

1. DEFINITIONS

- (a) **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, regardless of whether it is owned by the Buyer, the Seller or a third party.
- (b) **Business Day** means any day other than a Saturday, Sunday, statutory holiday, or other day on which either the Buyer or Seller are normally closed for business.
- (c) **Buyer** means Raytheon Canada Limited, North Warning System Contract Management Office (“CMO”), Ottawa, Ontario, Canada.
- (d) **Ceiling Price Subject to Downward Adjustment** means the maximum price to be paid to the Seller as established in the Purchase Order for which the Seller will not receive additional compensation for the defined Work. As provided in the Purchase Order, the ceiling price will be subject to downward adjustment based upon the Seller’s actual costs incurred in its performance of the Work. The Seller shall submit its invoice(s) along with copies of all supporting expenses including labour records, expense receipts, and third party invoices in accordance with the payment terms in the Purchase Order.
- (e) **Contracting Authority** means the representative from the Buyer’s Supply Chain or Subcontracts organizations who is identified in the Purchase Order and is the primary point of contact between the Seller and the Buyer.
- (f) **Controlled Goods** mean items, including components and technical data that have military or national security significance which are controlled domestically in Canada under the Controlled Goods Program (CGP) by the Government of Canada, Public Services and Procurement Canada, Controlled Goods Directorate as defined in the Defence Production Act R.S.C. 1985, c. D-1.
- (g) **Firm fixed Price** means a fixed price to be paid to the Seller as established in the Purchase Order. Subject to certain pre-negotiated conditions such as an annual economic adjustment, no adjustment in the Purchase Order price shall be provided for the Work. The Seller shall submit its invoice to the Buyer for its Work completed in accordance with the payment terms in the Purchase Order.
- (h) **Foreground Information** means all intellectual property first conceived, developed, produced or reduced to practice as part of the Work under the Purchase Order.
- (i) **Indefinite Quantity (IQ) Requirement** means a requirement that cannot be included in the firm, fixed price (FFP) of the Buyer’s Prime Contract as the scope, frequency, predictability recurrence cannot be determined precisely.
- (j) **Party** means either the Buyer or the Seller and includes the plural “Parties” to describe both the Buyer and Seller.
- (k) **Purchase Order (“PO”) or Subcontract** means a formal and legally binding agreement between the Buyer and Seller for Work described therein to be performed by the Seller in return for consideration.
- (l) **Seller, Supplier or Subcontractor** means the Party to whom the Buyer has issued a Purchase Order.
- (m) **Subcontractor Statement of Work (“SSOW”)** means a document containing the Buyer’s stated Work requirements, including services, to be provided under the Buyer’s Purchase Order.
- (n) **Urgency** means a need of pressing emergency in which delay would be injurious to the public interest. An emergency may be an actual or imminent life-threatening situation, a disaster which endangers the quality of life or has resulted in loss of life, or one that may result in significant costs, loss or damage to the environment or Government of Canada property.
- (o) **Weather Delay** means a type of excusable delay wherein the Seller may be compensated for both schedule and labour costs associated with a disruption in its Work at a North Warning System site caused by inclement weather.
- (p) **Work** means all activities, services, goods or material, equipment, matters and things required to be completed, delivered or performed by the Seller under the Purchase Order.

2. GENERAL.

- (a) Agreement by the Seller to furnish the materials, equipment or services hereby ordered, or the Seller’s commencement of such performance, shall constitute acceptance by the Seller of this Purchase Order subject to these terms and conditions. Any terms or conditions proposed by the Seller inconsistent with or in addition to the Purchase Order General Provisions herein contained, whether proposed prior or subsequent to issuance by the Buyer of this Purchase Order, shall be void and of no effect unless specifically agreed to by the Buyer. Modifications hereof or additions hereto, to be effective, must be made in writing and be signed by the Buyer’s Contracting Authority.

3. GOVERNMENT OF CANADA STANDARD ACQUISITION CLAUSES AND CONDITIONS (“SACC”).

This Purchase Order is issued pursuant to the Buyer’s North Warning Services Renewal prime contract with Public Services and Procurement Canada. The Buyer’s prime contract is a defence contract within the meaning of the Defence Production Act, RSC 1985, c. D-1, which contains conditions that must be included in the Buyer’s purchase orders or subcontracts. The following SACC Conditions, in descending order of precedence, are therefore incorporated into this Purchase Order by reference, and are available at the Canadian Government Buy & Sell website: <https://buyandsell.gc.ca/policy-and-guidelines/standard-acquisition-clauses-and-conditions-manual>.

- (a) General Condition:
  - (i) 1031-2 (2012-07-16) Contract Cost Principles
- (b) Supplemental General Conditions:
  - (i) 4001 (2013-01-28) Hardware Purchase, Lease and Maintenance
  - (ii) 4007 (2010-08-16) Canada to Own Intellectual Property Rights in Foreground Information
  - (iii) 4002 (2010-08-16) Software Development or Modification Services
  - (iv) 4003 (2010-08-16) Licensed Software
- (c) General Condition:
  - (i) 2035 (2013-06-17) General Conditions – Higher Complexity – Services
- (d) Where necessary to make the context of the above Conditions applicable to the Purchase Order, unless the context of a Condition requires otherwise, the

term "Contractor" shall mean "Seller", the term "Contract" shall mean this "Purchase Order". The term "Government of Canada" or "Canada", and equivalent phrases, unless so identified in the Articles of these Purchase Order General Provisions, shall mean the "Buyer", and the term "Contracting Officer" shall mean the Buyer's "Contracting Authority".

