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**Quebec**

**K1A 0S5**

**Bid Fax: (819) 997-9776**

**SOLICITATION AMENDMENT**

**MODIFICATION DE L'INVITATION**

The referenced document is hereby revised; unless otherwise indicated, all other terms and conditions of the Solicitation remain the same.

Ce document est par la présente révisé; sauf indication contraire, les modalités de l'invitation demeurent les mêmes.

**Comments - Commentaires**

**Vendor/Firm Name and Address**

**Raison sociale et adresse du fournisseur/de l'entrepreneur**

**Issuing Office - Bureau de distribution**

Mainframe & Business Software Procurement Division /  
Div des achats des ordi principaux et des logiciels de gestion

Terrasses de la Chaudière

4th Floor, 10 Wellington Street

4th etage, 10, rue Wellington

Gatineau

Quebec

K1A 0S5

<b>Title - Sujet</b> RFI - SaaS Method of Supply	
<b>Solicitation No. - N° de l'invitation</b> EN578-191593/C	<b>Amendment No. - N° modif.</b> 002
<b>Client Reference No. - N° de référence du client</b> 20191593	<b>Date</b> 2018-11-27
<b>GETS Reference No. - N° de référence de SEAG</b> PW-\$EEM-039-34003	
<b>File No. - N° de dossier</b> 039eem.EN578-191593	<b>CCC No./N° CCC - FMS No./N° VME</b>
<b>Solicitation Closes - L'invitation prend fin at - à 02:00 PM on - le 2018-12-17</b>	<b>Time Zone</b> Fuseau horaire Eastern Standard Time EST
<b>F.O.B. - F.A.B.</b> <b>Plant-Usine:</b> <input type="checkbox"/> <b>Destination:</b> <input type="checkbox"/> <b>Other-Autre:</b> <input type="checkbox"/>	
<b>Address Enquiries to: - Adresser toutes questions à:</b> Vincent Wong	<b>Buyer Id - Id de l'acheteur</b> 039eem
<b>Telephone No. - N° de téléphone</b> (819) 639-5603 ( )	<b>FAX No. - N° de FAX</b> (819) 953-3703
<b>Destination - of Goods, Services, and Construction:</b> <b>Destination - des biens, services et construction:</b>	

**Instructions: See Herein**

**Instructions: Voir aux présentes**

<b>Delivery Required - Livraison exigée</b>	<b>Delivery Offered - Livraison proposée</b>
<b>Vendor/Firm Name and Address</b> <b>Raison sociale et adresse du fournisseur/de l'entrepreneur</b>	
<b>Telephone No. - N° de téléphone</b> <b>Facsimile No. - N° de télécopieur</b>	
<b>Name and title of person authorized to sign on behalf of Vendor/Firm (type or print)</b> <b>Nom et titre de la personne autorisée à signer au nom du fournisseur/de l'entrepreneur (taper ou écrire en caractères d'imprimerie)</b>	
<b>Signature</b>	<b>Date</b>

Contract No. - N° du contrat  
EN578-191593/C

Amd. No. - N° de la modif.  
002

Buyer ID - Id de l'acheteur  
039eem

Client Ref. No. - N° de réf. du client

File No. - N° du dossier

CCC No./N° CCC - FMS No./N° VME

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This Amendment 002 is raised to amend and incorporate the following information into Solicitation No. EN578-191593/C:

**1. Under Section “6.1 Closing date for the RFI”:**

**DELETE:** “Responses to this RFI are to be submitted to the PSPC Contracting Authority identified above, on or before December 3, 2018.”

**REPLACE WITH:** “Responses to this RFI are to be submitted to the PSPC Contracting Authority identified above, on or before December 17, 2018.”

**2. Draft Resulting Contract Terms for Comment:**

The draft resulting contract terms attached to this Amendment 002 were developed as part of PSPC’s Contract Simplification Initiative and are provided for comment. These terms are based on the simplified terms used in the recent PSPC Artificial Intelligence procurement process (EN578-180001/A).

As part of this RFI consultation and engagement process, PSPC appreciates feedback and suggestions from industry on these terms for use in SaaS requirements as well as any improvements or additions to them.

