

ANNEX C - RESULTING CONTRACT CLAUSES

INSTALLATION AND CONFIGURATION OF AVAYA CM G400 SOLUTION FOR CFB BORDEN O-215 SHARED SERVICES CANADA

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Annex A – Statement of Work

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1. Requirement

- a. _____ (the "Contractor") agrees to supply to the Client the goods and services described in the Contract, including the Statement of Work, in accordance with, and at the prices set out in, the Contract to one or more locations to be designated by Canada, excluding any locations in areas subject to any of the Comprehensive Land Claims Agreements (<https://buyandsell.gc.ca/policy-and-guidelines/supply-manual/section/9/35>).
- b. The contract is for the requirement competed as:
- i. **Installation and Configuration of Avaya CM G400 SOLUTION for CFB Borden O-215**
- c. **Client:** 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.
- d. **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.
- e. **Defined Terms:** Words and expressions defined in the General Conditions or Supplemental General Conditions or Annex A Statement of Work and used in the Contract have the meanings given to them in the General Conditions or Supplemental General Conditions or Annex A Statement of Work. Also, the following words and expressions have the following meanings: any reference to a "**deliverable**" or "**deliverables**" includes the Hardware, the license to use the Licensed Software (the Licensed Software itself is not a deliverable, because the Licensed Software is only being licensed under the Contract, not sold or transferred) and the Leased Hardware.
- "Product"** means any hardware that operates at the data link layer of the OSI (Open Systems Interconnection) Model (layer 2) and above, any software and Workplace Technology Devices.
- "Workplace Technology Devices"** means desktops, mobile workstations such as laptops and tablets, smartphones, phones, and peripherals and accessories such as monitors, keyboards, computer mouse, audio devices and external and internal storage devices such as USB flash drives, memory cards, external hard drives and writable CD or DVD.
- "Canada's Data"** means any data originating from the Work, any data received in contribution to the Work or that is generated as a result of the delivery of security, configuration, operations, administration and management services, and any data that is transported or stored by the contractor or any subcontractor as a result of performing the Work.
- "Work"** means all the activities, services, goods, equipment, matters and things required to be done, delivered or performed by the Contractor under the resulting contract.

Federal Government Work Day (FGWD): means a regular work day, Monday to Friday with work hours between 8:00 am to 5:00 pm. Not including Statutory Holidays or Civic Holidays.

2. 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 (<http://buyandsell.gc.ca/policy-and-guidelines/standard-acquisition-clauses-and-conditions-manual>) issued by Public Works and Government Services Canada. All references contained within the General Conditions or Supplementary General Conditions to the Minister of Public Works and Government Services will be interpreted as a reference to the minister presiding over Shared Services Canada and all references to the Department of Public Works and Government Services will be interpreted as Shared Services Canada.

For purposes of this contract the PWGSC policies referenced within the Standard Acquisitions Clauses and Conditions Manual are adopted as SSC policies.

a. General Conditions:

- i. **2035 (2016-04-04), General Conditions - Higher Complexity - Services**, apply to and form part of the Contract. These General Conditions are amended as follows:

Section 2 of the General Conditions is amended as follows: delete "Pursuant to the *Department of Public Works and Government Services Act*, S.C. 1996, c.16"

- ii. **2030 (2016-04-04), General Conditions - Higher Complexity - Goods**, apply to and form part of the Contract. These General Conditions are amended as follows:

Section 2 of the General Conditions is amended as follows: delete "Pursuant to the *Department of Public Works and Government Services Act*, S.C. 1996, c.16"

b. Supplemental General Conditions:

The following Supplemental General Conditions:

- i. **4001 (2015-04-01), Supplemental General Conditions - Hardware Purchase, Lease and Maintenance:**
- ii. **4005 (2012-07-16), Supplemental General Conditions - Telecommunications Services and Products;**

apply to and form part of the Contract.

3. On-going Supply Chain Integrity Process

- a. Supply Chain Integrity Process: The Parties acknowledge that a Supply Chain Integrity Process assessment was a key component of the procurement process that resulted in the award of this Contract. In connection with that assessment process, Canada assessed the Contractor's Supply Chain Security Information (SCSI) without identifying any security concerns. The following SCSI was submitted:
 - i. an IT Product List;
 - ii. one or more network diagrams; and
 - iii. a list of subcontractors;
- b. This SCSI is included as Form 2A. The Parties also acknowledge that security is a critical consideration for Canada with respect to this Contract and that on-going assessment of SCSI will be required throughout the Contract Period. This Article governs that process.
- c. **Assessment of New SCSI:** During the Contract Period, the Contractor may need to modify the SCSI information contained in Form 2A. In that regard:

