

DEFENCE PRODUCTION SHARING AGREEMENT

BETWEEN

CANADA

AND

THE UNITED STATES OF AMERICA

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AMENDMENT TO CANADIAN  
LETTER OF AGREEMENT

Dated **27 July 1956**

Change Paragraph 2. (a) of the Letter of Agreement as it appears in the Defense Acquisition Regulation (DAR) Section M Part **1406.1** (a) and substitute the following language:-

**2.(a)** The Corporation agrees that it will cause all first-tier subcontracts, under contracts covered by this agreement to be placed in accordance with the practices, policies and procedures of the Government of Canada covering procurement for defense purposes; and agrees that if the aggregate profit realized under such subcontracts by any first-tier subcontractor exceeds that which is allowed by the Government of Canada under the above mentioned practices, policies, and procedures, the amount of such excess will be refunded by the Corporation to the Military Departments. There shall also be refunded profits on any subcontract in excess of amounts which the Minister of Defence Production (Canada) in the exercise of said practices, policies, and procedures considers to be fair and reasonable, recovered by the Minister pursuant to Section 21 of the Defense Production Act (Canada) from any individual subcontractor of any tier. It is recognized that the practices, policies, and procedures of the Government of Canada referred to above permit various rates of profit in accordance with the terms of the said practices, policies, and procedures as from time-to-time amended; however, in no case will the rate of profit be allowed to exceed any limit prescribed by statute of the Government of the United States. For the purpose of this paragraph, the Corporation will cause to be conducted such audits in accordance with the Costing Memorandum (DDP -31) of the Department of Defence Production (Canada) and such verifications of cost as are in accordance with the said practices, policies, and procedures. The Corporation will render to the Military Departments its certificate that the provisions of this paragraph have been observed.

For the Government of the  
United States of America

(signed)

Caspar Weinberger  
Secretary of Defense

For the Government of  
Canada

(signed)

Herb Gray  
Ministry of Industry,

Trade and Commerce

**DEPUTY MINISTER OF DEFENCE PRODUCTION**  
**SOUS-MINISTRE DE LA PRODUCTION DE DÉFENSE**  
**CANADA**

Text of Agreement dated **27 July 1956**, as amended **17 December 1956**,  
31 May **1957**, **6 January 1961**, and **15 October 1962**, between the Department of Defence  
Production (Canada) and the **U.S.** Departments of the Army, the Navy, the Air Force, and the  
Defense Supply Agency, sets forth policies and provides procedures with respect to all contracts  
for supplies and services placed with the Canadian Commercial Corporation on or after 1  
October 1956. ,

Letter of Agreement

1. This agreement applies to all contracts placed, on or after October 1, 1956, by any of the Military Departments with the Corporation. It shall remain in force from year to year until terminated by mutual consent; however, it can be terminated on the 31<sup>st</sup> day of December or the 30<sup>th</sup> day of June in any year by either party provided that six months' notice of termination has been given in writing. In addition, this agreement provides for certain reciprocal arrangements facilitating procurement by each of the parties in the country of the other.
  
2. (a) The Corporation agrees that it will cause all first-tier subcontracts under contracts covered by this agreement to be placed in accordance with the practices, policies and procedures of the Government of Canada covering procurement for defence purposes; and agrees that if the aggregate profit realized under such subcontracts by any first-tier subcontractor exceeds that which is allowed by the Government of Canada under the above-mentioned practices, policies, and procedures, the amount of such excess will be refunded by the Corporation to the Military Departments. There shall also be refunded profits on any subcontract in excess of amounts which the Minister of Defence Production (Canada) in the exercise of said practices, policies and procedures considers to be fair and reasonable, recovered by the Minister pursuant to Section 21 of the Defence Production Act (Canada) from any individual subcontractor of any tier. It is recognized that the practices, policies and procedures of the Government of Canada referred to above permit varying rates of profit not exceeding in the case of cost

reimbursement type contracts 7 ½ percent of estimated cost plus, in certain cases, a bonus where cost savings have been demonstrated, and not exceeding in the case of negotiated fixed price contracts 10 percent of estimated cost. For the purpose of this paragraph, the Corporation will cause to be conducted such audits (in accordance with the Costing Memorandum DDP-31 of the Department of Defence Production (Canada)) and such verifications of cost as are in accordance with the said practices, policies and procedures. The Corporation will render to the Military Departments its certificate that the provisions of this paragraph have been observed.

(b) Contracts for communication and transportation services, and the supply of power, water, gas and other utilities shall be excepted from the provisions of sub-paragraph (a) above, provided the rates of charges for such services or utilities are fixed by public regulatory bodies; and provided further the Military Departments are accorded any special rates that may be available to the Canadian Government with respect to such Contracts.

(c) The Canadian Government, its Departments and Agencies, including but not limited to the Corporation, and Canadian Arsenals Limited, a Crown Company wholly owned by the Canadian Government, shall not be entitled to any profit on any contract or contracts covered by this agreement. Any profits which may be realized shall be returned to the Military Departments except as hereinafter provided:

Before refunding profits realized from the following sources:

- i) net profits of the Canadian Government, b Departments and Agencies as defined above, with respect to contracts and subcontracts covered by this agreement;
- ii) excess profits referred to in paragraph (a) above; and
- iii) renegotiation recoveries from subcontracts of any tier under contracts covered by this agreement, which recoveries the Military Departments would otherwise be entitled to receive in accordance with the provisions of subparagraph (a) above;

the Corporation shall be entitled to deduct any losses it may sustain with respect to contracts covered by this agreement.