4. ORDER OF PRECEDENCE OF DOCUMENTS.

Where a conflict arises between one of the SACC conditions referenced in Article 3 and the other Articles contained in these Purchase Order General Conditions, the Article in the Purchase Order General Conditions shall prevail. Otherwise, conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: 1) Typed provisions set forth on the Purchase Order, 2) Buyer's Technical Specification(s), 3) Subcontractor Statement of Work, 4) the preprinted portion of the Purchase Order, including these Purchase Order General Provisions. Buyer's specifications shall prevail over those of any agency of the Government of Canada or Buyer's Government, and both shall prevail over those of Seller.

5. CONTROLLED GOODS PROGRAM

- (a) If the Purchase Order states that the Work will be governed by the Controlled Goods Program (CGP), the Seller, its subcontractors or suppliers must first be registered with the Controlled Goods Directorate before any of them may have access to a NWS Site or NWS controlled goods or technical data. Within Canada, only persons who are registered, exempt or excluded under the CGP are lawfully entitled to examine, possess or transfer Controlled Goods. Details on how to register with the Controlled Goods Program are available on the Controlled Goods Directorate website at: <https://www.tpsgc-pwpsc.gc.ca/pmc-cgp/index-eng.html>. If the Purchase Order contains a Controlled Goods Program requirement, Paragraphs (b), (c) and (d) of this Article shall also apply.
- (b) No examination, possession or transfer of Controlled Goods shall be performed until the Seller has provided satisfactory proof to the Buyer, that the Seller, and any of the Seller's subcontractors or suppliers who intend to examine, possess or transfer Controlled Goods, are registered, exempt or excluded under the CGP.
- (c) Failure of the Seller to provide proof satisfactory to the Contracting Authority that the Seller and any of its subcontractors or suppliers are registered, exempt or excluded under the CGP, within thirty (30) days after receipt of the Buyer's Purchase Order, will be considered a default under the Purchase Order.
- (d) The Seller and any of its subcontractors or suppliers must maintain their CGP registrations, exemptions or exclusions for the duration of this Purchase Order and in any event for so long as they will examine, possess, or transfer Controlled Goods.

6. SECURITY.

- (a) Seller shall provide and maintain a system of security controls in accordance with any security requirements stated in the Purchase Order and any other security requirements which may be imposed by the Canadian Industrial Security Directorate ("CISD") of Public Services and Procurement Canada ("PSPC").
- (b) If required by this Purchase Order, the Seller must, at all times during performance of the Work, hold a valid Facility Security Clearance at the level of SECRET for document safeguarding, issued by the CISD, and the Seller SHALL NOT issue a purchase order containing PROTECTED or CLASSIFIED security requirements directly to a subcontractor without obtaining the prior written permission of PSPC/CISD and the Buyer.
- (c) Seller personnel requiring access to PROTECTED information, assets or a sensitive work site within a North Warning System Site must each hold a valid RELIABILITY STATUS, granted or approved by CISD before accessing such information or assets or before entering the sensitive work site.
- (d) Seller personnel requiring access to CLASSIFIED information, assets or a sensitive work site within a North Warning System Site must each be a permanent resident of Canada, or a citizen of Canada or the United States of America and hold a valid personnel screening at the level of SECRET, granted or approved by CISD before accessing such information or assets or before entering the sensitive work site.
- (e) Seller personnel SHALL NOT HAVE ACCESS to any PROTECTED or CLASSIFIED document, asset or to sensitive work site until a required personnel security screening(s) have first been granted or approved by the CISD.
- (f) The Seller MUST NOT utilize its own information technology systems to electronically process, produce or store any PROTECTED information until PSPC/CISD and the Buyer have issued their written approvals. After approval has been granted, these tasks MUST be performed at the level of PROTECTED A.

7. FITNESS FOR WORK.

- (a) Seller's personnel or its supplier's or subcontractor's representatives who are not physically, mentally and emotionally fit for duty at all times while attending a North Warning System ("NWS") Site or the Buyer's Contract Management Office ("CMO") may present a safety hazard to themselves or to other individuals, or to NWS or CMO facilities and equipment, or to the public. The Seller shall therefore comply with the Buyer's safety policy and applicable federal, provincial or territorial legislation and regulations concerning fitness for duty.
- (b) It is a violation of the Buyer's safety policy for individuals to be under the influence of alcohol, drugs or chemical substances when present at a NWS Site or CMO. Use, possession, or distribution of alcohol, drugs or chemical substances at these locations is prohibited. Possession and/or consumption of an over-the-counter or prescription drug or chemical substance which, when taken as directed, does not adversely affect the individual's fitness for duty is permitted.
- (c) If a Seller's employee or subcontractor representative is observed to be exhibiting signs of impairment, that individual shall be deemed impaired by the Buyer until such time as the Buyer is satisfied by the Seller that the individual is fit for duty. In all cases wherein such individual is unfit for duty, the Seller shall ensure that the individual is removed immediately from the NWS Site or CMO and replaced, at no cost to the Buyer, with a qualified individual who is fit for duty. The Seller shall immediately notify the Contracting Authority of the incident.
- (d) Smoking is also prohibited at NWS Sites and the CMO.

8. COMPLIANCE WITH DELIVERY/PERFORMANCE SCHEDULE.

- (a) Time is of the essence in the performance under this Purchase Order. Seller shall perform the work and make deliveries hereunder no earlier or later than required to comply with the performance schedules, unless otherwise authorized in writing by Buyer.
- (b) Seller agrees to notify Buyer immediately, if at any time it appears that the delivery schedules may change. Such notification shall include the reasons for any possible delays, and steps being taken to remedy any such problems. Seller further agrees to take such action as Seller considers appropriate to regain current delivery schedule including the performance of overtime, weekend, holiday work, or the establishment of additional shift work, to the extent such actions are permitted by local laws and regulations. Such actions shall be taken at no additional cost to Buyer.
- (c) The Work will be considered by the Buyer to be complete, unless otherwise directed in writing by the Contracting Authority, when all Work defined in the Purchase Order and its related documents has been completed and accepted by the Buyer.