Canada reserves the right to define the terms and conditions of any contract awarded under the proposed Supply Arrangement following industry consultations.

**ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.**

Contract No. - N° du contrat  
EN578-191593/C

Amd. No. - N° de la modif.  
002

Buyer ID - Id de l'acheteur  
039eem

Client Ref. No. - N° de réf. du client

File No. - N° du dossier

CCC No./N° CCC - FMS No./N° VME

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**DRAFT - Software-as-a-Service Resulting Contract Clauses**

November 2018

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This Contract is made on [CONTRACT DATE] between [CONTRACTOR NAME] (the "Contractor") and [GOVERNMENT OF CANADA ENTITY] ("Canada").

## 1. License Grant

**1.1. License Grant.** The Contractor hereby grants to Canada, including to all Canada's Users, a non-exclusive, non-sublicensable, non-assignable, royalty-free, and worldwide license to access and use the [DESCRIPTION OF SaaS SERVICE] (the "Software").

**1.2. Right to Transfer.** Canada may transfer license rights, within the license limits of the Software to any Canadian government department, corporation, or agency as defined in the *Financial Administration Act*, R.S.C. 1985, c. F-11, as amended from time to time, or to any other party for which the Department of Public Works and Government Services Canada has been authorized to act under section 16 of the *Department of Public Works and Government Services Act*, S.C. 1996, c. 16, provided the Contracting Authority informs the Contractor in writing of the transfer within 30 calendar days of the transfer.

**1.3. Right to License.** The Contractor guarantees (a) it has the right to grant the rights in this Contract, (b) it has all necessary consents, and (c) this Contract contains the only terms between the parties with respect to the Software.

**1.4. "Shrink-Wrap" or "Click-Wrap" Conditions.** The Contractor agrees that 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 the Software or conditions that may accompany the Software or Work in any manner, regardless of any notification to the contrary.

### 1.5. Software Documentation

(a) The Contractor guarantees that the Software Documentation contains enough detail to permit a User to access, test and use all features of the Software.

(b) Canada has the right to translate the Software Documentation into English or French. Canada owns any translation and is under no obligation to provide it to the Contractor. Canada will include any copyright and/or proprietary right notice that was part of the original document in any translation. The Contractor is not responsible for technical errors that arise as a result of any translation made by Canada.

(c) The Contractor must maintain, update and provide Canada with access to the Software Documentation throughout the Contract Period. The Software Documentation

should reflect the most current release level consistent with the Software accessed under the Contract.

**1.6. Client.** The initial Client is [NAME OF CLIENT]. The Contracting Authority can add additional Clients from time to time, which may include any department or Crown corporation as described in the *Financial Administration Act* (as amended from time to time), and any other party for which the Department of Public Works and Government Services may be authorized to act from time to time under section 16 of the *Department of Public Works and Government Services Act*.

## **2. Work**

*(optional section to be used when professional services are required)*

**2.1. Professional Services.** The Contractor must perform and deliver to Canada such professional services as detailed in an attached Statement of Work (the Software and services are collectively the "Work").

**2.2. Conduct of the Work.** The Contractor represents and warrants that (a) it is competent to perform the Work, (b) it has everything necessary to perform the Work, including the resources, facilities, labour, technology, equipment, and materials; and (c) it has the necessary qualifications, including knowledge, skill, know-how and experience, to effectively perform the Work.

### **2.3. Subcontracts**

(a) **Conditions to Subcontracting.** The Contractor may subcontract the performance of the Work, provided (a) the Contractor obtains the Contracting Authority's prior written consent, (b) the subcontractor is bound by the terms of this Contract, and (c) the Contractor remains liable to Canada for all the Work performed by the subcontractor.

(b) **Exceptions to Subcontracting Consent.** The Contractor is not required to obtain consent for subcontracts specifically authorized in the Contract. The Contractor may also without the consent of the Contracting Authority: (i) purchase "off-the-shelf" items and any standard articles and materials that are ordinarily produced by manufacturers in the normal course of business (ii) subcontract any incidental services that would ordinarily be subcontracted in performing the Work; and (iii) permit its subcontractors at any tier to make purchases or subcontract as permitted in paragraphs (i) and (ii).

