



## Canadian Air Transport Security Authority Purchase Order Terms and Conditions (“Terms and Conditions”)

**1. GENERAL.** The Canadian Air Transport Security Authority (“**CATSA**”) Purchase Order Requisition for Goods and Services form (“**PO Form**”) constitutes CATSA’s offer to purchase, the Goods and/or Services as described on the PO Form (as applicable, “**Goods**”, “**Services**” or “**Goods and/or Services**”) made to the party named on the PO Form (“**Contractor**”) in accordance with these Terms and Conditions and any additional terms specified on the face of the PO Form (collectively “**PO**”). Notwithstanding CATSA’s act of accepting or paying for Goods and/or Services, all terms and conditions which are contained in any other document submitted by Contractor, such as an order acknowledgement, invoice or other such document are hereby expressly rejected and superseded by this PO. Failure by CATSA to object to any provision in Contractor’s documents shall not be deemed acceptance of such provision, or a waiver of the provisions of this PO. In the event of any conflict or inconsistency among these Terms and Conditions and any other term on other documents forming part of this PO, these Terms and Conditions shall govern. Contractor shall be deemed to accept this offer and the terms of this PO upon the earlier of (i) acceptance or acknowledgement of the PO whether orally, in writing or otherwise or (ii) commencement of performance of Contractor’s obligations under the PO. The provisions of this PO may only be excluded or amended by express written agreement (or where expressly provided, an amending notice) signed by a duly authorized representative of CATSA.

**2. PERSONNEL.** Contractor shall provide the services of the persons named in the PO, together with any additional persons necessary to perform the work and provide the Services required under this PO. Should Contractor, at any time, be unable to provide the services of the named persons, Contractor shall be responsible for providing replacements with at least the same level of skill and experience. In such cases, Contractor shall notify CATSA in writing and provide: (a) the reason for the removal of the named person from the project; (b) the name of the proposed replacement; (c) an outline of the skills and experience of the proposed replacement; and (d) security clearance specified by CATSA. To the extent practicable, the notice will be sent at least seven (7) days in advance of the date upon which the replacement is to commence work. Such replacements will be subject to the written approval of CATSA. CATSA may reject the replacement if the replacement fails to meet the criteria used in the selection of the Contractor’s proposal. Failure to provide a replacement acceptable to CATSA shall be deemed a breach of this PO. CATSA may order the removal of Contractor personnel and where such a request is made, Contractor shall immediately remove the person from the work and use commercially reasonable efforts to secure a suitable replacement acceptable to CATSA failing which the Contractor shall be deemed to be in breach of this PO.

**3. PAYMENT.** Unless otherwise specified on the face of the PO, all prices specified in this PO are in Canadian dollars and are the maximum prices to be charged for the Goods and/or Services. Any maintenance services and unique parts and consumable items required in connection with Goods must be offered by Contractor at a price that is not higher than Contractor’s published prices at the time that the PO is executed (where not published, then at commercially reasonable and competitive prices) and must not increase for at least the twelve (12) month period following the effective date of the PO. Thereafter, such prices must not increase more than the percentage increase in the Canadian Consumer Price Index in any twelve (12) month period. Payment of invoices shall be made within thirty (30) days from the later of CATSA’s receipt of a proper invoice, or acceptance of the Goods and/or Services in accordance with acceptance provisions set out below. Where applicable, a transportation bill of lading must be attached to each invoice. CATSA may withhold from, reduce or set-off against any amount due to the Contractor, such sums as are reasonably necessary to cover non-performance, indemnity or liability of Contractor in relation to this PO. Invoices are to be submitted to the attention of Accounts Payable quoting the PO Number. Invoices must also include a detailed breakdown of prices, a breakdown of hours (for services), delivery destinations and Contractor’s GST or HST and applicable PST registration numbers. CATSA is not liable for any Services performed or Goods delivered in excess of those required by the PO unless expressly agreed in writing in advance.