9. COOPERATION WITH BUYER AND OTHER PARTIES AT SITES

- (a) If the Work, or any portion thereof, requires the Seller to be present at one or more North Warning System Sites, the Seller shall permit access to its Work at the Site(s) at any time, for the Buyer's personnel, Government of Canada representatives or other subcontractors ("other third parties") as necessary to engage in the performance of their duties as they relate to the Purchase Order or other North Warning System maintenance.
- (b) The Seller shall fully cooperate with the Buyer's personnel and other third parties as necessary during the performance of the Work. Any potential or real conflict with such other individuals on site that will affect the Seller's performance of the Work shall be immediately reported to the Contracting Authority for resolution.

10. CHANGES.

- (a) Buyer may, at any time, by a written order, make changes to any aspect of the Work including the amount of any materials, equipment or services to be provided by the Buyer in support of the Seller's obligations necessary for compliance with provisions of the Buyer's contract with the Government of Canada or of any amendments thereto. If any such change causes an increase or decrease in the price of this Purchase Order or in the time required for its performance, Seller shall promptly notify Buyer thereof and assert its claim for adjustment within twenty (20) days after the change is ordered, and an equitable adjustment shall be made in the price, payment terms, delivery schedules and/or any other terms of this Purchase Order as may be effected pursuant to the provisions of this Article. However, nothing in this article shall excuse Seller from proceeding immediately with the Purchase Order as changed.
- (b) If the Seller requests a change in the scope of the Work, the Seller shall provide a detailed change proposal to the Contracting Authority that will include a statement of the reason for the change and details including estimated labour hours, a revised schedule, material changes, a request for a change to the Buyer's support, if required, and a revised cost covering all changed expenses required by the change. Upon the Buyer's approval, the Contracting Authority will issue a change to the Purchase Order for the change.
- (c) Changes shall not be binding upon the Buyer unless specifically confirmed in writing and signed by the Buyer's Contracting Authority, before the change work is initiated, which expressly states that it constitutes an amendment or change to this Purchase Order. Information, advice, approvals, or inspections given by Buyer's technical personnel or other Buyer's representatives shall be deemed expressions of personal opinions only and shall not affect Buyer's and Seller's rights and obligations hereunder. The Seller must not begin to perform work in excess of or outside the scope of the Purchase Order unless and until it receives the Contracting Authority's change authorization.
- (c) The Seller agrees not to make any changes in its design and/or in the provision of materials, equipment or services to be delivered to the Buyer and agrees not to make any changes in procedures or processes which might affect the services or the fit, form, function, safety, weight, maintainability, service life, reliability, replaceability, or interchangeability of the supplies to be delivered to Buyer without prior written approval of the Buyer's Contracting Authority.

11. EXCUSABLE DELAY.

- (a) Neither Party shall be in default for its failure to deliver or a delay in its performance hereunder when such failure or delay is the result of an event of force majeure, which is hereby defined as any event which is beyond the control and without the fault or negligence of either affected Party. Such events may include, but are not restricted to:
  - (i) acts of God or the public enemy,
  - (ii) acts of government in either its sovereign or contractual capacity,
  - (iii) strikes, lockouts or other industrial disputes,
  - (iv) transportation breakdowns or freight embargoes,
  - (v) riots, mutinies, civil commotion, war or war-like operations, sabotage.
- (b) The Seller shall be excused and not be held liable for its delay in performance or in delivery on the part of the Seller's suppliers due to causes of force majeure as defined above, unless the supplies or services to be furnished by such suppliers were obtainable from other sources in sufficient time to permit the Seller to meet the required performance schedules.
- (c) The Seller shall duly verify the beginning and duration of such events by documents certified or confirmed by a cognizant government authority or other evidence acceptable to the Buyer. These documents or other evidence shall clearly show the nature of the event, its beginning and end.
- (d) To the extent that such delay is unavoidable, the date of delivery or performance may be extended at the Buyer's option for a period equal to the duration of the delay, but the Seller shall not be entitled to any extra financial compensation for such delay.
- (e) The portion of this Purchase Order affected by such failure or delay, or the Purchase Order in whole, may also be terminated at the Buyer's option. If such termination occurs, it shall be deemed a termination for convenience subject to the provisions of the article entitled: "TERMINATION".

12. WEATHER DELAY

- (a) This article applies to all Work carried out at North Warning System Long Range Radar (LRR) Sites or Short Range Radar (SRR) Sites unless expressly excluded in the Purchase Order.
- (b) In the event the Work cannot be initiated or completed in accordance with the Purchase Order schedule and such delay is caused by weather, then the Seller shall be reimbursed for its personnel costs actually incurred during the period of delay on the basis of a normal eight (8) hour work day, subject to the following:
  - (i) Personnel for whom the claim is being made were identified in the Seller's Work schedule, by position;
  - (ii) All such personnel departed on the scheduled departure day;
  - (iii) The Seller notified the Contracting Authority of the delay within 72 hours after the day of delay; and
  - (iv) The Seller provided supporting documentation to justify the delay along with costs incurred and supporting information as a result of the delay

13. LIQUIDATED DAMAGES.

- (a) Without limiting the Buyer's other remedies, the Buyer may set off, withhold or abate from any payments due under this Purchase Order, or any other agreement between the Parties, any liquidated damages that may be due under this Purchase Order. If this Purchase Order contains no provision for liquidated damages and in the opinion of Buyer, acting reasonably, any deliverable is deficient or is not furnished when scheduled resulting in additional costs and/or government penalties being incurred by the Buyer in support of the Work, Buyer may withhold from any payments due hereunder, or under any other agreement between the Parties, such amount as determined by the Buyer, until such deficiency or delinquency is cured.
- (b) The Buyer shall further have the right to recover from the Seller by set off or otherwise against any amounts owed to the Seller under this Purchase Order or any other agreement between the Parties, the price of any items returned to Seller under the terms of this Purchase Order.

