

TERMS AND CONDITIONS SUBCONTRACT

1. DEFINITIONS

- 1.1. "Amendment" means a variation or modification of this Agreement or of any of its provisions agreed to by both parties.
- 1.2. "Background Intellectual Property" or "BIP" means all Intellectual Property owned or controlled by a party prior to the Effective Date or that is developed or acquired independently of this Agreement by a party after the Effective Date and includes any corrections or minor modifications to any such Intellectual Property.
- 1.3. "Confidential Information" means any information and know how related to the technical, scientific and business interests of a party that is not generally available to third parties. Confidential Information includes but is not limited to:
- a. Intellectual Property;
 - b. software (source and executable or object code), algorithms, computer processing systems, formulae, compilations of information (databases), drawings, proposals, job notes, reports, records, specifications, and related documentation in any media, including all modifications, enhancements, updates and derivatives;
 - c. unique software and hardware configurations, design concepts and all materials developed therefrom;
 - d. business plans, sales and marketing information (including customer contacts and information), and any other materials or information relating to the business of a party, or its subsidiaries, owners, affiliates and divisions;
 - e. trade secrets (any expression, tangible or otherwise, of unique ideas or specialized compilations of data that are not generally known and that are commercially useful, or that have economic value as a result of not being generally known).
 - f. any information in any media that is owned by a third party and that is provided to a party under an obligation of confidentiality;
 - g. any other information that a party protects as confidential but that is determined by a court of competent jurisdiction not to rise to the level of a trade secret under applicable law.
- 1.4. "Customer" means the entity to whom Buyer will deliver the Work or on whose behalf Buyer has arranged for the Work to be performed.
- 1.5. "Day" or "day" means a normal business working day in the jurisdiction of the obligated party, unless clearly identified otherwise in the Agreement.
- 1.6. "Effective Date" means the date the Agreement comes into full force and effect as defined in the Agreement.
- 1.7. "Foreground Intellectual Property" or "FIP" means all Intellectual Property produced directly as a result of the Work under this Agreement that is not Background Intellectual Property.
- 1.8. "Incoterms" means the official rules for the interpretation of trade terms published by the International Chamber of Commerce as Incoterms 2010.
- 1.9. "Intellectual Property" or "IP" means intangible property falling within the scope of a party's patents, copyrights, trademarks, trade secrets, publicity rights, moral rights and rights against unfair competition, including commercially valuable information, inventions or know-how, in concrete or abstract form, that are or could be the subject of copyright, patent, or trade secret protection and that are the subject of efforts that are reasonable under the circumstances to maintain their secrecy.
- 1.10. "material" in the context of any requirements, obligation, term, condition, or covenant in the Agreement means any act or failure to act that provides sufficient cause for the other party to be relieved of its obligations under the Agreement or that substantially frustrates or renders it impossible for the other party to perform its obligations under the Agreement.
- 1.11. "Month" means a Gregorian calendar month.
- 1.12. "Notice", "Notify", "Notification" all mean a formal written notification by one party to another as required under this Agreement.
- 1.13. "reasonable" as applied in this Agreement shall be taken to mean "in keeping with prevailing trade practices among reputable and

responsible business and commercial enterprises engaged in the same or a similar business acting in good faith" and as consistent with sound business practices.

1.14. "Term" means the period beginning on the Effective Date and ending on the later of: the end date, if specified in the Agreement; or the date on which all obligations of the parties have been fulfilled.

1.15. "Week" means a seven calendar day period.

1.16. "Work" means all activities, goods and services to be done, delivered or performed by Seller as set out in the Agreement including all extra work, changes, substitutions and variations ordered by Buyer.

1.17. Unless the context otherwise requires, the singular includes the plural, the masculine includes the feminine or neuter, and vice versa. Any reference to any statute includes any re-enactment, consolidation and/or renewal thereof and any reference to a statute or statutes in general includes any order, plan, regulation, permission or direction made or issued thereunder. When calculating the period of time within which or following which any act is to be done or step taken, the date which is the reference day in calculating such period shall be excluded. If the last day of such period is not a business working day in the jurisdiction of the obligated party, the period shall end on the next business day in that jurisdiction.

2. ACCEPTANCE / REJECTION

2.1. Acceptance shall only be accomplished after receipt, inspection and approval of the Work by Buyer in accordance with acceptance criteria and/or procedures specified in the Agreement or otherwise agreed in writing between Buyer and Seller.

2.2. Where no acceptance criteria and/or procedures are specified in the Agreement the Work shall be deemed accepted ten (10) Days after delivery to Buyer unless prior to the expiration of that period Buyer provides written notification to Seller that the Work is not acceptable and the reasons therefore.

2.3. Any approval or acceptance by Buyer of all or part of the Work, including specifications or other documentation requiring Buyer approval, shall not relieve Seller of its obligations under the Agreement.

2.4. No act of payment by Buyer shall be considered an approval or acceptance of any or all of the Work.

2.5. Buyer may reject any of the Work that does not conform to the requirements contained in the Agreement.

2.6. Rejected Work may, at the option of Buyer, be returned to Seller or held pending disposition instructions from Seller.

2.7. On re-delivery of any rejected Work Seller shall disclose the previous rejection and the corrective action taken.

2.8. Repair, replacement or other corrective action shall be completed within the original delivery schedule or such additional time as Buyer may reasonably allow.

3. AMENDMENTS

3.1. Amendments to this Agreement shall only be effective and binding on the parties when made in writing and signed by both parties.

4. APPLICABLE LAW

4.1. This Agreement shall be governed by and interpreted in accordance with the laws of the Province of British Columbia, Canada excluding its conflicts of laws principles.

