

Request for Proposal IC401586

Technology Roadmap of the Automotive Sector

AMENDMENT NO. 1

The Department of Industry Canada hereby amends the request for proposal for the provision of Technology Roadmap of the Automotive Sector, number IC401586 dated July 12, 2016. This amendment hereby forms part of the RFP. The purpose of this amendment is to:

1. Change Attachment 1 to Part 7 – Industry Canada General Conditions of a Service Contract.

DELETE in its entirety Attachment 1 to Part 7 – Industry Canada General Conditions of a Service Contract and **REPLACE** with the following:

Industry Canada's General Conditions of a Service Contract, as set out in Attachment 1 to Part 7, forms part of and is incorporated in the Contract.

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GC01 Interpretation

1.1 In the present Contract, unless the context otherwise requires:

1.1.1 "Articles of Agreement" means the clauses and conditions incorporated in full text or incorporated by reference from the *Standard Acquisition Clauses and Conditions* (SACC) Manual to form the body of the Contract; it does not include these general conditions, any supplemental general conditions, annexes, the Contractor's bid or any other document;

1.1.2 "Basis of Payment" defines what a contractor will be paid for the service or good acquired, and the duration of the contract. It must also include other related costs, such as travel and administrative expenses. There are different types of basis of payment and only one should be selected in accordance with the nature of the contract;

1.1.3 "Canada", "Crown", "Her Majesty" or "the Government" means Her Majesty the Queen in right of Canada as represented by the Minister of Industry and any other person duly authorized to act on behalf of that minister;

1.1.4 "Contract" means the Articles of Agreement, these general conditions, any supplemental general conditions, annexes and any other document specified or referred to as forming part of the Contract, all as amended by agreement of the Parties from time to time;

1.1.5 "Contract Price" means the amount stated in the Contract to be payable to the Contractor for the Work, exclusive of Goods and Services Tax and Harmonized Sales Tax;

1.1.6 "Contracting Authority" means the person designated by that title in the Contract, or by notice to the Contractor, to act as Canada's representative to manage the Contract;

1.1.7 "Contractor" means the person, entity or entities named in the Contract to supply goods, services or both to Canada;

1.1.8 "Government Property" means anything supplied to the Contractor by or on behalf of Canada for the purposes of performing the Contract and anything acquired by the Contractor in any manner in connection with the Work, the cost of which is paid by Canada under the Contract;

1.1.9 "Party" means Canada, the Contractor, or any other signatory to the Contract and "Parties" means all of them;

1.1.10 "Project Officer" means the individual designated in the Articles of Agreement and delegated by the Contracting Authority to act as administrative liaison between the Contractor and the Contracting Authority;

1.1.11 "Specifications" means the description of the essential, functional or technical requirements of the Work in the Contract, including the procedures for determining whether the requirements have been met;

1.1.12 "Work" means all the activities, services, goods, equipment, matters and things required to be done, delivered or performed by the Contractor under the Contract.

GC02 Standard Clauses and Conditions

In the event that clauses and conditions identified by number, date and title in the Contract are incorporated by reference, then such clauses and conditions form part of the Contract as though expressly set out in the Contract.

GC03 Powers of Canada

All rights, remedies, powers and discretions granted or acquired by Canada under the Contract or by law are cumulative, not exclusive.

GC04 Status of the Contractor

The Contractor is an independent contractor engaged by Canada to perform the Work. Nothing in the Contract is intended to create a partnership, a joint venture or an agency between Canada and the other Party or Parties. The Contractor must not represent itself as an agent or representative of Canada to anyone. Neither the Contractor nor any of its personnel is engaged as an employee or agent of Canada. The Contractor is responsible for all deductions and remittances required by law in relation to its employees.

GC05 Conduct of the Work

5.1 The Contractor represents and warrants that:

- (a) it is competent to perform the Work;
- (b) it has everything necessary to perform the Work, including the resources, facilities, labour, technology, equipment, and materials; and
- (c) it has the necessary qualifications, including knowledge, skill, know-how and experience, and the ability to use them effectively to perform the Work.

5.2 The Contractor must:

- (a) perform the Work diligently and efficiently;
- (b) except for Government Property, supply everything necessary to perform the Work;
- (c) use, as a minimum, quality assurance procedures, inspections and controls generally used and recognized by the industry to ensure the degree of quality required by the Contract;
- (d) select and employ a sufficient number of qualified people;
- (e) perform the Work in accordance standards of quality acceptable to Canada and in full conformity with the Specifications and all the requirements of the Contract;
- (f) provide effective and efficient supervision to ensure that the quality of workmanship meets the requirements of the Contract.

5.3 The Work must not be performed by any person who, in the opinion of Canada, is incompetent, unsuitable or has been conducting himself/herself improperly.

5.4 All services rendered under the Contract must, at the time of acceptance, be free from defects in workmanship and conform to the requirements of the Contract. If the Contractor is required to correct or replace the Work or any part of the Work, it will be at no cost to Canada.

5.5 Canada's facilities, equipment and personnel are not available to the Contractor to perform the Work unless the Contract specifically provides for it. The Contractor is responsible for advising the Contracting Authority in advance if it requires access to Canada's facilities, equipment or personnel to perform the Work. The Contractor must comply and ensure that its employees and subcontractors comply with all security measures, standing orders, policies or other rules in force at the site where the Work is performed.

5.6 Unless the Contracting Authority orders the Contractor to suspend the Work or part of the Work pursuant to section 24, the Contractor must not stop or suspend the Work or part of the Work pending the settlement of any dispute between the Parties about the Contract.

5.7 The Contractor must provide all reports that are required by the Contract and any other information that Canada may reasonably require from time to time.

5.8 The Contractor is fully responsible for performing the Work. Canada will not be responsible for any negative consequences or extra costs if the Contractor follows any advice given by Canada unless the Contracting Authority provides the advice to the Contractor in writing and includes a statement specifically relieving the Contractor of any responsibility for negative consequences or extra costs that might result from following the advice.

