

Annex D-1 - Proposed Resulting Contract Clauses

4.1.1 **SSC Standard Instructions1.0**

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

4.1.2.1 in Section 2, delete the words: "Pursuant to the Department of Public Works and Government Services Act, S.C. 1996, c.16";

4.1.2.2 in Subsection 6(1), delete the words "Except as provided in subsection 2" and capitalize the first word remaining in that sentence;

4.1.2.3 the text of Subsection 6(2) is deleted;

4.1.2.4 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";

4.1.3 **Supplemental General Conditions 4003 (2010-08-16) – Licensed Software**

4.1.4 **Supplemental General Conditions 4004 (2013-04-25) – Maintenance and Support Services for Licensed Software**

4.1.5 **Supplemental General Conditions 4006 (2010-08-16) – Contractor to Own Intellectual Property Rights in Foreground Information**

4.1.6 **Supplemental General Conditions 4007 (2010-08-16) – Canada to Own Intellectual Property Rights in Foreground Information**

4.1.7 **Limitation of Liability - Information Management/Information Technology N0000C (2013-04-25)**

1. This section applies despite any other provision of the Contract and replaces the section of the general conditions 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 described in this section, even if it has been made aware of the potential for those damages.
2. First Party Liability:
 - a. 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:
 - i. any infringement of intellectual property rights to the extent the Contractor breaches the section of the general conditions entitled "Intellectual Property Infringement and Royalties";
 - ii. physical injury, including death.

- b. The Contractor is liable for all direct damages caused by the Contractor's performance or failure to perform the Contract affecting real or tangible personal property owned, possessed, or occupied by Canada.
- c. 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.
- d. 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 (a) above.
- e. The Contractor is also liable for any other direct damages to Canada caused by the Contractor's performance or failure to perform the Contract that relate to:
 - i. any breach of the warranty obligations under the Contract, up to the total amount paid by Canada (including Applicable Taxes) for the goods and services affected by the breach of warranty; and
 - ii. 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 either in whole or in part for default, up to an aggregate maximum for this subparagraph (ii) 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 block 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 \$1,000,000.

In any case, the total liability of the Contractor under paragraph (e) will not exceed the total estimated cost (as defined above) for the Contract or \$ 1,000,000, whichever is more.

- f. 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.

3. Third Party Claims:

- a. 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.
- b. 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 paragraph (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.

- c. The Parties are only liable to one another for damages to third parties to the extent described in this paragraph 3.