

## Annex M Supplemental General Conditions

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## 1. Supplemental General Conditions

### 1.1 4001 (2015-04-01) Hardware Purchase Lease and Maintenance

Supplemental General Conditions 4001 (2015-04-01) applies to Schedule A, UWSU Acquisition Pricing Article 2, items N°1, N°4 through N°9, N°12, N°14, or any hardware supplied under Task Authorizations, and should the options be exercised, Schedule A Article 3 items N°1 through N°3.

#### Part I - Conditions Common to Hardware Transactions

The following information consists of conditions common to hardware transactions.

#### 4001 01 (2010-01-11) Interpretation

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

**"Delivery Date"**

means the date specified in the Contract for the delivery of the Hardware. If no date is specified elsewhere in the Contract, the Delivery Date is for any initial delivery, thirty (30) days from the date of the Contract; for any Hardware purchased or leased under an option, thirty (30) days from the date the option is exercised; and if the Contract provides for multiple orders, thirty (30) days from the date of each order;

**"Downtime"**

means the time, measured in hours and whole minutes, during which the Hardware is not available for Fully Functional Operation during User Time because of a malfunction of the Hardware. Downtime starts when Canada notifies the Contractor that the Hardware is not available for Fully Functional Operation and ends when the malfunction has been corrected and the Contractor notifies Canada that the Hardware has been restored to Fully Functional Operation, unless Canada then notifies the Contractor that the Hardware is still not available for Fully Functional Operation;

**"Firmware"**

means any computer programs stored in integrated circuits, read-only memory, or other similar devices within the Hardware;

**"Fully Functional Operation"**

means that the Hardware is working according to all the Specifications, so that all of the functionalities of the Hardware can be used;

**"General Conditions"**

means the general conditions that form part of the Contract;

**"Hardware"**

means all the equipment, materials, matters and things to be provided, maintained, and supported, as applicable, by the Contractor under the Contract (including cables and other ancillary items). The term "Hardware" includes Firmware, if any, but does not include software or services. Unless the context requires otherwise, the term "Hardware" includes any Leased Hardware. Also, unless the context requires otherwise, each time the term "Hardware" is used, it will be read as also applying to each System delivered under the Contract;

**"Hardware Documentation"**

means all of the manuals, handbooks, user guides and other human-readable material to be provided by the Contractor to Canada for use with the Hardware, whether it is to be supplied in printed form or on an electronic storage medium, such as a CD-ROM;

"Leased Hardware"

means the Hardware leased under the Contract;

"Hardware Maintenance Service"

has the meaning given in Part V;

"Operational Use Time"

means the time, measured in hours and whole minutes, during which the Hardware performs its functions or activities in accordance with the Specifications during User Time, and includes all intervals between the stop and start times of the Hardware during User Time that do not constitute Downtime, such as maintenance scheduled in advance with Canada;

"Ready for Use"

describes the Hardware once the Contractor has delivered it and, if applicable, has installed, integrated and configured it so that it is available for Fully Functional Operation;

"Specifications",

despite the definition in the General Conditions, for the Hardware, means the functional or technical description of the Work set out or referred to in the Contract, including drawings, samples and models, and also includes, except to the extent inconsistent with anything in the Contract, any such description set out or referred to in any brochure, product literature or other documentation provided by the Contractor under the Contract, as well as any technical documentation published or made generally available by the manufacturer of any of the Hardware. For any System to be provided, if there is any inconsistency between the Specifications for an individual System component and the Specifications for the System as a whole, the Specifications for the System will prevail over the Specifications for any System component;

"System"

means the integrated combination of any of the Hardware delivered under the Contract and any other equipment, materials or software described in the Contract that are interconnected with or that otherwise interoperate with the Hardware together as a unit. There may be multiple "Systems" including different items of Hardware delivered under the Contract. A System may include Custom Software, if supplemental general conditions 4002 are part of the Contract and/or a System may include Licensed Software, if supplemental general conditions 4003 are part of the Contract;

"User Time"

means 7:00 a.m. to 7:00 p.m., Eastern Time, Mondays through Fridays, excluding statutory holidays observed by Canada at the site where the Hardware is being used.

2. Words and expressions defined in the General Conditions and used in these supplemental general conditions have the meanings given to them in the General Conditions, unless provided otherwise. If the General Conditions contain a section entitled "Ownership" that section does not apply to the Hardware. If the General Conditions contain a section entitled "Warranty", that section does not apply to the Hardware, except for 2030 22 (2014-09-25) Warranty Articles 2 through 7). Instead, the ownership and warranty provisions in these supplemental general conditions apply to the Hardware.

3. If there is any inconsistency between the General Conditions and these supplemental general conditions, the applicable provisions of these supplemental general conditions prevail.
4. Part I of these supplemental general conditions applies to the relationship between the Parties with respect to hardware transactions generally.
5. Part II of these supplemental general conditions applies if any Hardware is being purchased or leased under the Contract.
6. Part III of these supplemental general conditions applies if any Hardware is being purchased under the Contract, including Leased Hardware that is purchased because Canada exercises an option to purchase.
7. Part IV of these supplemental general conditions applies if any Hardware is being leased under the Contract.
8. Part V of these supplemental general conditions applies if either or both of Part III or Part IV applies, or if the Contract is for maintenance of Hardware already owned by Canada.

#### 4001 02 (2010-01-11) Hardware Must be New

1. All Hardware supplied by the Contractor, including parts used to provide the Hardware Maintenance Service under Part V, must be new and unused. The Hardware must also:
  - a. be off-the-shelf, meaning it must be composed of standard equipment requiring no further research or development;
  - b. be a model that is still in production by the manufacturer at the time of delivery; and
  - c. conform to the version of the applicable specification or part number of the manufacturer in effect at the time of delivery.
2. Unless the Contract provides otherwise, hardware or parts that have been refurbished or are certified as "equal to new quality" are not acceptable, including for the Hardware Maintenance Service.
3. By supplying the Hardware, the Contractor is guaranteeing that the Hardware is not counterfeit, meaning it is not an unauthorized copy, replica, or substitute for the product manufactured by the original equipment manufacturer identified by name on the Hardware.

#### Part II - Conditions Common to Lease and Purchase

The following information consists of conditions common to lease and purchase.

#### 4001 03 (2010-01-11) Delivery

The Contractor must deliver the Hardware to the location(s) designated by Canada by the Delivery Date. The Contractor must pay all costs associated with replacing any item damaged in transit to the final destination. The Contractor acknowledges that no item will be considered delivered on the Delivery Date if it is damaged or otherwise not ready for Canada to begin its acceptance procedures. The Contractor must, at a minimum, package the Hardware according to industry standards and include a packing slip with each shipment. The Contractor must also arrange for any rigging and

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drayage necessary to deliver the Hardware. All costs associated with packaging, shipping, transportation and delivery are included in the price of the Hardware.

#### 4001 04 (2008-05-12) Special Site Delivery or Installation Preparation Requirements

1. If the Contract describes special site preparation requirements, the Contractor must prepare the site for delivery or installation at its own expense according to those requirements, sufficiently in advance to meet the Delivery Date. All the costs associated with the special site preparation are included in the price of the Hardware.
2. If the Contract provides that Canada is responsible for special site preparation requirements, then the following applies instead of subsection 1:
  - a. Canada must prepare the site at its own expense in accordance with the site preparation requirements described in the Contract.
  - b. If the Contract provides that there are special site preparation requirements, but does not describe them, the Contractor must deliver a complete written description of them to Canada immediately following the date of the Contract or, if the Delivery Date is more than thirty (30) days after the date of the Contract, at any time at least thirty (30) days before the Delivery Date. If the Contractor delivers the special site preparation requirements to Canada by this time, and Canada does not object to any of the Contractor's requirements within ten (10) days, Canada must prepare the site according to these requirements. If Canada is required to make any alterations or modifications because the Contractor's special site preparation requirements were incomplete or incorrect, the Contractor must reimburse Canada for any additional expenses it incurs. The Contractor guarantees that, if the site is prepared and maintained by Canada according to the special site preparation requirements, the resulting environment will permit the Hardware to operate according to the Specifications.
  - c. Canada must complete the special site preparations and notify the Contractor that the site is ready at least five (5) working days before the Delivery Date, after which the Contractor may inspect the site at a time agreed to by Canada. Inspection by the Contractor does not relieve Canada of its obligation to prepare the site according to the special site preparation requirements described in the Contract.
  - d. If Canada does not prepare the site according to the special site preparation specifications on time, unless the delay is due to an event reasonably beyond Canada's control, the Contractor will be entitled to be reimbursed for any additional costs that it can demonstrate that it reasonably and properly incurred as a direct result of the delay.
3. If the Contract does not describe any special site preparation requirements, subsections 1 and 2 do not apply, and instead the Contractor guarantees that none are required for the Hardware to operate according to the Specifications.