GC06 Subcontracts

6.1 Except as provided in subsection 6.2 the Contractor must obtain the Contracting Authority's written consent before subcontracting or permitting the subcontracting of any part of the Work. A subcontract includes a contract entered into by any subcontractor at any tier to perform any part of the Work.

6.2 The Contractor is not required to obtain consent for subcontracts specifically authorized in the Contract. The Contractor may also without the consent of the Contracting Authority:

- (a) purchase "off-the-shelf" items and any standard articles and materials that are ordinarily produced by manufacturers in the normal course of business;
- (b) subcontract any portion of the Work as is customary in the carrying out of similar contracts; and;
- (c) permit its subcontractors at any tier to make purchases or subcontract as permitted in paragraphs (a) and (b).

6.3 In any subcontract other than a subcontract referred to in paragraph 6.2 (a), the Contractor must, unless the Contracting Authority agrees in writing, ensure that the subcontractor is bound by conditions compatible with and, in the opinion of the Contracting Authority, not less favourable to Canada than the conditions of the Contract.

6.4 Even if Canada consents to a subcontract, the Contractor is responsible for performing the Contract and Canada is not responsible to any subcontractor. The Contractor is responsible for any matters or things done or provided by any subcontractor under the Contract and for paying any subcontractors for any part of the Work they perform.

GC07 Specifications

7.1 All Specifications provided by Canada or on behalf of Canada to the Contractor in connection with the Contract belong to Canada and must be used by the Contractor only for the purpose of performing the Work.

7.2 If the Contract provides that Specifications furnished by the Contractor must be approved by Canada, that approval will not relieve the Contractor of its responsibility to meet all requirements of the Contract.

GC08 Replacement of Specific Individuals

8.1 If specific individuals are identified in the Contract to perform the Work, the Contractor must provide the services of those individuals unless the Contractor is unable to do so for reasons beyond its control.

8.2 If the Contractor is unable to provide the services of any specific individual identified in the Contract, it must provide a replacement with similar qualifications and experience. The replacement must meet the criteria used in the selection of the Contractor and be acceptable to Canada. The Contractor must, as soon as possible, give notice to the Contracting Authority of the reason for replacing the individual and provide:

- (a) the name, qualifications and experience of the proposed replacement; and
- (b) proof that the proposed replacement has the required security clearance granted by Canada, if applicable.

8.3 The Contractor must not, in any event, allow performance of the Work by unauthorized replacement persons. The Contracting Authority may order that a replacement stop performing the Work. In such a case, the Contractor must immediately comply with the order and secure a further replacement in accordance with subsection 2.

8.4 The fact that the Contracting Authority does not order that a replacement stop performing the Work does not relieve the Contractor from its responsibility to meet the requirements of the Contract.

GC09 Time of the Essence

It is essential that the Work be performed within or at the time stated in the Contract.

GC10 Excusable Delay

10.1 A delay in the performance by the Contractor of any obligation under the Contract that is caused by an event that:

- (a) is beyond the reasonable control of the Contractor,
- (b) could not reasonably have been foreseen,
- (c) could not reasonably have been prevented by means reasonably available to the Contractor, and
- (d) occurred without the fault or neglect of the Contractor, will be considered an "Excusable Delay" if the Contractor advises the Contracting Authority of the occurrence of the delay or of the likelihood of the delay as soon as the Contractor becomes aware of it. The Contractor must also advise the Contracting Authority, within fifteen (15) working days, of all the circumstances relating to the delay and provide to the Contracting Authority for approval a clear work around plan explaining in detail the steps that the Contractor proposes to take in order to minimize the impact of the event causing the delay.

10.2 Any delivery date or other date that is directly affected by an Excusable Delay will be postponed for a reasonable time that will not exceed the duration of the Excusable Delay.

10.3 However, if an Excusable Delay has continued for thirty (30) days or more, the Contracting Authority may, by giving notice in writing to the Contractor, terminate the Contract. In such a case, the Parties agree that neither will make any claim against the other for damages, costs, expected profits or any other loss arising out of the termination or the event that contributed to the Excusable Delay.

The Contractor agrees to repay immediately to Canada the portion of any advance payment that is unliquidated at the date of the termination.

10.4 Unless Canada has caused the delay by failing to meet an obligation under the Contract, Canada will not be responsible for any costs incurred by the Contractor or any of its subcontractors or agents as a result of an Excusable Delay.

10.5 If the Contract is terminated under this Section, the Contracting Authority may require the Contractor to deliver to Canada, in the manner and to the extent directed by the Contracting Authority, any completed parts of the Work not delivered and accepted before the termination and anything that the Contractor has acquired or produced specifically to perform the Contract. Canada will pay the Contractor:

- (a) the value, of all completed parts of the Work delivered to and accepted by Canada, based on the Contract Price, including the proportionate part of the Contractor's profit or fee included in the Contract Price; and
- (b) the Cost to the Contractor that Canada considers reasonable in respect of anything else delivered to and accepted by Canada.

10.6 The total amount paid by Canada under the Contract to the date of termination and any amounts payable under this subsection must not exceed the Contract Price.

GC11 Inspection and Acceptance of the Work

11.1 All the Work is subject to inspection and acceptance by Canada. Inspection and acceptance of the Work by Canada do not relieve the Contractor of its responsibility for defects or other failures to meet the requirements of the Contract. Canada will have the right to reject any Work that is not in accordance with the requirements of the Contract and require its correction or replacement at the Contractor's expense.

11.2 The Contractor must provide representatives of Canada access to all locations where any part of the Work is being performed at any time during working hours. Representatives of Canada may make examinations and such tests of the including Work as they may think fit. The Contractor must provide all assistance and facilities, test pieces, samples and documentation that the representatives of Canada may reasonably require for the carrying out of the inspection. The Contractor must forward such test pieces and samples to such person or location as Canada specifies.

