

4. The amount claimed under the contract, calculated in accordance with the Basis of Payment provision in the Articles of Agreement, is subject to government audit both before and after payment is made. If an audit is performed after payment, the Contractor agrees to repay any overpayment immediately on demand by Canada. Canada may hold back, deduct and set off any credits owing and unpaid under this section from any money that Canada owes to the Contractor at any time (including under other contracts). If Canada does not choose to exercise this right at any given time, Canada does not lose this right.

2035 32 (2008-05-12) Right of Set-off

Without restricting any right of set-off given by law, Canada may set-off against any amount payable to the Contractor under the Contract, any amount payable to Canada by the Contractor under the Contract or under any other current contract. Canada may, when making a payment pursuant to the Contract, deduct from the amount payable to the Contractor any such amount payable to Canada by the Contractor which, by virtue of the right of set-off, may be retained by Canada.

2035 33 (2008-05-12) Notice

Any notice under the Contract must be in writing and may be delivered by hand, courier, mail, facsimile or other electronic method that provides a paper record of the text of the notice. It must be sent to the Party for whom it is intended at the address stated in the Contract. Any notice will be effective on the day it is received at that address. Any notice to Canada must be delivered to the Contracting Authority.

2035 34 (2008-05-12) Conflict of Interest and Values and Ethics Codes for the Public Service

The Contractor acknowledges that individuals who are subject to the provisions of the [Conflict of Interest Act](#), 2006, c. 9, s. 2, the *Conflict of Interest Code for Members of the House of Commons*, the *Values and Ethics Code for the Public Service* or all other codes of values and ethics applicable within specific organizations cannot derive any direct benefit resulting from the Contract.

2035 35 (2008-05-12) No Bribe or Conflict

1. The Contractor declares that no bribe, gift, benefit, or other inducement has been or will be paid, given, promised or offered directly or indirectly to any official or employee of Canada or to a member of the family of such a person, with a view to influencing the entry into the Contract or the administration of the Contract.
2. The Contractor must not influence, seek to influence or otherwise take part in a decision of Canada knowing that the decision might further its private interest. The Contractor must have no financial interest in the business of a third party that causes or would appear to cause a conflict of interest in connection with the performance of its obligations under the Contract. If such a financial interest is acquired during the period of the Contract, the Contractor must immediately declare it to the Contracting Authority.
3. The Contractor warrants that, to the best of its knowledge after making diligent inquiry, no conflict exists or is likely to arise in the performance of the Contract. In the event the Contractor



becomes aware of any matter that causes or is likely to cause a conflict in relation to the Contractor's performance under the Contract, the Contractor must immediately disclose such matter to the Contracting Authority in writing.

4. If the Contracting Authority is of the opinion that a conflict exists as a result of the Contractor's disclosure or as a result of any other information brought to the Contracting Authority's attention, the Contracting Authority may require the Contractor to take steps to resolve or otherwise deal with the conflict or, at its entire discretion, terminate the Contract for default. Conflict means any matter, circumstance, interest, or activity affecting the Contractor, its personnel or subcontractors, which may or may appear to impair the ability of the Contractor to perform the Work diligently and independently.

2035 36 (2008-05-12) Survival

All the Parties' obligations of confidentiality, representations and warranties set out in the Contract as well as the provisions, which by the nature of the rights or obligations might reasonably be expected to survive, will survive the expiry or termination of the Contract.

2035 37 (2008-05-12) Severability

If any provision of the Contract is declared by a court of competent jurisdiction to be invalid, illegal or unenforceable, that provision will be removed from the Contract without affecting any other provision of the Contract.

2035 38 (2008-05-12) Successors and Assigns

The Contract is to the benefit of and binds the successors and permitted assignees of Canada and of the Contractor.

2035 39 (2008-12-12) Contingency Fees

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

2035 40 (2012-07-16) International Sanctions

1. Persons in Canada, and Canadians outside of Canada, are bound by economic sanctions imposed by Canada. As a result, the Government of Canada cannot accept delivery of goods or services that originate, either directly or indirectly, from the countries or persons subject to [economic sanctions](#).
2. The Contractor must not supply to the Government of Canada any goods or services which are subject to economic sanctions.
3. The Contractor must comply with changes to the regulations imposed during the period of the Contract. The Contractor must immediately advise Canada if it is unable to perform the Work as a



result of the imposition of economic sanctions against a country or person or the addition of a good or service to the list of sanctioned goods or services. If the Parties cannot agree on a work around plan, the Contract will be terminated for the convenience of Canada in accordance with section 30.