#### 4001 05 (2008-05-12) Installation, Integration and Configuration

1. Unless provided otherwise in the Contract, the Contractor must unpack, assemble, install, integrate, interconnect, and configure all the Hardware at the location(s) specified in the Contract. Where necessary to complete this part of the Work, the Contractor must provide all required moving and installation resources, including but not limited to personnel, packing material, vehicles, cranes, and floor protection panels. After completing this part of the Work, the Contractor must provide Canada's on-site representative with written notification that the

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Hardware is Ready for Use. If either or both of *Supplemental General Conditions* 4002 and/or 4003 apply to the Contract, and the Contract provides that the System consists of the Hardware together with Licensed Software and/or Custom Software, the Work described in this article also applies to the entire System.

2. The Contractor must supply all materials required to complete the assembly, installation, integration, interconnection, and configuration of the Hardware at the location(s) specified in the Contract so that it is Ready for Use and acceptance, including providing and setting up all the required connections to the power supply and any other necessary utilities, cables, and any other accessories or supplies.
3. The Contractor must leave all work areas clean and tidy at the end of each workday and once the Work is complete, which includes removing and disposing of all packing materials.
4. All costs associated with the Work described in this section are included in the price of the Hardware.

#### 4001 06 (2008-05-12) Certification of Electrical Equipment

The Contractor guarantees that all electrical equipment delivered under the Contract is either:

- a. certified by an organization accredited by the Standards Council of Canada in accordance with Part I of the *Canadian Electrical Code*; or
- b. has been inspected by an organization acceptable to the Chief Electrical Inspector in the province, territory or city in Canada where the electrical equipment will be delivered, in which case the Contractor must present evidence of this inspection if requested by Canada.

#### 4001 07 (2008-05-12) Hardware Documentation

1. The Contractor must provide to Canada the same Hardware Documentation that it provides to other purchasers of similar hardware, and must include all supplements and revisions to the Hardware Documentation effective up to the Delivery Date. The Hardware Documentation must at least include all the documentation available to consumers from the manufacturer of the Hardware about the technical specifications of the Hardware and the Firmware, installation requirements, and operating instructions, as well as details about the software programs with which the Hardware functions, regardless of whether licenses to those software programs are provided under the Contract.
2. The Contractor guarantees that the Hardware Documentation it provides is sufficiently detailed to allow Canada to use and test all the Hardware's functions.
3. If the Contract states that the Contractor must provide maintenance documentation, the Contractor guarantees that the Hardware Documentation it provides is sufficiently detailed to permit Canada, or someone authorized by Canada, to maintain and repair the Hardware properly, and to test it for that purpose.
4. The Contractor must deliver the Hardware Documentation to Canada with the Hardware. If multiple units are delivered, unless the Contract specifically provides otherwise, the Contractor must provide one complete set of Hardware Documentation with each item of Hardware.

5. If there are changes to the Hardware during the contract period, the Contractor must update the Hardware Documentation, at no additional cost to Canada. The Contractor must provide these updates within ten (10) days of the updates being made available by the manufacturer. If available from the manufacturer, the updates must include supporting documentation that identifies any problem resolved or enhancement made to the Hardware, any new feature(s) added, and any necessary installation instructions.
6. Despite anything in the General Conditions concerning copyright, the copyright in the Hardware Documentation will not be owned or transferred to Canada. However, Canada has the right to use the Hardware Documentation and may, for its own internal purposes, copy it for use by individuals using or supporting the Hardware, as long as Canada includes any copyright and proprietary right notices that are part of the original document.
7. Unless provided otherwise in the Contract, the Hardware Documentation must be delivered in both English and French. If the Contract provides that the Hardware Documentation is only required to be provided in one of Canada's official languages, Canada has the right to translate it or have it translated for its own use. Canada owns any translation and is not required to provide it to the Contractor. Canada must include any copyright and proprietary right notices that are part of the original document in any translation. The Contractor is not responsible for technical errors that arise as a result of any translation made by Canada.

#### 4001 08 (2010-01-11) Minimum Availability Level Requirement

1. Each item of Hardware must achieve the minimum availability level specified in the Contract during each month of the contract period. If no minimum availability level is specified, this section does not apply to the Contract.
2. The availability level achieved each month must be calculated as follows:  
$$\text{Operational Use Time} / [\text{Operational Use Time} + \text{Downtime}] \times 100\%$$
3. The Contractor must monitor the performance of the Hardware and submit written monthly reports regarding the availability level during each calendar month of the contract period. The report must be submitted to the Contracting Authority and the Technical or Project Authority within thirty (30) days of the end of the month covered by the report.
4. If the Contract states that no availability level reports are required, the Contractor acknowledges that Canada may monitor the availability level or perform testing at any time during the contract period.
5. If any Hardware does not meet the minimum availability level in any given month, in addition to any other remedy provided for in the Contract, the Contractor must immediately perform Hardware Maintenance Service to restore the Hardware to Fully Functional Operation at the minimum availability level.

#### 4001 09 (2010-01-11) Availability-Level Testing Before Acceptance

1. Availability-level testing may be required by Canada before acceptance if the Contract specifies a Minimum Availability Level. If no Minimum Availability Level is specified, this section does not apply to the Contract.



- ~~2. The Contractor must notify the Technical or Project Authority in writing once the work under section 5 is complete and the Hardware is Ready for Use. Canada must start any availability level testing within five (5) working days after receiving this notice or by the Ready for Use date specified in the Contract, whichever is later.~~
- ~~3. If the Contract provides that section 5 does not apply to the Contract, and Canada intends to conduct availability level testing on the Hardware, Canada agrees to install the Hardware within ten (10) working days after receiving the Hardware or ten (10) working days after the Delivery Date, whichever is later. Canada agrees to start any availability level testing within two (2) working days of completing the installation.~~
4. Without affecting any of Canada's other rights or remedies under the Contract, Canada must have full access to the Hardware and may make unrestricted operational use of it after the Contractor has given notice that it is Ready for Use or, where installation is Canada's responsibility, after it is delivered to and installed by Canada. However, Canada must provide the Contractor, at all times before the Hardware is accepted, priority access to the Hardware to maintain it and to perform the Contract.
5. To pass the availability-level test, the Hardware must achieve the Minimum Availability Level specified in the contract. ~~for thirty (30) consecutive days within ninety (90) days of the testing beginning. During availability level testing, the Contractor must provide weekly written reports to Canada showing the Hardware performance in relation to the Minimum Availability Level.~~
6. If the Hardware does not pass the availability-level tests ~~in the time described in subsection 5,~~ Canada may, without affecting any other rights or remedies described in the Contract, choose to do one or more of the following:
  - a. require the Contractor to replace some or all of the Hardware with new Hardware, which would again be subject to availability-level testing and acceptance;
  - b. extend the availability-level testing period; and
  - c. terminate the Contract for default, at no cost to Canada.
7. If Canada does not carry out any availability-level testing within the time described in ~~the contract this section,~~ when the availability level of the Hardware is calculated, the time during which Canada otherwise would have conducted that testing will be considered uninterrupted Operational Use Time. However, this will not apply if Canada is unable to start or continue the availability-level testing because of an event reasonably beyond Canada's control. In that case, Canada may temporarily suspend the availability-level testing and the time limits for testing referred to in this section or elsewhere in the Contract will be extended by the number of days that testing is suspended, ~~up to a maximum extension of sixty (60) days.~~
- ~~8. If Canada determines that the Hardware successfully passes the availability level testing, which in addition to the above may include tests of any function of the Hardware to determine whether it meets the Specifications, the first day of the 30-day period in which the Hardware achieves the Minimum Availability Level will be considered the acceptance date.~~

#### 4001 10 (2008-05-12) Acceptance

1. The Hardware, including all the Work related to it, is subject to acceptance by Canada. As part of its acceptance process, Canada may test any function of the Hardware to determine whether it

meets the Specifications. If any of the Work does not meet the requirements of the Contract, Canada may reject it or require that it be corrected at the Contractor's expense before accepting it. No payments for the Hardware are due under the Contract unless the Hardware is accepted.