### **2.4. Personnel**

(a) **Key Personnel.** If specific individuals are identified in the Contract to perform the Work, the Contractor must provide the services of those individuals. If the Contractor is unable to provide the services of any specific individual identified in the Contract, it must provide a replacement with equivalent qualifications and experience and provide written notice to Canada giving (i) the reason for the replacement, (ii) the name and qualifications of the replacement individual, and (iii) proof that the proposed replacement has the required security clearance from Canada.

(b) **Request to Replace Key Personnel.** The Contracting Authority may order that a replacement stop performing the Work. In such a case, the Contractor must immediately comply with the order and secure a further replacement in accordance with terms of replacement of key personnel. The fact that the Contracting Authority does not order that a replacement stop performing the Work does not relieve the Contractor from its responsibility to meet the requirements of the Contract.

**2.5. 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.

### 3. Software Support Services

**3.1. Support Services.** The Contractor must provide the following support services (collectively the "Support Services").

(a) **Technical Support.** The Contractor must provide (i) telephone support in English and French available during business hours and (ii) web support available 24 hours a day, 365 days a year excepting maintenance downtime not to exceed 1% of the time.

(b) **Maintenance.** The Contractor must apply (i) all upgrades, updates, new releases, and other enhancements; (ii) all extensions and other modifications; (iii) all bug fixes and software patches; and (iv) all application program interfaces (APIs), plug-ins, and applets.

### 3.2. Error Resolution

(a) **Error Response.** Upon receipt of a report of a failure from Canada, unless provided otherwise in the Contract, the Contractor must use all reasonable efforts to provide Canada within the time frames established in this section, with a correction of the Software Error which caused the failure. All Software Error corrections will become part

of the Software and will be subject to the conditions of Canada's license with respect to the Software.

**(b) Error Resolution**

(i) **Severity 1:** In the event of total inability to use the Software, resulting in a critical impact on user objectives, then on notification by Canada to the Contractor, the Contractor must begin continuous work on the issue and provide reasonable effort for workaround or solution within 24 hours.

(ii) **Severity 2:** In the event that user operation of the Software is seriously restricted, the Contractor must work during normal business hours to provide reasonable effort for workaround or solution within 72 hours.

(iii) **Severity 3:** In the event that user operation of the Software is limited, but not critical to overall to overall user operations, the Contractor must work during normal business hours to provide reasonable effort for workaround or solution within 14 days.

(iv) **Severity 4:** In the event of all other issues affecting user operation of the Software, the Contractor must work during normal business hours to provide reasonable effort for workaround or solution within 90 days.

**4. Task Authorization (TA)**

*(optional section to be used when professional services are required)*

The Contractor's professional services performed under this Contract will be on an "as and when requested basis" using a Task Authorization.

**4.1. Form and Content of TA.** A TA will contain (a) Contract and TA number, (b) the details of the required activities and resources, (c) a description of the deliverables, (d) a schedule indicating completion dates for the major activities or submission dates for the deliverables, (e) security requirements, and (f) costs.

**4.2. Contractor's Response to TA.** The Contractor must provide to Canada, within the period specified in the TA, the proposed total price for performing the task and a breakdown of that cost, established in accordance with the fees. The Contractor will not be paid for preparing or providing its response or for providing other information required to prepare and validly issue the TA.

**4.3. TA Limit and Authorities for Validly Issuing TAs.** A validly issued TA must be signed by the appropriate Contracting Authority as set forth in this Contract. Any work

performed by the Contractor without receiving a validly issued TA is done at the Contractor's own risk.

**4.4. Periodic Usage Reports.** The Contractor must compile and maintain records on its provision of services to the federal government under the valid TAs issued under this Contract.

**4.5. Consolidation of TAs for Administrative Purposes.** This Contract may be amended from time to time to reflect all validly issued TAs to date, to document the Work performed under those TAs for administrative purposes.