- i. The Contractor must revise its SCSI at least once every 30 calendar days to show all changes made, as well as all deletions and additions to the SCSI that affect the services under the Contract (including Products deployed by its subcontractors) during that period; the list must be marked to show the changes made during the applicable period. If no changes have been made during a 30 calendar day period, the Contractor must advise the Contracting Authority in writing that the existing list is unchanged. Changes made to the IT Product List must be accompanied with revised Network Diagram(s).
 - ii. The Contractor agrees that, during the Contract Period, it will periodically (at least once a year) provide the Contracting Authority with updates regarding upcoming new Products that it anticipates deploying in the Work (for example, as it develops its “technology roadmap” or similar plans). This will allow Canada to assess those Products in advance so that any security concerns can be identified prior to the Products being deployed in connection with the services being delivered under the Contract. Canada will endeavour to assess proposed new Products within 30 calendar days, although lengthier lists of Products may take additional time.
 - iii. Canada reserves the right to conduct a complete, independent security assessment of all new SCSI. The Contractor must, if requested by the Contracting Authority, provide any information that Canada requires to perform its assessment.
 - iv. Canada may use any government resources or consultants to conduct the assessment and may contact third parties to obtain further information. Canada may use any information, whether it is provided by the Contractor or comes from another source, that Canada considers advisable to conduct a comprehensive assessment of any proposed new SCSI.
- d. Identification of New Security Vulnerabilities in SCSI already assessed by Canada:**
- i. The Contractor must provide to Canada timely information about any vulnerabilities of which it becomes aware in performing the Work, including any weakness, or design deficiency, identified in any Product used to deliver services that would allow an unauthorized individual to compromise the integrity, confidentiality, access controls, availability, consistency or audit mechanism of the system or the data and applications it hosts.
 - ii. The Contractor acknowledges that the nature of information technology is such that new vulnerabilities, including security vulnerabilities, are constantly being identified and, that being the case, new security vulnerabilities may be identified in SCSI that have already been the subject of an SCSI assessment and assessed without security concerns by Canada, either during the procurement process or later during the Contract Period.
- e. Addressing Security Concerns:**
- i. If Canada notifies the Contractor of security concerns regarding a Product that has not yet been deployed, the Contractor agrees not to deploy it in connection with this Contract without the consent of the Contracting Authority.
 - ii. At any time during the Contract Period, if Canada notifies the Contractor that, in Canada’s opinion, there is a Product that is being used in the Contractor’s solution (including use by a subcontractor) that has been assessed as having the potential to compromise or be used to compromise the security of Canada’s equipment, firmware, software, systems or information, then the Contractor must:
 - A. provide Canada with any further information requested by the Contracting Authority so that Canada may perform a complete assessment;
 - B. if requested by the Contracting Authority, propose a mitigation plan (including a schedule), within 10 business days, such as migration to an alternative product. The Contracting Authority will notify the Contractor in writing if Canada approves the mitigation plan, or will otherwise provide comments about concerns or deficiencies with the mitigation plan; and
 - C. implement the mitigation plan approved by Canada.

- iii. This process applies both to new Products and to Products that were already assessed pursuant to the Supply Chain Integrity Process assessment by Canada, but for which new security vulnerabilities have since been identified.
 - iv. Despite the previous Sub-article, if Canada determines in its discretion that the identified security concern represents a threat to national security that is both serious and imminent, the Contracting Authority may require that the Contractor immediately cease deploying the identified Product(s) in the Work. For Products that have already been deployed, the Contractor must identify and/or remove (as required by the Contracting Authority) the Product(s) from the Work according to a schedule determined by Canada. However, prior to making a final determination in this regard, Canada will provide the Contractor with the opportunity to make representations within 48 hours of receiving notice from the Contracting Authority. The Contractor may propose, for example, mitigation measures for Canada's consideration. Canada will then make a final determination.
- f. **Cost Implications:**
- i. Any cost implications related to a demand by Canada to cease deploying or to remove a particular Product or Products will be considered and negotiated in good faith by the Parties on a case-by-case basis and may be the subject of a Contract Amendment, However, despite any such negotiations, the Contractor must cease deploying and/or remove the Product(s) as required by Canada. The negotiations will then continue separately. The Parties agree that, at a minimum, the following factors will be considered in their negotiations, as applicable:
 - ii. with respect to Products already assessed without security concerns by Canada pursuant to an SCSi assessment, evidence from the Contractor of how long it has owned the Product;
 - iii. with respect to new Products, whether or not the Contractor was reasonably able to provide advance notice to Canada regarding the use of the new Product in connection with the Work;
 - iv. evidence from the Contractor of how much it paid for the Product, together with any amount that the Contractor has pre-paid or committed to pay with respect to maintenance and support of that Product;
 - v. the normal useful life of the Product;
 - vi. any "end of life" or other announcements from the manufacturer of the Product indicating that the Product is or will no longer be supported;
 - vii. the normal useful life of the proposed replacement Product;
 - viii. the time remaining in the Contract Period;
 - ix. whether or not the existing Product or the replacement Product is or will be used exclusively for Canada or whether the Product is also used to provide services to other customers of the Contractor or its subcontractors;
 - x. whether or not the Product being replaced can be redeployed to other customers;
 - xi. any training required for Contractor personnel with respect to the installation, configuration and maintenance of the replacement Products, provided the Contractor can demonstrate that its personnel would not otherwise require that training;
 - xii. any developments costs required for the Contractor to integrate the replacement Products into the Service Portal, operations, administration and management systems, if the replacement Products are products not otherwise deployed anywhere in connection with the Work; and
 - xiii. the impact of the change on Canada, including the number and type of resources required and the time involved in the migration.
 - g. Additionally, if requested by the Contracting Authority, the Contractor must submit a detailed cost breakdown, once any work to address a security concern identified under this Article has been completed. The cost breakdown must contain an itemized list of all applicable cost elements related to the work required by the Contracting Authority and must be signed and certified as

