



PROPOSED CONTRACT CLAUSES FOR THE RESULTING CONTRACT

Safe Harbour Statement

The information contained within this document is intended to communicate SSC's draft Resulting Contract Clauses as part of the Collaborative Procurement Process for Public Cloud Services. They cannot be interpreted as requirements and are subject to change at later stages of the procurement process.

1.1. Statement of Requirement

_____ (the "Contractor") agrees to supply to the Client the goods and services described in the Contract, including the Statement of Requirements in accordance with, and at the prices set out in, the Contract. This includes:

- a) The provision of Commercially Available Cloud Services, as defined in Annex A, on an as-and-when-requested basis

1.2. Client

1.2.1. Under the Contract, the "Client" is Shared Services Canada ("SSC"), an organization with a mandate to provide shared services. This Contract will be used by SSC to provide shared services to its clients, which include SSC itself, those government institutions for whom SSC's services are mandatory at any point during the Contract Period, and those other organizations for whom SSC's services are optional at any point during the Contract Period and that choose to use those services from time to time. SSC may choose to use this Contract for some or all of its clients and may use alternative means to provide the same or similar services.

1.2.2. Reorganization of Client: The Contractor's obligation to perform the Work will not be affected by (and no additional fees will be payable as a result of) the renaming, reorganization, reconfiguration, or restructuring of any Client. The reorganization, reconfiguration and restructuring of the Client includes the privatization of the Client, its merger with another entity, or its dissolution, where that dissolution is followed by the creation of another entity or entities with mandates similar to the original Client. In connection with any form of reorganization, Canada may designate another department or government body as the Contracting Authority or Technical Authority, as required to reflect the new roles and responsibilities associated with the reorganization.

1.3. Defined Terms

1.3.1. Words and expressions defined in the General Conditions or Supplemental General Conditions and used in the Contract have the meanings given to them in the General Conditions or Supplemental General Conditions. Also, the following words and expressions have the following meanings:

- i. any reference to the "**Contract Award Date**" (or words of similar effect) refers to the date on which this Contract is issued by the Client, as evidenced by the date on the first page of this Contract; et
- ii. any reference to "**Services**" (or words of similar effect) refers to Commercially Available Cloud Services as defined in Annex A, Statement of Requirement.



1.4. Task Authorization /Service Order Request

(To be provided at the RFP phase)

1.5. Minimum Work Guarantee

1.5.1. In this clause,

1.5.1.1. **"Maximum Contract Value"** means the amount specified in the **"Limitation of Expenditure"** clause set out in the Contract (excluding GST/HST); and

1.5.1.2. **"Minimum Contract Value"** means **TBD**

1.5.2. Canada's obligation under the Contract is to request Work in the amount of the Minimum Contract Value or, at Canada's option, to pay the Contractor at the end of the Contract in accordance with sub-article 3. In consideration of such obligation, the Contractor agrees to stand in readiness throughout the Contract Period to perform the Work described in the Contract. Canada's maximum liability for work performed under the Contract must not exceed the Maximum Contract Value, unless an increase is authorized in writing by the Contracting Authority.

1.5.3. In the event that Canada does not request work in the amount of the Minimum Contract Value during the Contract Period, Canada must pay the Contractor the difference between the Minimum Contract Value and the total cost of the Work requested.

1.5.4. Canada will have no obligation to the Contractor under this article if Canada terminates the entire Contract

1.5.4.1. for default;

1.5.4.2. for convenience as a result of any decision or recommendation of a tribunal or court that the contract be cancelled, re-tendered or awarded to another supplier; or

1.5.4.3. for convenience within **TBD** business days of Contract award.

1.6. Standard Clauses and Conditions

All clauses and conditions identified in the Contract by number, date and title are set out in the Standard Acquisition Clauses and Conditions Manual(<https://buyandsell.gc.ca/policy-and-guidelines/standard-acquisition-clauses-and-conditions-manual>) issued by Public Works and Government Services Canada.

1.6.1. General Conditions

1.6.1.1. 2035 (2016-04-04), General Conditions - Higher Complexity - Services, apply to and form part of the Contract.