11.3 The Contractor must inspect and approve any part of the Work before submitting it for acceptance or delivering it to Canada. The Contractor must keep accurate and complete inspection records that must be made available to Canada on request. Representatives of Canada may make copies and take extracts of the records during the performance of the Contract and for up to three (3) years after the end of the Contract.

GC12 Invoice Submission

12.1 Invoices must be submitted in the Contractor's name. The Contractor must submit invoices for each delivery or shipment; invoices must only apply to the Contract. Each invoice must indicate whether it covers partial or final delivery.

12.2 Invoices must show:

- (a) the date, the name and address of the client department, item or reference numbers, deliverable and/or description of the Work, contract number, Client Reference Number (CRN), Procurement Business Number (PBN), and financial code(s);
- (b) details of expenditures in accordance with the Basis of Payment, exclusive of Goods and Services Tax (GST) or Harmonized Sales Tax (HST) (such as item, quantity, unit of issue, unit price, fixed time labour rates and level of effort, subcontracts, as applicable);
- (c) deduction for holdback, if applicable;
- (d) the extension of the totals, if applicable; and
- (e) if applicable, the method of shipment together with date, case numbers and part or reference numbers, shipment charges and any other additional charges.

12.3 If applicable, the GST or HST must be specified on all invoices as a separate item. All items that are zero-rated, exempt or to which the GST or HST does not apply, must be identified as such on all invoices.

12.4 By submitting an invoice, the Contractor certifies that the invoice is consistent with the Work delivered and is in accordance with the Contract.

GC13 Taxes

13.1 Applicable Taxes

Federal government departments and agencies are required to pay Applicable Taxes

13.1.2 Responsibility of Canada and of the Contractor

- (a) Applicable Taxes will be paid by Canada as provided in the Invoice Submission section. It is the sole responsibility of the Contractor to charge Applicable Taxes at the correct rate in accordance with applicable legislation. The Contractor agrees to remit to appropriate tax authorities any amounts of Applicable Taxes paid or due.
- (b) The Contractor is not entitled to use Canada's exemptions from any tax, such as provincial sales taxes, unless otherwise specified by law. The Contractor must pay applicable provincial sales tax, ancillary taxes, and any commodity tax, on taxable goods or services used or consumed in the performance of the Contract (in accordance with applicable legislation), including for material incorporated into real property.

13.1.3 Changes to Taxes and Duties

In those cases where Applicable Taxes, customs duties, and excise taxes are included in the Contract Price, the Contract Price will be adjusted to reflect any increase, or decrease, of Applicable Taxes, customs duties, and excise taxes that will have occurred between bid submission and contract award. However, there will be no adjustment for any change to increase the Contract Price if public notice of the change was given before bid submission date in sufficient detail to have permitted the Contractor to calculate the effect of the change.

13.1.4 Tax Withholding of 15 Percent

Pursuant to the [Income Tax Act](#), 1985, c. 1 (5th Supp.) and the [Income Tax Regulations](#), Canada must withhold 15 percent of the amount to be paid to the Contractor in respect of services provided in Canada

if the Contractor is not a resident of Canada, unless the Contractor obtains a valid waiver from the [Canada Revenue Agency](#). The amount withheld will be held on account for the Contractor in respect to any tax liability which may be owed to Canada.

GC14 Payment Period

14.1 Canada's standard payment period is thirty (30) days. The payment period is measured from the date an invoice in acceptable form and content is received in accordance with the Contract or the date the Work is delivered in acceptable condition as required in the Contract, whichever is later. A payment is considered overdue on the 31st day following that date and interest will be paid automatically in accordance with the section 15.

14.2 If the content of the invoice and its substantiating documentation are not in accordance with the Contract or the Work is not in acceptable condition, Canada will notify the Contractor within fifteen (15) days of receipt. The 30-day payment period begins upon receipt of the revised invoice or the replacement or corrected Work. Failure by Canada to notify the Contractor within fifteen (15) days will only result in the date specified in subsection 1 to apply for the sole purpose of calculating interest on overdue accounts.

GC15 Interest on Overdue Accounts

15.1 For the purpose of this section:

"Average Rate" means the simple arithmetic mean of the Bank Rates in effect at 4:00 p.m. Eastern Time each day during the calendar month immediately before the calendar month in which payment is made;

"Bank Rate" means the rate of interest established from time to time by the Bank of Canada as the minimum rate at which the Bank of Canada makes short term advances to members of the Canadian Payments Association;

"date of payment" means the date of the negotiable instrument drawn by the Receiver General for Canada to pay any amount under the Contract;
an amount becomes "overdue" when it is unpaid on the first day following the day on which it is due and payable according to the Contract.

15.2 Canada will pay to the Contractor simple interest at the Average Rate plus 3 percent per year on any amount that is overdue; from the date that amount becomes overdue until the day before the date of payment, inclusive. The Contractor is not required to provide notice to Canada for interest to be payable.

15.3 Canada will pay interest in accordance with this section only if Canada is responsible for the delay in paying the Contractor. Canada will not pay interest on overdue advance payments.

GC16 Compliance with Applicable Laws

16.1 The Contractor must comply with all laws applicable to the performance of the Contract. The Contractor must provide evidence of compliance with such laws to Canada at such times as Canada may reasonably request.

16.2 The Contractor must obtain and maintain at its own cost all permits, licenses, regulatory approvals and certificates required to perform the Work. If requested by the Contracting Authority, the Contractor must provide a copy of any required permit, license, regulatory approvals or certificate to Canada.

GC17 Ownership

17.1 Unless provided otherwise in the Contract, the Work or any part of the Work belongs to Canada after delivery and acceptance by or on behalf of Canada.

17.2 However if any payment is made to the Contractor for or on account of any Work, either by way of progress or milestone payments, that work paid for by Canada belongs to Canada upon such payment being made. This transfer of ownership does not constitute acceptance by Canada of the Work or any part of the Work and does not relieve the Contractor of its obligation to perform the Work in accordance with the Contract.