accurate by the Contractor's most senior financial officer, unless stated otherwise in writing by the Contracting Authority. Canada must consider the supporting information to be sufficiently detailed for each cost element to allow for a complete audit. In no case will any reimbursement of any expenses of the Contractor (or any of its subcontractors) exceed the demonstrated out-of-pocket expenses directly attributable to Canada's requirement to cease deploying or to remove a particular Product or Products.

- h. Despite the other provisions of this Article, if the Contractor or any of its subcontractors deploys new Products that Canada has already indicated to the Contractor are the subject of security concerns in the context of the Work, Canada may require that the Contractor or any of its subcontractors immediately cease deploying or remove that Product. In such cases, any costs associated with complying with Canada's requirement will be borne by the Contractor and/or subcontractor, as negotiated between them. Canada will not be responsible for any such costs.
- i. **General:**
- i. The process described in this Article may apply to a single Product, to a set of Products, or to all Products manufactured or distributed by a particular supplier.
 - ii. The process described in this Article also applies to subcontractors. With respect to cost implications, Canada acknowledges that the cost considerations with respect to concerns about subcontractors (as opposed to products) may be different and may include factors such as the availability of other subcontractors to complete the work.
 - iii. If the Contractor becomes aware that any subcontractor is deploying Products subject to security concerns in relation to the Work, the Contractor must immediately notify both the Contracting Authority and the Technical Authority and the Contractor must enforce the terms of its contract with its subcontractor. The Contractor acknowledges its obligations pursuant to General Conditions 2035, Subsection 8(3).

Any determination made by Canada will constitute a decision with respect to a specific Product or subcontractor and its proposed use under this Contract, and does not mean that the same Product or subcontractor would necessarily be assessed in the same way if proposed to be used for another purpose or in another context.

4. Change of Control

- a. At any time during the Contract Period, if requested by the Contracting Authority, the Contractor must provide to Canada:
- i. 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 entity if:
 - ii. they are "related persons" or "affiliated persons" according to the *Canada Income Tax Act*;
 - iii. 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
 - iv. 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.*
 - v. 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; with respect to any publicly traded corporation, Canada anticipates that the circumstances in which it would require a complete list of shareholders would be unusual and that any request from Canada for a list of a publicly traded corporation's shareholders would normally be limited to a list of those shareholders who hold at least 1% of the voting shares;

- vi. 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 any other information related to ownership and control that may be requested by Canada.

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.

- b. The Contractor must notify the Contracting Authority in writing of:
- i. any change of control in the Contractor itself;
 - ii. any change of control in any parent corporation or parent partnership of the Contractor, up to the ultimate owner; and
 - iii. 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).

The Contractor must provide this notice by no later than 10 FGWDs after any change of control takes place (or, in the case of a subcontractor, within 15 FGWDs after any change of control takes place). Where possible, Canada requests that the Contractor provide advance notice of any proposed change of control transaction.

- c. 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, encumbrance, 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.
- d. 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 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.
- e. 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 90 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 180 days of receiving the original notice from the Contractor regarding the change of control.

- f. 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.
- g. 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. However, in any such case, the notice requirements of this Article still apply.

5. Contract Period

- a. Contract Period: The “Contract Period” is the entire period of time during which the Contractor is obliged to perform the Work, which includes:
 - i. The “**Initial Contract Period**”, which begins on the date the Contract is awarded and ends one year later; and
 - ii. DND delivery location: “**To be Amended at time of Contract Award**”
- a) The Contract shall remain in place for the duration of the 12 months warranty period.