These General Conditions are amended as follows:

1. in Section 2, delete the words: "Pursuant to the Department of Public Works and Government Services Act, S.C. 1996, c.16";
2. in Subsection 6(1), delete the words "Except as provided in subsection 2" and capitalize the first word remaining in that sentence;
3. the text of Subsection 6(2) is deleted;



4. in Subsection 6(3), delete the words “other than a subcontract referred to in paragraph 2(a)”. Subcontracting is also addressed in a separate Article of these Articles of Agreement entitled “Subcontracting”;

1.7. Security Requirements

- 1.7.1. The following security requirements (SRCL and related clauses provided by ISP) apply and form part of the Contract.

(To be provided at the RFP phase)

- 1.7.2. Contractor’s Sites or Premises Requiring Safeguarding Measures

- 1.7.3. Where safeguarding measures are required in the performance of the Work, the Contractor must diligently maintain up-to-date the information related to the Contractor’s and proposed individuals’ sites or premises for the following addresses:

Street Number / Street Name, Unit / Suite / Apartment Number
City, Province, Territory / State
Postal Code / Zip Code
Country

- 1.7.3.1. The Company Security Officer (CSO) must ensure through the Industrial Security Program (ISP) that the Contractor and individuals hold a valid security clearance at the required level.

1.8. Term of Contract

- 1.8.1. Contract Period

- 1.8.1.1. The “Contract Period” is the entire period of time during which the Contractor is obliged to perform the Work, which includes:

- 1.8.1.2. The “Contract Period”, begins on the date the Contract is awarded and ends 2 year(s) later; and

- 1.8.1.3. The period during which the Contract is extended, if Canada chooses to exercise any options set out in the Contract.

- 1.8.2. Option to Extend the Contract

- 1.8.3. The Contractor grants to Canada the irrevocable option to extend the term of the Contract by up to two additional one year period(s) under the same conditions. The Contractor agrees that, during the extended period of the Contract, it will be paid in accordance with the applicable provisions as set out in the Basis of Payment.

- 1.8.4. Canada may exercise this option at any time by sending a written notice to the Contractor at least **(TBD)** calendar days before the expiry date of the Contract. The option may only be exercised by the Contracting Authority, and will be evidenced for administrative purposes only, through a contract amendment.

1.9. Delivery Points

- 1.9.1. Delivery of the requirement will be made to delivery point(s) specified at **TBD** of the Contract.

(To be entered at contract award)



1.10. Authorities

1.10.1. Contracting Authority

The Contracting Authority for the Contract is: **(To be entered at contract award)**

Name: _____
Title: _____
Shared Services Canada
Procurement Vendor Relationships
Address: _____
Telephone: _____
Facsimile: _____
E-mail address: _____

The Contracting Authority is responsible for the management of the Contract and any changes to the Contract must be authorized in writing by the Contracting Authority. The Contractor must not perform work in excess of or outside the scope of the Contract based on verbal or written requests or instructions from anybody other than the Contracting Authority.

1.10.2. Technical Authority

The Technical Authority for the Contract is: **(To be entered at contract award)**

Name: _____
Title: _____
Organization: _____
Address: _____
Telephone: _____
Facsimile: _____
E-mail address: _____

The Project Authority is the representative of the department or agency for whom the Work is being carried out under the Contract and is responsible for all matters concerning the technical content of the Work under the Contract. Technical matters may be discussed with the Project Authority; however, the Project Authority has no authority to authorize changes to the scope of the Work. Changes to the scope of the Work can only be made through a contract amendment issued by the Contracting Authority.

1.10.3. Contractor's Representative

The Contractor's Representative for the Contract is: **(To be entered at contract award)**

Name: _____
Title: _____
Organization: _____
Address: _____
Telephone: _____
Facsimile: _____
E-mail address: _____



1.11. Proactive Disclosure of Contracts with Former Public Servants

By providing information on its status, with respect to being a former public servant in receipt of a *Public Service Superannuation Act* (PSSA) pension, the Contractor has agreed that this information will be reported on departmental websites as part of the published proactive disclosure reports, in accordance with Contracting Policy Notice: 2012-2 of the Treasury Board Secretariat of Canada.