17.3 Despite any transfer of ownership, the Contractor is responsible for any loss or damage to the Work or any part of the Work until it is delivered to Canada in accordance with the Contract. Even after delivery, the Contractor remains responsible for any loss or damage to any part of the Work caused by the Contractor or any subcontractor.

17.4 Upon transfer of ownership to the Work or any part of the Work to Canada, the Contractor must, if requested by Canada, establish to Canada's satisfaction that the title is free and clear of all claims, liens, attachments, charges or encumbrances. The Contractor must execute any conveyances and other instruments necessary to perfect the title that Canada may require.

GC18 Confidentiality

18.1 The Contractor must keep confidential all information provided to the Contractor by or on behalf of Canada in connection with the Work, including any information that is confidential or proprietary to third parties, and all information conceived, developed or produced by the Contractor as part of the Work when copyright or any other intellectual property rights in such information belongs to Canada under the Contract. The Contractor must not disclose any such information without the written permission of Canada. The Contractor may disclose to a subcontractor any information necessary to perform the subcontract as long as the subcontractor agrees to keep the information confidential and that it will be used only to perform the subcontract.

18.2 The Contractor agrees to use any information provided to the Contractor by or on behalf of Canada only for the purpose of the Contract. The Contractor acknowledges that all this information remains the property of Canada or the third party, as the case may be. Unless provided otherwise in the Contract, the Contractor must deliver to Canada all such information, together with every copy, draft, working paper and note that contains such information, upon completion or termination of the Contract or at such earlier time as Canada may require.

18.3 Subject to the *Access to Information Act*, R.S.C. 1985, c. A-1 and to any right of Canada under the Contract to release or disclose, Canada must not release or disclose outside the Government of Canada any information delivered to Canada under the Contract that is proprietary to the Contractor or a subcontractor.

18.4 The obligations of the Parties set out in this section do not apply to any information if the information:

- (a) is publicly available from a source other than the other Party; or
- (b) is or becomes known to a Party from a source other than the other Party, except any source that is known to be under an obligation to the other Party not to disclose the information; or
- (c) is developed by a Party without use of the information of the other Party.

18.5 Wherever possible, the Contractor must mark or identify any proprietary information delivered to Canada under the Contract as "Property of (Contractor's name), permitted Government uses defined under Department of Innovation, Science and Economic Development Canada (Innovation, Science and Economic Development Canada (ISED)) Contract No. (fill in Contract Number)". Canada will not be liable for any unauthorized use or disclosure of information that could have been so marked or identified and was not.

18.6 If the Contract, the Work, or any information referred to in subsection 1 is identified as TOP SECRET, SECRET, CONFIDENTIAL, or PROTECTED by Canada, the Contractor must at all times take all measures reasonably necessary for the safeguarding of the material so identified, including those set out in the PWGSC Industrial Security Manual and its supplements and any other instructions issued by Canada.

18.7 If the Contract, the Work, or any information referred to in subsection 1 is identified as TOP SECRET, SECRET, CONFIDENTIAL, or PROTECTED, by Canada, representatives of Canada are entitled to inspect the Contractor's premises and the premises of a subcontractor at any tier for security purposes at any time during the term of the Contract. The Contractor must comply with, and ensure that

any subcontractor complies with, all written instructions issued by Canada dealing with the material so identified, including any requirement that employees of the Contractor or of any subcontractor execute and deliver declarations relating to reliability screenings, security clearances and other procedures.

GC19 Liability

The Contractor is liable for any damage caused by the Contractor, its employees, subcontractors, or agents to Canada or any third party. Canada is liable for any damage caused by Canada, its employees or agents to the Contractor or any third party. The Parties agree that no limitation of liability or indemnity provision applies to the Contract unless it is specifically incorporated in full text in the Articles of Agreement. Damage includes any injury to persons (including injury resulting in death) or loss of or damage to property (including real property) caused as a result of or during the performance of the Contract.

GC20 Contractor to Own Intellectual Property Rights in the Foreground Information

20.1 Interpretation

20.1.1 In the Contract, unless the context otherwise requires:

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

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

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

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

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

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

20.1.2 Canada's primary objective in entering into the Contract is to receive the deliverables contracted for, to be able to use those deliverables and any Intellectual Property arising by virtue of the Contract for Canada's activities, including future contracts, procurements and to protect or advance the broader public interest. This section GC20 does not affect any existing Intellectual Property Rights in any information belonging to Canada, the Contractor or a third party.

20.1.3 If supplemental general conditions 4001, 4003 and 4004 are also incorporated in the Contract, the provisions of those supplemental general conditions concerning the ownership of Intellectual Property will prevail in relation to the subject matter of those supplemental general conditions.

20.1.4 References in these conditions to the Contractor owning the Foreground Information or any rights in it refer to the Contractor, its subcontractors, its suppliers, its agents, its representatives or any of their employees owning such information or rights, as applicable.

20.2 Records and disclosure of Foreground Information

20.2.1 During and after the performance of the Contract, the Contractor must keep detailed records of the Foreground Information, including details of its creation, ownership and about any sale or transfer of any right in the Foreground Information. The Contractor must report and fully disclose to Canada all Foreground Information as required by the Contract. If the Contract does not specifically state when and how the Contractor must do so, the Contractor must provide this information when requested by the Contracting Authority or a representative of the department or agency for which the Contract is performed, whether before or after the completion of the Contract.

20.2.2 Before and after final payment to the Contractor, the Contractor must provide Canada with access to all records and supporting data that Canada considers pertinent to the identification of Foreground Information.

20.2.3 For any Intellectual Property that was developed or created in relation to the Work, Canada will be entitled to assume that it was developed or created by Canada, if the Contractor's records do not list that Intellectual Property or do not indicate that it was created by the Contractor, or by someone on behalf of the Contractor, other than Canada.

20.3 Ownership of Intellectual Property Rights in Foreground Information

20.3.1 All Intellectual Property Rights in the Foreground Information belong to the Contractor as soon as they come into existence.