4.2. The parties hereby agree to exclude application of the British Columbia Sale of Goods Act, the Uniform Commercial Code (UCC) and any similar applicable laws or statutes in any relevant jurisdiction.

4.3. The parties hereby agree to exclude the application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) to the supply of any goods or services under this Agreement.

5. ASSIGNMENT

5.1. No party shall assign this Agreement, or any rights or obligations under this Agreement, in whole or in part, without the prior written consent of the other party(ies). Such consent shall not be unreasonably withheld. This restriction shall not apply to assignments to a parent company, wholly owned subsidiary or an affiliated company that is effectively controlled by the party or its parent company.

5.2. Any attempt to assign this Agreement without such consent shall be null, void and of no effect.

5.3. Unless otherwise agreed in writing no assignment shall:

- a. relieve the assigning party from any of its obligations under the Agreement;
- b. prejudice any of the other party's (parties') rights against the assigning party, whether arising before or after the date of any such assignment; or
- c. impose any liability on the other party(ies).

6. AUDITS

6.1. This Agreement does not grant a party any right to audit any other party

6.2. Seller shall, in accordance with accepted business rules and practice, keep all proper books, records, papers and documents directly pertinent to the performance of this Agreement and maintain these for at least three (3) years following receipt of final payment from Buyer.

6.3. Buyer shall have the right to examine such books, records, papers and documents directly pertinent to the performance of this Agreement for the Term of this Agreement and for the period during which Seller is required to maintain these items. Seller shall, during normal business hours at no additional charge:

- a. make all such books, records, papers, and supporting documents available for review by Buyer;
- b. permit Buyer to make copies, excerpts and transcriptions for this purpose; and
- c. furnish such assistance, including access to personnel, as may be required at any reasonable time by Buyer or its delegates.

7. AUTHORIZED REPRESENTATIVES

7.1. Unless specified elsewhere in the Agreement the only person authorized to make commitments on behalf of a party is the person who signed the Agreement for that party or a person delegated by that person in a Notice to the other party.

8. CHANGES IN THE WORK

8.1. Buyer may, within the general scope of this Agreement and in writing, make reasonable changes in the Work including, but not limited to:

- a. the goods or services to be provided;
- b. the specifications, requirements or quantity of the Work;
- c. quantity or specifications for any customer furnished assets;
- d. the time, place, or method of delivery, inspection, or acceptance.

8.2. If any change results in an alteration to the cost of or time required for Seller performance of its obligations, an equitable adjustment will be negotiated and the Agreement amended accordingly.

8.3. If Seller believes any action, instruction, interpretation, or decision by Buyer affects its performance obligations herein and should be the subject of an Amendment, it may within ten (10) Days of receipt thereof, give written Notice to Buyer identifying the effect upon Seller's performance obligations. Receipt of such Notice by Buyer or acknowledgement thereof shall not be construed as an Amendment. Buyer, at its sole discretion, may consider any such Notice regardless of when asserted.

8.4. Pending an Amendment Seller shall continue performance of the Work as directed by Buyer in accordance with subsection 1 above.

8.5. No action, instruction, interpretation or decision by Buyer that results from an error, mistake, or omission of Seller in the provision of the Work shall be considered as a change.

9. COMPLIANCE WITH LAW

9.1. All parties shall comply with all applicable federal, provincial, state, municipal, county or other local laws and regulations.

10. CONFIDENTIAL INFORMATION

10.1. The parties agree to treat Confidential Information disclosed to them as proprietary and confidential, and to protect same from disclosure to others with, as a minimum, the same degree of care used to protect their own Confidential Information.

10.2. Confidential Information shall be conveyed in written, graphic or other permanent tangible form and clearly marked as confidential or proprietary; or if conveyed orally, be identified as proprietary or confidential at the time of disclosure and

reduced to a permanent tangible form within thirty (30) calendar days of disclosure.

10.3. If any items are received that contain a marking that is deemed to be ambiguous or unauthorized the receiving party shall so notify the disclosing party and, as long as the marking provides an indication that a restriction on use or disclosure was intended, the items shall be treated as Confidential Information.

10.4. Confidential Information shall not be reproduced in any form or stored in a data base by a receiving party without the prior written consent of the disclosing party. All copies of the Confidential Information shall contain only the proprietary notices that appear on the original Confidential Information.

10.5. Confidential Information shall not be used by a receiving party for any purpose inconsistent with this Agreement or for the creation of any product or service that is directly or indirectly based on, derived from, or uses the Confidential Information.

10.6. The obligations relating to Confidential Information shall apply to any information that could be or is obtained by decomposing, reverse engineering, disassembling, decompiling, or otherwise decoding any Confidential Information.

10.7. A receiving party shall not, without the prior written consent of the disclosing party, directly or indirectly disclose, allow access to, transmit, or transfer Confidential Information disclosed to it to a third party.

10.8. A receiving party may disclose Confidential Information to its employees, directors, agents and affiliates (being understood to include a parent company, a subsidiary company, and any company having a parent company in common with the receiving party) who have an actual need to know the Confidential Information in order for the receiving party to fulfill the purpose of or meet its obligations under this Agreement.

10.9. Prior to disclosing the Confidential Information to permitted third parties a receiving party shall obtain their agreement to receive, use and protect the Confidential Information on the same conditions as contained in this Agreement.