1.12. Payment

1.12.1. Basis of Payment

1.12.1.1. The Contractor will be reimbursed for the costs reasonably and properly incurred in providing Services specified in the authorized Task Authorization (TA) /Service Order (SO), as determined in accordance with the Annex B – Basis of Payment and Financial Tables.

1.12.2. Method of Payment for Task Authorizations/ Service Orders

1.12.2.1. Canada will pay the Contractor no more frequently than once a month in accordance with the Basis of Payment. The Contractor must submit an invoice for each active TA/SO showing the days and hours Services were provided to support the charges claimed in the invoice.

1.12.3. Payment Credits

1.12.3.1. **Credits for Failure to Meet Minimum Availability Level:** If the Service does not meet the Minimum Availability Level in any given month, Canada will be entitled to a credit in accordance with Annex E, Contractor's Service Levels and Credits.

1.12.3.2. **Corrective Measures:** If credits are payable under this Article for two consecutive months or for three months in any 12-month period, the Contractor must submit a written action plan describing measures it will implement or actions it will undertake to eliminate the recurrence of the problem. The Contractor will have five working days to deliver the action plan to the Client and the Contracting Authority and 20 working days to rectify the underlying problem.

1.12.3.3. **Termination for Failure to Meet Availability Level:** In addition to any other rights it has under the Contract, Canada may terminate the Contract for default in accordance with the General Conditions by giving the Contractor three months' written notice of its intent, if any of the following apply:

1.12.3.3.1. the total amount of credits for a given monthly billing cycle reach a level of 10%; or

1.12.3.3.2. the corrective measures required of the Contractor described above are not met.

This termination will be effective when the three-month notice period expires, unless the Contractor has sustained the Availability Level during those months.

1.12.3.4. **Credits Apply during Entire Contract Period:** The Parties agree that the credits apply throughout the Contract Period, including during implementation.

1.12.3.5. **Credits represent Liquidated Damages:** The Parties agree that the credits are liquidated damages and represent their best pre-estimate of the loss to Canada in the event of the applicable failure. No credit is intended to be, nor will it be construed as, a penalty.

1.12.3.6. **Canada's Right to Obtain Payment:** The Parties agree that these credits are a liquidated debt. To collect the credits, Canada has the right to hold back, draw back, deduct or set off from and against any money Canada owes to the Contractor from time to time.



1.12.3.7. **Canada's Rights & Remedies not Limited:** The Parties agree that nothing in this Article limits any other rights or remedies to which Canada is entitled under the Contract (including the right to terminate the Contract for default) or under the law generally.

1.12.3.8. **Audit Rights:** The Contractor's calculation of credits under the Contract is subject to verification by government audit, at the Contracting Authority's discretion, before or after payment is made to the Contractor. The Contractor must cooperate fully with Canada during the conduct of any audit by providing Canada with access to any records and systems that Canada considers necessary to ensure that all credits have been accurately credited to Canada in the Contractor's invoices. If an audit demonstrates that past invoices contained errors in the calculation of the credits, the Contractor must pay to Canada the amount the audit reveals was required to be credited to Canada, plus interest, from the date Canada remitted the excess payment until the date of the refund (the interest rate is the Bank of Canada's discount annual rate of interest in effect on the date the credit was first owed to Canada, plus 1.25% per year). If, as a result of conducting an audit, Canada determines that the Contractor's records or systems for identifying, calculating or recording the credits are inadequate, the Contractor must implement any additional measures required by the Contracting Authority.

1.13. Limitation of Expenditure

1.13.1. Canada's total liability to the Contractor under the Contract for all validly issued Task Authorizations (TAs) / Service Orders (SOs), inclusive of any revisions, must not exceed the sum of **TBD (To be entered at RFP stage)**. Customs duties are included and the Applicable Taxes are extra, if applicable.

1.13.2. No increase in the total liability of Canada will be authorized or paid to the Contractor unless an increase has been approved, in writing, by the Contracting Authority.