20.3.2 Despite the Contractor's ownership of all the Intellectual Property Rights in the Foreground Information, Canada has unrestricted ownership rights in any prototype, model, custom or customized system or equipment that is a deliverable under the Contract, including manuals and other operating and maintenance documents. This includes the right to make them available for public use, whether for a fee or otherwise, sell them or otherwise transfer ownership in them.

20.3.3 Any personal information, as defined in the *Privacy Act*, R.S., 1985, c. P-21, collected by the Contractor in the execution of the Work under the Contract becomes the property of Canada immediately upon collection and must be used only for the performance of the Work. The Contractor has no right in any such personal information.

20.3.4 If the Work under the Contract involves the preparation of a database or other compilation using information or data supplied by Canada and any personal information referred to above, the Intellectual Property Rights in the database or compilation containing such information will belong to Canada. The Contractor's Intellectual Property Rights in the Foreground Information are restricted to those capable of being exploited without the use of the information or data supplied by Canada and the personal information.

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

20.4 Licenses to Intellectual Property Rights in Foreground and Background Information

20.4.1 As Canada has contributed to the cost of developing the Foreground Information, the Contractor grants to Canada a license to exercise all Intellectual Property Rights in the Foreground Information for Canada's activities. Subject to any exception described in the Contract, this license allows Canada to do anything that it would be able to do if it were the owner of the Foreground Information, other than exploit it commercially and transfer or assign ownership of it. The Contractor also grants to Canada a license to use the Background Information to the extent that it is reasonably necessary for Canada to exercise fully all its rights in the deliverables and in the Foreground Information.

20.4.2 These licenses are non-exclusive, perpetual, irrevocable, worldwide, fully-paid and royalty-free. Neither license can be restricted in any way by the Contractor providing any form of notice to the contrary, including the wording on any shrink-wrap or click-wrap license or any other kind of packaging, attached to any deliverable.

20.4.3 For greater certainty, Canada's licenses include, but are not limited to:

- (a) the right to disclose the Foreground and Background Information to third parties bidding on or negotiating contracts with Canada and to sublicense or otherwise authorize the use of that information by any contractor engaged by Canada solely for the purpose of carrying out such contracts. Canada will require these third parties and contractors not to use or disclose that information except as may be necessary to bid on, negotiate or carry out those contracts;
- (b) the right to disclose the Foreground and Background Information to other governments for information purposes;
- (c) the right to reproduce, modify, improve, develop or translate the Foreground and Background Information or have it done by a person hired by Canada. Canada, or a person designated by Canada, will own the Intellectual Property Rights associated with the reproduction, modification, improvement, development or translation;
- (d) without restricting the scope of any license or other right in the Background Information that Canada may otherwise hold, the right, in relation to any custom-designed or custom-manufactured part of the Work, to exercise such of the Intellectual Property Rights in the Background Information as may be required for the following purposes:
 - (i) for the use, operation, maintenance, repair or overhaul of the custom-designed or custom-manufactured parts of the Work;
 - (ii) in the manufacturing of spare parts for maintenance, repair or overhaul of any custom-designed or custom-manufactured part of the Work by Canada, if those parts are not available on reasonable commercial terms to enable timely maintenance, repair or overhaul;
- (e) for Software that is custom designed for Canada, the right to use any source code the Contractor must deliver to Canada under the Contract.

20.4.4 The Contractor agrees to make the Background Information, including in the case of Software, the source code promptly available to Canada for any purpose mentioned above. The license does not apply to any Software that is subject to detailed license conditions that are set out elsewhere in the Contract. Furthermore, in the case of commercial off-the-shelf software, the Contractor's obligation to make the source code promptly available to Canada applies only to source code that is within the control of or can be obtained by the Contractor or any subcontractor.

20.5 Contractor's Right to Grant Licenses

The Contractor represents and warrants that it has the right to grant to Canada the licenses and any other rights to use the Foreground and Background Information. If the Intellectual Property Rights in any Foreground or Background Information are or will be owned by a subcontractor or any other third party, the Contractor must have or obtain promptly a license from that subcontractor or third party that permits compliance with subsection 20.4 or arrange, without delay, for the subcontractor or third party to grant promptly any required license directly to Canada.

20.6 Waiver of Moral Rights

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

20.7 License to Intellectual Property Rights to Canada's Information

20.7.1 Any information supplied by Canada to the Contractor for the performance of the Work remains the property of Canada. The Contractor must use Canada's Information only to perform the Contract.

20.7.2 If the Contractor wants to use any information owned by Canada for the commercial exploitation or further development of the Foreground Information, the Contractor must obtain a license from the department or agency for which the Contract is performed. In its request for a license to that department or agency, the Contractor must explain why the license is required and how the Contractor intends to use the information. If the department or agency agrees to grant a license, conditions will be negotiated between the Contractor and that department or agency and may include the payment of compensation to Canada.

20.8 Transfer or License of Contractor's Rights

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

20.8.2 After the Contract, if the Contractor transfers ownership in the Foreground Information, the Contractor is not required to obtain Canada's permission, but must notify the department or agency for whom the Contract is performed in writing of the transfer by referring to the serial number of the Contract and its date and by providing details about the transferee, including the conditions of the transfer. The Contractor must ensure that the transfer requires the transferee to notify the Canada of any future transfer. Any transfer must be subject to all Canada's rights to use the Foreground Information.

20.8.3 After the Contract, if the Contractor grants a license or any other right (other than a transfer of ownership) to a third party to use the Foreground Information, the Contractor is not required to notify Canada, but the license or right granted must not affect Canada's rights in any way.

20.8.4 If the Contractor at any time transfers ownership of or grants rights in the Foreground Information that interfere in any way with Canada's rights to use the Foreground Information, the Contractor must, if requested by Canada, immediately take all steps necessary to restore Canada's rights. If the Contractor is not successful in doing so, within the time reasonably required by Canada, the Contractor must immediately reimburse Canada for all costs Canada incurs to do so itself.