2. Acceptance by Canada does not relieve the Contractor of its responsibility for defects in the Hardware or other failures to meet the requirements of the Contract or of its warranty or maintenance obligations under the Contract.
3. ~~Except where section 9 applies, the procedure for acceptance will be as follows:~~ The procedure for acceptance is detailed in Annex B Statement of Work.
  - ~~a. the Contractor must notify the Contracting Authority in writing once the Hardware is Ready for Use by referring to this provision of the Contract and requesting acceptance of the Work;~~
  - ~~b. Canada will have thirty (30) days to perform its acceptance procedures (the "Acceptance Period"); and~~
  - ~~c. if Canada provides notice of any deficiency during the Acceptance Period, the Contractor must address the deficiency at no cost to Canada as soon as possible and notify Canada in writing once the Work is complete, at which time Canada will be entitled to re-inspect the Work and the Acceptance Period will start again.~~
4. If Canada provides notice of any deficiency during the Acceptance Period, the Contractor must address the deficiency at no cost to Canada as soon as possible and notify Canada in writing once the Work is complete, at which time Canada will be entitled to re-inspect the Work and the Acceptance Period will start again.
5. Despite Supplemental General Conditions 4002 and 4003, if either or both apply to the Contract, if the Contract states that the System consists of the Hardware together with Licensed Software and/or Custom Software, the period for conducting any acceptance tests for the System, including any Licensed Software and any Custom Software components of the System, will be the acceptance period for the Hardware specified in these supplemental general conditions.

#### 4001 11 (2008-05-12) Firmware

1. The Contractor must deliver the Hardware equipped with all the Firmware required to use all the Hardware's functions.
2. Canada will not own any of the Firmware, but the Contractor grants to Canada a perpetual, non-exclusive, irrevocable, royalty-free license to use the Firmware with the Hardware. Canada may transfer this license if Canada transfers ownership of the Hardware to a third party. Any reference in the Contract to the Firmware being a deliverable is a reference to the license to use that Firmware, not ownership of the Firmware.
3. The Contractor guarantees that it has the right to license the Firmware and full power and authority to grant to Canada the rights to use the Firmware described in this section. The Contractor also guarantees that all necessary consents to that grant have been obtained.

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#### 4001 12 (2008-05-12) Total System Responsibility

1. If the Contract provides that the Hardware is part of one or more Systems, the Contractor must supply the System(s) as a whole and ensure that each System is available for Fully Functional Operation at all times.
2. If the Contract provides that the Contractor must incorporate Government Property into the System, the obligations under subsection 1 include the Government Property and the Contractor must make any adjustments to the Government Property required to ensure compatibility with the rest of the System. If requested by Canada during the Hardware Warranty Period (defined below), the Contractor must as soon as possible correct any failure of the System to conform to the Specifications that is caused by the improper interconnection or integration of any Government Property into the System. This provision survives acceptance of the Work and does not limit any of the Contractor's warranty or maintenance obligations under the Contract.
3. Despite subsections 1 and 2, the Contractor is not responsible for a failure of the System to meet the Specifications, if that failure is directly caused by a defect in any Government Property, or by any failure of Government Property to meet its specifications. This subsection does not apply to any Government Property that was originally supplied to Canada by the Contractor, but is then made available by Canada to the Contractor for use under the Contract.

#### Part III - Additional Conditions: Purchase

The following information consists of additional conditions regarding purchases.

#### 4001 13 (2008-05-12) Ownership of the Purchased Hardware and Risk of Loss or Damage

1. Unless provided otherwise in the Contract, including subsection 2, Canada becomes the owner of the Hardware once the Hardware has been delivered to and accepted by Canada according to the conditions of the Contract.
2. If Canada pays the Contractor for any materials, parts, work-in-process, or finished work, either by way of progress payments or otherwise, then Canada will own them once the payment is made, unless ownership has already passed to Canada under another provision of the Contract. The fact that ownership has transferred to Canada does not mean that Canada has accepted the materials, parts, work-in-process or finished work, and does not relieve the Contractor of its obligation to perform the Work in accordance with the Contract. Also, the risk of loss or damage to the materials, parts, work-in-process or finished work remains with the Contractor until they are delivered to Canada in accordance with the Contract, even if ownership has transferred to Canada.
3. After delivery, the Contractor remains responsible for loss or damage to any part of the Work caused by the Contractor or any subcontractor or any person for whom either is responsible.
4. The Contractor guarantees that it has the right to transfer ownership of the Hardware to Canada and that there are no liens, attachments, charges, encumbrances, or claims affecting the Hardware. Once ownership passes to Canada, the Contractor must, if Canada requests, establish to the Contracting Authority's satisfaction that the title is free and clear of all liens, attachments, charges, encumbrances, or claims. If requested by the Contracting Authority, the Contractor must execute any transfer documentation and take any other steps that are necessary to perfect Canada's title.

## 4001 14 (2010-01-11) Warranty for Purchased Hardware

### The warranty period begins as follows:

- a. For Schedule A, UWSU Acquisition Pricing Article 2, item N°1, and should the options be exercised, Schedule A Article 3 items N°1 through N°3, the warranty period begins upon acceptance by Canada of the of the Underwater Sensor System (or Fitted for But Not With configuration) Sea Acceptance Test results;
  - b. For Schedule A, UWSU Acquisition Pricing Article 2, items N°4 through N°9, the warranty period begins upon system acceptance of the Shore-based Site through approval of the Acceptance Test Report.
  - c. For Schedule A, UWSU Acquisition Pricing Article 2, items, N°12 and N°14, the warranty period begins on the date of Acceptance;
1. Even if Canada has accepted the Work, the Contractor guarantees that, for twelve (12) months after the Hardware is accepted (the "Hardware Warranty Period"), it will be free from all defects in materials or workmanship, be free from all design defects, and conform in all ways with the requirements of the Contract, including the Specifications and any Minimum Availability Level requirements. Because items of Hardware may be accepted on different days, the Hardware Warranty Period for different items of Hardware delivered under the Contract may begin and end on different days. If the Contract provides that the System consists of the Hardware together with Licensed Software and/or Custom Software, the Hardware Warranty Period will also apply to the Licensed Software and/or Custom Software components of the System and this longer period will apply to all the warranty, maintenance and support obligations described in *Supplemental General Conditions* 4002 and 4003.
  2. This warranty does not apply to a specific item of Hardware if the only reason that item fails to conform to the requirements of the Contract is because:
    - a. Canada is negligent or does not use the Hardware in accordance with the Specifications;
    - b. electric power or air conditioning or humidity control at the site does not perform according to any special site preparation requirements described in the Contract;
    - c. a person other than the Contractor, a subcontractor, or a person approved by either of them modifies the Hardware or attaches equipment to the Hardware that was not designed or approved for use with the Hardware by the Contractor, a subcontractor, or the manufacturer of the Hardware; or
    - d. Canada uses consumable supplies or materials in or on the Hardware that are supplied by a person other than the Contractor or a subcontractor or a person for whom either of them is responsible, if those consumables or materials do not conform to the Specifications or to the Hardware manufacturer's instructions to consumers.
  - ~~3. The Contractor must provide Hardware Maintenance Service for the Hardware throughout the Hardware Warranty Period. All charges and costs associated with providing the Hardware Maintenance Service during the Hardware Warranty Period are included in the price of the Hardware. The Contractor must continue to provide Hardware Maintenance Service for any part of the Hardware that is repaired, replaced or otherwise made good as part of the Hardware Maintenance Service for the remainder of the Hardware Warranty Period that applied to the original item of Hardware.~~

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Part IV - Additional Conditions: Lease (Removed)

Part V - Additional Conditions: Maintenance (Removed)

## **1.2 4002 (2010-08-16) Software Development or Modification Services**

### **4002 01 (2008-05-12) Software Interpretation**

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

**"Custom Software"**

means the computer programs, data bases and documentation that Canada wishes to develop, or to have developed, either as new software or by modification of existing software, all as described in the Contract;

**"Detailed Design Specifications"**

means the specifications for the detailed technical design of the Custom Software;

**"Functional Specifications"**

means the functional description of the Custom Software set out or referred to in the Contract specifying the functions the Custom Software must perform and the features and capacities the Custom Software must have;

**"General Conditions"**

means the general conditions that form part of the Contract;

2. Words and expressions defined in the General Conditions and used in these supplemental general conditions have the meanings given to them in the General Conditions unless provided otherwise. If the general conditions contain sections entitled "Ownership" or "Warranty", those sections do not apply to the Custom Software. Instead the ownership and warranty provisions in these supplemental general conditions apply to the Custom Software.
3. In the event of any inconsistency between the General Conditions and these supplemental general conditions, the applicable provisions of these supplemental general conditions will prevail.