2035 41 (2012-11-09) Code of Conduct and Certifications - Contract

1. The Contractor agrees to comply with the [Code of Conduct for Procurement](#) and to be bound by its terms. In addition to complying with the [Code of Conduct for Procurement](#), the Contractor must also comply with the terms set out in this section.
2. The Contractor further understands that, to ensure fairness, openness and transparency in the procurement process, the commission of certain acts or offences may result in a termination for default under the Contract. If the Contractor made a false declaration in its bid, makes a false declaration under the Contract, fails to diligently maintain up to date the information herein requested, or if the Contractor or any of the Contractor's affiliates fail to remain free and clear of any acts or convictions specified herein during the period of the Contract, such false declaration or failure to comply may result in a termination for default under the Contract. The Contractor understands that a termination for default will not restrict Canada's right to exercise any other remedies that may be available against the Contractor and agrees to immediately return any advance payments.
3. For the purpose of this section, everyone, including but not limited to organizations, bodies corporate, societies, companies, firms, partnerships, associations of persons, parent companies and subsidiaries, whether partly or wholly-owned, as well as individuals and directors, are Contractor's affiliates if:
 - a. directly or indirectly either one controls or has the power to control the other, or
 - b. a third party has the power to control both.

Indicia of control, include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity created following the acts or convictions specified in this section which has the same or similar management, ownership, or principal employees, as the case may be.

4. The Contractor must diligently maintain an up-to-date list of names by informing Canada in writing of any change occurring during the period of the contract. The Contractor must also, when so requested, provide Canada with the corresponding Consent Forms.
5. The Contractor certifies that it is aware, and that its affiliates are aware, that Canada may verify the information provided by the Contractor, including the information relating to the acts or convictions specified herein through independent research, use of any government resources or by contacting third parties.
6. The Contractor certifies that neither the Contractor nor any of the Contractor's affiliates have directly or indirectly, paid or agreed to pay, and will not, directly or indirectly, pay a contingency fee to any individual for the solicitation, negotiation or obtaining of the Contract if the payment of the fee would require the individual to file a return under section 5 of the [Lobbying Act](#).
7. The Contractor certifies that no one convicted under any of the provisions under a) or b) are to receive any benefit under the contract. In addition, the Contractor certifies that except for those offences where a criminal pardon or a record suspension has been obtained or capacities



restored by the Governor in Council, neither the Contractor nor any of the Contractor's affiliates has ever been convicted of an offence under any of the following provisions:

- a. paragraph 80(1)(d) (*False entry, certificate or return*), subsection 80(2) (*Fraud against Her Majesty*) or section 154.01 (*Fraud against Her Majesty*) of the [Financial Administration Act](#), or
- b. section 121 (*Frauds on the government and Contractor subscribing to election fund*), section 124 (*Selling or Purchasing Office*), section 380 (*Fraud*) for fraud committed against Her Majesty or section 418 (*Selling defective stores to Her Majesty*) of the [Criminal Code](#) of Canada, or
- c. section 462.31 (*Laundering proceeds of crime*) or sections 467.11 to 467.13 (*Participation in activities of criminal organization*) of the [Criminal Code](#) of Canada, or
- d. section 45 (*Conspiracies, agreements or arrangements between competitors*), 46 (*Foreign directives*) 47 (*Bid rigging*), 49 (*Agreements or arrangements of federal financial institutions*), 52 (*False or misleading representation*), 53 (*Deceptive notice of winning a prize*) under the [Competition Act](#), or
- e. section 239 (*False or deceptive statements*) of the [Income Tax Act](#), or
- f. section 327 (*False or deceptive statements*) of the [Excise Tax Act](#), or
- g. section 3 (*Bribing a foreign public official*) of the [Corruption of Foreign Public Officials Act](#), or
- h. section 5 (*Trafficking in substance*), section 6 (*Importing and exporting*), or section 7 (*Production of substance*) of the [Controlled Drugs and Substance Act](#).

2035 42 (2008-05-12) Harassment in the Workplace

1. The Contractor acknowledges the responsibility of Canada to ensure, for its employees, a healthy work environment, free of harassment. A copy of the [Policy on the Prevention and Resolution of Harassment in the Workplace](#), which is also applicable to the Contractor, is available on the Treasury Board Web site.
2. The Contractor must not, either as an individual, or as a corporate or unincorporated entity, through its employees or subcontractors, harass, abuse, threaten, discriminate against or intimidate any employee, contractor or other individual employed by, or under contract with Canada. The Contractor will be advised in writing of any complaint and will have the right to respond in writing. Upon receipt of the Contractor's response, the Contracting Authority will, at its entire discretion, determine if the complaint is founded and decide on any action to be taken.

2035 43 (2008-05-12) Entire Agreement

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

**2035 44 (2012-07-16) Access to Information**

Records created by the Contractor, and under the control of Canada, are subject to the [Access to Information Act](#). The Contractor acknowledges the responsibilities of Canada under the [Access to Information Act](#) and must, to the extent possible, assist Canada in discharging these responsibilities. Furthermore, the Contractor acknowledges that section 67.1 of the [Access to Information Act](#) provides that any person, who destroys, alters, falsifies or conceals a record, or directs anyone to do so, with the intent of obstructing the right of access that is provided by the [Access to Information Act](#) is guilty of an offence and is liable to imprisonment or a fine, or both.