## 5. Contract Period

**5.1. Initial Term.** This Contract begins on [EFFECTIVE DATE] and ends on [CONTRACT END DATE].

**5.2. Extended Term.** The Contractor grants to Canada the irrevocable option to extend the term of the Contract by up to [NUMBER OF EXTENSIONS] [NUMBER OF YEAR]-year period(s) under the same terms and conditions. The Contractor agrees that, during the extended period of the Contract, it will be paid in accordance with the applicable provisions set out in the Basis of Payment. Canada may exercise this option at any time by sending a written notice to the Contractor 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.

## 6. Basis of Payment

**6.1. Software Licence and Software Support.** For the license to use the Software (including the access, Warranty, Software Support Services and Software Documentation), all as detailed in the Contract, Canada will pay the Contractor the firm subscription price [of \$[SUBSCRIPTION / LICENCE FEE] / listed in [ATTACHMENT]] in accordance with Annex X, Basis of Payment, payable in advance, including all customs duties, Applicable Taxes extra.

**6.2. Professional Services provided under a Task Authorization.** For professional services requested by Canada, in accordance with a validly issued Task Authorization, Canada will pay the Contractor, in arrears, [up to the Maximum Price for the TA, for actual time worked and any resulting deliverables / the firm price set out in the Task Authorization] in accordance with the firm all-inclusive [hourly or per diem] rates set out in Annex X, Basis of Payment, Applicable Taxes extra.

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**6.3. On-Site Support Charges.** If approved in advance by Canada, the Contractor will be paid the hourly or daily labour rates specified in the Contract, together with reasonable and proper travel and living costs incurred by the Contractor in connection with on-site services. Any travel and living costs will only be reimbursed in accordance with the applicable meal and private vehicle allowances provided in the National Joint Council Travel Directive, as amended from time to time. All such pre-approved costs must be invoiced to Canada as a separate charge.

## **7. Payments**

### **7.1. Invoices**

(a) **Invoice Submission.** The Contractor must submit invoices for the Software License and Support Fee and delivery of any Work, if applicable.

(b) **Invoice Requirements.** Invoices must be submitted in the Contractor's name and contain:

(i) the date, the name and address of the client department, item or reference numbers, deliverable/description of the Work, contract number, Client Reference Number (CRN), Procurement Business Number (PBN), and financial code(s);

(ii) details of expenditures (such as item, quantity, unit of issue, unit price, fixed time labour rates and level of effort, subcontracts, as applicable) in accordance with the Basis of Payment, exclusive of Applicable Taxes;

(iii) Applicable Taxes must be shown as a separate line item along with corresponding registration numbers from the tax authorities and all items that are zero-rated, exempt or to which Applicable Taxes do not apply, must be identified as such on all invoices

(iii) deduction for holdback, if applicable; and

(iv) the extension of the totals, if applicable.

### **(c) Taxes**

(i) **Payment of Taxes.** Applicable Taxes will be paid by Canada as provided in the Invoice Submission section. It is the sole responsibility of the Contractor to charge Applicable Taxes at the correct rate in accordance with applicable legislation. The Contractor must remit to appropriate tax authorities any amounts of Applicable Taxes paid or due.

(ii) **Withholding for Non-Residents.** Canada must withhold 15 percent of the amount to be paid to the Contractor in respect of services provided in Canada if the Contractor is not a resident of Canada, unless the Contractor obtains a valid waiver from the Canada Revenue Agency. The amount withheld will be held on account for the Contractor in respect to any tax liability which may be owed to Canada.

(d) **Certification of Invoices.** By submitting an invoice, the Contractor certifies that the invoice is consistent with the Work delivered and is in accordance with the Contract.

**7.2. Payment Period.** Canada will pay the Contractor's undisputed invoice amount within 30 [CALENDAR / BUSINESS] days after receipt of invoice in acceptable form and content. In the event, an invoice is not in acceptable form and content, Canada will notify the Contractor within 15 days of receipt and the 30 day payment period will begin on receipt of a conforming invoice.

**7.3. Interest on Late Payments.** Canada will pay to the Contractor simple interest at the Average Rate plus 3 percent per year on any amount that is overdue, from the date that amount becomes overdue until the day before the date of payment, inclusive, provided Canada is responsible for the delay in paying the Contractor. Canada will not pay interest on overdue advance payments.