14. SUSPENSION OF WORK.

- (a) The Buyer may at any time by written Notice of Suspension of Work, order the Seller to suspend all or part of the Work for such period of time as it may deem to be appropriate for the convenience of the Buyer. Upon receipt of such Notice, the Seller shall forthwith comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the Work covered by the notice during the period of Work suspension, and shall provide proper care and protection of all related work in progress and all materials, supplies and equipment Seller has on hand for the performance of the Work. Buyer may at any time thereafter by written notice cancel the Notice of Suspension of Work or terminate the suspended work pursuant to the provisions of the article entitled "TERMINATION".
- (b) If the performance of all or any part of the Work is suspended beyond one hundred and eighty (180) days, an equitable adjustment shall be made in the performance or delivery schedules, the Purchase Order price, or any other terms as may be affected by such suspension. Seller shall assert its claim, if any, for such adjustment within thirty (30) days after the end of the period of work suspension. However, no adjustment shall be made for any suspension to the extent that performance would have been so suspended by any other cause, including the fault or negligence of Seller. Also no adjustment shall be made under this article for any suspension for which an equitable adjustment is provided for or excluded under any other provision of this Purchase Order.
- (c) In no event shall Seller be entitled to any adjustment for loss of prospective profits or any damages whatsoever including, without limitation, incidental or consequential damages, whether directly or indirectly resulting from such suspension.

15. TERMINATION.

- (a) This Purchase Order may at any time be terminated in whole or in part by written notice from the Buyer. Such notice shall specify the effective date of such termination. If such termination is for the convenience of the Buyer and is not caused by the Seller's failure to fulfill the requirements or make progress so as to endanger performance of this Purchase Order, the Buyer, deducting any amount(s) previously paid, shall pay a proportional price for all work performed plus a profit on such work but excluding profit on direct costs incurred due to termination. The total amount to be paid by the Buyer in the event of convenience termination shall be determined by negotiation, but it shall in no event exceed the price of this Purchase Order.
- (b) The Buyer may terminate this Purchase Order for default in whole or in part if:
  - (i) the Seller fails to deliver the Work specified in the Purchase Order within the time set forth in the Purchase Order;
  - (ii) the Seller fails to make progress so as to endanger performance;
  - (iii) the Seller becomes insolvent, fails to pay its debts as they become due, or makes or proposes to make an assignment for the benefit of creditors; or
  - (iv) the Seller fails to perform any other provision of this Purchase Order, including, without limitation, the provisions of the article entitled "EXPORT CONTROLS – UNITED STATES TECHNOLOGY".
- (c) In the event of termination pursuant to this subparagraph (b), the Seller shall be liable for the excess cost of procuring similar supplies or services from an alternate source. The Buyer at its option may require the Seller to transfer title to any completed Work at the specified contract price or uncompleted Work, tooling, drawings, information or material at an equitable price. The Buyer shall have such additional remedies for default as may be available at law or in equity whether or not it terminates this Purchase Order.
- (d) In the event of either default or convenience termination, the Seller shall use its best efforts to reduce cost incurrence on terminated work and, to the extent or part not terminated, shall diligently continue performance of the Work not terminated in accordance with the terms of this Purchase Order.

16. PROPERTY RIGHTS.

Any property furnished by the Buyer to the Seller shall remain the property of either the Buyer or the Government of Canada, as the case may be, and shall be plainly so marked and safely stored. The Seller shall not use such property except in the performance of the Work under this Purchase Order and shall not substitute any other property therefor. The Seller shall be fully responsible for all such property upon delivery thereof to the Seller until it is returned to the Buyer.

17. SELLER'S DATA.

- (a) The Seller must provide information and data in a timely manner required under the Purchase Order for the performance of the Buyer's Prime Contract

with the Government of Canada, including data that will be provided to other suppliers or subcontractors.

- (b) The Seller agrees that any document, such as drawings, or any printed or written material that pre-existed this Purchase Order (“Background Information”) and that is furnished by the Buyer to the Seller under the terms of the Purchase Order may be used and duplicated in connection with further use or disposition of the Work performed under this Purchase Order. The Seller agrees to reproduce any restrictive legends or copyright notices on copies thereof and abide by military security requirements relating thereto, if any.
- (c) Any document containing information or data first produced and furnished by the Seller during the performance of the Work under the Purchase Order (“Foreground Information”) shall automatically become the property of the Government of Canada as soon as it comes into existence and shall be marked “Copyright © Her Majesty the Queen in right of Canada (year)”. The Seller shall have no right in or to any such intellectual property rights in Foreground Information, except any right that may be granted in writing by the Government of Canada.
- (d) To the extent that this Purchase Order is for the purchase of commercial off-the-shelf (“COTS”) computer software, notwithstanding any other provision of the Buyer’s License Agreement with the Seller, the Buyer may transfer such computer software licensed hereunder to the Government of Canada who will use the software in accordance with its rights provided in Public Services and Procurement Canada’s Standard Acquisition Clauses and Conditions (SACC), Supplemental General Condition No. 4003 (2010-08-16) Licensed Software.
- (e) Any greater rights which the Government of Canada may have acquired in this computer software are stated in the Purchase Order.