## **Part I - Development of Functional Specifications and Detailed Design Specifications**

### **4002 02 (2008-05-12) Application of Part I**

This Part only applies if the Contract requires the Contractor either to design the Custom Software or to further develop an existing technical design for the Custom Software.

### **4002 03 (2008-05-12) Functional Specifications**

The Functional Specifications developed by the Contractor under the Contract and accepted by Canada are incorporated in the Contract by reference and supersede any functional specifications that were originally incorporated in the Contract.

### **4002 04 (2008-05-12) Detailed Design Specifications**

The Contractor must develop the Detailed Design Specifications for the Custom Software in accordance with the Functional Specifications and all other requirements of the Contract.

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## 4002 05 (2008-05-12) Inspection Procedures for Detailed Design Specifications

1. The inspection procedures set out below will only apply in the absence of any other inspection procedures in the Contract.
2. In this section, "Review Period" means a period of five (5) working days from the date on which the Detailed Design Specifications must be submitted to Canada or from the actual date of submission of those specifications by the Contractor, whichever is later.
3. Canada may extend the Review Period by an additional five (5) working days by giving notice to the Contractor within the Review Period.
4. During the Review Period, Canada will inspect the Detailed Design Specifications submitted by the Contractor and, within two (2) working days following the end of the Review Period, will advise the Contractor whether or not the Detailed Design Specifications have passed inspection.
5. If the Detailed Design Specifications submitted by the Contractor are inconsistent with the Functional Specifications or fail in any other way to meet the requirements of the Contract, Canada will send a written description of the deficiencies to the Contractor within two (2) working days following the end of the Review Period.
6. Upon receipt of Canada's description of the deficiencies mentioned in subsection 5, the Contractor must immediately modify the Detailed Design Specifications to correct the deficiencies and promptly submit the corrected work to Canada for inspection.
7. During a second Review Period, Canada will inspect the corrected work submitted to Canada pursuant to subsections 4 and 5.
8. Despite anything else contained in this section, the Contractor must ensure that the Detailed Design Specifications developed by the Contractor pass inspection by Canada within thirty (30) days of their original delivery date set out in the Contract.

## Part II - Implementation of Custom Software

### 4002 06 (2008-05-12) Coding and Pre-Installation Tests

1. The Contractor must develop the Custom Software based on the Detailed Design Specifications and the Functional Specifications. In the development of the Custom Software, the Contractor must carry out all detailed programming and coding required under the Detailed Design Specifications, and, if necessary, must revise the Detailed Design Specifications in order to ensure that they are derived from and are consistent with the Functional Specifications and all other requirements of the Contract.
2. The Contractor must conduct pre-installation testing to ensure that the Custom Software will operate in accordance with the Functional Specifications and all other requirements of the Contract. The Contractor must notify Canada of all such tests. Upon request from Canada, the Contractor must give Canada an opportunity to witness those tests and provide Canada with a copy of all intermediate and final test records and results.

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#### 4002 07 (2008-05-12) New Source Code

1. In this section, "New Source Code" means all of the source code for the Custom Software that is written by the Contractor or any subcontractor as part of the Work performed under the Contract.
2. The Contractor must deliver the New Source Code to Canada at such time or times as the Contract may require, and if no time is specified in the Contract, within thirty (30) days following acceptance of the Custom Software by Canada.
3. The New Source Code provided by the Contractor must contain a complete description of the operation of the developed software in sufficient detail to enable a programmer, experienced in the programming language or languages in which the source code is written, to modify all aspects of that software without assistance from the Contractor.

#### 4002 08 (2008-05-12) Pre-existing Software

1. In this section, "Pre-existing Software" means software that is not developed as part of the Work performed under the Contract and that is proprietary to the Contractor or any of its subcontractors or to a third party.
2. The Contractor must not develop the Custom Software by modifying Pre-existing Software or incorporate any Pre-existing Software into the Custom Software without first obtaining the written consent of Canada. However, the consent of Canada is not required if the use of Pre-existing Software is specifically authorized in the Contract.
3. If Pre-existing Software forms part of the Custom Software, unless provided otherwise in the Contract, the Contractor must, within thirty (30) days following acceptance of the Custom Software by Canada, at its option and expense, either:
  - a. deliver the source code for that software to Canada; or
  - b. deliver the source code to an escrow agent approved by Canada, to be held in trust by that agent, for release to Canada upon the occurrence of any of the following events:
    - i. Canada terminates either the Contract or any subsequent support or development arrangement relating to the Custom Software for default;
    - ii. the Contractor or its supplier ceases to do business or ceases to make support or development services in relation to the Custom Software reasonably available to Canada;
    - iii. the Contractor or its supplier becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, or takes the benefit of any statute relating to bankrupt or insolvent debtors;
    - iv. a receiver is appointed for the Contractor or its supplier under a debt instrument, or a receiving order is made against the Contractor or its supplier; or
    - v. an order is made or a resolution passed for the winding up of the Contractor or its supplier.

4. The source code delivered by the Contractor to Canada or to any escrow agent, in relation to any Pre-existing Software that forms part of the Custom Software, must contain a complete description of the operation of that Pre-existing Software in sufficient detail to enable a programmer, experienced in the programming language or languages in which the source code is written, to modify all aspects of that software without assistance from the Contractor. If the source code for the Pre-existing Software is delivered to an escrow agent, the Contractor must ensure that the source code in the possession of the escrow agent is updated from time to time to correspond with the most current version of the object code in the possession of Canada.
5. Unless provided otherwise in the Contract or in any escrow agreement signed by Canada, Canada's rights to use, copy, modify and disclose any Pre-existing Software supplied under the Contract and any source code for that software must be identical to those set out in *Supplemental General Conditions* 4003.

#### 4002 09 (2008-05-12) Object Code and User Documentation

1. Without limiting any of the Contractor's other obligations under the Contract, including its obligation with respect to the supply of source code, the Contractor must provide the Pre-existing Software and Custom Software to Canada in executable object code.
2. The operating manuals, technical manuals and other user documentation provided by the Contractor to Canada for use with the Custom Software must describe the operation of the Custom Software in sufficient detail to enable appropriately trained employees of Canada to use all functions and features of the Custom Software without assistance from the Contractor.

#### 4002 10 (2008-05-12) Conversion of Data Files

The Contractor must convert, as required in the Contract, Canada's machine-readable data files, as they exist on any existing computer system used to fulfill all or part of the then-current functional requirements of Canada, to data files designed for use with the Custom Software. Canada is responsible for the accuracy and the completeness of data files delivered to the Contractor. The Contractor is responsible for the accuracy and completeness of the data files after conversion and for the compatibility of such data files with the Custom Software.

#### 4002 11 (2008-05-12) Acceptance Procedures for Custom Software

1. The acceptance procedures set out in subsections 2 to 5 inclusive only apply in the absence of any other detailed acceptance procedures for the Custom Software in the Contract.
2. Canada must prepare and provide to the Contractor acceptance test data before the date specified in the Contract for the start of pre-installation testing of the Custom Software. Canada will consult with the Contractor in connection with the preparation of such data and the Contractor must assist in such preparation to the extent indicated in the Contract. Canada and the Contractor will use such data to determine whether the Custom Software, when executed on the hardware and its operating system, performs in accordance with the Functional Specifications and all other requirements of the Contract. Unless otherwise agreed, the test data must be in the format and media required for direct input to the computer system, as provided in the Detailed Design Specifications.
3. Following receipt of the acceptance test data referred to in subsection 2, and before the date specified in the Contract for the start of acceptance testing of the Custom Software (the "Test Start Date"), the Contractor must provide an "Acceptance Test Plan" to Canada for Canada's review and approval. The Acceptance Test Plan must consist of a description of a series of tasks



and verifications, based on the acceptance test data, in sufficient detail to enable Canada and the Contractor to determine whether the Custom Software performs in accordance with the Functional Specifications and all other requirements of the Contract.