Appendix "1"

Contractor to Own Intellectual Property Rights in Foreground Information

- 01 Interpretation
- 02 Disclosure of Foreground Information
- 03 Contractor to Own Intellectual Property Rights in Foreground Information
- 04 License to Intellectual Property Rights in Foreground Information
- 05 License to Intellectual Property Rights in Background Information
- 06 Right to License
- 07 Transfer of Intellectual Property Rights in Foreground Information
- 08 Sale, Assignment, Transfer or Licensing of Intellectual Property Rights in Foreground Information
- 09 Access to Information; Exception to Contractor Rights
- 10 Waiver of Moral Rights

01 Interpretation

1. In the Contract,

"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;

"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;

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

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



"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;

"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;

"Software" means any computer program whether in source or object code (including Firmware), any computer program documentation recorded in any form or upon any medium, and any computer database, and includes modifications to any of the foregoing;

"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.

02 Disclosure of Foreground Information

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

03 Contractor to Own Intellectual Property Rights in Foreground Information

1. Subject to subsection 3 and section 07 (Transfer of Intellectual Property Rights in Foreground Information), and without affecting any Intellectual Property Rights or interests therein that have come into being prior to the Contract or that relate to information or data supplied by Canada for purposes of the Contract, all Intellectual Property Rights in the Foreground Information shall immediately, as soon as they come into existence, vest in and remain the property of the Contractor.
2. Notwithstanding the Contractor's ownership of the Intellectual Property Rights in Foreground Information that is a prototype, model or custom or customized system or equipment together with associated manuals and other operating and maintenance documents and tools, Canada shall have unrestricted ownership rights in those deliverables, including the right to make them available for public use, whether for a fee or otherwise, and, except in the case of Software that is not necessary for the operation of the prototype, model or system or equipment, the right to sell them.
3. (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 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, 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.

04 License to Intellectual Property Rights in Foreground Information

1. In consideration of Canada's contribution to the cost of development of the Foreground Information, the Contractor hereby grants to Canada a non-exclusive, perpetual, irrevocable, world-wide, fully-paid and royalty-free license to exercise all Intellectual Property Rights in the Foreground Information that vest in the Contractor pursuant to section 03, for any public purpose except Commercial Exploitation in Competition with the Contractor. Canada's license to the Intellectual Property Rights in the Foreground Information also includes the right to disclose the Foreground Information to other governments for information purposes only. The Intellectual Property Rights arising from any modification, improvement, development or translation of the Foreground Information that is effected by or for Canada in the exercise of this license shall vest in Canada, or in such person as Canada shall decide.

2. The Contractor acknowledges that Canada may wish to award contracts for any of the purposes contemplated in subsection 1 and that such contract awards may follow a competitive process. The Contractor agrees that Canada's license in relation to the Intellectual Property Rights in the Foreground Information that vest in the Contractor pursuant to section 03, includes the right to disclose the Foreground Information to bidders for such contracts, and to sub-license or otherwise authorize the use of that information by any contractor engaged by Canada solely for the purpose of carrying out such a contract. Canada shall require the bidder or the contractor not to use or disclose any Foreground Information except as may be necessary to bid for or to carry out that contract.

3. For greater certainty and without limiting the generality of subsections 1 and 2, Canada's right to modify, improve, translate, reproduce or further develop any Foreground Information pursuant to subsections 1 and 2:

(a) applies to Foreground Information that is Software, notwithstanding any terms to the contrary delivered by the Contractor with any 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.

4. Notwithstanding subsections 1, 2, and 3, if any Foreground Information arises solely from correction by the Contractor of errors in Background Information that is Software, or from minor modifications made by the Contractor to such Software, then the license set out in subsections 1, 2 and 3 shall not apply to that Foreground Information and, unless otherwise agreed, the license that applies to such Background Information shall apply to that Foreground Information.

5. Where the Intellectual Property Rights in any Foreground Information are or will be owned by a Subcontractor at any tier, the Contractor shall either obtain a license from that Subcontractor that permits compliance with subsections 1, 2 and 3 or arrange for the Subcontractor to convey directly to Canada the same rights by execution of the form provided for that purpose by the Minister, in which case the Contractor shall deliver that form to the



Minister, duly completed and executed by the Subcontractor, no later than the time of disclosure to Canada of that Foreground Information.