1.13.3. The Contractor must notify the Contracting Authority in writing as to the adequacy of this sum:

1.13.3.1. when it is 75 percent committed, or

1.13.3.2. 4 months before the contract expiry date, or

1.13.3.3. as soon as the Contractor considers that the sum is inadequate for the completion of the Work required in all authorized TAs, inclusive of any revisions, whichever comes first.

1.13.4. If the notification is for inadequate contract funds, the Contractor must provide to the Contracting Authority, a written estimate for the additional funds required. Provision of such information by the Contractor does not increase Canada's liability.

1.14. Electronic Payment of Invoices – Contract

1.14.1. The Contractor accepts to be paid using any of the following Electronic Payment Instrument(s):

1. Visa Acquisition Card;
2. MasterCard Acquisition Card;
3. Direct Deposit (Domestic and International);
4. Electronic Data Interchange (EDI);
5. Wire Transfer (International Only);
6. Large Value Transfer System (LVTS) (Over \$25M)

1.15. Invoicing Instructions



- 1.15.1. The Contractor must submit invoices in accordance with the information required in the General Conditions.
- 1.15.2. The Contractor's invoice must include a separate line item for each subparagraph in Annex B.
- 1.15.3. By submitting invoices, the Contractor is certifying that the goods and services have been delivered and that all charges are in accordance with the Payment provision of the Contract and Annex B, including any charges for work performed by subcontractors.
- 1.15.4. The Contractor must provide the original of each invoice to the Technical Authority. On request, the Contractor must provide a copy of any invoices requested by the Contracting Authority.
- 1.15.5. The Contractor must include adjustments for Service Credits owing to Canada in the invoice that follows the month after the month in which the Service Credits accrue.

1.16. Certifications

- 1.16.1. Compliance with Certifications: Compliance with the certifications provided by the Contractor in its bid that resulted in the award of this Contract and with those found in its response to the Invitation to Qualify issued by SSC under No. 16-42051-0/A is a condition of the Contract and subject to verification by Canada during the entire Contract Period. The Contracting Authority may ask for additional information to verify the Contractor's certifications at any time during the Contract Period. If the Contractor does not provide the requested additional information or does not comply with any certification or it is determined that any certification made by the Contractor in its bid is untrue, regardless of whether or not the Contractor knew when it made the certification that it was untrue, and regardless of whether or not the certification became untrue after it was made, Canada has the right to terminate the Contract for default.
- 1.16.2. Federal Contractors Program for Employment Equity – Default by the Contractor: The Contractor understands and agrees that, when an Agreement to Implement Employment Equity (AIEE) exists between the Contractor and Employment and Social Development Canada (ESDC)-Labour, the AIEE must remain valid during the entire Contract Period. If the AIEE becomes invalid, the name of the Contractor will be added to the "FCP Limited Eligibility to Bid" list. The imposition of such a sanction by ESDC will result in the Contractor being in default pursuant to this Contract.

1.17. Applicable Laws

- 1.17.1. The Contract must be interpreted and governed, and the relations between the parties determined, by the laws in force in TBD. **(To be provided at contract award)**

1.18. Priority of Documents

- 1.18.1. If there is a discrepancy between the wording of any documents that appear on the list, the wording of the document that first appears on the list has priority over the wording of any document that subsequently appears on the list.

Note to Bidders: This clause will not be included in any resulting contract if the Contractor's bid is not subject to any tariffs.

- a) the Articles of Agreement;
- b) the general conditions 2035 (2016-04-04), General Conditions - Higher Complexity – Services;
- c) Annex A, Statement of Requirement;
- d) Annex B, Basis of Payment **(Contractor proposed at the RFP stage)**;
- e) Annex C, Security Requirements Check List (SRCL)



- f) Annex D, Contractor's Service Levels and Credits **(Proposed by Bidder at the RFP stage)**
- g) Annex E, Task Authorization Form/Service Order Request Form; **(To be provided at RFP stage)**
- h) the signed Task Authorizations/Service Order Requests (including all of its annexes, if any) *(if applicable)*;
- i) the Contractor's bid dated _____, **(To be entered at contract award)**

1.19. Foreign Nationals (Canadian Contractor OR Foreign Contractor)

(To be entered at contract award) - One of (a) or (b) will be used, dependent on the nationality of the Contractor