4. On the Test Start Date, Canada must commence the acceptance tests in relation to the Custom Software using the pre-approved Acceptance Test Plan referred to in subsection 3. The acceptance tests must be conducted during the period of time specified in the Contract. If no other acceptance testing period is specified in the Contract, the acceptance tests must be conducted over a 40-day period from the Test Start Date. If the Custom Software passes the acceptance tests and if the Contractor has completed all other work under the Contract in accordance with the conditions of the Contract, Canada will promptly give notice to the Contractor that the Custom Software is accepted.
5. If the Custom Software fails to pass the acceptance tests referred to in subsection 4, Canada will send a written description of the deficiencies to the Contractor within ten (10) days following the end of the acceptance testing period referred to in that subsection. Upon receipt of Canada's description of the deficiencies, the Contractor must modify the Custom Software to correct the deficiencies within ten (10) days of receipt of such description. All acceptance tests in relation to the Custom Software must then be repeated, at no additional cost to Canada, and the Contractor must ensure that the Custom Software passes the second set of acceptance tests within the acceptance testing period specified in subsection 4.
6. Despite anything else contained in this section, if Canada is unable to commence or continue the acceptance tests in relation to the Custom Software because of an event reasonably beyond its control, the acceptance tests may be temporarily suspended for a period of time not to exceed sixty (60) days. The time limits for testing referred to in this section or elsewhere in the Contract will in such cases be extended by the number of days of the suspension. If the delay exceeds sixty (60) days, the Parties must use reasonable efforts to negotiate a mutually acceptable amendment to the Contract.

#### 4002 12 (2008-05-12) Warranty

1. In this section, unless provided otherwise in the Contract, "Warranty Period" means a period of ninety (90) days commencing on the date of acceptance of the whole of the Work by Canada, with the exception only of warranty work.
2. Despite inspection and acceptance of the Custom Software by Canada and without restricting any condition of the Contract or any condition, warranty or provision imposed by law, the Contractor warrants that, during the Warranty Period, the Custom Software will perform in accordance with the Functional Specifications and all other requirements of the Contract on the computer system on which the Custom Software is installed under the Contract.
3. During the Warranty Period, if Canada notifies the Contractor in writing of any failure of the Custom Software to perform in accordance with the Functional Specifications or any other requirement of the Contract, the Contractor must, as soon as possible, provide, at no additional charge to Canada, corrections to the Custom Software. If Canada reports a failure to the Contractor, Canada must give the Contractor reasonable access to the computer system on which the Custom Software resides and provide such information as the Contractor may reasonably request, including sample output and other information, in order to permit the Contractor to expeditiously correct the error which caused that failure.
4. Although the Contractor must use all reasonable efforts to provide permanent corrections for all software errors, Canada acknowledges that certain errors may not be permanently corrected by

the Contractor under this section. The Contractor must provide a software patch or by-pass around the error in all cases where the error will not be permanently corrected. As a minimum, any such software patch or by-pass must cause the Custom Software to meet the functional and performance criteria set out in the Functional Specifications.

5. The Contractor is not obligated to correct errors in the Custom Software which result from modifications to the Custom Software or any part of it unless those modifications were made by the Contractor or by someone authorized by the Contractor to perform those modifications.
6. The Contractor must remedy all data and reports pertaining to any correction or replacement under this section, including revisions and updating of all affected data, manuals, publications, software and drawings called for under the Contract, at no cost to Canada.

### Part III - Ownership and Risk

#### 4002 13 (2008-05-12) Ownership of Media

1. For the purposes of this section, the term "media" does not include the information stored on the media.
2. All media containing the Custom Software or any part of it, as well as any specification, design, prototype or any other information provided as part of the Work, becomes the property of Canada upon either delivery to Canada of the Work or upon any payment being made to the Contractor for or on account of the media or the information stored on it, whichever comes first. It is agreed however that the transfer of ownership of the media to Canada does not constitute acceptance by Canada of the media or of the information stored on it and it does not relieve the Contractor of its obligation to perform the Work in accordance with the requirements of the Contract.
3. The intellectual property rights in the information stored on the media become the property of either Canada or the Contractor, as indicated in the intellectual property provisions of the Contract.

#### 4002 14 (2008-05-12) Risk of Loss

1. Risk of loss of or damage to the media or to the information stored on it pass to Canada upon delivery of the media to Canada. However, if the Contractor has retained a copy of the information that was stored on the media, the Contractor must, upon request by Canada, replace the lost or damaged media and information at no additional charge to Canada except for costs reasonably and properly incurred in the carrying out of such replacement.
2. Despite subsection 1, the Contractor will be liable for loss of or damage to the media and the information stored on it that is caused by the Contractor or any of its subcontractors after delivery.

#### 4002 15 (2008-05-12) Ownership of Developed Custom Software

1. For the purposes of this section, "Developed Custom Software" includes object code, source code, documentation, data bases, specifications, designs, prototypes and other related information conceived, developed or produced as part of the Work performed under the Contract.
2. The Developed Custom Software belongs either to Canada or to the Contractor, whichever is indicated in the intellectual property provisions of the Contract. If the Developed Software belongs

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to the Contractor, the Contractor grants to Canada the license with respect to the Developed Software set out or referred to in those provisions.

### 1.3 4003 (2010-08-16) Licensed Software

#### 4003 01 (2008-05-12) Interpretation

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

"Client"

means the department or agency for which the Work is performed, or, in the event of a transfer under section 08 below, the department, agency or Crown corporation to whom the Licensed Software is transferred;

"Device"

means equipment having a physical central processor unit (CPU), mass storage and input output devices such as keyboard and monitor and includes servers, desktops, workstations, notebooks, laptops, personal digital assistants and mobile computing equipment.

"General Conditions"

means the general conditions that form part of the Contract;

"Licensed Programs"

means all of the computer programs, in object-code form, which must be provided by the Contractor to Canada under the Contract, and include all patches, fixes and other code that may be delivered to Canada under the Contract, including any code provided as part of the warranty, maintenance, or support;

"Licensed Software"

means the Licensed Programs and the Software Documentation collectively;

"Media"

means the material or medium on which the Licensed Programs are stored for delivery to Canada, including electronic media such as magnetic disks or electronic downloads. Media does not include the Licensed Software stored on the Media;

"Software Documentation"

means all of the manuals, handbooks, user guides and other human-readable material to be provided by the Contractor to Canada under the Contract for use with the Licensed Programs, whether that material is to be provided in printed form or on Media;

"User"

means an individual authorized by the Client to use the Licensed Software under the Contract and for the purposes of these supplemental general conditions, includes any employee, agent or contractor authorized to use the Licensed Software.

2. Words and expressions defined in the General Conditions and used in these supplemental general conditions have the meanings given to them in the General Conditions unless provided otherwise. If the General Conditions contain sections entitled "Ownership" and "Warranty", those sections do not apply to the Licensed Software and the Media. Instead, the ownership and warranty provisions in these supplemental general conditions apply to the Licensed Software and the Media.

3. If there is any inconsistency between the General Conditions and these supplemental general Conditions, the applicable provisions of these supplemental general conditions will prevail.

#### 4003 02 (2008-05-12) License Grant

1. The Contractor grants to Canada a non-exclusive license to use and reproduce the Licensed Software in accordance with the conditions of the Contract.
2. Subject to the transfer rights described in section 08, the Client is the only entity authorized to use and reproduce the Licensed Software on behalf of Canada. If the Client is reconfigured, absorbed by another government department or agency, or is disbanded entirely, the Contracting Authority may, by giving notice to the Contractor, designate another department, agency or Crown corporation as the "Client" for the purposes of the Contract.
3. Unless provided otherwise in the Contract, the license granted under the Contract is unaffected by changes in the Client's environment, such as changes to the operating system, types of Devices, or other software products used by the Client from time to time in addition to the Licensed Software.
4. Unless provided otherwise in the Contract, the license granted under the Contract is an Entity License as described in section 06 below.
5. The Contractor must provide the English language version of the Licensed Software and, if available, the French version of the Licensed Software.

#### 4003 03 (2008-05-12) Ownership

1. Canada acknowledges that ownership of the Licensed Software belongs to the Contractor or its licensor and is not transferred to Canada. As a result, any reference in the Contract to any part of Licensed Software as a deliverable must be interpreted as a reference to the license to use that Licensed Software, not to own the Licensed Software.
2. Canada acknowledges that, in performing any warranty, maintenance, support and professional services related to the Licensed Software (if required under the Contract), the Contractor and its employees, agents, and subcontractors may develop and share with Canada ideas, know-how, teaching techniques and other intellectual property. Unless otherwise provided in the Contract, ownership to that intellectual property will remain with the Contractor. As long as the Contractor at all times observes the confidentiality provisions of the Contract, the Contractor will be entitled to use that intellectual property for whatever purposes it sees fit, including in the services it provides to its other customers, on the condition that Canada also has the right to use that intellectual property for its own business purposes at no additional cost. The Contractor agrees that all data, know-how or other intellectual property created or owned by Canada will remain the property of Canada, regardless of whether that data is created, processed, or stored using the Licensed Software.