6. If the Contractor wishes to make use of any Canada-owned information that was supplied for purposes of the Contract, for the commercial exploitation or further development of any of the Foreground Information, then the Contractor may make a written request for a license to exercise the required Intellectual Property Rights in that Canada-owned information, to the minister for whose department or agency the Work is being or was carried out. The Contractor shall give that minister an explanation as to why such a license is required. That minister shall respond in writing to the request within a reasonable period of time. If the request is refused, the response shall provide an explanation for the refusal. Should that minister agree to grant such a license, it shall be on terms and conditions to be negotiated between the Contractor and that minister. It is understood that those terms may include payment of compensation to Canada.

7. The Contractor may apply to the minister for whose department or agency the Work is being or was carried out for a license to commercially exploit a translation of the Foreground Information which is effected by or for Canada, subject to the same restrictions and obligations as apply under the Contract to commercial exploitation of the Foreground Information that was translated. Any such license shall be on terms and conditions to be negotiated between the Contractor and that minister. It is understood that those terms may include payment of compensation to Canada.

05 License to Intellectual Property Rights in Background Information

1. Without restricting the scope of any licence 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.

2. Without restricting the scope of any licence 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 2 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.

3. Notwithstanding subsections 1 and 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.



4. The Contractor acknowledges that, subject to paragraph (c) of subsection 1, Canada may wish to award contracts for any of the purposes contemplated in subsections 1 and 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 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 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.

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 subsections 1 and 2 or arrange for the Subcontractor to convey directly to Canada the same rights by execution of the form provided for that purpose by the Minister, in which case the Contractor shall deliver that form to the Minister, duly completed and executed by the Subcontractor, no later than the time of disclosure to Canada of that Background Information.

06 Right to License

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 the Background Information as required by the Contract.

07 Transfer of Intellectual Property Rights in Foreground Information

1. Until the Contractor completes the Work and discloses all of the Foreground Information in accordance with section 02 (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.

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 02, 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.

3. In the event of the issuance by the Minister of a notice under subsection 2, the Contractor shall, at its own expense and without delay, execute such conveyances or other documents relating to title to the Intellectual Property Rights as the minister for whose department or agency the Work is being or was carried out may require, and the Contractor shall, at Canada's expense, afford that minister all reasonable assistance in the preparation of applications and in the prosecution of any applications for, or any registration of, any Intellectual Property Right in any jurisdiction, including without limitation the assistance of the inventor in the case of Inventions.

08 Sale, Assignment, Transfer or Licensing of Intellectual Property Rights in Foreground Information

1. In any sale, assignment, transfer or license of Intellectual Property Rights in Foreground Information by the Contractor except a sale or license for end use of a product based on Foreground Information, the Contractor



shall impose on the other party all of its obligations to Canada in relation to the Intellectual Property Rights in the Foreground Information and any restrictions set out in the Contract on the use or disposition of the Intellectual Property Rights in the Foreground Information (and, if applicable, the Foreground Information), including the obligation to impose the same obligations and restrictions on any subsequent transferee, assignee or licensee.

2. The Contractor shall promptly notify Canada of the name, address and other pertinent information in regard to any transferee, assignee or licensee referred to in subsection 1, and shall ensure that such party is required to do the same with regard to any subsequent transferee, assignee or licensee.

3. The Contractor shall not charge or permit any person to charge a royalty or other fee to Canada in respect of the Intellectual Property Rights in any Foreground Information for purposes of a contract or other arrangement with Canada. Where the contract or other arrangement is for a product based on Foreground Information or on any modification or improvement thereof, the Contractor shall grant to Canada a reasonable credit against its commercial price for that product to take into account Canada's financial contribution toward the development of the product, and in the case of a product owned by a transferee, assignee or licensee of the Intellectual Property Rights in any Foreground Information, the Contractor shall ensure that such party is required to do the same.

09 Access to Information; Exception to Contractor Rights

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.

2. Notwithstanding subsection 1, nothing in these terms and conditions shall be construed as limiting Canada's right to exercise the Intellectual Property Rights in any Foreground Information or any Background Information, or to disclose any Foreground Information or any Background Information, to the extent that such information:

(a) is or becomes in the public domain, or to the extent that the Contractor does not benefit from or ceases to benefit from any intellectual property rights protection for such information under legislation or at law (other than under the terms of the Contract), for any reason including as a result of Canada's use or disclosure of deliverables under the Contract for any purpose whatever that is not expressly excluded under the Contract;

(b) is or becomes known to Canada from a source other than the Contractor, except from any source that is known to Canada to be under an obligation to the Contractor not to disclose the information;

(c) is independently developed by or for Canada; or

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

10. Waiver of Moral Rights

1. The Contractor shall obtain a written permanent waiver of moral rights (as this term is defined in the *Copyright Act*, R.S.C., c. C-42), 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.

2. If the Contractor is an author of the Foreground Information referred to in subsection 1, the Contractor hereby permanently waives the Contractor's moral rights in that Foreground Information.