**18. INTELLECTUAL PROPERTY RIGHTS.**

- (a) The Seller agrees that any information disclosed by the Buyer to the Seller for the purpose of this Purchase Order shall be used only in the performance thereof; provided, however, that when the Government of Canada or any other government has an independent right of ownership or use of such information, as determined solely by the Buyer upon request by the Seller, the Seller may use such information for the Government of Canada or any other government, as the case may be, to the extent of such right. Nothing in this Article, however, shall restrict the Seller’s right to use or disclose any information, which is or becomes generally known to the public without breach of this provision by the Seller or is rightfully obtained from other sources. Upon completion or termination of this Purchase Order, the Seller shall return all information disclosed by the Buyer to the Buyer, or make such other disposition thereof as may be directed or approved by the Buyer.
- (b) No item furnished under this Purchase Order, or tools, plans, designs, or specifications for producing the same, which have been specifically designed for or by the Buyer after the award of the North Warning Service Renewal Contract, shall be duplicated, furnished to other third parties or used to produce such items for direct sale to the Government of Canada or third parties without the prior written consent of the Buyer and the Government of Canada.

**19. PRICES.**

The Seller warrants that any unit prices charged herein do not exceed the unit prices charged during the term of this Purchase Order by the Seller to other customers of the Seller in substantially similar transactions.

**20. FINANCIAL CONTROLS AND REPORTING.**

- (a) The Seller shall implement a financial control system to track all of its costs under the Purchase Order.
- (b) The Seller must advise the Contracting Authority when the Seller has committed and/or spent seventy percent (70%) of the value of any Purchase Order Line Item(s). The Seller shall monitor its total spend against the Purchase Order. The Seller assumes full financial responsibility for any cost overrun beyond the value of each Purchase Order Line Item if:
  - (i) the Seller has not advised the Contracting Authority when the Seller’s spend reached 70% of the Purchase Order Line Item value; and
  - (ii) the Purchase Order amendment to increase the Line Item value has not been approved.

**21. OVERTIME.**

The Seller shall not be reimbursed for costs incurred for any work in excess of a normal eight (8) hour work day unless authorized in writing in advance by the Contracting Authority, and all such costs are actually incurred by the Seller.

**22. TRAVEL AND LIVING EXPENSES.**

For commercial travel, the Seller will be reimbursed its authorized travel and living expenses, reasonably and properly incurred in the performance of the Work, without any allowance for administrative overhead or profit, in accordance with the meal, private vehicle and incidental expenses provided in Appendix C of the National Joint Council Travel Directive. All travel must have prior Contracting Authority authorization. The Seller is advised that travel between the NWS Logistics Support Sites (“LSS’s”) and the other NWS radar sites is provided by government supplied airlift and is therefore not to be charged to the Buyer. Food and lodging at the LSS’s and radar sites is provided by the Buyer’s staff and is not to be charged to the Buyer unless other arrangements are included in the Purchase Order. The Seller must provide copies of its commercial travel and living expenses incurred along with its Invoice(s).

**23. PAYMENTS AND INVOICES.**

- (a) The Seller will be paid via Electronic Funds Transfer (“EFT”) the amount(s) stipulated in the Purchase Order for completion of the Work or part thereof as agreed in the Purchase Order schedule of payments. An EFT form will be provided to the Seller after Purchase Order award for the Seller to complete and submit as instructed on the form. All communications concerning EFT payments must be submitted in writing to the Contracting Authority.
- (b) Invoices, including any required supporting documents, shall be submitted in accordance with the payment terms specified here and elsewhere in the Purchase Order, but in no case more frequently than once per month if the Purchase Order allows for milestone or monthly progress payments. The method of payment to be used, either: payment on completion/delivery, milestone payments, progress payments or a combination of one or more of these methods of payment, shall be described in the Purchase Order. Payment of a Seller’s invoice shall not be considered before the Work described by the Seller in its invoice is completed and accepted by the Buyer in accordance with the requirements of this Purchase Order.
- (c) Progress payments shall be regarded as interim payments only. The Government of Canada shall have the right to conduct interim or final cost/time verifications or audits and to make adjustments from time to time during the performance of the Work. If cited in the Purchase Order, SACC Clauses C0305C (2008-05-12) “Cost Submission”, C0711C (2008-05-12) “Time Verification” and C0101C (2010-01-11) “Discretionary Audit” shall apply. If an audit reveals that an overpayment for work actually performed has been made, the Seller shall promptly refund to the Buyer any overpayments resulting from such progress payments.

- (d) Invoices to be submitted shall include the following information:
- (i) The Purchase Order Number and Line Item Number(s)
  - (ii) Project Title
  - (iii) Contracting Authority's name
  - (iv) Invoice Amount
  - (v) Copies of all deliverable documentation if not previously delivered to the Buyer
- Ceiling price invoices shall include supporting cost information as explained in the Definitions.

- (d) The Seller's invoices shall be submitted to the Buyer as follows:
- (i) One (1) copy to the Contracting Authority;
  - (ii) One (1) copy to be emailed to Raytheon Canada Limited Accounts Payable at [AP\\_RCLottawa@raytheon.com](mailto:AP_RCLottawa@raytheon.com).
  - (iii) If the Seller cannot email its invoice to the Buyer's email address, then the Seller is to mail its invoice to:  
Raytheon Canada Limited  
Attention: Accounts Payable (Ottawa)  
PO Box 660761  
Dallas, Texas  
USA 75266-0761

(e) Unless otherwise specified in the payment terms of this Purchase Order, payments will be made in Canadian Dollars.

(f) All payments under the Purchase Order are subject to Buyer and/or Government of Canada audit.

**24. TAXES AND DUTIES.**

Except as may be otherwise provided in the Purchase Order, the price of this Purchase Order is inclusive of all taxes, assessments, fees, licenses, customs charges and duties and other mandatory governmental charges imposed on the Seller, its suppliers and their employees in the performance of the work. If the Seller has included in its price any such charges in excess of the requirements of the applicable laws or regulations, the price of the Purchase Order shall be correspondingly reduced.

**25. OFFSET CREDIT.**

The Buyer represents that it has or may have in the future certain offset commitments with the Government of Canada. The Seller agrees to support the Buyer in obtaining offset credit(s) for this Purchase Order with the appropriate Government agencies if so required by the Buyer.