10.10. Notwithstanding any other provisions of this Article, the restrictions on the use of Confidential Information shall not apply to information that:

- a. is lawfully in the public domain at the time of disclosure under this Agreement, or becomes lawfully within the public domain after disclosure without breach of this agreement; or
- b. was lawfully received from a third party without restriction; or
- c. was already in a receiving party's possession in fully recorded form without an obligation of confidentiality at the time of disclosure under this Agreement; or
- d. is required to be produced pursuant to a court order or other Government action, provided the disclosing party has been Notified at least two (2) weeks prior to such disclosure.

10.11. If a receiving party believes that any of the events or conditions in the preceding paragraph that remove restrictions on the use, disclosure and reproduction of Confidential Information apply, the receiving party shall promptly Notify the disclosing party of s

10.12. ;adsuch belief prior to acting on such belief, and, in any event, shall Notify the disclosing party prior to any unrestricted use, disclosure or reproduction of any such information.

10.13. Termination, or breach of this Agreement by a party, shall not relieve a receiving party from its continuing obligation to preserve, safeguard and protect the Confidential Information disclosed hereunder.

10.14. On expiry or termination of this Agreement:

- a. a receiving party shall upon written demand of the disclosing party:
 - i. return to the disclosing party all of the disclosing party's Confidential Information (and any copies thereof) in any tangible form that is in the receiving party's possession or under its control; and
 - ii. permanently delete such Confidential Information from all retrieval systems and data bases in which it may be found save

that the receiving party shall not be obliged to erase Confidential Information held in any archive system in accordance with its security and/or disaster recovery procedures; and

ii. if requested by the disclosing party, provide certification that all Confidential Information has been returned or deleted as applicable

b. If the disclosing party has not made a demand under subsection a. above within three (3) calendar months of expiry or termination, the receiving party may destroy, erase or procure the destruction or erasure of, such Confidential Information (and any copies thereof) in accordance with its usual business practices; and

c. the receiving party shall make no further use of the Confidential Information, save that the Receiving Party may retain one (1) copy of any Confidential Information in its legal adviser's files solely for the purpose of enabling it to comply with the provisions of this Agreement or for legal or regulatory purposes.

11. CONTACT WITH THE CUSTOMER

11.1. Buyer shall be the prime contact with the Customer for matters related to the subject matter of this Agreement.

11.2. Any necessary contact with the Customer initiated by Seller shall be made through Buyer.

11.3. Seller shall immediately advise Buyer of all Customer-initiated contact and discussions related to the subject matter of this Agreement.

11.4. Buyer shall keep Seller advised of all Customer contact and discussions concerning Seller's area of responsibility as described in this Agreement.

12. CUSTOMER FURNISHED ASSETS (CFA)

12.1. Buyer may provide certain documentation, equipment, materials, supplies or other items (collectively referred to as Customer Furnished Assets or "CFA") as set out in the Agreement.

12.2. All rights and title to CFA shall remain with Buyer.

12.3. Seller shall Notify Buyer of any shortages, defects or inadequacies in the CFA and the impact of these on the conduct of the Work within five (5) Days of receipt of the CFA, or where other events or information are pre-requisites to determining the adequacy of the CFA, within five (5) Days of the occurrence of such events or the receipt of such other information.

12.4. Should any failure to deliver, late delivery, shortage, defect or inadequacy in the CFA result in a change in the time required or the cost of the Work, such failure to deliver, late delivery, shortage, defect or inadequacy shall be a change in accordance with the Article entitled CHANGES IN THE WORK.

12.5. If the required items can be procured from an alternate source Seller shall so advise Buyer. Any procurement from an alternate source authorized by Buyer shall be a change in accordance with the Article entitled CHANGES IN THE WORK.

12.6. In the event of any missing or inadequate CFA, Buyer, where this is practical, may direct Seller to proceed with the Work, making due allowance for the impact of the missing or inadequate CFA. Any such direction shall be a change in accordance with the Article entitled CHANGES IN THE WORK.

12.7. During any delay in obtaining direction or authorization from Buyer with respect to CFA Seller shall be entitled to a suspension of its performance obligations in accordance with the Article entitled FORCE MAJEURE.

12.8. All CFA not consumed during the production of the Work or incorporated into the Work shall be returned to Buyer on completion of the Work.

12.9. Seller shall assume responsibility for the care and custody of the CFA from receipt until it is delivered as part of the Work or returned to Buyer.

12.10. Seller shall be liable to Buyer for any loss of or damage to the CFA, reasonable wear and tear excepted, while it is in Seller's custody.

13. DEFAULT

13.1. A party shall be in default under this Agreement if it fails to comply with any material requirement, obligation, term, condition, or covenant of the Agreement, and does not correct such failure within twenty (20) Days after receipt of a Notice from the non-defaulting party setting out the failure.

13.2. Deemed acts of default by a party shall include but not be limited to its:

- a. indicating that it is unable or unwilling to substantially comply with and observe the provisions of the Agreement; or
- b. ceasing to carry on its business in the ordinary course; or
- c. insolvency, bankruptcy, or making of a general assignment for the benefit of its creditors; or
- d. taking the benefit of any Act now or hereafter in force for bankrupt or insolvent debtors; or
- e. being placed under the control of a custodian, receiver or similar person unless the appointment of such person is being disputed in good faith and such proceedings effectively postpone enforcement of such appointment.

13.3. The defaulting party shall be liable for all direct losses, costs, damages, and expenses, including reasonable attorney's fees incurred by the non-defaulting party(ies) as a result of such default, whether in contract, tort or otherwise.

13.4. Failure to comply with the requirements of the Article titled CONTACT WITH THE CUSTOMER shall be sufficient cause for termination of this Agreement for default.