(d) Interim adjustments and refunds under this paragraph 2 shall be made at such time or times as may be mutually agreed upon but at least once a year as of June 30th. Such interim adjustments shall apply only to completed contracts. The final adjustment and refund shall be made as soon as practicable after the expiration of

this agreement.

- (e) The profit and loss provisions of this paragraph 2 shall not apply to contracts awarded to the Corporation as the result of formal competitive bidding (initiated by Invitation for Bids).
3. (a) All contracts placed by the Military Departments with the Corporation, except those placed as the result of formal competitive bidding, shall provide for prices or cost reimbursement, as the case may be, in terms of Canadian currency, and for payment to be made in such currency. Therefore, quotations and invoices shall be submitted by the Corporation to the Military Departments in terms of Canadian currency, and such cost data, vouchers, etc., as the contracts require shall also be submitted in terms of Canadian currency. However, the Corporation may elect in respect of any such contracts to quote, submit the said cost data, vouchers, etc., and receive payment in United States currency, in which event such contracts shall provide for payment in United States currency and shall not be subject to adjustment for losses or gains resulting from fluctuations in exchange rates.
  - (b) All formal competitive bids shall be submitted by the Corporation in terms of United States currency and contracts placed as a result of such formal competitive bidding shall not be subject to adjustment for losses or gains resulting from fluctuation in exchange rates.
4. The Military Departments and the Corporation shall avoid, to the extent consistent with the declared policies of the Military Departments and the Canadian Government, the making of any surcharges covering administration costs with respect to contracts placed with the Corporation by any of the Military Departments and contracts placed by the Military Departments in the United States for the Canadian Government.
  5. To the extent that contracts placed with the Corporation by the Military Departments provide for the audit of costs and profits, such audit shall be made without charge to the Military Departments by the Cost Inspection and Audit Division of the Treasury of Canada in accordance with Costing Memorandum Form DDP-31 of the Department of Defence Production (Canada).
  6. The Canadian Government shall arrange for inspection personnel of the Department of National Defence (Canada) to act on behalf of the Military Departments with respect to contracts placed by the Military Departments with the Corporation and with respect to subcontracts placed in Canada by United States contractors which are performing contracts for the Military Departments and for the use of inspection facilities of the Department of National Defence (Canada) for such purposes, such personnel and facilities to be provided without cost to the Military Departments. The Military

Departments shall provide and make no charge for inspection services and inspection facilities in connection with contracts placed in the United States by the Military Departments for the Canadian Government and with respect to subcontracts placed in the United States by Canadian contractors which are performing contracts for the Department of Defence Production (Canada). The Department of National Defence (.Canada) or any Military Department may provide liaison with the other's inspection personnel in connection with the foregoing. It is understood that either the Department of National Defence (Canada) or any Military Department may in appropriate cases arrange for inspection by its own inspection organization in the other's country.

7. Because of the varying arrangements made by the Canadian- Government and the Military Departments in furnishing Government-owned facilities (including buildings and machine tools) to contractors, it is recognized that the matter of inclusion in contract prices of charges, through amortization or otherwise, for use of such facilities will be determined in the negotiation of individual contracts. However, there shall be avoided, to the extent consistent with the policies of the Canadian Government and Military Departments, any such charges for use of Government-furnished facilities.
- 8.(a) The Corporation agrees that the prices set out in fixed-price type contracts covered by this agreement will not include any taxes with respect to first-tier subcontracts; nor shall prices include customs duties to the extent refundable in accordance with Canadian law, paid upon the import of any materials, parts, or components incorporated or to be incorporated in the supplies, with respect to first-tier subcontracts.
- (b) The Corporation agrees that under cost-reimbursement type contracts the Corporation shall, to the extent practicable with respect to first-tier subcontracts, exclude from its claims all taxes and to the extent refundable in accordance with Canadian law, customs duties, paid upon the import of any materials, parts of components, incorporated or to be incorporated in the supplies and that any amounts included in such claims representing such taxes and duties shall be refunded or credited to the Military Departments.
- (c) The Corporation agrees that, to the extent that such taxes and duties can be reasonably and economically identified, it will use b best endeavors to cause such taxes and duties to be excluded from all subcontracts below the first-tier and, if found to be included, to be recovered and credited to the Military Departments.
9. The Corporation recognizes that existing law of the United, States prohibits the use of the cost-plus-a percentage-of-cost system of contracting.
10. Each contract covered by this agreement shall be deemed to include the provisions

required by (i) Public Law 245, 82nd Congress of the United States (65 Stat. 700; 41 USC 153(c) and (ii) Section 719 of Public Law 458, 83rd Congress of the United States (68 Stat. 353) or similar provisions that may be required by subsequent legislation.

The Assistant Secretary of the Army (Logistics)  
The Assistant Secretary of the Navy (Material)  
The Assistant Secretary of the Air Force (Material)  
The Pentagon,  
Washington 25, D.C.  
U.S.A.