**26. QUALITY CONTROL AND INSPECTION.**

- (a) The Seller and its suppliers shall establish and maintain a quality control and inspection program as required by the quality control requirements of this Purchase Order. Specific quality requirements, if any, that are not identified within the Purchase Order technical requirements, SSOW or these General Provisions, are provided in the Purchase Order as Enterprise Quality Notes ("Q-Notes") which are available to the Seller at the following website address: <http://qnotes.raytheon.com>. Any changes, deviations or waivers from the quality requirements of the Purchase Order must have the prior written approval of the Buyer before such changes may be implemented.
- (b) Subject to applicable national security regulations, the Buyer and/or government representative(s) shall have the right of access on a non- interference basis to any area of the Seller's or its suppliers' premises wherein any part of the Work is being performed in order to conduct audits or surveillance inspections of the Seller's operations to assess compliance with Purchase Order quality requirements. At least one week's notice will be provided to the Seller prior to conducting the audit or surveillance inspection. The Buyer's quality audit and inspections will be restricted to the Seller's facilities and, if applicable, the NWS site where any of the Work is being conducted, and will not include access to the Seller's proprietary financial information, books, records or systems. The audit plan shall be mutually agreed between the Parties prior to establishing the date of the audit/inspection. The Seller shall, without additional costs to the Buyer, provide all reasonable in-plant accommodations, facilities and assistance for the safety and convenience of the Buyer and government representative(s) in the performance of their duties.
- (c) To ensure that the Work satisfies the Purchase Order requirements and to demonstrate compliance with applicable technical specifications, the Seller and Seller's suppliers shall perform acceptance tests as required by the Purchase Order and the Buyer or government representative(s) may witness such tests and review any test data in connection therewith. The Seller shall give Buyer such advance notice as is reasonably necessary to allow Buyer to witness any required test. The work set forth in the Purchase Order is subject to inspections and monitoring in accordance with the requirements of the Purchase Order and the quality program set forth therein at the Seller's or Seller's supplier's facility and may be performed by the Buyer or a government authorized representative at their sole discretion. Inspection by the Buyer or the government representative(s) shall not relieve the Seller from responsibility for any omission, defect, fault or other failure to meet the requirements of the Purchase Order. If any of the Work is found to be defective in material, workmanship or otherwise not in conformance with the requirements of this Purchase Order, the Buyer shall have the right to reject such defective Work and require its prompt correction all at the Seller's expense.
- (d) The Seller shall keep and maintain proper and adequate inspection, test and related records, which shall be available for audit or inspection by the Buyer or the government representative(s) and shall allow copies thereof to be made and extracts taken therefrom, and shall furnish all information which may be required by the Buyer or the government representative(s).
- (e) All Work also may be subject to further inspection and acceptance at the Buyer's plant, Seller's plant, or site of installation as the case may be, notwithstanding any payments or other prior inspection. Final acceptance shall be at the Buyer's facility or such other place as may be designated in writing by the Buyer's Contracting Authority.

**27. SHIPMENT OF HAZARDOUS PRODUCTS / DANGEROUS GOODS**

- (a) If the Work requires the Seller to transport items classed as hazardous products or dangerous goods either to or from a NWS Site, the Seller must ensure it adheres to all levels of regulations regarding dangerous goods/hazardous products as set forth by federal, provincial, territorial and municipal

laws and by-laws. The Seller is required to mark such goods and products as follows:

- (i) shipping container: in accordance with the Transportation of Dangerous Goods Act, 1992, c. 34 and the Transportation of Dangerous Goods Regulations; and
  - (ii) Intermediate Bulk Container ("IBC"): in accordance with the Hazardous Products Act, R.S., 1985, c. H-3.
- (b) For each hazardous product or dangerous good to be shipped, the Seller must provide two (2) copies of bilingual Material Safety Data Sheets, indicating the NATO Stock Number to the Buyer as follows:
- (i) one (1) copy to be enclosed with the shipment; and
  - (ii) one (1) copy to be mailed to the Contracting Authority.
- (c) The Seller shall be responsible for any damages caused by improper packaging, labelling or carriage of goods/products.
- (d) The Seller must contact the Contracting Authority or the Contracting Authority's delegate at least 72 hours before shipping hazardous products / dangerous goods in order to schedule a receiving time at the Buyer's directed location.

**28. PACKAGING AND MARKING**

- (a) All product packaging shall be designed to allow for safe lifting, handling and load securing.
- (b) All packages weighing greater than 16kg (35 lbs) shall include the appropriate caution hazard label and shall clearly identify the specific weight.
- (c) Wherever possible, Seller shall ensure all products are shipped on wrapped standard wood pallets measuring 1.22m x 1.02m (48 in. x 40 in.).
- (d) Ownership of all product packaging will transfer to Buyer upon receipt and acceptance.

**29. IMPORT/EXPORT DOCUMENTATION INDEMNIFICATION.**

- (a) To the extent items furnished hereunder are to be exported, the Seller warrants that all import-export documentation, including but not limited to, all copies of packing sheets, invoices (commercial and customs), and special customs documentation, are accurate and correspond to the actual items shipped. The Seller shall indemnify and hold the Buyer harmless against any and all losses, claims, seizures, forfeitures, fines, penalties, assessments and damages of any kind whatsoever arising out of any violation by the Seller of applicable customs regulations due to the Seller's errors in its import/export documentation.
- (b) The Seller also agrees that upon notification by the Buyer of a violation, the Seller shall immediately provide the Buyer with assistance and documentation to rectify the Seller's errors and settle matters related thereto with the customs authorities. In the event of actual monetary losses incurred by the Buyer as a result of the foregoing circumstances, the Buyer may elect, at its option, to request direct payment or affect an offset against any amount, due to that time or in the future, by the Buyer to the Seller.