13.5. Where Seller is the defaulting party, Seller shall be liable for Buyer's re-procurement costs (if applicable).

13.6. Any failure to pay a disputed invoice shall be considered and resolved as a dispute and not an act of default.

14. DELIVERY

14.1. Unless specified otherwise in the Agreement all Work shall be delivered CIP per Incoterms to Buyer's address as set out in the Agreement. In the event of any conflict between this Agreement and Incoterms this Agreement shall govern.

15. DISPUTE RESOLUTION

15.1. Any dispute that cannot be amicably settled by the parties within thirty (30) calendar days of presentation of a Notice of Dispute setting out the details of the dispute shall be referred to arbitration in Vancouver, British Columbia, Canada, in accordance with the rules of the British Columbia International Commercial Arbitration Centre (BCICAC) in effect as of the date of the Notice, in English, by a single arbitrator, whose decision shall be final and binding upon the parties.

15.2. Pending settlement of any dispute, the parties shall proceed diligently with performance hereunder, with the sole exception that Seller shall be entitled to suspend work if the dispute relates solely to non-payment of any amounts that are not in dispute that are due to Seller under the Agreement.

16. ENTIRE AGREEMENT

16.1. This Agreement, including any items attached or referenced herein, comprises the entire agreement between the parties with respect to the subject matter hereof and supersedes all previous statements, representations or agreements whether written or oral, express or implied.

16.2. Any Work done or payment made under an Authorization To Proceed issued in anticipation of this Agreement shall be considered as having been done or made under this Agreement and subject to all of the terms and conditions in this Agreement. In the event of any conflict this Agreement shall take precedence.

17. ENUREMENT

17.1. Each and every provision of this Agreement shall apply to and enure to the benefit of and bind the respective legal representatives, successors and permitted assigns of the parties hereto.

18. EXECUTION OF THE AGREEMENT

18.1. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original executed by any party whose signature appears thereon and that shall, taken together, constitute one and the same instrument.

18.2. A copy of this Agreement signed by a party and transmitted by facsimile by that party shall be accepted as an executed original of this Agreement.

19. EXPORT APPROVAL

19.1. The parties acknowledge that:

- a. the information to be exchanged or the goods and services to be delivered under this Agreement, or portions thereof, may be subject to the provisions of the Canadian Export and Import Permits

Act (CEIPA), the Canadian Controlled Goods Registration Program (CGRP) and/or to the U.S. International Traffic in Arms Regulations (ITAR) and Export Administration Regulations (EAR);

- b. these laws and regulations impose restrictions on export and transfer to third countries of certain categories of data and articles;
- c. licenses and/or registrations from the relevant government departments may be required before such articles and data can be provided hereunder; and
- d. such licenses may impose further restrictions on use of such articles and data.

19.2. The exporting party shall be responsible for obtaining any export approvals, registrations permits or licenses, including technical assistance agreements, required from any governmental authority by the exporting party, or any of its subcontractors or suppliers, to be in compliance with any applicable export control laws.

19.3. The importing party shall, at no cost to the other party, provide information and/or certificates as reasonably required by the exporting party to enable it to comply with export control laws and regulations.

19.4. The importing party shall be solely responsible for obtaining any import approvals, registrations, permits or licenses required from any governmental authority by the importing party to be in compliance with any applicable import control laws.

19.5. The exporting party shall, at no cost to the other party, provide information and/or certificates as reasonably required by the importing party to enable it to comply with import control laws and regulations.

19.6. Notwithstanding any limitations of liability specified in this Agreement, the exporting party shall be responsible for any and all costs or delays resulting from failure to obtain any necessary export approvals, registrations, permits or licenses.

20. FORCE MAJEURE / EXCUSABLE DELAY

20.1. A party shall not be in default under this Agreement from any failure to perform any of its obligations under this Agreement if such failure arises from any cause that could not have been prevented by means reasonably available to the party and that was beyond the control of and without the fault or negligence of the party. Such causes include but are not limited to: acts of God or of the public enemy; acts of Government in either its sovereign, legislative or contractual capacity; fire; flood; landslide; earthquake; epidemic; quarantine restrictions; freight embargo; strike; lockout; sabotage; labour dispute; or unusually severe weather.

20.2. The affected party shall as soon as reasonably possible give Notice to the other, including all relevant information that it has available, regarding any such actual event that is impacting or any potential event that threatens to impact the affected party's performance of its obligations under the Agreement.

20.3. If a suspension under this Article has lasted for a period exceeding ninety (90) calendar days, Buyer shall be entitled, by providing Notice to Seller, to terminate the Agreement with respect to the remaining Work. Such a termination shall be treated as a Termination for Convenience.

21. HEADINGS

21.1. Any headings in the Agreement are for convenience only and shall not have the effect of modifying, amending, or altering any provision of the Agreement.

22. INDEMNIFICATION

22.1. Seller shall at all times defend, indemnify and save Buyer (and its Customer, if applicable) harmless from and against all damages, costs and expenses, (including legal fees), that Buyer may sustain, pay, or incur as a result of any cause, action, suit, proceeding or claim that may be brought or made against Buyer:

- a. arising from Seller's negligent performance or non-performance of the Work;
- b. as a result of or in connection with any alleged or actual infringement of any letters patent, copyright, trademark or proprietary right of any third party resulting from the use or sale of the Work.

22.2. Seller shall have the right, at its discretion, to conduct the defence of the claim.

22.3. In the event of an alleged or actual infringement of any letters patent, copyright, trademark or proprietary rights of a third party Seller may, at its option:

- a. obtain for Buyer the right of continued use of the Work; or
- b. deliver and install without charge a non-infringing modification or replacement; or
- c. grant Buyer a credit for the depreciated value of the infringing portion of the Work and accept the return of same.