20.9 Transfer of Intellectual Property Rights upon Termination of the Contract for Default

20.9.1 If Canada terminates the Contract in whole or in part for default, Canada may, by giving notice to the Contractor, require the Contractor to transfer to Canada all the Intellectual Property Rights in the Foreground Information, including the rights owned by subcontractors. In the case of Intellectual Property Rights in the Foreground Information that have been sold or assigned to a third party, the Contractor must pay to Canada on demand, at Canada's discretion, the fair market value of the Intellectual Property Rights in the Foreground Information or an amount equal to the payment received by the Contractor from the sale or assignment of the Intellectual Property Rights in the Foreground Information.

20.9.2 In the event of the issuance of a notice under subsection 20.9.1, the Contractor must, at its own expense and without delay, execute such documents relating to ownership of the Intellectual Property Rights as Canada may require. The Contractor must, at Canada's expense, provide all reasonable assistance in the preparation of applications and in the prosecution of any applications for registration of any Intellectual Property Rights in any jurisdiction, including the assistance of the inventor in the case of an invention.

20.10 Products created using the Foreground Information

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

GC21 Intellectual Property Infringement and Royalties

21.1 The Contractor represents and warrants that, to the best of its knowledge, neither it nor Canada will infringe any third party's intellectual property rights in performing or using the Work, and that Canada will have no obligation to pay royalties of any kind to anyone in connection with the Work.

21.2 If anyone makes a claim against Canada or the Contractor concerning intellectual property infringement or royalties related to the Work, that Party agrees to notify the other Party in writing immediately. If anyone brings a claim against Canada, according to Canada's *Department of Justice Act*, R.S., 1985, c. J-2, the Attorney General of Canada must have the regulation and conduct of all litigation for or against Canada, but the Attorney General may request that the Contractor defend Canada against the claim. In either case, the Contractor agrees to participate fully in the defence and any settlement negotiations and to pay all costs, damages and legal costs incurred or payable as a result of the claim, including the amount of any settlement. Both Parties agree not to settle any claim unless the other Party first approves the settlement in writing.

21.3 The Contractor has no obligation regarding claims that were only made because:

- (a) Canada modified the Work or part of the Work without the Contractor's consent or used the Work or part of the Work without following a requirement of the Contract; or
- (b) Canada used the Work or part of the Work with a product that the Contractor did not supply under the Contract (unless that use is described in the Contract or the manufacturer's specifications); or
- (c) the Contractor used equipment, drawings, specifications or other information supplied to the Contractor by Canada (or by someone authorized by Canada); or
- (d) the Contractor used a specific item of equipment or software that it obtained because of specific instructions from the Contracting Authority; however, this exception only applies if the Contractor has included the following language in its own contract with the supplier of that equipment or software:

"[Supplier named herein] acknowledges that the purchased items will be used by the Government of Canada. If a third party claims that equipment or software supplied under this contract infringes any intellectual property right, [supplier name], if requested to do so by either [Contractor named herein] or Canada, will defend both [Contractor name] and Canada against that claim at its own expense and will pay all costs, damages and legal fees payable as a result of that infringement." Obtaining this protection from the supplier is the Contractor's responsibility and, if the Contractor does not do so, it will be responsible to Canada for the claim.

21.4 If anyone claims that, as a result of the Work, the Contractor or Canada is infringing its intellectual property rights, the Contractor must immediately do one of the following:

- (a) take whatever steps are necessary to allow Canada to continue to use the allegedly infringing part of the Work; or
- (b) modify or replace the Work to avoid intellectual property infringement, while ensuring that the Work continues to meet all the requirements of the Contract; or
- (c) take back the Work and refund any part of the Contract Price that Canada has already paid.

If the Contractor determines that none of these alternatives can reasonably be achieved, or if the Contractor fails to take any of these steps within a reasonable amount of time, Canada may choose either to require the Contractor to do (c), or to take whatever steps are necessary to acquire the rights to use the allegedly infringing part(s) of the Work itself, in which case the Contractor must reimburse Canada for all the costs it incurs to do so.

GC22 Amendment and Waivers

22.1 To be effective, any amendment to the Contract must be done in writing by the Contracting Authority and the authorized representative of the Contractor.

22.2 While the Contractor may discuss any proposed modifications to the Work with other representatives of Canada, Canada will not be responsible for the cost of any modification unless it has been incorporated into the Contract in accordance with subsection 22.1.

22.3 A waiver will only be valid, binding or affect the rights of the Parties if it is made in writing by, in the case of a waiver by Canada, the Contracting Authority and, in the case of a waiver by the Contractor, the authorized representative of the Contractor.

22.4 The waiver by a Party of a breach of any condition of the Contract will not be treated or interpreted as a waiver of any subsequent breach and therefore will not prevent that Party from enforcing of that term or condition in the case of a subsequent breach.

GC23 Assignment

23.1 The Contractor must not assign the Contract without first obtaining the written consent of the Contracting Authority. Any assignment made without that consent is void and will have no effect. The assignment will be effective upon execution of an assignment agreement signed by the Parties and the assignee.

23.2 Assignment of the Contract does not relieve the Contractor from any obligation under the Contract and it does not impose any liability upon Canada.

GC24 Suspension of the Work

24.1 The Contracting Authority may at any time, by written notice, order the Contractor to suspend or stop the Work or part of the Work under the Contract for a period of up to one hundred eighty (180) days. The Contractor must immediately comply with any such order in a way that minimizes the cost of doing so. While such an order is in effect, the Contractor must not remove any part of the Work from any premises without first obtaining the written consent of the Contracting Authority. Within these one hundred eighty (180) days, the Contracting Authority must either cancel the order or terminate the Contract, in whole or in part, under section 24 or section 25.