**4. TAXES.** Contractor acknowledges that, for all purposes (including, to the extent applicable, provincial sales tax purposes) the supply of Goods is considered to be made at the province of destination and the supply of Services is considered to be made at the province where services are consumed by CATSA. The prices set out in this PO are: exclusive of Canadian GST/HST and PST (if applicable) and; inclusive of any other taxes, duties fees (including

brokerage fees) and levies that may be imposed on the Contractor by Canadian law or a non-Canadian jurisdiction. Where any payments due under the PO are subject to any Canadian legislated deduction, withholding or similar tax, CATSA shall deduct or withhold the necessary amount unless Contractor provides proper documentation from a competent governmental authority relieving CATSA of its withholding obligations prior to payment being made. CATSA will not pay GST/HST and/or PST unless such taxes have been so identified on the invoices submitted to CATSA by the Contractor. Contractor's invoices will not be returned or adjusted by CATSA to correct errors or omissions in Contractor's tax calculations or tax assumptions. The Contractor agrees to cooperate with CATSA to reduce the foregoing inclusive taxes, duties and fees to the extent administratively reasonable and in compliance with applicable legislation, and that such savings will be reflected in the price charged to CATSA.

**5. TIME OF THE ESSENCE/DELIVERY DATES.** Time is of the essence in this PO. Contractor shall notify CATSA as soon as it becomes aware that it cannot meet the agreed delivery dates for Goods and/or Services. In the event of a delay, Contractor shall, at no additional cost to CATSA, employ accelerated measures such as premium transportation costs or labour overtime to ensure the Goods and/or Services are delivered on or before the revised delivery date. In the event a delay in delivery or a new delivery date proposed by Contractor is not acceptable to CATSA, in addition to any other rights and remedies that may be available to CATSA at law, CATSA may terminate the PO without any liability whatsoever to Contractor.

**6. SHIPPING.** Where applicable and unless otherwise specified herein, Contractor shall ship the Goods Delivery Duty Paid (DDP -Incoterms, 2010), to the place of destination specified by CATSA on the face of the PO, using the most direct and economical means. A packing slip must accompany each shipment indicating the PO number. Title to the Goods shall pass to CATSA upon acceptance by CATSA. In the event of loss or damage during shipping, Contractor shall be required to promptly ship replacement Goods, at Contractor's cost.

**7. INSPECTION AND ACCEPTANCE.** CATSA shall have ten (10) business days following receipt to inspect and accept the Goods and/or Services. Where CATSA discovers defective or non-conforming Goods and/or Services, CATSA may at its option and without prejudice to any other rights or remedies it may have hereunder or at law: (a) at Contractor's expense, return such Goods for credit, repair or replacement or (b) obtain a price reduction or re-performance of non-conforming Services.

**8. WARRANTY.** Contractor represents and warrants that: any and all Services will be performed in a good and workmanlike manner and of a quality at least equal to that generally accepted in the industry for similar work; that the Goods are not subject to economic sanctions; will be new and of current production and that, for a period of one (1) year, following CATSA's acceptance, the Goods will be merchantable, of satisfactory quality, free from defects in design, material and workmanship; and where applicable, will conform to and perform in accordance with specifications, drawings and samples accepted by CATSA. Goods and/or Services failing to comply with applicable warranties will be, at CATSA's option, (i) returned for a full refund or credit of amounts paid by CATSA for the defective Goods, (ii) repaired, (iii) replaced; (iv) re-performed by Contractor using alternate personnel if instructed by CATSA or (v) rejected by CATSA, at no cost or expense to CATSA and with any shipping and transportation costs and risk of loss and damage in transit borne by Contractor. Repaired and replaced Goods and/or re-performed Services shall be warranted as set forth in this Section. The above warranties, together with any additional Contractor warranties, survive inspection, test, acceptance of and payment for the Goods and/or Services. Unless otherwise specified on the face of the PO, if an additional warranty-related obligation (e.g. manufacturer's warranty) sets a warranty time period or warranty standard that is not consistent with a warranty time period or warranty standard set out in this section, the Contractor shall comply with the longest time period and highest standards.