#### 4003 04 (2008-05-12) User License

Unless provided otherwise in the Contract, a "User License" entitles the designated number of Users specified in the Contract to access, install, copy, deploy, test and use the Licensed Software for government purposes unrestricted by the number or type of installations, locations, servers, processors, data, documents, transactions, platforms, devices, networks, operating systems, application program interfaces or operating environments that a User may be using or processing at

any time including any equipment required to allow Users to work remotely; all without requiring the purchase of any further licenses or rights.

#### 4003 05 (2008-05-12) Device License

Unless provided otherwise in the Contract, a "Device License" entitles Users to access, install, copy, deploy, test and use the Licensed Software for government purposes on the designated number of Devices specified in the Contract without requiring Canada to purchase any additional licenses to software or components; all without any restriction on the use of associated peripheral equipment. The Device License allows the Client to use the Licensed Software unrestricted by the number or type of Users, data, documents and/or transactions a Client or a User may be using or processing at any time, or the location of a Device.

#### 4003 06 (2008-05-12) Entity License

Unless provided otherwise in the Contract, an "Entity License" entitles the Client to use the Licensed Software for government purposes throughout the entity in association with any number of Devices or by any number of Users. The Entity License allows the Client to use the Licensed Software in whole or in part, unrestricted by the number or type of Users, data, documents and/or transactions a Client or a User may be using or processing at any time, or the location of the Device.

#### 4003 07 (2008-05-12) Disabling Codes

1. If the Licensed Software contains any features, functions or characteristics ("Disabling Codes") that might cause the Licensed Software to be unusable by Canada without passwords, authorization codes or similar information, the Contractor must provide to Canada, in advance and on an ongoing basis, provided Canada is not in default of its obligations regarding the use of the Licensed Software, all the information required by Canada to continue to use the Licensed Software.
2. If the license is perpetual, the Contractor must deliver this information regardless of whether the Contract has otherwise expired and regardless of whether Canada is currently receiving maintenance or support for the Licensed Software.
3. If the existence or characteristics of any Disabling Code are not known to the Contractor, but the Contractor later becomes aware of them, the Contractor must correct or remove the Disabling Code from the Licensed Software or take whatever other steps are necessary to ensure that Canada is able to continue using the Licensed Software.

#### 4003 08 (2008-05-12) Licensed Software - Transfer

The license to use the Licensed Software under the Contract is transferable by Canada under the same conditions of the Contract, to any Device or Client, as applicable, or to any Canadian government department, corporation or agency, as defined in the [Financial Administration Act](#), R.S.C. 1985, c. F-11, as amended from time to time, or to any other party for which the Department of Public Works and Government Services Canada has been authorized to act under section 16 of the [Department of Public Works and Government Services Act](#), S.C. 1996, c. 16, as long as Canada informs the Contractor of the transfer within thirty (30) days of the transfer occurring. For the purposes of this section, in the circumstances where an Entity License is transferred, such license will be capped at the number of users in the transferring department, corporation, agency or other party before the transfer.

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#### 4003 09 (2008-05-12) Software Documentation

1. Copyright in the Software Documentation will not be owned by or transferred to Canada. However, Canada has the right to use the Software Documentation and may, for its own internal purposes, copy it for use by individuals using or supporting the Licensed Software, as long as Canada includes any copyright and/or proprietary right notice that was part of the original document in any copy. Unless provided otherwise in the Contract, Canada must not otherwise reproduce the Software Documentation without first obtaining the written consent of the Contractor.
2. The Contractor guarantees that the Software Documentation contains enough detail to permit a User to access, install, copy, deploy, test and use all features of the Licensed Programs. If the source code for the Licensed Programs must be provided to Canada under the Contract, the Contractor guarantees that the code provided will contain enough detail to permit a programmer, experienced in the use of the programming language or languages in which the source code is written, to modify the Licensed Programs.
3. If the Software Documentation is available in both of the two official languages of Canada, the Contractor must deliver it in both French and English. If the Software Documentation is only available in either English or French, it may be delivered in that language; however, Canada then has the right to translate it. Canada owns any translation and is under no obligation to provide it to the Contractor. Canada will include any copyright and/or proprietary right notice that was part of the original document in any translation. The Contractor is not responsible for technical errors that arise as a result of any translation made by Canada.
4. Unless provided otherwise in the Contract, at no additional cost to Canada, the Contractor must update the Software Documentation throughout the period of the Contract to the most current release level consistent with the Licensed Software delivered under the Contract. The Contractor must provide these updates to Canada within ten (10) days of the update being available. These updates must include supporting documentation for all modifications to the Licensed Software, including new versions and new releases that Canada is entitled to receive under the Contract and must identify any problems resolved, enhancements made, or features added to the Licensed Software, together with installation instructions.

#### 4003 10 (2008-05-12) Media

1. The Contractor must deliver the Licensed Programs to Canada on the medium of Canada's choice from among those the Contractor makes available to its other customers (for example, CD-ROM or Internet download). The Contractor agrees that Canada may distribute the Licensed Software to Users on Canada's choice of Media.
2. The Contractor guarantees that the Media will be compatible with the computer systems, as detailed in the Contract, on which the Licensed Programs will be installed. The Contractor also guarantees that the Media, as supplied by the Contractor, will be free from computer viruses.
3. Canada will own the Media once it has been delivered to and accepted by or on behalf of Canada.

#### 4003 11 (2008-05-12) Term of License

1. Unless provided otherwise in the Contract, Canada's license to use the Licensed Software is perpetual, regardless of any termination of the Contract by mutual consent, for the convenience

of Canada or for default of the Contractor, as long as Canada has paid for the license to the Licensed Software. Any perpetual license granted under the Contract can only be terminated by the Contractor in accordance with subsection 2 below.

2. The Contractor may terminate Canada's license with respect to the Licensed Software by giving the Contracting Authority written notice to that effect if Canada is in breach of its license with respect to the Licensed Software, or fails to pay for the license in accordance with the Contract, and if that breach continues for a period of thirty (30) days after the Contracting Authority receives written notice from the Contractor giving particulars of the breach.

#### 4003 12 (2010-01-11) Acceptance

1. Work Subject to Acceptance: All Licensed Programs delivered and all services provided under the Contract are subject to inspection by Canada. If any of the Licensed Programs does not meet all the requirements of the Contract, Canada may reject it or require that it be corrected, at the sole expense of the Contractor, before recommending payment.
2. Effect of Acceptance: Acceptance by Canada does not relieve the Contractor of any responsibility for defects or other failures to meet the requirements of the Contract or the Contractor's responsibilities with respect to warranty, maintenance or support under the Contract.
3. ~~Period of Acceptance: Unless provided otherwise in the Contract, the acceptance procedures are as follows: The procedure for acceptance is detailed in Annex B Statement of Work.~~
  - ~~a. when the Work is complete, the Contractor must notify the Technical or Project Authority in writing, with a copy to the Contracting Authority, by referring to this provision of the Contract and requesting acceptance of the Work;~~
  - ~~b. Canada will have thirty (30) days from receipt of the notice to perform its inspection (the "Acceptance Period").~~
4. If Canada provides notice of a deficiency during the Acceptance Period, the Contractor must address the deficiency as soon as possible and notify Canada in writing once the Work is complete, at which time Canada will be entitled to re-inspect the Work before acceptance and the Acceptance Period will begin again.

#### 4003 13 (2008-05-12) Right to License

1. The Contractor guarantees that it has the right to license the Licensed Software and full power and authority to grant to Canada all the rights granted under the Contract. The Contractor also guarantees that all necessary consents to that grant have been obtained. Canada agrees that its only remedy and the Contractor's entire obligations in relation to a breach of this guarantee are the remedies and obligations set out in the section entitled "Intellectual Property Infringement and Royalties" contained in the General Conditions or in the Articles of Agreement, as the case may be.
2. The Parties agree that only the conditions that expressly form part of the Contract by being written out in full in the Articles of Agreement or an annex to the Contract listed in the Priority of Documents section in the Articles of Agreement form part of the Contract. Any conditions accompanying or enclosed with the Licensed Software, if any, do not form part of the Contract and, therefore, are not part of Canada's license and do not affect the rights of the Parties in any way. The Contractor agrees that in no event will Canada or any Client or User be required to



enter into any additional license agreement with respect to the Licensed Software or any portion of it. The Contractor acknowledges that any additional license agreement relating to the Licensed Software signed by anyone other than the Contracting Authority is void and of no effect.