- (a) SACC Manual clause A2000C (2006-06-16) Foreign Nationals (Canadian Contractor) - The Contractor must comply with Canadian immigration requirements applicable to foreign nationals entering Canada to work temporarily in fulfillment of the Contract. If the Contractor wishes to hire a foreign national to work in Canada to fulfill the Contract, the Contractor should immediately contact the nearest Service Canada regional office to enquire about Citizenship and Immigration Canada's requirements to issue a temporary work permit to a foreign national. The Contractor is responsible for all costs incurred as a result of non-compliance with immigration requirements

OR

- (b) SACC Manual clause A2001C (2006-06-16) Foreign Nationals (Foreign Contractor) - The Contractor must comply with Canadian immigration legislation applicable to foreign nationals entering Canada to work temporarily in fulfillment of the Contract. If the Contractor wishes to hire a foreign national to work in Canada to fulfill the Contract, the Contractor should immediately contact the nearest Canadian Embassy, Consulate or High Commission in the Contractor's country to obtain instructions, information on Citizenship and Immigration Canada's requirements and any required documents. The Contractor is responsible to ensure that foreign nationals have the required information, documents and authorizations before performing any work under the Contract in Canada. The Contractor is responsible for all costs incurred as a result of non-compliance with immigration requirements.

1.20. Change of Control

- 1.20.1. At any time during the Contract Period, if requested by the Contracting Authority, the Contractor must provide to Canada:
- 1.20.2. an organization chart for the Contractor showing all related corporations and partnerships; for the purposes of this Sub-article, a corporation or partnership will be considered related to another party if:
- 1.20.3. they are "related persons" or "affiliated persons" according to the Canada Income Tax Act;
- 1.20.4. the entities have now or in the two years before the request for the information had a fiduciary relationship with one another (either as a result of an agency arrangement or any other form of fiduciary relationship); or
- 1.20.5. the entities otherwise do not deal with one another at arm's length, or each of them does not deal at arm's length with the same third party.
- 1.20.6. a list of all the Contractor's shareholders; if the Contractor is a subsidiary, this information must be provided for each parent corporation or parent partnership, up to the ultimate owner;



- 1.20.7. a list of all the Contractor's directors and officers, together with each individual's home address, date of birth, birthplace and citizenship(s); if the Contractor is a subsidiary, this information must be provided for each parent corporation or parent partnership, up to the ultimate owner; and
- 1.20.8. any other information related to ownership and control that may be requested by Canada.
- 1.20.9. If requested by the Contracting Authority, the Contractor must provide this information regarding its subcontractors as well. However, if a subcontractor considers this information to be confidential, the Contractor may meet its obligation by having the subcontractor submit the information directly to the Contracting Authority. Regardless of whether the information is submitted by the Contractor or a subcontractor, Canada agrees to handle this information in accordance with Subsection 22(3) of General Conditions 2035 (General Conditions – Higher Complexity – Services), provided the information has been marked as either confidential or proprietary.
- 1.20.10. The Contractor must notify the Contracting Authority in writing of:
- 1.20.11. any change of control in the Contractor itself;
- 1.20.12. any change of control in any parent corporation or parent partnership of the Contractor, up to the ultimate owner; and
- 1.20.13. any change of control in any subcontractor performing any part of the Work (including any change of control in any parent corporation or parent partnership of the subcontractor, up to the ultimate owner).
- 1.20.14. The Contractor must provide this notice by no later than 10 working days after any change of control takes place (or, in the case of a subcontractor, within 15 working days after any change of control takes place). Where possible, Canada requests that the Contractor provide advance notice of any proposed change of control transaction.
- 1.20.15. In this Article, a "change of control" includes but is not limited to a direct or indirect change in the effective control of the corporation or partnership, whether resulting from a sale, encumbrances, or other disposition of the shares (or any form of partnership units) by any other means. In the case of a joint venture Contractor or subcontractor, this applies to a change of control of any of the joint venture's corporate or partnership members. In the case of a Contractor or subcontractor that is a partnership or limited partnership, this requirement also applies to any corporation or limited partnership that is a partner.
- 1.20.16. If Canada determines in its sole discretion that a change of control affecting the Contractor (either in the Contractor itself or any of its parents, up to the ultimate owner) may be injurious to national security, Canada may terminate the Contract on a "no-fault" basis by providing notice to the Contractor within 90 calendar days of receiving the notice from the Contractor regarding the change of control. Canada will not be required to provide its reasons for terminating the Contract in relation to the change of control, if Canada determines in its discretion that the disclosure of those reasons could itself be injurious to national security.