6. Authorities

- a. Contracting Authority

The Contracting Authority for the Contract is:

Name: **James Graves**

Title: Procurement Officer

Shared Services Canada

Procurement and Vendor Relationships

Networks, Email and Internal Services Procurement

Address: 180 Kent, Ottawa, ON, K1G4A8

Telephone: (613) 668-9563

E-mail address: james.graves2@canada.ca

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.

- b. Technical Authority

The Technical Authority for the Contract is:

Name:

Title:

Telephone:

E-mail address:

The Technical Authority is responsible for all matters concerning the technical content of the Work under the Contract. Technical matters may be discussed with the Technical Authority; however, the Technical 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.

c. Contractor's Representative:

Name:

Title:

Address:

Telephone:

Facsimile:

E-mail address:

7. 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.

8. Paymenta. **Basis of Payment**

- i. **Hardware:** For the purchase of Hardware, in accordance with the Contract, Canada will pay the Contractor the firm price(s) set out in Annex A, DDP destination, including all customs duties, Applicable Taxes extra.

Estimated Cost: _____ CAD

GST/HST: (ON 13%) Estimated Cost: _____ CAD

- ii. **Professional Services / Installation and Configuration of Telecom Equipment:** For the labour associated with the Installation of the Telecom Equipment, in accordance with the Contract, Canada will pay the Contractor the firm price(s) set out in Annex B, DDP Destination, including all customs duties, Applicable Taxes extra: **"To be Amended at time of Contract Award"**

Estimated Cost: _____ CAD

GST/HST: (ON 13%) Estimated Cost: _____ CAD

- iii. **Competitive Award:** 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.
- iv. **Professional Services Rates:** In Canada's experience, bidders from time to time propose rates at the time of bidding for one or more categories of resources that they later refuse to honour, on the basis that these rates do not allow them to recover their own costs and/or make a profit. This denies Canada of the benefit of the awarded contract. If the Contractor does not respond or refuses to provide an individual with the qualifications described in the Contract within the time described in the Contract (or proposes instead to provide someone from an alternate category at a different rate), whether or not Canada terminates the Contract as a whole or in part or chooses to exercise any of the rights provided to it under the general conditions, Canada may impose sanctions which measures may include an assessment that results in conditions applied against the Contractor to be fulfilled before doing further business with Canada, or full debarment of the Contractor from bidding on future requirements.

- v. **Purpose of Estimates:** All estimated costs contained in the Contract are included solely for the administrative purposes of Canada and do not represent a commitment on the part of Canada to purchase goods or services in these amounts. Any commitment to purchase specific amounts or values of goods or services is described elsewhere in the Contract.
- b. **Limitation of Expenditure**
- i. Canada's total liability to the Contractor under the Contract must not exceed the amount set out on page 1 of the Contract, less any Applicable Taxes. With respect to the amount set out on page 1 of the Contract, Customs duties are excluded and Applicable Taxes are included, if applicable. Any commitments to purchase specific amounts or values of goods or services are described elsewhere in the Contract.
- ii. No increase in the total liability of Canada or in the price of the Work resulting from any design changes, modifications or interpretations of the Work, will be authorized or paid to the Contractor unless these design changes, modifications or interpretations have been approved, in writing, by the Contracting Authority before their incorporation into the Work. The Contractor must not perform any work or provide any service that would result in Canada's total liability being exceeded before obtaining the written approval of the Contracting Authority. The Contractor must notify the Contracting Authority in writing as to the adequacy of this sum when:
- A. it is 75 percent committed, or**
- B. 4 months before the Contract expiry date, or**
- C. as soon as the Contractor considers that the contract funds provided are inadequate for the completion of the Work,**
- whichever comes first.
- iii. If the notification is for inadequate contract funds, the Contractor must provide to the Contracting Authority a written estimate for the additional funds required. Providing this information does not increase Canada's liability.
- iv. Canada will not pay the Contractor for any design changes, modifications or interpretations of the Work unless they have been approved, in writing, by the Contracting Authority before their incorporation into the Work.
- c. **Method of Payment – Single Payment**
- i. H1000C (2008-05-12), Single Payment
- 9. Invoicing Instructions**
- a. The Contractor must submit invoices in accordance with the information required in the General Conditions.
- b. The Contractor's invoice must include a separate line item for each subparagraph in the Basis of Payment provision.
- c. By submitting invoices, the Contractor is certifying that the goods and services have been delivered and that all charges are in accordance with the Basis of Payment provision of the Contract, Annex B Pricing and the Invoicing section of the Annex A Statement of Work, including any charges for work performed by subcontractors.
- d. 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.
- 10. Procure to Payment (P2P) System**