3. Canada is not bound by and does not accept any "shrink-wrap" or "click-wrap" conditions or any other conditions, express or implied, that are contained in or on the software packaging or conditions that may accompany the software in any manner, regardless of any notification to the contrary.

#### 4003 14 (2008-05-12) Enhancements and Improvements

The Contractor agrees to provide Canada with all improvements, updates, upgrades and enhancements to the Licensed Software for ninety (90) days following the acceptance of the Licensed Software.

#### 4003 15 (2008-05-12) Warranty

1. In this section, unless provided otherwise in the Contract, "Software Warranty Period" means a period of ninety (90) days from the date on which the Licensed Software is accepted in accordance with the conditions of the Contract, except for warranty work and any other work that is scheduled under the Contract to be performed after the start of the Software Warranty Period.
2. The Contractor warrants that, during the Software Warranty Period, the Licensed Programs will operate on the computer system or systems on which the Licensed Programs are installed in accordance with the Software Documentation that is associated with the Licensed Programs, as well as the Specifications set out in the Contract, if any. If the Licensed Programs fail to meet this warranty at any time during the Software Warranty Period, the Contractor, if requested by Canada, must, as soon as possible, correct, at the Contractor's expense, any programming errors and defects and make any additions, modifications or adjustments to the Licensed Software that are necessary to keep the Licensed Programs in operating order, in accordance with the Software Documentation that is associated with the Licensed Programs and the Specifications.
3. Although the Contractor must use all reasonable efforts to provide permanent corrections for all software errors, Canada acknowledges that certain errors may not be permanently corrected by the Contractor under the warranty. The Contractor must provide a software patch or by-pass around the error in all cases where the error will not be permanently corrected. As a minimum, any such software patch or by-pass must cause the Licensed Programs to meet the functional and performance criteria set out in the Software Documentation associated with the Licensed Programs and the Specifications.
4. The Contractor warrants that, throughout the Software Warranty Period, the Software Documentation will be free from all defects in materials and will conform with the requirements of the Contract. If Canada discovers a defect or non-conformance in any part of the Software Documentation during the Software Warranty Period, the Contractor must, if requested by Canada, as soon as possible, correct, at the Contractor's expense, the part of the Software Documentation found to be defective or not in conformance with the requirements of the Contract.
5. The Contractor warrants that, throughout the Software Warranty Period, the Media will be free from all defects in materials or workmanship, and will conform with the requirements of the Contract. Canada may return non-conforming or defective Media to the Contractor within the Software Warranty Period, with notice of the non-conformance or the defect, and the Contractor must promptly replace that Media with corrected Media at no additional cost to Canada.



6. If the Contractor must perform support services with respect to the Licensed Software during the Software Warranty Period, it is agreed that the provisions concerning support will not be interpreted so as to derogate from the warranty provisions set out in this section.
7. The warranties set out in this section will survive inspection and acceptance of the Work by or on behalf of Canada, and do not restrict any other provision of the Contract or any condition, warranty or provision imposed by law.
8. The Contractor must remedy all data and reports pertaining to any correction or replacement under this section, including revisions and updating of all affected data, manuals, publications, software and drawings called for under the Contract, at no cost to Canada.

#### 4003 16 (2008-05-12) Source Code Escrow

If requested by Canada, the Contractor must put in place for Canada, at no additional charge, whatever escrow arrangements, if any, it usually puts in place for its customers, and must give Canada, within thirty (30) days from the date of the Contract, a copy of the agreement with its escrow agent which sets out the conditions under which the escrow agent is authorized to release the source code to Canada.

#### 4003 17 (2008-05-12) Right to Modify and no Reverse Engineer

1. If the source code for the Licensed Programs is provided to Canada under the Contract, that code forms part of the "Licensed Software" for the purposes of the Contract. Canada will have the right, at Canada's discretion, to copy and modify the Licensed Software for Canada's own purposes and use, through the services of Canada's own employees or of independent contractors, as long as those contractors agree not to disclose or distribute any part of the Licensed Software to any other person or entity or otherwise violate the proprietary rights of the owner of the Licensed Software.
2. Canada will be the owner of any modifications contemplated in this clause, but will obtain no ownership interest in the Licensed Software, and any portion of the Licensed Software contained in those modifications will remain subject to the conditions of Canada's license. The Contractor must not incorporate any such modifications into its software for distribution to third parties unless Canada has granted the necessary distribution rights to the Contractor under a written license agreement. The provisions of this section do not prevent the Contractor or its third-party licensors from independently developing modifications. Unless provided otherwise in the Contract, Canada agrees not to reverse engineer the Licensed Software.

#### 4003 18 (2008-05-12) Risk of Loss

1. Risk of loss of or damage to the Licensed Software or the Media, or to any part of them, will pass to Canada upon delivery of the Licensed Software or the Media, or that part, to Canada.
2. Despite subsection 1, the Contractor will be liable for loss or damage to the Licensed Software or Media that is caused by the Contractor or any of its subcontractors after delivery.

#### 4003 19 (2008-05-12) Destruction on Termination or Expiration

In the event of termination or expiration of Canada's license, Canada will, if requested by the Contractor, either return all copies of the Licensed Software to the Contractor or, at Canada's option, will confirm in writing to the Contractor that all copies of the Licensed Software have been destroyed except for one copy, which Canada may retain for archival purposes only.

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## 1.4 4006 (2010-08-16) Contractor to OWN Intellectual Property Rights in Foreground Information

### 4006 01 (2008-05-12) Interpretation

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

**"Background Information"**

means all Intellectual Property that is not Foreground Information that is incorporated into the Work or necessary for the performance of the Work and that is proprietary to or the confidential information of the Contractor, its subcontractors or any other third party;

**"Firmware"**

means computer programs that are stored in integrated circuits, read-only memory or other similar devices within the hardware or other equipment;

**"Foreground Information"**

means all Intellectual Property first conceived, developed, produced or reduced to practice as part of the Work under the Contract;

**"General Conditions"**

means the general conditions that form part of the Contract;

**"Intellectual Property"**

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

**"Intellectual Property Right"**

means any intellectual property right recognized by law, including any intellectual property right protected by legislation such as patents, copyright, industrial design, integrated circuit topography, and plant breeders' rights, or subject to protection under the law as trade secrets and confidential information.

**"Software"**

means any computer program whether in source or object code (including Firmware), any computer program documentation recorded in any form or upon any medium, and any computer database, including any modification.

2. Canada's primary objective in entering into the Contract is to receive the deliverables contracted for, to be able to use those deliverables, and any Intellectual Property arising by virtue of the Contract for Canada's activities, including future contracts, procurements and to protect or advance the broader public interest. These supplemental general conditions do not affect any existing Intellectual Property Rights in any information belonging to Canada, the Contractor or a third party.
3. Words and expressions defined in the General Conditions and used in these supplemental general conditions have the meanings given to them in the General Conditions. In the event of any inconsistency between the General Conditions and these supplemental general conditions, the applicable provisions of these supplemental general conditions will prevail. If the General

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Conditions include a section on "Copyright", they are amended by deleting the section in its entirety.

4. If supplemental general conditions [4001](#), [4003](#) and [4004](#) are also incorporated in the Contract, the provisions of those supplemental general conditions concerning the ownership of Intellectual Property will prevail in relation to the subject matter of those supplemental general conditions.
5. References in these supplemental general conditions to the Contractor owning the Foreground Information or any rights in it refer to the Contractor, its subcontractors, its suppliers, its agents, its representatives or any of their employees owning such information or rights, as applicable.

#### 4006 02 (2008-05-12) Records and disclosure of Foreground Information

1. During and after the performance of the Contract, the Contractor must keep detailed records of the Foreground Information, including details of its creation, ownership and about any sale or transfer of any right in the Foreground Information. The Contractor must report and fully disclose to Canada all Foreground Information as required by the Contract. If the Contract does not specifically state when and how the Contractor must do so, the Contractor must provide this information when requested by the Contracting Authority or a representative of the department or agency for which the Contract is performed, whether before or after the completion of the Contract.
2. Before and after final payment to the Contractor, the Contractor must provide Canada with access to all records and supporting data that Canada considers pertinent to the identification of Foreground Information.
3. For any Intellectual Property that was developed or created in relation to the Work, Canada will be entitled to assume that it was developed or created by Canada, if the Contractor's records do not list that Intellectual Property or do not indicate that it was created by the Contractor, or by someone on behalf of the Contractor, other than Canada.