- 1.20.17. If Canada determines in its sole discretion that a change of control affecting a subcontractor (either in the subcontractor itself or any of its parents, up to the ultimate owner) may be injurious to national security, Canada will notify the Contractor in writing of its determination. Canada will not be required to provide the reasons for its determination, if Canada determines in its discretion that the disclosure of those reasons could itself be injurious to national security. The Contractor must, within 30 calendar days of receiving Canada's determination, arrange for another subcontractor, acceptable to Canada, to perform the portion of the Work being performed by the existing subcontractor (or the Contractor must perform this portion of the Work itself). If the Contractor fails to do so within this time period, Canada will be entitled to terminate the Contract on a "no-fault" basis by providing notice to the Contractor within 120 calendar days of receiving the original notice from the Contractor regarding the change of control.
- 1.20.18. In this Article, termination on a "no-fault" basis means that neither party will be liable to the other in connection with the change of control or the resulting termination, and Canada will only be responsible for paying for those services received up to the effective date of the termination.
- 1.20.19. Despite the foregoing, Canada's right to terminate on a "no-fault" basis will not apply to circumstances in which there is an internal reorganization that does not affect the ownership of the ultimate parent corporation or parent partnership of the Contractor or subcontractor, as the case may be; that is, Canada does not have a right to terminate the Contract pursuant to this Article where the Contractor or subcontractor continues, at all times, to be controlled, directly or indirectly, by the same ultimate owner.

1.21. Competitive Award

- 1.21.1. The Contractor acknowledges that the Contract has been awarded as a result of a competitive process. No additional charges will be allowed to compensate for errors, oversights, misconceptions or underestimates made by the Contractor when bidding for the Contract.

1.22. License Grant

- 1.22.1. The Contractor grants to Canada a non-exclusive license to use and reproduce any Licensed Software available as part of its Services, in accordance with the conditions of the Contract.
- 1.22.2. The Client is the only entity authorized to use and reproduce the Licensed Software on behalf of Canada. If the Client is reconfigured, absorbed by another government department or agency, or is disbanded entirely, the Contracting Authority may, by giving notice to the Contractor, designate another department, agency or Crown corporation as the "Client" for the purposes of the Contract.
- 1.22.3. Unless provided otherwise in the Contract, the license granted under the Contract is unaffected by changes in the Client's environment, such as changes to the operating system, types of Devices, or other software products used by the Client from time to time in addition to the Licensed Software.
- 1.22.4. Unless provided otherwise in the Contract, the license granted under the Contract is an Entity License as described in section 1.6.2.5 below.
- 1.22.5. An "Entity License" entitles the Client to use the Licensed Software for government purposes throughout the entity in association with any number of Devices or by any number of Users. The Entity License allows the Client to use the Licensed Software in whole or in part, unrestricted by the number or type of Users, data, documents and/or transactions a Client or a User may be using or processing at any time, or the location of the Device.



1.22.6. The Contractor must provide the English language version of the Licensed Software and, if available, the French version of the Licensed Software.

1.23. "Shrink-wrap" or "Click-wrap" conditions

1.23.1. Canada is not bound by and does not accept any "shrink-wrap" or "click-wrap" conditions or any other conditions, express or implied, that are contained in service offering or conditions that may accompany the Services in any manner, regardless of any notification to the contrary.