- a. As of July 1, 2016, SSC has launched a new portal that provides Shared Services Canada with e functionality from procurement through payment (the "**P2P system**"). SSC's suppliers are required to interface with that functionality.
- b. Suppliers can register for portal access. Visit the [P2P Portal](#) or email us @ SSC.p2p-apl.SPC@canada.ca

16. Certifications

- a. Compliance with the certifications provided by the Contractor in its bid is a condition of the Contract and subject to verification by Canada during the entire Contract Period. If the Contractor does not comply with any certification or it is determined that any certification made by the Contractor in its bid is untrue, whether made knowingly or unknowingly, Canada has the right, under the default provision of the Contract, to terminate the Contract for default.
- b. **Federal Contractors Program for Employment Equity – Default by the Contractor**
 - a. The Contractor understands and agrees that, when an Agreement to Implement Employment Equity (AIEE) exists between the Contractor and HRSDC-Labour, the AIEE must remain valid during the entire period of the Contract. 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 HRSDC will constitute the Contractor in default as per the terms of the Contract.

17. Applicable Laws

The Contract must be interpreted and governed, and the relations between the parties determined, by the laws in force in Ontario.

18. Priority of Documents

If there is a discrepancy between the wording of any documents that appear on the following list, the wording of the document that first appears on the list has priority over the wording of any document that appears later on the list:

- a. Section 02 of Supplemental General Conditions 4005 (Telecommunications Services and Products) entitled "Termination Rights Associated with Breach of Telecommunications Warranties and Representations";
- b. these Articles of Agreement, including any individual SACC clauses incorporated by reference in these Articles of Agreement;
- c. supplemental general conditions, in the following order:
- d. 4001(2015-04-01); Supplemental General Conditions - Hardware Purchase, Lease and Maintenance
- e. 4003(2010-08-16); Supplemental General Conditions - Licensed Software
- f. 4004(2010-08-16); Supplemental General Conditions - Maintenance and Support Services for Licensed Software
- g. 4005(2012-07-16); Supplemental General Conditions - Telecommunications Services and Products
- h. General Conditions 2035 (2016-04-04), General Conditions - Higher Complexity – Services;
- i. 2030 (2016-04-04), General Conditions - Higher Complexity - Goods,
- j. Annex A, Statement of Work;
- k. Annex B, Pricing Sheet

- l. the Contractor's bid dated _____, as amended, not including any software publisher license terms and conditions that may be included in the bid, not including any provisions in the bid with respect to limitations on liability, and not including any terms and conditions incorporated by reference (including by way of a web link) in the bid.
- m. Form 1 – OEM Certification
- n. Form 2 – Integrity Form
- o. Form 2A – Supply Chain Security Information
- p. Form 3 – Substantiation of Technical Compliance Form

19. Dispute Resolution

- a. Any dispute concerning this Contract that cannot be resolved by discussions or written communications between the Contracting Authority and the Contractor's Contract Program Manager within 20 Working Days will be handled as follows:
 - i. After the 20-working day period, either Party may give notice to the other containing a request to negotiate, which must contain a description of the nature of the dispute, any relevant background details, and refer to specific articles of the Contract that relate to the dispute. The Party receiving the request to negotiate must provide the request to negotiate to:
 - A. In the case of the GoC, to a Senior Director; and
 - B. In the case of the Contractor, to _____ [to be completed on Contract award], an individual who is not involved in the day-to-day administration of the Contract and is someone who corresponds to the Senior Director level within the Contractor's organization.
 - b. Within 10 Working Days of receiving a request to negotiate, the receiving Party must respond in writing with its position regarding the nature of the dispute, any additional relevant details and any additional articles of the Contract that Party considers relevant to the dispute. The Party receiving this response must provide the response to:
 - i. In the case of the GoC, to a Senior Director; and
 - ii. In the case of the Contractor, to _____ [to be completed on Contract award], an individual not involved in the day-to-day administration of the Contract and who corresponds to the Senior Director level within the Contractor's organization.
 - c. If the dispute is not resolved within 10 Federal Government Working Days of the response being provided, the Parties agree to refer the matter to the following individuals, depending on the nature of the dispute:
 - i. If the dispute concerns a financial matter not exceeding \$5M or the delivery of goods and services for which payment would not exceed \$5M:
 - A. In the case of the GoC, to a Director General; and
 - B. In the case of the Contractor, to _____ [to be completed on Contract award], an individual who is not involved in the day-to-day administration of the Contract and who corresponds to the Director General level within the Contractor's organization,
 - ii. For all other matters,
 - A. In the case of the GoC, to an Assistant Deputy Minister; and
 - B. In the case of the Contractor, to _____ [to be completed on Contract award], an individual not involved in day-to-day administration of the Contract and who corresponds to the Assistant Deputy Minister level within the Contractor's organization.