**30. EXPORT CONTROLS – UNITED STATES TECHNOLOGY**

- (a) For each item or for technical data of United States origin that is ordered by the Buyer under this Purchase Order, the Seller shall:
  - (i) furnish to the Buyer:
    - a. a copy of the documentation from the United States Government commodity licensing jurisdiction which shall contain the Export Control Classification Number (ECCN) or United States Munitions List (USML) classification as determined by the licensing jurisdiction; and
    - b. a then-current complete description of all restrictions on re-export imposed by the relevant authority on the items;
  - (ii) immediately notify the Buyer in the event of any change in any of the following:
    - a. the U.S. commodity licensing jurisdiction;
    - b. the ECCN or USML classification; or
    - c. the re-export restrictions relevant to the item; and
  - (iii) indemnify the Buyer against all liabilities, penalties, losses, damages, costs or expenses, including legal fees, that may be imposed on or be incurred by the Buyer in connection with the failure of the Seller to comply with subparagraphs (i) and (ii). Without limiting the generality of the foregoing, the Seller shall provide, at its own expense, all necessary and reasonable assistance to the Buyer, including access to the Seller's documentation and employees, to permit the Buyer to mitigate the consequences of the Seller's failure to comply with the obligations of subparagraphs (i) and (ii) above.

**31. WARRANTIES.**

- (a) The Seller warrants that all Work delivered hereunder, will be free from defects in material and workmanship, that services shall be provided by appropriately certified and experienced personnel, and that all Work will conform to applicable specifications and drawings. To the extent that such Work, or portion thereof, is not manufactured pursuant to detailed designs furnished by the Buyer, the Seller further warrants that all Work will be free from defects in design and suitable for the intended purpose for a period of:
  - (i) Twelve (12) months from date of delivery or Buyer's acceptance, whichever is the latter, of materials or services; or
  - (ii) Ninety (90) days from date of delivery or Buyer's acceptance, whichever is the latter, of licensed software.

The warranty period will automatically be extended by the duration of any period where the Work, or part thereof, cannot be used because of a defect or non-conformance that prevented such use during the original warranty period.

- (b) The Work or any part of the Work found to be defective or non-conforming will be returned to the Seller's plant for replacement, repair or making good. However, when in the opinion of the Buyer it is not expedient to remove the Work from its location, the Seller must carry out any necessary repair or making good of the Work at that location. In such cases, the Seller will be responsible for all costs (including travel and living expenses) incurred in so doing; the Buyer will not reimburse such costs.
- (c) The Seller must pay the transportation cost associated with returning the Work or any part of the Work that is transportable to the Seller's plant pursuant to (b) above. The Seller must also pay the transportation cost associated with forwarding the replacement or returning such Work or part of the Work when

rectified to the delivery point specified in the Purchase Order or to another location directed by the Buyer.

- (d) If the Seller fails to fulfill any obligation described in this Article within a reasonable time after receiving a notice from the Buyer, the Buyer will have the right to remedy or to have remedied the defective or non-conforming work at the Seller's expense.
- (e) In addition to other remedies which may be available to the Buyer at law or in equity, the Buyer, at its option, may either return to the Seller any nonconforming or defective Work or part thereof, including related documentation, and require correction or replacement and revised documentation as soon as possible and all at the Seller's risk and expense. If the Buyer does not require correction or replacement of the nonconforming or defective Work or part thereof, the Seller shall repay such portion of the purchase price or such additional amount as is equitable under the circumstances. These rights of the Buyer are in addition to but shall not be limited by the Seller's standard warranty or any statutory or other warranty implied or imposed by law. Inspection and acceptance of items by the Buyer or the Government of Canada, or payment therefor, shall not relieve the Seller of its responsibilities hereunder.
- (f) The Seller represents and warrants that only new and authentic materials, parts or components and no counterfeit materials, parts or components are used in the Work to be delivered unless prior written approval has been received from the Contracting Authority. For greater certainty, Seller shall only provide authentic materials, parts or components directly from Original Equipment Manufacturers ("OEM's") or from their authorized dealers/distributors. Seller represents and warrants that all materials, parts and components to be delivered are traceable back to the OEM and will provide documents attesting to such traceability to the Buyer upon request.

**32. INTEGRITY PROVISIONS**

- (a) The Seller represents and warrants that neither the Seller nor any of its officers, directors, employees, agents or representatives (hereinafter called the "Seller's Employees") have not offered or given, nor will offer or give, any gratuities to any officer, director, employee, agent or representative of either the Buyer or the Government of Canada or any other third party for the purpose of securing or amending or securing favourable treatment under this Purchase Order.
- (b) Seller shall fully comply with all applicable provisions of the Corruption of Foreign Officials Act of Canada, the United States Foreign Corrupt Practices Act and local anti-corruption laws.

**33. INDEMNIFICATION AGAINST CLAIMS.**

The Purchase Order may require the Seller or any of its suppliers to perform work on one or more of the North Warning System Sites. The Seller agrees to indemnify and hold harmless the Buyer and the Government of Canada, their officers, employees, agents and invitees from and against all claims, judgments, liabilities, losses, injuries and damages of every nature (including costs and expenses incident thereto) caused by acts or omissions to act by the Seller, its suppliers, their officers, employees, agents and invitees, directly and indirectly arising out of the performance of the Work under this Purchase Order.

- (a) The Seller shall maintain such General Liability, Property Damage, Worker's Compensation Insurance and Motor Vehicle Liability (Personal Injury and Property Damage) insurance as are specified in this Purchase Order, or if none are specified, such amounts as will protect the Seller (or its suppliers) and the Buyer from said risk and from any claims under any applicable Occupational Health and Safety regulations including the Ontario or applicable Workers' Compensation Act. Required insurance coverage amounts are provided below (an Umbrella/Excess Liability policy may be used to comply with the required limits of liability):

- (i) Workers' Compensation Employer's Liability: \$1,000,000.00 per employee/per accident;
- (ii) Motor Vehicle Liability: Private Passenger vehicles: \$1,000,000.00 per accident covering all owned, non-owned and hired vehicles; and
- (iii) General Liability (Buyer must be included as additional insured on Seller's insurance policy): \$1,000,000.00 per occurrence.