24.2 When an order is made under subsection 24.1, unless the Contracting Authority terminates the Contract by reason of default by the Contractor or the Contractor abandons the Contract, the Contractor will be entitled to be paid its additional costs incurred as a result of the suspension plus a fair and reasonable profit.

24.3 When an order made under subsection 24.1 is cancelled, the Contractor must resume work in accordance with the Contract as soon as practicable. If the suspension has affected the Contractor's ability to meet any delivery date under the Contract, the date for performing the part of the Work affected by the suspension will be extended for a period equal to the period of suspension plus a period, if any, that in the opinion of the Contracting Authority, following consultation with the Contractor, is necessary for the Contractor to resume the Work. Any equitable adjustments will be made as necessary to any affected conditions of the Contract.

GC25 Default by the Contractor

25.1 If the Contractor is in default in carrying out any of its obligations under the Contract, the Contracting Authority may, by giving written notice to the Contractor, terminate for default the Contract or part of the Contract. The termination will take effect immediately or at the expiration of a cure period specified in the notice, if the Contractor has not cured the default to the satisfaction of the Contracting Authority within that cure period.

25.2 If the Contractor becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, or takes the benefit of any statute relating to bankrupt or insolvent debtors, or if a receiver is appointed under a debt instrument or a receiving order is made against the Contractor, or an order is made or a resolution passed for the winding down of the Contractor, the Contracting Authority may, to the extent permitted by the laws of Canada, by giving written notice to the Contractor, immediately terminate for default the Contract or part of the Contract.

25.3 If Canada gives notice under subsection 25.1 or 25.2, the Contractor will have no claim for further payment except as provided in this section. The Contractor will be liable to Canada for all losses and

damages suffered by Canada because of the default or occurrence upon which the notice was based, including any increase in the cost incurred by Canada in procuring the Work from another source. The Contractor agrees to repay immediately to Canada the portion of any advance payment that is unliquidated at the date of the termination.

25.4 Upon termination of the Contract under this section, the Contracting Authority may require the Contractor to deliver to Canada, in the manner and to the extent directed by the Contracting Authority, any completed parts of the Work, not delivered and accepted before the termination and anything the Contractor has acquired or produced specifically to perform the Contract. In such a case, subject to the deduction of any claim that Canada may have against the Contractor arising under the Contract or out of the termination, Canada will pay or credit to the Contractor:

- (a) the value, of all completed parts of the Work delivered to and accepted by Canada, based on the Contract Price, including the proportionate part of the Contractor's profit or fee included in the Contract Price; and
- (b) the cost to the Contractor that Canada considers reasonable in respect of anything else delivered to and accepted by Canada.

The total amount paid by Canada under the Contract to the date of the termination and any amount payable under this subsection must not exceed the Contract Price.

25.5 Title to everything for which payment is made to the Contractor will, once payment is made, pass to Canada unless it already belongs to Canada under any other provision of the Contract.

25.6 If the Contract is terminated for default under subsection 25.1, but it is later determined that grounds did not exist for a termination for default, the notice will be considered a notice of termination for convenience issued under subsection 25.1.

GC26 Termination for Convenience

26.1 At any time before the completion of the Work, the Contracting Authority may, by giving notice in writing to the Contractor, terminate for convenience the Contract or part of the Contract. Once such a notice of termination for convenience is given, the Contractor must comply with the requirements of the termination notice. If the Contract is terminated in part only, the Contractor must proceed to complete any part of the Work that is not affected by the termination notice. The termination will take effect immediately or, as the case may be, at the time specified in the termination notice.

26.2 If a termination notice is given pursuant to subsection 26.1, the Contractor will be entitled to be paid, for costs that have been reasonably and properly incurred to perform the Contract to the extent that the Contractor has not already been paid or reimbursed by Canada. The Contractor will be paid:

- (a) on the basis of the Contract Price, for all completed work that is inspected and accepted in accordance with the Contract, whether completed before, or after the termination in accordance with the instructions contained in the termination notice;
- (b) the Cost to the Contractor plus a fair and reasonable profit for all work terminated by the termination notice before completion; and
- (c) all costs incidental to the termination of the Work incurred by the Contractor but not including the cost of severance payments or damages to employees whose services are no longer required, except wages that the Contractor is obligated by statute to pay.

26.3 Canada may reduce the payment in respect of any part of the Work, if upon inspection; it does not meet the requirements of the Contract.

26.4 The total of the amounts, to which the Contractor is entitled to be paid under this section, together with any amounts paid, due or becoming due to the Contractor must not exceed the Contract Price. The Contractor will have no claim for damages, compensation, loss of profit, allowance arising out of any termination notice given by Canada under this section except to the extent that this section expressly

provides. The Contractor agrees to repay immediately to Canada the portion of any advance payment that is unliquidated at the date of the termination.

GC27 Accounts and Audit

27.1 The Contractor must keep proper accounts and records of the cost of performing the Work and of all expenditures or commitments made by the Contractor in connection with the Work, including all invoices, receipts and vouchers. The Contractor must retain records, including bills of lading and other evidence of transportation or delivery, for all deliveries made under the Contract.

27.2 If the Contract includes payment for time spent by the Contractor, its employees, representatives, agents or subcontractors performing the Work, the Contractor must keep a record of the actual time spent each day by each individual performing any part of the Work.

27.3 Unless Canada has consented in writing to its disposal, the Contractor must retain all the information described in this section **for six (6) years** after it receives the final payment under the Contract, or until the settlement of all outstanding claims and disputes, whichever is later. During this time, the Contractor must make this information available for audit, inspection and examination by the representatives of Canada, who may make copies and take extracts. The Contractor must provide all reasonably required facilities for any audit and inspection and must furnish all the information as the representatives of Canada may from time to time require to perform a complete audit of the Contract.

27.4 The amount claimed under the contract, calculated in accordance with the Basis of Payment provision in the Articles of Agreement, is subject to government audit both before and after payment is made. If an audit is performed after payment, the Contractor agrees to repay any overpayment immediately on demand by Canada. Canada may hold back, deduct and set off any credits owing and unpaid under this section from any money that Canada owes to the Contractor at any time (including under other contracts). If Canada does not choose to exercise this right at any given time, Canada does not lose this right.