- d. The Parties agree that negotiations will begin between these individuals within 10 Working Days. However, negotiations need not necessarily take place in the form of a face-to-face meeting.
- e. Either Party may choose to bring the dispute to a more senior individual in its own organization at any time.
- f. If the dispute is not resolved through these negotiations within a total of 60 Working Days (including all of the above steps), the Parties agree to consider referring the matter to more senior officials in their respective organizations and/or to consider other appropriate dispute resolution processes before resorting to litigation.
- g. All information exchanged during these negotiations or other dispute resolution processes will be regarded as "without prejudice" communications for the purpose of settlement negotiations and will be treated as confidential by the Parties and their representatives, unless otherwise required by law. However, evidence that is independently admissible or discoverable will not be rendered inadmissible or non-discoverable by virtue of its use during the negotiations or other alternate dispute resolution process.
- h. A Contract dispute is defined as any disagreement that cannot be resolved at a contract management review meeting.

20. Insurance Requirements

- a. SACC Manual clause G1005C (2008-05-12) Insurance Requirements applies: The Contractor is responsible for deciding if insurance coverage is necessary to fulfill its obligation under the Contract and to ensure compliance with any applicable law. Any insurance acquired or maintained by the Contractor is at its own expense and for its own benefit and protection. It does not release the Contractor from or reduce its liability under the Contract.

21. Limitation of Liability – Telecom Services (Voice)

- a. This section applies despite any other provision of the Contract and replaced the section of the general condition entitled "Liability". Any reference in this section to damages caused by the Contractor also includes damages caused by its employees, as well as its subcontractors, agents, and representatives, and any of their employees. This section applies regardless of whether the claim is based in contract, tort, or another cause of action. The Contractor is not liable to Canada with respect to the performance of or failure to perform the Contract, except as described in this section and in any section of the Contract pre-establishing any liquidated damages. The Contractor is only liable for indirect, special or consequential damages to the extent describes in this Articles, even if it has been made aware of the potential for this damages.
- b. **First Party Liability:**
 - i. The Contractor is fully liable for all damages to Canada, including indirect, special or consequential damages, caused by the Contractor's performance or failure to perform the Contract that relate to:
 - A. any infringement of intellectual property rights to the extent the Contractor breaches the section of the General Conditions entitled "Intellectual Property Infringement and Royalties";
 - B. physical injury, including death.
 - ii. The Contractor is liable for all direct damages affecting real or tangible personal property owned, possessed, or occupied by Canada.
 - iii. Each of the Parties is liable for all direct damages resulting from its breach of confidentiality under the Contract. Each of the Parties is also liable for all indirect, special or consequential damages in respect of its unauthorized disclosure of the other Party's trade secrets (or trade secrets of a third party provided by one Party to another under the Contract) relating to information technology.

- iv. The Contractor is liable for all direct damages relating to any encumbrance or claim relating to any portion of the Work for which Canada has made any payment. This does not apply to encumbrances or claims relating to intellectual property rights, which are addressed under subparagraph (a) above.
- v. The Contractor is also liable for any other direct damages to Canada caused by the Contractor in any way relating to the Contract including:
 - A. any breach of the warranty obligations under the Contract, up to the total amount paid by Canada (including any applicable taxes) for the goods and services affected by the breach of warranty; and
 - B. any other direct damages, including all identifiable direct costs to Canada associated with re-procuring the Work from another party if the Contract is terminated by Canada either in whole or in part for default, up to an aggregate maximum for this subparagraph 2.5.2 of the greater of 0.25 times the total estimated cost (meaning the dollar amount shown on the first page of the Contract in the cell titled "Total Estimated Cost" or shown on each call-up, purchase order or other document used to order goods or services under this instrument), or \$ 2 Million.
 - C. In any case, the total liability of the Contractor under subparagraph (e) will not exceed the total estimated cost (as defined above) for the Contract or \$ 2 Million, whichever is more.
- vi. If Canada's records or data are harmed as a result of the Contractor's negligence or willful act, the Contractor's only liability is, at the Contractor's own expense, to restore Canada's records and data using the most recent back-up kept by Canada. Canada is responsible for maintaining an adequate back-up of its records and data.
- c. **Third Party Claims:**
 - i. Regardless of whether a third party makes its claim against Canada or the Contractor, each Party agrees that it is liable for any damages that it causes to any third party in connection with the Contract as set out in a settlement agreement or as finally determined by a court of competent jurisdiction, where the court determines that the Parties are jointly and severally liable or that one Party is solely and directly liable to the third party. The amount of the liability will be the amount set out in the settlement agreement or determined by the court to have been the Party's portion of the damages to the third party. No settlement agreement is binding on a Party unless its authorized representative has approved the agreement in writing.
 - ii. If Canada is required, as a result of joint and several liability, to pay a third party in respect of damages caused by the Contractor, the Contractor must reimburse Canada by the amount finally determined by a court of competent jurisdiction to be the Contractor's portion of the damages to the third party. However, despite Sub-article Third Party Claims (a). with respect to special, indirect, and consequential damages of third parties covered by this Section, the Contractor is only liable for reimbursing Canada for the Contractor's portion of those damages that Canada is required by a court to pay to a third party as a result of joint and several liability that relate to the infringement of a third party's intellectual property rights; physical injury of a third party, including death; damages affecting a third party's real or tangible personal property; liens or encumbrances on any portion of the Work; or breach of confidentiality.
 - iii. The Parties are only liable to one another for damages to third parties to the extent described in this Sub-article Third Party Claims.