#### **7.4. Method of Payment**

(a) Canada will make the advance payment to the Contractor for the Software Licence and Software Support within 30 days after receiving a complete invoice (and any required substantiating documentation), or within 30 days of any date specified in the Contract for making that advance payment, whichever is later.

(b) If Canada disputes an invoice for any reason, Canada will pay the Contractor the undisputed portion of the invoice, as long as the undisputed items are separate line items on the invoice and owed. In the case of disputed invoices, the invoice will only be considered to have been received for the purposes of the section 7.3 once the dispute is resolved.

(c) The Contractor acknowledges that this is an advance payment and that, despite anything to the contrary in the Contract, Canada will perform acceptance procedures for the services only after the services have been performed, regardless of whether the payment has already been made. The Contractor agrees that any advance payments authorized and paid under the terms of the Contract are not considered acceptance of the services for which the payment is made. Also, payment in advance does not prevent Canada from exercising any or all potential remedies in relation to this payment or any of the Work, if the Work performed later proves to be unacceptable.

**7.5. Limitation of Expenditure.** 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.

**7.6. Right of Set-Off.** When making a payment to the Contractor, Canada may deduct any amount payable to Canada by the Contractor under this or any other current contract.

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

- (a) Visa Acquisition Card:
- (b) MasterCard Acquisition Card;
- (c) Direct Deposit (Domestic and International);
- (d) Electronic Data Interchange (EDI);
- (e) Wire Transfer (International Only);
- (f) Large Value Transfer System (LVTS) (Over \$25M)

#### **7.8. Financial Accounts and Audit**

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

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

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

information as the representatives of Canada may from time to time require to perform a complete audit of the Contract.

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

## 8. Warranty

8.1. **Professional Services Warranty.** The Contractor represents and warrants that (a) it is competent to perform the Work, (b) it has everything necessary to perform the Work, including the resources, facilities, labour, technology, equipment, and materials; and (c) it has the necessary qualifications, including knowledge, skill, know-how and experience, to effectively perform the Work.

8.2. **Performance Warranty.** During the term of the Contract, the Contractor warrants that,

(a) the Software will operate in accordance with the Software Documentation and the specifications,

(b) the Work will be performed in a professional manner in accordance with industry standards, and

(c) the Software Documentation will be free from all defects in materials and will conform with the requirements of this Contract.

### 8.3. Service Levels

(a) **Applicable Levels.** The Contractor will provide the Software to Canada with a Software Availability of at least [98]% during each calendar month.

(b) **Exceptions to Software Availability.** Software Availability will not include any minutes of downtime resulting from (i) scheduled Maintenance, (ii) events beyond the Contractor's control, and (iii) issues associated with Canada's computing devices or internet service provider connections.

(c) **Credits.** If the Service fails to meet the Software Availability, the Contractor must pay to Canada a [5]% refund credit for each full percentage point that the availability of

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the Software fails to meet Software Availability. At Canada's discretion, any such refund credits may be applied to future payments to the Contractor.

**8.4. No Infringement.** The Contractor warrants that nothing in the Software, or in Canada's use of the Software, will infringe or constitute a misappropriation of the intellectual property or other rights of a third party.

### 8.5. Remedies

(a) **Work.** If at any time during the Warranty Period the Work fails to meet its warranty obligations, the Contractor must as soon as possible correct at its own expense any errors or defects and make any necessary changes to the Work.

(b) **Documentation.** If at any time during the Warranty Period Canada discovers a defect or non-conformance in any part of the documentation, the Contractor must as soon as possible correct at its own expense the defect or non-conformance.

**8.6. Canada's Right to Remedy.** If the Contractor fails to fulfill any obligation described herein within a reasonable time of receiving a notice, Canada will have the right to remedy or to have remedied the defective or non-conforming Work at the Contractor's expense. If Canada does not wish to correct or replace the defective or non-conforming Work, an equitable reduction will be made in the Contract Price.

### 9. Restricted Uses

Canada will not knowingly

- (a) distribute, license, loan, or sell the Software,
- (b) impair or circumvent the Software's security mechanisms, or
- (c) remove, alter, or obscure any copyright, trademark, or other proprietary rights notice on or in the Software.