GC28 Right of Set-off

Without restricting any right of set-off given by law, Canada may set-off against any amount payable to the Contractor under the Contract, any amount payable to Canada by the Contractor under the Contract or under any other current contract. Canada may, when making a payment pursuant to the Contract, deduct from the amount payable to the Contractor any such amount payable to Canada by the Contractor which, by virtue of the right of set-off, may be retained by Canada.

GC29 Notice

Any notice under the Contract must be in writing and may be delivered by hand, courier, mail, facsimile or other electronic method that provides a paper record of the text of the notice. It must be sent to the Party for whom it is intended at the address stated in the Contract. Any notice will be effective on the day it is received at that address. Any notice to Canada must be delivered to the Contracting Authority.

GC30 Conflict of Interest and Values and Ethics Codes for the Public Service

The Contractor acknowledges that individuals who are subject to the provisions of the *Conflict of Interest Act*, 2006, c. 9, s. 2, the Conflict of Interest Code for Members of the House of Commons, the Values and Ethics Code for the Public Service or all other codes of values and ethics applicable within specific organizations cannot derive any direct benefit resulting from the Contract.

GC31 No Bribe or Conflict

31.1 The Contractor declares that no bribe, gift, benefit, or other inducement has been or will be paid, given, promised or offered directly or indirectly to any official or employee of Canada or to a member of the family of such a person, with a view to influencing the entry into the Contract or the administration of the Contract.

31.2 The Contractor must not influence, seek to influence or otherwise take part in a decision of Canada knowing that the decision might further its private interest. The Contractor must have no financial interest in the business of a third party that causes or would appear to cause a conflict of interest in connection with the performance of its obligations under the Contract. If such a financial interest is acquired during the period of the Contract, the Contractor must immediately declare it to the Contracting Authority.

31.3 The Contractor warrants that, to the best of its knowledge after making diligent inquiry, no conflict exists or is likely to arise in the performance of the Contract. In the event the Contractor becomes aware of any matter that causes or is likely to cause a conflict in relation to the Contractor's performance under the Contract, the Contractor must immediately disclose such matter to the Contracting Authority in writing.

31.4 If the Contracting Authority is of the opinion that a conflict exists as a result of the Contractor's disclosure or as a result of any other information brought to the Contracting Authority's attention, the Contracting Authority may require the Contractor to take steps to resolve or otherwise deal with the conflict or, at its entire discretion, terminate the Contract for default. Conflict means any matter, circumstance, interest, or activity affecting the Contractor, its personnel or subcontractors, which may or may appear to impair the ability of the Contractor to perform the Work diligently and independently.

GC32 Survival

All the Parties' obligations of confidentiality, representations and warranties set out in the Contract as well as the provisions, which by the nature of the rights or obligations might reasonably be expected to survive, will survive the expiry or termination of the Contract.

GC33 Severability

If any provision of the Contract is declared by a court of competent jurisdiction to be invalid, illegal or unenforceable, that provision will be removed from the Contract without affecting any other provision of the Contract.

GC34 Successors and Assigns

The Contract is to the benefit of and binds the successors and permitted assignees of Canada and of the Contractor.

GC35 Contingency Fees

The Contractor certifies that it has not directly or indirectly, paid or agreed to pay and agrees that it will not, directly or indirectly, pay a contingency fee for the solicitation, negotiation or obtaining of the Contract to any person, other than an employee of the Contractor acting in the normal course of the employee's duties. In this section, "contingency fee" means any payment or other compensation that depends or is calculated based on a degree of success in soliciting, negotiating or obtaining the Contract and "person" includes any individual who is required to file a return with the registrar pursuant to section 5 of the *Lobbying Act*, 1985, c. 44 (4th Supplement).

GC36 International Sanctions

36.1 Persons in Canada, and Canadians outside of Canada, are bound by economic sanctions imposed by Canada. As a result, the Government of Canada cannot accept delivery of goods or services that originate, either directly or indirectly, from the countries or persons subject to [economic sanctions](#).

Details on existing sanctions can be found at:

<http://www.international.gc.ca/sanctions/index.aspx?lang=eng>

36.2 The Contractor must not supply to the Government of Canada any goods or services which are subject to economic sanctions.

36.3 The Contractor must comply with changes to the regulations imposed during the period of the Contract. The Contractor must immediately advise Canada if it is unable to perform the Work as a result of the imposition of economic sanctions against a country or person or the addition of a good or service to

the list of sanctioned goods or services. If the Parties cannot agree on a work around plan, the Contract will be terminated for the convenience of Canada in accordance with section 26.

GC37 Code of Conduct for Procurement

The Contractor certifies that it has read the [Code of Conduct for Procurement](#) and agrees to be bound by its terms.

GC38 Harassment in the Workplace

38.1 The Contractor acknowledges the responsibility of Canada to ensure, for its employees, a healthy work environment, free of harassment. A copy of the Treasury Board policy, [the Policy on the Prevention and Resolution of Harassment in the Workplace](#) which is also applicable to the Contractor, is available on the Treasury Board Web site.

38.2 The Contractor must not, either as an individual, or as a corporate or unincorporated entity, through its employees or subcontractors, harass abuse, threaten, discriminate against or intimidate any employee, contractor or other individual employed by, or under contract with Canada. The Contractor will be advised in writing of any complaint and will have the right to respond in writing. Upon receipt of the Contractor's response, the Contracting Authority will, at its entire discretion, determine if the complaint is founded and decide on any action to be taken.

GC39 Entire Agreement

The Contract constitutes the entire and only agreement between the Parties and supersedes all previous negotiations, communications and other agreements, whether written or oral, unless they are incorporated by reference in the Contract. There are no terms, covenants, representations, statements or conditions binding on the Parties other than those contained in the Contract.