22. Extension of Existing Product Line

- a. During the Contract Period, if technological improvements have been made to the products available for purchase under the Contract, the Contractor may propose new products that are an extension of an existing product line or the "next generation" of an existing product line that meet

or exceed the specification(s) of existing products under the Contract, if the price for the new product does not exceed:

- A. the firm price (or ceiling price, if applicable) for the product originally offered in the Contractor's bid that resulted in the award of the Contract plus 5%;
 - B. the current published list price of the substitute product, minus any applicable Government discount; or
 - C. the price at which the substitute product is generally available for purchase,
- b. Whichever is the lowest.
 - c. The proposed new product may be subject to benchmark evaluation and the Contractor must pay for all costs associated with the benchmark evaluation (e.g., transportation, benchmark fee, etc.).
 - d. Whether or not to accept or reject a proposed new product is entirely within the discretion of Canada. If Canada does not accept a proposed new product that is proposed to replace an existing product, the Contractor must continue to deliver the original product. If accepted, the addition of the new product will be documented for the administrative purposes of Canada by a contract amendment, by adding the new product to the Contract.
 - e. No new products will be included in the Contract until one month after the Contract is awarded.
 - f. The proposed new product is also to the requirements of the clause entitled "Assessment of New Products".

23. Assessment of New Products

- a. At any time during the Contract Period, if the Contractor or any of its subcontractors intends to deploy new products (i.e., any hardware, software or firmware that was not on the IT Products List approved by Canada as part of the Supply Chain Security Information assessment during the procurement process), the Contractor must first obtain the written approval of the Technical Authority. This applies to new products to be deployed on Canada's network, on the Contractor's infrastructure or backbone that will be interconnected with Canada's network, or on a third party's infrastructure or backbone that will be interconnected with Canada's network. In all these cases, Canada reserves the right to conduct a complete, independent security assessment of the new products; the Contractor must, if requested by the Contracting Authority, provide any information that Canada requires to perform its assessment.
- b. Canada may use any government resources or consultants to conduct the assessment and may contact third parties to obtain further information. Canada may use any information, whether it is provided by the Contractor or comes from another source, that Canada considers advisable to conduct a comprehensive assessment of the proposed new product.
- c. Canada may in its discretion refuse consent with respect to any new product being deployed on its own network or on any network interconnected with Canada's network. Prior to doing so, Canada will provide the Contractor with the opportunity to make representations within 10 days of receiving notice from the Contracting Authority. The Contractor may propose, for example, mitigation measures for Canada's consideration. Canada will then make a final determination. Any determination made by Canada will constitute a decision with respect to the proposed product and its proposed use under this Contract, and does not mean that the same product would necessarily be assessed in the same way if proposed to be used for another purpose or in another context.

24. Telecommunications Services

- a. Service Evolution:
 - i. The Contractor agrees to advise the Technical Authority of all improvements that affect the Work, including technological, administrative, commercial or other types of improvements. The Contractor agrees to offer all improvements that it is offering to any other customer as

part of its standard services at no additional charge to Canada. Any other improvements must only be provided following approval in writing by the Contracting Authority. The price of these other service improvements will be negotiated on a case-by-case basis. These improvements may include, among other things, discounts resulting from aggregating certain services or discounted pricing for additional capacity.