**9. TERMINATION.** CATSA may, at any time upon written notice to Contractor, terminate, suspend performance of, or issue a hold on, (collectively "Termination"), the PO, in whole or in part. If CATSA cancels or terminates the PO, all work completed by Contractor to the satisfaction of CATSA, and all authorized work in progress as of the termination date will be paid by CATSA in accordance with the provisions of the PO. The Contractor will not be entitled to payment for work completed or authorized work in progress, if CATSA suspends performance of or issues a hold on the PO unless and until CATSA terminates the PO. CATSA will have no further liability or obligation whatsoever for such Termination. CATSA

may terminate this PO upon written notice to Contractor without liability whatsoever if Contractor is in breach of any provision of the PO, any Services, Goods or work has been unsatisfactorily performed or is deficient in any way, any representation or warranty given by Contractor hereunder becomes false or Contractor fails to make progress as to endanger performance of the PO in accordance with its terms. Where no cure period is specified in the written notice, no cure period shall be permitted. If the written notice expressly provides for a cure period, Contractor shall have such period to remedy such breach, or rectify the deficiency in the Services, Goods or work or remedy the falsehood, as applicable, to the reasonable satisfaction of CATSA within the cure period specified in CATSA's notice, failing which the PO shall terminate.

**10. GOVERNING LAW AND COMPETENT COURT.** The construction, interpretation and performance of this PO is governed by the applicable laws of the Province of Ontario and Canada, without regard to conflicts of laws principles. The parties expressly exclude application of the United Nations Convention on Contracts for the International Sale of Goods. Any and all disputes between CATSA and Contractor that ensue from the PO will be submitted to a competent court of the Province of Ontario, without prejudice to CATSA's right to submit a dispute to the court that would be competent absent this clause.

**11. INDEMNITY AND LIABILITY.** Each party to this PO agrees it is responsible to any third party for injury or losses that the third party may suffer to the extent such party to this PO caused them. The Contractor is liable to CATSA only for: (a) all damages and costs resulting from intellectual property infringement; (b) all damages for physical injury, including death, caused by the Contractor, its employees, agents or subcontractors (collectively "Contractor and Assigns"); (c) all direct damages for loss of or physical harm to tangible property and real property caused by Contractor and Assigns; (d) all damages for breach of confidentiality; and (e) any other direct damages caused by the Contractor and Assigns in relation to this PO, including re-procurement costs incurred by CATSA, up to a maximum for this subsection (e) of ONE MILLION (CND \$1,000,000) DOLLARS. The Contractor shall not be liable to CATSA for special, indirect or consequential damages or damages of third parties claimed against CATSA except in relation to (a), (b), and (d) above. Contractor shall defend CATSA at Contractor's cost where CATSA requests. Contractor agrees to furnish, upon request by CATSA, evidence of comprehensive general liability insurance with minimum limits of CDN \$1,000,000. IN NO EVENT SHALL CATSA BE LIABLE TO CONTRACTOR FOR SPECIAL, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR INDIRECT COSTS, EXPENSES OR DAMAGES INCLUDING WITHOUT LIMITATION LITIGATION COSTS, THE LOSS OF PRODUCTION OR PROFIT ARISING FROM ANY CAUSE WHATSOEVER, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH COSTS OR DAMAGES OR EVEN IF SUCH COSTS OR DAMAGES ARE ALLEGED TO ARISE FROM NEGLIGENT ACTS, OMISSIONS OR CONDUCT OF CATSA. IN NO EVENT SHALL CATSA'S LIABILITY EXCEED THE MAXIMUM VALUE OF THIS PO.

**12. INTELLECTUAL PROPERTY.** In exchange for the consideration provided to Contractor hereunder, CATSA will: (i) have free title to and all ownership interest in the Goods and/or Services delivered (except for pre-existing software and any improvements or modifications thereto by Contractor for which CATSA is hereby granted a non-exclusive, perpetual, unlimited, paid-up, royalty free, irrevocable license to use, modify, translate, perform, reproduce, disclose and make use of for CATSA's mandate); (ii) own all intellectual property rights in any documents, information, reports, data, prototype, model or other information or work developed for CATSA and delivered hereunder. Contractor agrees to execute any assignment, conveyance or any other assurance necessary to give effect to this Section and shall ensure that CATSA has supporting technical documentation and the license to any other materials delivered by Contractor hereunder sufficient to allow CATSA to have the intended use of the materials.