22.4. Buyer shall:

- a. provide Seller with timely written notice of any cause, action, suit, proceeding or claim;
- b. co-operate fully with Seller in furtherance of Seller's obligations herein;
- c. not settle a claim without the written agreement of Seller.

22.5. Seller's obligations to defend, indemnify and save Buyer and Customer harmless shall not apply in situations where information, equipment, or a service provided by Buyer, alone or in combination with that provided by Seller, is the cause of an action, claim, proceeding or demand.

23. INJUNCTIVE RELIEF

23.1. In the event of a breach or threatened breach by a party of any material obligation under this Agreement, any other party shall, in addition to and not in substitution for any other remedy available to it in respect of such breach, be entitled to injunctive relief which restrains the party in breach from committing or continuing such breach.

24. INSPECTION

24.1. Seller shall maintain an inspection system and inspection records acceptable to Buyer. As a minimum the inspection system and records shall be consistent with those in general usage in the trade and be reasonably calculated to ensure the degree of quality required by the Agreement.

24.2. Seller shall inspect and test in accordance with its inspection system and as required in the Agreement.

24.3. Buyer or Customer may at any time view Seller's performance under the Agreement or, on a non-interference basis, conduct independent tests or inspections of the Work. Seller agrees to:

- a. cooperate fully with such activities;
- b. allow access to its facilities and those of its subcontractors or vendors as reasonably required for such activities;
- c. furnish, and require its subcontractors to furnish, without additional charge, reasonable facilities and assistance for the safe and convenient performance of these activities.

24.4. Any inspections, tests, reviews, or comments by Buyer, its representatives, or Customer shall not relieve Seller of any of its obligations.

25. INSURANCE

25.1. Seller shall maintain in force during the term of this Agreement insurance with the following minimum limits:

- a. General Liability \$2,000,000
- b. Automobile Liability \$2,000,000
- c. Worker's Compensation - as required in any jurisdiction in which work is to be performed.

25.2. Within ten (10) Days of the execution of the Agreement Seller shall provide Buyer with a certificate of insurance:

- a. showing evidence of the above coverages;
- b. showing Buyer as an Additional Insured;
- c. providing for a minimum of thirty (30) calendar days prior written notice to Buyer of any cancellation or material alteration to any coverage.

26. INTELLECTUAL PROPERTY

26.1. Except as expressly permitted herein, nothing contained in this Agreement shall be deemed, by implication, estoppel or otherwise, to grant to another party any right or license in respect of any Intellectual Property that is owned by, or within the control of, a party prior to the Effective Date of this Agreement or that is acquired thereafter independently of this Agreement.

26.2. Seller agrees that any Work created by Seller under Buyer's direction is a "work made for hire" and that any and all Intellectual Property in the Work shall belong to Buyer.

26.3. To the extent that any Work is deemed not to be "work made for hire," Seller hereby assigns all Intellectual property rights, title and interest in the Work to Buyer without further compensation.

26.4. Seller agrees, at Buyer's expense, to perform all acts and execute and deliver all documents that may be necessary in any jurisdiction for Buyer to apply for, obtain, defend and vest in Buyer all Intellectual Property rights in the Work or that are necessary to vest title in and to the Work in Buyer.

26.5. Seller hereby waives all claims with respect to any moral rights Seller may have in the Work or its use, including the right to restrain or claim damages for any distortion, mutilation or other modification of the Work or any part of the Work, and the right to restrain the use or reproduction of the Work in any context, or in connection with any product or service.

27. KEY PERSONNEL

27.1. Where specific personnel are identified in the Agreement, Seller shall provide those personnel for the performance of the Work unless Seller is unable to do so for reasons beyond its control.

27.2. If at any time Seller is unable to provide the services of a person specifically named in the Agreement, Seller shall provide a replacement person with similar qualifications and experience.

27.3. Seller shall, as soon as possible, give Notice to Buyer of:

- a. the reason for the removal of the named person from the Work;
- b. the name, qualifications and experience of the proposed replacement person; and
- c. proof that the replacement person has the required security clearance, if applicable.

27.4. Buyer may order the removal from the Work of any such replacement person and Seller shall immediately remove the person from the Work, and secure another replacement acceptable to Buyer.

27.5. Buyer's not ordering the removal of a replacement person from the Work shall not relieve Seller from its responsibility to meet the requirements of the Agreement.

28. LANGUAGE

28.1. The definitive language of the Agreement and the language to be used in all communications written or otherwise between the parties in connection with this Agreement shall be English.

29. LICENCE

29.1. If any of the Work, as identified in the Agreement, is to be provided by licence, then the following shall apply to such licenced Work:

- a. all rights and title to the licenced Work and all supporting documents remain the property of Seller;
- b. licence is perpetual, non-exclusive, non-transferable, fully-paid and royalty-free;
- c. Buyer may make one (1) copy of the licensed Work for backup or archival purposes only;
- d. the licenced Work shall be considered Confidential Information and handled and protected accordingly.

30. LIMITATION OF LIABILITY

30.1. NO PARTY SHALL BE LIABLE TO ANY OTHER PARTY FOR ANY LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF DATA, LOSS OF USE, SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES.

30.2. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT BUYER SHALL NOT BE LIABLE TO SELLER FOR ANY AMOUNT IN EXCESS OF THE AMOUNT TO BE PAID BY BUYER TO SELLER UNDER THIS AGREEMENT OR ANY WORK ORDERS ISSUED UNDER THIS AGREEMENT.