- ii. The price of these other service improvements will be negotiated on a case-by-case basis (as set out in the Article entitled "Basis of Payment"), and will be reflected in a Contract Amendment. Any improvement resulting in a change to pricing will not be introduced to the Contract until at least 12 months after Canada accepts the Work performed during the Migration Readiness Stage.
- iii. Whether or not to accept or reject a proposed new Service extension is entirely within the discretion of Canada. If Canada does not accept a new Service that is proposed to extend a Service, the Contractor must continue to deliver the original Service as and when requested by Canada. If accepted, the extension of the new Service will be documented for the administrative purposes of Canada by contract amendment adding the new Service extension to the Contract as a Service available for purchase.
- iv. No new Service extension will be included in the Contract until one year after the Contract is awarded.

25. Professional Services - General

- a. The Contractor must provide professional services on request as specified in this Contract. All resources provided by the Contractor must meet the qualifications described in the Contract (including those relating to previous experience, professional designation, education, language proficiency and security clearance) and must be competent to provide the required services by any delivery dates described in the Contract.
- b. If the Contractor fails to deliver any deliverable (excluding delivery of an individual) or complete any task described in the Contract on time, in addition to any other rights or remedies available to Canada under the Contract or the law, Canada may notify the Contractor of the deficiency, in which case the Contractor must submit a written plan to the Technical Authority within ten working days detailing the actions that the Contractor will undertake to remedy the deficiency. The Contractor must prepare and implement the plan at its own expense.
- c. In General Conditions 2035, Section 08 titled "Replacement of Specific Individuals" is deleted and the following applies instead:
 - a. Replacement of Specific Individuals
 - i. If the Contractor is unable to provide the services of any specific individual identified in the Contract to perform the services, the Contractor must within five working days of the individual's departure or failure to commence Work (or, if Canada has requested the replacement, within ten working days of Canada's notice of the requirement for a replacement) provide to the Contracting Authority:
 - A. the name, qualifications and experience of a proposed replacement immediately available for Work; and
 - B. security information on the proposed replacement as specified by Canada, if applicable.

The replacement must have qualifications and experience that meet or exceed the score obtained for the original resource.
 - ii. Subject to an Excusable Delay, where Canada becomes aware that a specific individual identified under the Contract to provide the services has not been provided or is not performing, the Contracting Authority may elect to:
 - A. exercise Canada's rights or remedies under the Contract or at law, including terminating the Contract for default under the Section titled "Default of the Contractor", or

- B. assess the information provided under subparagraph 1 above or, if it has not yet been provided, require the Contractor propose a replacement to be rated by the Technical Authority. The replacement must have qualifications and experience that meets or exceeds those obtained for the original resource and be acceptable to Canada. Upon assessment of the replacement, Canada may accept the replacement, exercise the rights in subparagraph 2.1 above, or require another replacement in accordance with this sub article.
- 1.25.a.i.1 Where an Excusable Delay applies, Canada may require subparagraph 2.2 above instead of terminating under the "Excusable Delay" Article. An Excusable Delay does not include resource unavailability due to allocation of the resource to another Contract or project (including those for the Crown) being performed by the Contractor or any of its affiliates.
- iii. The Contractor must not, in any event, allow performance of the Work by unauthorized replacement persons. The Contracting Authority may order that a resource stop performing the Work. In such a case, the Contractor must immediately comply with the order. The fact that the Contracting Authority does not order that a resource stop performing the Work does not relieve the Contractor from its responsibility to meet the requirements of the Contract.
- iv. The obligations in this article apply despite any changes that Canada may have made to the Client's operating environment.

26. Safeguarding Electronic Media

- a. Before using them on Canada's equipment or sending them to Canada, the Contractor must use a regularly updated product to scan electronically all electronic media used to perform the Work for computer viruses and other coding intended to cause malfunctions. The Contractor must notify Canada if any electronic media used for the Work are found to contain computer viruses or other coding intended to cause malfunctions.
- b. If magnetically recorded information or documentation is damaged or lost while in the Contractor's care or at any time before it is delivered to Canada in accordance with the Contract, including accidental erasure, the Contractor must immediately replace it at its own expense.

27. Representations and Warranties

- a. The Contractor made statements regarding its experience and expertise in its bid that resulted in the award of the Contract and the issuance of SO's. The Contractor represents and warrants that all those statements are true and acknowledges that Canada relied on those statements in awarding the Contract and adding work to it through SO's. 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.

28. Access to Canada's Property and Facilities

- a. Canada's property, facilities, equipment, documentation, and personnel are not automatically available to the Contractor. If the Contractor would like access to any of these, it is responsible for making a request to the Technical Authority. Unless expressly stated in the Contract, Canada has no obligation to provide any of these to the Contractor. If Canada chooses, in its discretion, to make its property, facilities, equipment, documentation or personnel available to the Contractor to perform the Work, Canada may require an adjustment to the Basis of Payment and additional security requirements may apply.