### 10. Confidentiality

**10.1. Definition of Confidential Information.** "Confidential Information" means all material, non-public information, written or oral, whether or not it is marked, that Canada discloses or makes available to the Contractor, directly or indirectly, through any means of communication or observation, including any information that is confidential or proprietary to third parties, and all information conceived, developed or produced by the Contractor as part of the Work when copyright or any other intellectual property rights in such information belongs to Canada under this Contract.

## 10.2. Contractor's Obligations

(a) **Confidentiality Obligation.** The Contractor will hold the Confidential Information in confidence.

(b) **Marking.** Wherever possible, the Contractor must mark or identify any Confidential Information delivered to Canada under this Contract as "Property of [CONTRACTOR'S NAME], permitted government uses defined under Public Works and Government Services (PWGSC) Contract No. [CONTRACT NUMBER]". Canada is not liable for any unauthorized use or disclosure of information that could have been so marked or identified and was not.

(c) **Use of Information.** The Contractor may only use the Confidential Information in accordance with the terms of this Contract and solely for providing the Software and Services.

(d) **Standard of Care.** The Contractor will exercise reasonable care to protect the Confidential Information from any loss or unauthorized disclosure.

(e) **Top-Secret Material** (*Optional subclause*). If this Contract, the Software, or any Confidential Information is identified as TOP SECRET, SECRET, CONFIDENTIAL, or PROTECTED by Canada:

(i) the Contractor must always take all measures reasonably necessary to safeguard the material so identified, including those set out in the Public Works and Government Services Canada (PWGSC) Industrial Security Manual and its supplements and any other instructions issued by Canada, and

(ii) representatives of Canada are entitled to inspect the Contractor's premises and the premises of a subcontractor at any tier for security purposes at any time during the term of the Contract. The Contractor must comply with, and ensure that any subcontractor complies with, all written instructions issued by Canada dealing with the material so identified (including any requirement that employees of the Contractor or of any subcontractor execute and deliver declarations relating to reliability screenings, security clearances, and other procedures).

(g) **Notification of Disclosure.** The Contractor must immediately notify Canada if it discovers any loss or unauthorized disclosure of Confidential Information.

(h) **Permitted Disclosure.** The Contractor may disclose Confidential Information (i) if and to the extent that Canada consents in writing to such disclosure, or (ii) to the Contractor's officers, directors, employees, affiliates, or representatives who (1) need-

to-know that Confidential Information in furtherance of the Contractor providing the Software, (2) have been informed of the confidentiality obligations of this Contract, and (3) agree to abide and be bound by the provisions this Contract.

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

**10.4. Non-Confidential Information.** The restrictions of this Contract on use and disclosure of Confidential Information will not apply to information that, without the breach of this Contract,

(a) is already known to the receiving party,

(b) is or becomes publicly known,

(c) is or subsequently comes into the possession of the receiving party from a third party, or

(d) is independently developed by the receiving party without the use of Confidential Information.

## **11. Data Protection**

11.1. 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.

11.2. The Contractor agrees to assist Canada, to the full extent it is permitted by law, in responding to access to information requests, investigating complaints, investigating regulatory or criminal matters and prosecutions related to the Services provided under the Contract. In the event Canada needs to conduct a security audits/inspections and/or review any additional information (e.g., documentation, data protection description, data

architecture and security descriptions), both Parties agree to negotiate a solution in good faith and consider both the rationale for Canada's request and the Contractor's processes and protocols.

**11.3. Loss of Data.** The Contractor agrees to notify Canada when either a breach of the Service's security or incident has occurred, or when the Contractor believes that a breach of the Service's security is imminent, in accordance with the Contractor's Commercially Available Incident Management processes and timelines, regardless of whether:

- (a) The breach has an adverse impact on Canada's Data; or
- (b) The breach has an adverse impact on the Contractor's obligations and Service Level Commitments.