1.24. Canada's Liability with respect to Canada's Data

1.24.1. This Article applies notwithstanding the Article entitled Limitation of Liability.

1.24.2. If a third party makes any claims arising from reliance on or use of any of the content transmitted or received by Canada (or any person Canada permits to use the services provided by the Contractor under the Contract) using the Public Cloud Service or any other claim arising in respect of the content including, for example, defamation, intellectual property infringement, passing off, acts of unfair competition, or a claim that the content is "obscene" as defined by the Criminal Code, s.168 (as amended from time to time), Canada, if requested to do so by the Contractor, will defend the Contractor against the claim at Canada's expense. In this regard, Canada will pay all costs, damages and legal fees that a court finally awards, provided that the Contractor:

1.24.2.1.1. promptly notifies Canada in writing of the claim;

1.24.2.1.2. co-operates with Canada in, and allows Canada full participation in, the defence and related settlement negotiations; and

1.24.2.1.3. obtains Canada's prior approval of any agreement resulting from settlement negotiations held with the third party.

1.24.3. Canada agrees to participate in any claims, actions or proceedings arising under this Article. Both Parties agree not to settle any claim, action or proceeding without the prior written approval of the other Party.

1.24.4. Canada also agrees to indemnify the Contractor against all liability, damages or claims made against the Contractor by any third party in connection with Canada's use of (or failure to use) any of Canada's Data.

1.25. Communications

1.25.1. Except for information that the Contractor is required to make available under securities legislation or regulations, the Contractor must obtain the Contracting Authority's approval prior to releasing any public statement related to the award of the Contract. At the Contracting Authority's request, the Contractor must provide a draft of the announcement for review and approval.



1.26. Representations and Warranties

- 1.26.1. The Contractor made statements regarding both its and the Cloud Service Provider's experience and expertise in its bid that resulted in the award of the Contract and in its response to the Invitation to Qualify issued by SSC under No. 16-42051-0/B. The Contractor represents and warrants that all those statements are true and acknowledges that Canada relied on those statements in awarding the Contract. The Contractor also represents and warrants that it has, and all its resources and subcontractors that perform the Work have, and at all times during the Contract Period they will have, the skills, qualifications, expertise and experience necessary to perform and manage the Work in accordance with the Contract, and that the Contractor (and any resources or subcontractors it uses) has previously performed similar services for other customers.
- 1.26.2. The Contractor represents and warrants that, in addition to meeting the requirements of this Contract, it will provide the Public Cloud Service in a manner consistent with general industry standards reasonably applicable the provision of an commercial available cloud services and that the Public Cloud Service will perform in accordance with the Contract (including Annex A – Statement of Requirement under normal use and circumstances. To the extent that the Public Cloud Service does not perform in accordance with Annex A under normal use and circumstances, the Contractor agrees to make whatever adjustments are required for the Public Cloud Service to perform in accordance with the Contract within 30 days.
- 1.26.3. Both the Parties represent and warrant that they have the legal power and authority to enter into this Contract.

1.27. Ownership of Canada's Data

- 1.27.1. All data, information or material that Canada or any of its Users input, upload or submit to, or process using the Public Cloud Service ("Canada's Data") belongs to Canada. Canada does not grant any rights in Canada's Data to the Contractor.
- 1.27.2. In providing the Public Cloud Service, the Contractor's tools and systems used to provide the Public Cloud Services, will generate, process and store Canada's Data. However, the Parties agree that, in order to provide Public Cloud Services, the Contractor does not require access to Canada's Data at any time. The Contractor agrees that it is strictly prohibited from accessing Canada's Data, or permitting any third party (including a foreign government) to access Canada's Data, at any time, except with the written consent of the Contracting Authority.
- 1.27.3. The Contractor is responsible for ensuring that Canada's Data will be encrypted at all times in accordance with Annex A, and agrees that it is prohibited from decrypting any of Canada's Data unless it has the written consent of the Contracting Authority.
- 1.27.4. Canada agrees that it is solely responsible for the accuracy of the data it inputs into the Public Cloud Services and for intellectual property ownership or right to use all of Canada's Data.