**13. CATSA PROPERTY, CONFIDENTIALITY, PUBLICITY AND DISCLOSURE.** All specifications, drawings, patterns, samples and other information furnished to Contractor in connection with this PO will be used solely for the purpose of carrying out the work and for no other purpose; will remain the property of CATSA; and be returned or destroyed at CATSA's request at the expense of Contractor. This PO and information issued, used or disclosed in connection with the work are confidential information of CATSA and may be classified as to the degree of precaution necessary for their safeguarding. Contractor shall at all times take all measures required by this PO or otherwise instructed by CATSA, and where not specifically provided, measures reasonably necessary for the protection of the same. Contractor shall not use

the CATSA name in any public statement or publicize the fact the parties are doing business, without the prior written consent of CATSA. Contractor acknowledges that CATSA will, if and as required by applicable law (including but not limited to the *Access to Information Act*), disclose the Contract and/or information and records under CATSA's control.

**14. CONTRACTOR RECORDS.** Contractor shall keep proper accounts and records of costs and expenditures in connection with this PO including paid invoices for a period of seven (7) years following the expiration or termination of this PO, and shall make them available to CATSA upon request, for audit and inspection at any time. Where such audit or inspection discloses an overpayment by CATSA, CATSA shall have a right to set-off the amount of such overpayment against future Contractor invoices issued pursuant to this or any other PO and, to the extent that CATSA's right of set-off is not exercised or not adequate to cover such overpayment, Contractor shall be responsible for repaying such overpayment.

**15. Security of Information and Compliance.** All security requirements of Contractor specified on the PO Form or the request for a quote delivered by CATSA must be maintained to CATSA's satisfaction at all times during performance of this PO, unless otherwise agreed in writing by CATSA in its sole and absolute discretion, failing which Contractor shall be deemed to have breached the terms of this PO. Contractor represents and warrants that: (i) Contractor shall at all times comply with applicable laws, (including without limitation the Canadian *Income Tax Act* and the *Privacy Act*), and applicable policies relating to security of information (including without limitation the *Policy on Government Security* and CATSA's Document Protection Procedures, each as updated from time to time) and (ii) it has read and understands the Contractor Code of Conduct (the "**Code**") and will be bound by and comply with the provisions of the Code for the duration of the work. Copies of the Code and CATSA's Document Protection Procedures can be found at <http://www.catsa.gc.ca/procurement-and-contracting>. Contractor agrees that all 'Protected', 'UDP', 'Confidential', 'Secret' and 'Top Secret' information disclosed by CATSA, or managed, accessed, collected, used, retained, created or processed in order to fulfil the requirements of this PO, must not be removed from CATSA premises unless expressly permitted on the PO Form or CATSA otherwise consents, in which event all such information shall be protected according to the strictest applicable measure. All CATSA confidential information must be segregated from Contractor's other records, and if in electronic form, must at all times be stored on segregated, stand-alone information systems in Canada. Contractor shall ensure all of its personnel are made aware of and comply with Contractor's security obligations under this PO. Contractor shall promptly notify CATSA of any breach of its obligations under this Article 15.

**16. MISCELLANEOUS.** Contractor is an independent contractor and not an agent or employee of CATSA... Nothing in this PO grants Contractor the right to exclusively provide the Goods and/or Services. CATSA shall at any time have the right to engage alternate or supplemental parties to perform the same or similar Services or provide the Goods at any time. Any delay by CATSA in the exercise of any right or remedy provided herein shall in no event be deemed to be a waiver of such right or remedy. To be valid, any waiver by CATSA must be made in writing expressly referencing the PO. A valid waiver of any right or remedy herein will in no event be deemed to (i) constitute a waiver of such right or remedy arising in the future or (ii) operate as a waiver of any other right or remedy. CATSA may assign its rights and obligations under this PO without requiring any notice to or consent from Contractor. Contractor may not assign, subcontract, or transfer any right or obligations hereunder without the prior written consent of CATSA. Contractor shall obtain CATSA's written consent prior to entering into a subcontract in connection with the work under this PO, and prior to any merger, amalgamation, transfer of a controlling interest in Contractor or a sale of all or substantially all of Contractor's assets. A copy, facsimile or electronic version of this document will have the same force and effect as the original document. Les parties ont accepté que ce document soit rédigé en anglais. The parties have agreed that this document be prepared in the English language.