#### 4006 03 (2008-05-12) Ownership of Intellectual Property Rights in Foreground Information

1. All Intellectual Property Rights in the Foreground Information belong to the Contractor as soon as they come into existence.
2. Despite the Contractor's ownership of all the Intellectual Property Rights in the Foreground Information, Canada has unrestricted ownership rights in any prototype, model, custom or customized system or equipment that is a deliverable under the Contract, including manuals and other operating and maintenance documents. This includes the right to make them available for public use, whether for a fee or otherwise, sell them or otherwise transfer ownership in them.
3. Any personal information, as defined in the [Privacy Act](#), R.S., 1985, c. P-21, collected by the Contractor in the execution of the Work under the Contract becomes the property of Canada immediately upon collection and must be used only for the performance of the Work. The Contractor has no right in any such personal information.
4. If the Work under the Contract involves the preparation of a database or other compilation using information or data supplied by Canada and any personal information referred to above, the Intellectual Property Rights in the database or compilation containing such information will belong to Canada. The Contractor's Intellectual Property Rights in the Foreground Information are

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restricted to those capable of being exploited without the use of the information or data supplied by Canada and the personal information.

5. The Contractor must maintain the confidentiality of the information or data supplied by Canada and the personal information as required in the General Conditions. The Contractor must return all the information belonging to Canada on request or on completion or termination of the Contract. This includes returning all hard copies and electronic copies as well as any paper or electronic record that contains any part of the information or information derived from it.

#### 4006 04 (2008-05-12) Licenses to Intellectual Property Rights in Foreground and Background Information

1. As Canada has contributed to the cost of developing the Foreground Information, the Contractor grants to Canada a license to exercise all Intellectual Property Rights in the Foreground Information for Canada's activities. Subject to any exception described in the Contract, this license allows Canada to do anything that it would be able to do if it were the owner of the Foreground Information, other than exploit it commercially and transfer or assign ownership of it. The Contractor also grants to Canada a license to use the Background Information to the extent that it is reasonably necessary for Canada to exercise fully all its rights in the deliverables and in the Foreground Information.
2. These licenses are non-exclusive, perpetual, irrevocable, worldwide, fully-paid and royalty-free. Neither license can be restricted in any way by the Contractor providing any form of notice to the contrary, including the wording on any shrink-wrap or click-wrap license or any other kind of packaging, attached to any deliverable.
3. For greater certainty, Canada's licenses include, but are not limited to:
  - a. the right to disclose the Foreground and Background Information to third parties bidding on or negotiating contracts with Canada and to sublicense or otherwise authorize the use of that information by any contractor engaged by Canada solely for the purpose of carrying out such contracts. Canada will require these third parties and contractors not to use or disclose that information except as may be necessary to bid on, negotiate or carry out those contracts;
  - b. the right to disclose the Foreground and Background Information to other governments for information purposes;
  - c. the right to reproduce, modify, improve, develop or translate the Foreground and Background Information or have it done by a person hired by Canada. Canada, or a person designated by Canada, will own the Intellectual Property Rights associated with the reproduction, modification, improvement, development or translation;
  - d. without restricting the scope of any license or other right in the Background Information that Canada may otherwise hold, the right, in relation to any custom-designed or custom-manufactured part of the Work, to exercise such of the Intellectual Property Rights in the Background Information as may be required for the following purposes:
    - i. for the use, operation, maintenance, repair or overhaul of the custom-designed or custom-manufactured parts of the Work;

- ii. in the manufacturing of spare parts for maintenance, repair or overhaul of any custom-designed or custom-manufactured part of the Work by Canada, if those parts are not available on reasonable commercial terms to enable timely maintenance, repair or overhaul;
  - e. for Software that is custom designed for Canada, the right to use any source code the Contractor must deliver to Canada under the Contract.
4. The Contractor agrees to make the Background Information, including in the case of Software, the source code promptly available to Canada for any purpose mentioned above. The license does not apply to any Software that is subject to detailed license conditions that are set out elsewhere in the Contract. Furthermore, in the case of commercial off-the-shelf software, the Contractor's obligation to make the source code promptly available to Canada applies only to source code that is within the control of or can be obtained by the Contractor or any subcontractor.

#### 4006 05 (2008-05-12) Contractor's Right to Grant Licenses

The Contractor represents and warrants that it has the right to grant to Canada the licenses and any other rights to use the Foreground and Background Information. If the Intellectual Property Rights in any Foreground or Background Information are or will be owned by a subcontractor or any other third party, the Contractor must have or obtain promptly a license from that subcontractor or third party that permits compliance with section 4 or arrange, without delay, for the subcontractor or third party to grant promptly any required license directly to Canada.

#### 4006 06 (2008-05-12) Waiver of Moral Rights

If requested by Canada, during and after the Contract, the Contractor must provide a written permanent waiver of moral rights, as defined in the [Copyright Act](#), R.S., 1985, c. C-42, from every author that contributes to any Foreground Information subject to copyright protection that is a deliverable to Canada under the Contract. If the Contractor is an author of the Foreground Information, the Contractor permanently waives the Contractor's moral rights in that Foreground Information.

#### 4006 07 (2008-05-12) License to Intellectual Property Rights to Canada's Information

1. Any information supplied by Canada to the Contractor for the performance of the Work remains the property of Canada. The Contractor must use Canada's Information only to perform the Contract.
2. If the Contractor wants to use any information owned by Canada for the commercial exploitation or further development of the Foreground Information, the Contractor must obtain a license from the department or agency for which the Contract is performed. In its request for a license to that department or agency, the Contractor must explain why the license is required and how the Contractor intends to use the information. If the department or agency agrees to grant a license, conditions will be negotiated between the Contractor and that department or agency and may include the payment of a compensation to Canada.

#### 4006 08 (2008-05-12) Transfer or License of Contractor's Rights

1. During the Contract, the Contractor must not sell, transfer, assign or license the Foreground Information without first obtaining the Contracting Authority's written permission.

2. After the Contract, if the Contractor transfer ownership in the Foreground Information, the Contractor is not required to obtain Canada's permission, but must notify the department or agency for whom the Contract is performed in writing of the transfer by referring to the serial number of the Contract and its date and by providing details about the transferee, including the conditions of the transfer. The Contractor must ensure that the transfer requires the transferee to notify the Canada of any future transfer. Any transfer must be subject to all Canada's rights to use the Foreground Information.
3. After the Contract, if the Contractor grants a license or any other right (other than a transfer of ownership) to a third party to use the Foreground Information, the Contractor is not required to notify Canada, but the license or right granted must not affect Canada's rights in any way.
4. If the Contractor at any time transfers ownership of or grants rights in the Foreground Information that interfere in any way with Canada's rights to use the Foreground Information, the Contractor must, if requested by Canada, immediately take all steps necessary to restore Canada's rights. If the Contractor is not successful in doing so, within the time reasonably required by Canada, the Contractor must immediately reimburse Canada for all costs Canada incurs to do so itself.

#### 4006 09 (2008-05-12) Transfer of Intellectual Property Rights upon Termination of the Contract for Default

1. If Canada terminates the Contract in whole or in part for default, Canada may, by giving notice to the Contractor, require the Contractor to transfer to Canada all the Intellectual Property Rights in the Foreground Information, including the rights owned by subcontractors. In the case of Intellectual Property Rights in the Foreground Information that have been sold or assigned to a third party, the Contractor must pay to Canada on demand, at Canada's discretion, the fair market value of the Intellectual Property Rights in the Foreground Information or an amount equal to the payment received by the Contractor from the sale or assignment of the Intellectual Property Rights in the Foreground Information.
2. In the event of the issuance of a notice under subsection 1, the Contractor must, at its own expense and without delay, execute such documents relating to ownership of the Intellectual Property Rights as Canada may require. The Contractor must, at Canada's expense, provide all reasonable assistance in the preparation of applications and in the prosecution of any applications for registration of any Intellectual Property Rights in any jurisdiction, including the assistance of the inventor in the case of an invention.

#### 4006 10 (2008-05-12) Products created using the Foreground Information

If the Contractor uses the Foreground Information to develop any new product or any improvement in any existing product, the Contractor agrees that, if Canada wishes to purchase such new or improved product, the Contractor must sell them to Canada at a discount off the lowest price for which it has sold those products to other customers, to recognize Canada's financial contribution to the development of those products.