31. MAINTENANCE AND SUPPORT

31.1. Except as specifically set out in the Agreement, maintenance and support services are not included.

32. NOTICES

32.1. Notices shall be submitted in writing to the address given in the Agreement to the attention of the person signing the Agreement unless otherwise specified in the Agreement.

32.2. Notices may be delivered: personally; by registered mail, return receipt requested; by overnight courier; or by facsimile.

32.3. A notice shall be deemed to have been given and received if specifically acknowledged in writing by the receiving party or:

- a. if delivered by hand, at the time of delivery;
- b. if sent by registered mail, at the time of receipt;
- c. if sent by overnight courier, on the following Day; or
- d. if sent by facsimile, at the time of transmission if this falls within the normal working hours at the location of receipt and on the next working day at that location if received at any other time.

32.4. Where either party requests written confirmation of any communication that does not constitute a notice such request shall not unreasonably be refused.

33. PACKAGING AND MARKING

33.1. Seller shall employ the most suitable methods of packaging for the Work to ensure that it is not damaged under normal handling during transit.

33.2. Weight and size limitations for standard air transport (IATA regulations) shall be adhered to.

33.3. Marking shall be in accordance with applicable regulations and any Buyer instructions.

34. PAYMENT

34.1. Following delivery to, and acceptance of the Work or a portion of the Work, by Buyer, Seller shall submit an invoice in a form satisfactory to Buyer and accompanied by such supporting documentation as Buyer may reasonably require.

34.2. Invoices must be received by Buyer:

- a. for monthly progress payments, no later than ten (10) calendar days following the end of a month; or
- b. for milestone payments, no later than ten (10) calendar days following completion and acceptance of the milestone.

34.3. An invoice shall be deemed valid and accepted unless Buyer notifies Seller within ten (10) calendar days after receipt that it cannot accept the invoice. The Notice of Rejection shall identify the reasons for the rejection.

34.4. All amounts claimed on invoices other than the final invoice shall be subject to a ten percent (10%) holdback. The accumulated holdback shall be payable on final acceptance of the completed Work.

34.5. Buyer shall pay each invoice within thirty (30) calendar days of the later of:

- a. receipt of a satisfactory original invoice; or
- b. acceptance of the Work covered by the invoice; or
- c. receipt by Buyer of payment from Customer for the portion of the Work covered by the invoice.

34.6. Payments may be made via electronic funds transfer.

34.7. Seller shall promptly repay to Buyer any amounts paid in excess of amounts due Seller.

35. PERMITS AND LICENCES

35.1. Seller shall obtain and maintain any authorizations, registrations, licences or permits required by any national, state, provincial or local authority for the performance of the Work.

36. PREVAILING TERMS

36.1. These Terms and Conditions identify the minimum obligations under the Agreement.

36.2. If prime contract terms and conditions are identified in the Agreement as being applicable, the greater of or additional requirements contained in any of the terms and conditions shall apply.

37. PUBLICITY

37.1. Except as required by any applicable law or regulation, a party shall not release any information concerning this Agreement or disclose or use another party's name for purposes of advertising or soliciting business, including, but not limited to, press releases, brochures, photographs, or verbal announcements without the prior written permission of the other party.

38. RISK OF LOSS

38.1. Risk of loss shall transfer from Seller to Buyer, on a per shipment basis, in accordance with Incoterms 2010. If no terms are specified in the Agreement then risk of loss will pass to Buyer in accordance with DDP Buyer's facility.

39. SCOPE

39.1. Except as specified elsewhere in the Agreement, Seller shall furnish all labour, materials, tools, supplies, equipment, transportation, supervision, technical, professional and other services and shall perform all operations necessary to satisfactorily perform the Work.

39.2. Seller shall be fully responsible for performing the Work and Buyer shall not be liable for any negative consequences or extra costs arising out of Seller's following any advice given by Buyer, whether given gratuitously or invited or requested by Seller.

40. SECURITY

40.1. Seller shall at all times comply with Buyer's security requirements and shall, to the maximum extent possible, honour Buyer's security obligations to its clients.

40.2. Seller may be required to obtain a Security Clearance issued by the applicable national agency.

41. SEVERABILITY

41.1. If any provision of the Agreement is held to be invalid, illegal or unenforceable, in whole or in part, by a court or other lawful authority of competent jurisdiction, the remainder of the Agreement shall be severable and remain valid and in full force and effect.

41.2. The parties shall use all reasonable endeavours to replace the invalid, illegal or unenforceable provision by a valid, legal and enforceable substitute provision the effect of which is as close as possible to the intended effect of the invalid, illegal or unenforceable provision.

42. STATUS OF THE PARTIES

42.1. Each party shall at all times be an independent contractor.

42.2. This Agreement shall not constitute, create, give effect to, or imply a joint venture, pooling arrangement, agency, master/servant relationship, partnership or formal business organization of any kind.

42.3. All persons employed by a party to perform its obligations under the Agreement shall be that party's employees, servants or agents and shall not be considered the employees, servants or agents of any other party.

43. SUBCONTRACTING

43.1. Seller shall not subcontract any of the Work without the prior written permission of Buyer. Such permission shall not be unreasonably withheld.

43.2. Permission to subcontract shall not relieve Seller of any of its obligations under the Agreement.

43.3. Seller shall preserve and protect the rights of the parties hereto under any and all subcontracts or purchase orders issued in support of the Work.

43.4. Seller shall ensure that any obligations or restrictions contained herein that could reasonably be expected to apply to subcontractors shall be included in any subcontracts or purchase orders issued in support of the Work.

43.5. Nothing in this Agreement shall constitute or create any contractual relationship or commitment between any of Seller's subcontractors and Buyer.