- (b) The Seller shall, without limitation as to time, indemnify and save the Buyer harmless from all claims which may be asserted against property covered hereunder, including without limitation mechanic's liens or claims arising under Worker's Compensation or Occupational Disease laws and from all claims for injury to persons or property arising out of or related to such property unless the same are caused solely and directly by the Buyer's negligence.

**34. PATENT INDEMNITY.**

- (a) To the extent items are not supplied pursuant to detailed designs furnished by the Buyer, the Seller shall at its own expense hold harmless the Buyer and the Government of Canada and shall defend either or both of them, from and against any suit or proceeding based on a claim that the use or sale of any item supplied by the Seller under the Purchase Order constitutes infringement of any patent, copyright, trademark, or proprietary information rights of others, and the Seller shall pay all damages and costs, including legal costs, awarded therein against the Buyer or the Government of Canada, provided the Seller is notified promptly in writing of the suit or proceeding and shall be given adequate authority, information and assistance, at the Seller's expense, for the defense of same, subject to the rights of the Buyer and the Government of Canada to participate at their own expense and to be fully advised by the Seller in advance of all actions taken.
- (b) In the event said item in such suit is held to constitute infringement and its use or sale is enjoined, the Seller shall, at its own expense, procure for the Buyer and/or the Government of Canada the right to use or sell the item; or substitute an equivalent, but non-infringing item acceptable to the Buyer and/or the Government of Canada and extend this patent indemnity thereto; or, subject to the approval of the Buyer and/or the Government of Canada remove said item and refund the purchase price and any costs incurred by the Buyer for transportation and installation thereof.

**35. COMPLIANCE WITH LAWS AND REGULATIONS.**

The Seller warrants that it has been duly authorized to operate and to do business in the jurisdiction in which the work is to be performed, that it has the capacity and capability to enter into and complete the Work in accordance with the Purchase Order requirements, it has obtained, at no cost to the Buyer, all necessary and required licenses and permits required in connection with this Purchase Order, and that the Seller will comply fully with all pertinent federal, provincial, state and territorial laws, decrees, regulations and labor standards during the performance of this Purchase Order. The provision of the U.N. Convention on Contracts for the International Sale of Goods shall not apply to this agreement.

**36. GOVERNING LAW / DISPUTES.**

- (a) Irrespective of the place of performance of any work hereunder, the Buyer and Seller agree that this Purchase Order was entered into in the Province of Ontario (Canada) and shall be governed by and construed in accordance with the laws of the Province of Ontario and the applicable laws of Canada,

excluding any conflict of laws rules that may apply therein.

- (b) Pending final resolution of any dispute under this Purchase Order, the Seller shall proceed diligently with the performance of this Purchase Order in accordance with the Buyer's decision or direction concerning the subject matter of such dispute.

37. RIGHTS AND REMEDIES OF BUYER.

The rights and remedies of the Buyer set forth herein shall be in addition to any other rights and remedies provided in law or equity.

38. ASSIGNMENT AND SUBCONTRACTING.

- (a) Neither this Purchase Order nor any interest herein nor claim hereunder may be assigned or delegated by the Seller, nor may all or substantially all of this Purchase Order be further subcontracted by the Seller without the prior written consent of the Buyer. Such consent, however, shall not be deemed to relieve the Seller of its obligations to comply fully with the requirements of this Purchase Order.
- (b) Notwithstanding such assignment, no classified, or other confidential security information shall be furnished to the assignee or any other third party except upon prior written approval of the Buyer.

39. ENTIRE AGREEMENT / SEVERABILITY.

This Purchase Order and the attachments and documents incorporated herein constitute the complete and exclusive statement of the terms of this Purchase Order between the Buyer and Seller and supersede all prior representations, understandings, and communications relating hereto. The invalidity or unenforceability, in whole or in part, of a paragraph, subparagraph, provision or article of this Purchase Order shall attach only to such paragraph, subparagraph, provision or article. The validity of the remainder of the Purchase Order shall not be affected and the Purchase Order shall be carried out as if such invalid or unenforceable paragraph, subparagraph, provision or article were not contained therein.

40. SURVIVAL

All the Parties' obligations of confidentiality, representations and warranties set forth in the Purchase Order as well as the provisions, which by the nature of the rights and obligations might reasonably be expected to survive, including but not limited to copyright, intellectual property rights, property rights, record keeping and audit requirements, termination, patent indemnification and compliance with laws and regulations, shall survive the expiry or termination of the Purchase Order.

41. NOTICES.

All notices required to be given by Buyer or Seller to the other Party under the terms of this Purchase Order shall be written in English and shall be sent by registered letter, or facsimile or by email, confirmed promptly by email, and shall be effective at the time of receipt of the original notification by the other Party.

42. PUBLICITY.

Seller agrees that it will not, without prior written approval of Buyer, publicize this Purchase Order or any of Seller's performance hereunder, disclose any details in connection with said performance to third parties, or use Buyer's name in connection with Seller's publicity.

43. DOCUMENT LANGUAGE AND MEASUREMENTS.

- (a) All documentation furnished, including the exchange or correspondence under this Purchase Order, unless otherwise specified in this Purchase Order, will be written in the English language.
- (b) This Purchase Order is drawn up in the English language only. In the event of any inconsistency between any terms of this Purchase Order, and any translation thereof into another language, the English language meaning shall prevail.
- (c) All measurements applicable to the work performed herein will be in accordance with the system of measurements specified in the Seller Statement of Work. If not so specified, it will be in the metric system.