- 1.27.5. Throughout the Contract Period, the Contractor must implement and follow processes and controls that preserve the integrity, confidentiality and accuracy of all information and data and metadata, irrespective of format. This applies to all information, data and metadata in the Contractor's possession or under its care or control if the information, data or metadata is generated by, acquired pursuant to, or arises in any other way out of the Contractor's responsibilities and obligations under the Contract. The Contractor acknowledges that this is required in order to ensure that Canada can rely on the information, data and metadata and so that Canada can meet its own legal obligations, including statutory obligations. This is also required to ensure the information, data and metadata can be used as persuasive evidence in a court of law.
- 1.27.6. The Contractor must, to the full extent it is permitted by law, fully cooperate with Canada and assist Canada in responding to access to information requests, investigating complaints, investigating regulatory or criminal matters and prosecutions. This includes allowing Canada to conduct security audits/inspections and furnishing Canada with such information (e.g., documentation, data protection description, data architecture and security descriptions) as may be required by Canada within 5 FGWDs of a request by Canada.
- 1.27.7. In the event of any breach of the Public Cloud Service's security, regardless of whether it has an adverse impact on Canada's Data or Contractor's obligations with respect thereto, or any evidence that leads the Contractor to reasonably believe that such a breach is imminent, Contractor will immediately (and in no event more than twenty-four hours after discovering such breach) notify Canada. The Contractor will identify any of Canada's Data affected and inform Canada of the actions it is taking or will take to reduce the risk of further loss to Canada. The Contractor will provide Canada the opportunity to participate in the investigation of the breach and to exercise control over reporting the unauthorized disclosure, to the extent permitted by law.
- 1.28. On-going Supply Chain Security Assessment of Products**
(To be provided at the RFP phase)
- 1.29. Electronic Procurements and Payment (EPP) System**
- 1.29.1. SSC is working on an initiative that is expected to provide it with e-functionality from procurement through payment (the "EPP system"). SSC's suppliers will be required to interface with that functionality.
- 1.29.2. Because the functionality will not be ready at the time of Contract award, if Canada wishes for the Contractor to interface with the EPP system during the Contract Period, Canada may issue a Task Authorization regarding the work required for the Contractor to interface with the EPP system. The Contractor's response to Canada's draft Task Authorization must, in addition to identifying the required resources (and the rates applicable pursuant to the Contract), any costs for hardware or software that will be required, including development costs for work to be performed by third parties.
- 1.29.3. The Parties agree to work cooperatively to determine the work involved and a reasonable ceiling price for that work. If the Parties agree to proceed with that work, Canada will issue a Contract Amendment documenting the ceiling price associated with the work. The Contractor will be required to submit a service design for approval by Canada and the work associated with the development of any EPP system interfaces will be treated as a Service Project.



- 1.29.4. Canada will pay the Contractor, in arrears, up to the ceiling price established in the contract amendment, for actual time worked and any resulting deliverables in accordance with firm, all-inclusive per diem rates set out in the relevant Contract Amendment, with GST/HST extra. Partial days will be prorated based on actual hours worked based on a 7.5-hour workday. When submitting its invoices, the Contractor must show the actual time worked by each resource, and/or the amount paid to any subcontractor. With respect to any expenses, the Contractor will be required to demonstrate the out-of-pocket amount spent and will be reimbursed without the addition of any profit or overhead.
- 1.29.5. Canada acknowledges that, to the extent changes are required to the COTS ITSM SaaS Solution; the Contractor is under no obligation to complete the work unless the Parties agree.

1.30. Termination for Convenience

- 1.30.1. With respect to Section 30 of General Conditions 2035, if applicable, or Section 32 of 2030, if applicable, subsection 4 is deleted and replaced with the following subsections 4, 5 and 6:
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.
5. Where the Contracting Authority terminates the entire Contract and the Articles of Agreement include a Minimum Work Guarantee, the total amount to be paid to the Contractor under the Contract will not exceed the greater of
- (a) the total amount the Contractor may be paid under this section, together with any amounts paid, becoming due other than payable under the Minimum Revenue Guarantee, or due to the Contractor as of the date of termination, or
- (b) the amount payable under the Minimum Work Guarantee, less any amounts paid, due or otherwise becoming due to the Contractor as of the date of termination.
6. 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.

1.31. Communications Approval

- 1.31.1. The Contractor must obtain the Contracting Authority's approval prior to releasing any announcement related to the contract. At SSC's request, the Contractor must provide a draft of the announcement for SSC review and approval.