43.6. This article does not limit Seller's ability to purchase standard commercial supplies or raw materials.

44. SURVIVAL

44.1. Any provisions contained in this Agreement with respect to the following shall survive termination of this Agreement for any reason:

- a. Confidential Information;
- b. Indemnity;
- c. Limitation of Liability
- d. any other right or obligation, which by its nature, might reasonably be expected to so survive.

45. SUSPENSION

45.1. Buyer shall at all times have the right to suspend performance by Seller of all or part of the Work.

45.2. Upon Receipt of a Notice of Suspension Seller shall promptly comply with such Notice and make all reasonable efforts to minimize any costs associated with the suspension.

45.3. Within ninety (90) calendar days, Buyer will either:

- a. cancel the suspension and direct Seller in writing to resume performance of all or part of the suspended Work; or
- b. terminate, in whole or in part, the suspended Work pursuant to the termination provisions of this Agreement.

45.4. If the suspension results in an increase or decrease in the cost of the Work or the time required for the performance of the Work an equitable adjustment shall be made in the schedule and/or

compensation for the Work and in any other affected provisions of the Agreement and the Agreement amended accordingly.

45.5. A claim for an adjustment under this Article must be submitted to Buyer within thirty (30) calendar days after the end of the suspension.

46. TARIFFS

46.1. Duties, taxes or other charges payable upon export or import of the Work shall be paid by the parties as set out in Incoterms. If a specific term is not identified in the Agreement then the following shall apply:

- a. Seller shall pay all export related duties, taxes and other charges associated with delivery of the Work; and
- b. Buyer shall pay all import related duties, taxes, and other charges associated with delivery of the Work.

47. TAXES

47.1. Unless set out otherwise in the Agreement, all prices, fees, etc. are exclusive of all sales, use, value added, business transfer, excise or any similar taxes. Any such taxes shall be paid by Buyer.

47.2. Seller shall be responsible for paying all applicable corporate or personal income taxes, and any other assessments, taxes or source deductions required in any jurisdictions where Seller is located or the Work is performed.

47.3. If Seller is located in a different country than Buyer, Buyer reserves the right to withhold from payments to Seller any amount that applicable tax authorities require be withheld from payments to foreign entities.

48. TECHNOLOGY EVOLUTION

48.1. Updated Technology

48.1.1. During the term of this Agreement Seller shall advise Buyer of technology developments that, if incorporated into the Work, would result in improved performance and capabilities.

48.1.2. Seller shall not incorporate any technology developments into the Work unless and until so directed by Buyer in an Amendment to this Agreement.

48.2. Updated COTS Items

48.2.1. Where Commercial-off-the-Shelf (COTS) items (including hardware and software) are to be delivered as part of the Work or to be incorporated into the Work, such items shall be as identified in this Agreement except that Seller shall be permitted to substitute newer, compatible items that will meet or exceed the functional, performance and warranty requirements specified in this Agreement.

48.2.2. There shall be no increase in the cost to Buyer of the Work as a result of any such substitution unless specifically agreed to in writing.

49. TERMINATION

49.1. Termination for Convenience

49.1.1. Buyer may at any time and without cause terminate all or a portion of the Agreement.

49.1.2. Upon receipt of a Notice of Termination for Convenience Seller shall:

- a. immediately discontinue work on the date and to the extent specified in the Notice and place no further purchase orders or subcontracts related to the terminated Work;
- b. inventory, maintain and turn over to Buyer all materials, plant, tools, equipment and property furnished by Seller or its subcontractors or provided by Buyer for performance under the Agreement;
- c. co-operate with Buyer in the disposition of any work in progress; and
- d. continue to perform in accordance with all of the terms and conditions of the Agreement those portions of the Work that are not terminated.

49.1.3. Seller shall submit a final invoice within sixty (60) Days after receipt of the Notice of Termination for Convenience. The final invoice shall include, in addition to the value of all Work delivered but not previously invoiced for:

- a. all costs and expenses reimbursable in accordance with this Agreement that have not been paid for prior to the effective date of termination and such of these costs as may continue for a reasonable time thereafter;
- b. all costs of settling claims arising from the termination of subcontracts and/or purchase orders related to the terminated Work;

c. reasonable and unavoidable costs for settlement, including but not limited to, accounting, legal, clerical and other expenses reasonably necessary for the preparation of Seller's claim and for storage, transportation and other expenses in connection with the protection and disposition of inventory; and

d. normal overheads and a reasonable profit on the foregoing.

49.1.4. Notwithstanding the foregoing the total amount to be paid to Seller shall not exceed the amount that Seller would have received had the Agreement not been terminated for convenience.

49.2. Termination for Default

49.2.1. Upon default by a party the non-defaulting party may terminate all or a portion of this Agreement.

49.2.2. Upon termination of this Agreement for default, Buyer shall have no liability to Seller other than payment for that portion of the Work delivered to and accepted by Buyer.

49.2.3. If, after a Notice of Termination for Default has been issued by Buyer, it is determined or agreed by Buyer that such Notice was invalid, in whole or in part, or that the default was beyond the reasonable control of Seller, then the Agreement shall be deemed to have been terminated in accordance with the Termination for Convenience provisions.

50. TITLE

50.1. Except as specified otherwise in the Agreement, Buyer shall acquire title to all Work:

a. For any creation, design, report, etc. upon its being reduced to any recorded format;

b. for any material or component upon its identification as part of or to be incorporated into the Work.

50.2. Seller warrants that it has good and marketable title or legal licensed rights to the Work, and that the Work will be free from any claims, liens, charges or encumbrances of any kind.

50.3. Seller shall retain a proportional security interest in the portion of the Work for which it has not received full payment.

51. WAIVER

51.1. Waiver by a party of the strict performance of all or part of any term, condition or covenant in the Agreement shall not of itself constitute a waiver of or abrogate that term, condition, covenant or agreement, nor be a waiver of any subsequent breach of that or any other term, condition or covenant.

51.2. No failure to exercise or delay in exercising any right or remedy under this Agreement shall operate as a waiver of such right or remedy.

51.3. No provision of this Agreement shall be deemed waived amended or modified by a party unless such waiver, amendment or modification is in writing and signed by the waiving party.

52. WARRANTY

52.1. General

52.1.1. Unless otherwise specified in the Agreement, Seller's warranty obligations shall extend for a period of one (1) year from the date of delivery of the Work to Buyer.

52.1.2. Seller's sole obligation under this warranty are limited to the prompt correction, repair, replacement or re-performance, at the sole discretion of Seller and at no charge to Buyer, of any non-compliance with specifications or any defect in materials or workmanship in the Work.

52.1.3. Unless otherwise agreed in writing Seller's warranty obligations do not include the following:

a. provision of technical support in any form (e.g. for installation, operational advice, troubleshooting, etc., all of which support is available on an hourly fee basis);

b. attendance by Seller's personnel or representatives at Buyer's facilities.

52.1.4. Buyer shall provide a Notice of Defect within a reasonable time after discovery of any such non-compliance or defect. The Notice of Defect shall clearly identify the defective item (including part number and serial number where applicable) or service, the nature of the defect or non-compliance, the operating state of the equipment at the time the defect or non-compliance occurred, actions taken to troubleshoot or attempt to rectify the problem, impact on operation of the system, and any other information that may assist Seller in analyzing and correcting the problem. Supplier shall promptly investigate and shall either:

a. provide information supporting a determination that the subject of the Notice of Defect is not a valid warranty claim; or

b. take such action as may be required to correct such non-compliance or defect.

52.1.5. If Buyer submits a Notice of Defect and it is subsequently shown that the defect or failure was not covered by the warranty provisions of this Agreement then Buyer shall reimburse Seller for all labour and non-labour costs, including travel and living expenses, at Seller's regular commercial rates.

52.1.6. The warranty period for the portion of the Work that is the subject of a valid warranty claim shall be extended by the length of time after receipt of the Notice of Defect by Seller that the affected portion of the Work is unavailable as a result of the non-compliance or defect.

52.1.7. CORRECTION OF ANY NON-COMPLIANCE OR DEFECT IN THE MANNER PROVIDED HEREIN SHALL CONSTITUTE COMPLETE FULFILMENT OF ALL OF SELLER'S LIABILITY WITH RESPECT TO WARRANTY ARISING OUT OF OR RELATED TO THE WORK, WHETHER BASED ON CONTRACT, TORT, OR OTHERWISE.

52.1.8. THIS SOLE AND LIMITED WARRANTY IS EXCLUSIVE AND IN LIEU OF ANY OTHER WARRANTY OR CONDITION. THERE ARE NO OTHER WARRANTIES, CONDITIONS, REPRESENTATIONS, OR GUARANTEES, WHETHER EXPRESS, IMPLIED OR ARISING OUT OF STATUTE, LAW, EQUITY, COURSE OF DEALING, USAGE OF TRADE OR OTHERWISE WITH RESPECT TO THE WORK, INCLUDING BUT NOT LIMITED TO, THOSE RELATING TO MERCHANTABILITY, FITNESS FOR PURPOSE, OR OTHER WARRANTY OF QUALITY.

52.2. Goods

52.2.1. Seller warrants that the Work:

a. shall be new and shall meet standard industry quality where no quality is specified;

b. shall comply with published performance specifications (where applicable) and any additional requirements, specifications or drawings incorporated into the Agreement or otherwise agreed in writing;

c. if a system, shall perform in accordance with any system specifications and shall meet the criteria established in any system acceptance test procedures agreed between Buyer and Seller.

52.2.2. Seller gives no warranty with respect to any goods or materials not manufactured or produced by Seller. The warranty, if any, given by the manufacturer of such goods or materials shall be transferred to Buyer.

52.2.3. This limited warranty shall not extend to or include any:

a. defects or failures resulting from normal wear and tear;

b. damage or defects attributable to Buyer's failure to comply with Seller's maintenance procedures and instructions;

c. damage or defects attributable to negligence or misuse of the Work on the part of Buyer or its agents;

d. repair of, or modification, change, or addition to the Work by Buyer or its agents not in accordance with Seller's procedures and instructions; or

e. use of the Work for other than its intended purpose or not in accordance with Seller's operating instructions.

52.2.4. Upon receipt of a Notice of Defect, Seller will, where applicable, issue a Return to Manufacturer Authorization (RMA) Number to Buyer. Buyer shall return defective or non-compliant items to Seller's facilities with the RMA number clearly identified. Buyer shall bear the cost of return of the defective or non-compliant Work to Seller's facilities. Seller shall bear the cost of returning repaired items to Buyer at the original delivery destination. Any additional transportation costs arising from Buyer's requirement for delivery to a destination other than the original delivery point will be borne by Buyer.

52.3. Services

52.3.1. Seller warrants that Seller is competent to perform the Work and that Seller has the necessary qualifications including knowledge, skill and experience, to perform the Work and the ability to use those qualifications effectively for that purpose.

Seller warrants that it will perform the Work in a conscientious, diligent and efficient manner, and provide a quality of service at least equal to that generally expected of a like supplier in a like situation.