11.4 If Canada's Data is lost or damaged as a result of a breach of the Service's security, the Contractor will:

- (a) assist Canada in restoring Canada's Data to the Service from the last available backup copy in compatible format;
- (b) investigate and report the data breaches in accordance with the Contractor's Commercially Available Incident Management processes ; and
- (c) inform Canada of the actions it is taking or will take to reduce the risk of further loss to Canada.

## 12. Personal Information

12.1. **Interpretation.** In this Contract, unless the context otherwise requires,

- (a) "Personal Information" means information about an individual, including the types of information specifically described in the *Privacy Act*, R.S.C. 1985, c. P-21, and
- (b) "Record" means any hardcopy document or any data in a machine-readable format containing Personal Information.

### 12.2. Collection of Personal Information

- (a) **Notification.** If the Contractor must collect Personal Information from a third party to perform the Service, the Contractor must only collect Personal Information that is required to do so. The Contractor must collect the Personal Information from the

individual to whom it relates and must inform that individual (at or before the time when it collects the Personal Information) of the following:

(i) that the Personal Information is being collected on behalf of, and will be provided to, Canada,

(ii) the ways the Personal Information will be used,

(iii) that the disclosure of the Personal Information is voluntary or, if there is a legal requirement to disclose the Personal Information, the basis of that legal requirement,

(iv) the consequences, if any, of refusing to provide the information,

(v) that the individual has a right to access and correct his or her own Personal Information, and

(vi) that the Personal Information will form part of a specific personal information bank (within the meaning of the *Privacy Act*), and also provide the individual with information about which government institution controls that personal information bank, if Canada has provided this information to the Contractor.

(b) **Identification.** The Contractor, its subcontractors, and their respective employees must (i) identify themselves to the individuals from whom they are collecting Personal Information, and (ii) provide those individuals with a way to verify that they are authorized to collect the Personal Information under a contract with Canada.

(c) **Consent.** If requested by Canada, the Contractor must develop a request-for-consent form to be used when collecting Personal Information, or a script for collecting the Personal Information by telephone. The Contractor must obtain Canada's approval before first either using such a form or script or making any changes. If, when requesting Personal Information from any individual, the Contractor doubts that the individual has the capacity to provide appropriate consent, the Contractor must ask Canada for instructions.

### 12.3. **Maintaining the Accuracy, Privacy, and Integrity of Personal Information.**

The Contractor must ensure that the Personal Information is as accurate, complete, and up-to-date as possible. The Contractor must protect the privacy of the Personal Information. To do so, at a minimum, the Contractor must

(a) not use any personal identifiers (for example, social insurance number) to link multiple databases containing Personal Information,

(b) segregate all Records from its own information and records,

(c) restrict access to the Personal Information and the Records to people who require access to perform the Service,

(d) provide training to anyone to whom the Contractor will provide access to the Personal Information regarding the obligation to keep it confidential and use it only to perform the Service The Contractor must provide this training before giving an individual access to any Personal Information and the Contractor must keep a record of the training and make it available to Canada if requested,

(e) if requested by Canada, before providing anyone with access to the Personal Information, require anyone to whom the Contractor provides access to the Personal Information to acknowledge in writing (in a form approved by Canada) their responsibilities to maintain the privacy of the Personal Information,

(f) keep a record of all requests made by an individual to review his or her Personal Information, and any requests to correct errors or omissions in the Personal Information (whether those requests are made directly by an individual or by Canada on behalf of an individual),

(g) include a notation on any Record(s) that an individual has requested be corrected if the Contractor has decided not to make the correction for any reason. Whenever this occurs, the Contractor must immediately advise Canada of the details of the requested correction and the reasons for its decision not to make it. If directed by Canada to make the correction, the Contractor must do so,

(h) keep a record of the date and source of the last update to each Record,

(i) maintain an audit log that electronically records all instances of and attempts to access Records stored electronically. The audit log must be in a format that can be reviewed by the Contractor and Canada at any time, and

(j) secure and control access to any hard-copy Records.

**12.4. Appointment of Privacy Officer.** The Contractor must appoint an individual to be its privacy officer and to act as its representative for all matters related to the Personal Information and the Records. The Contractor must provide that person's name to Canada within 10 days of the award of this Contract.

### **13. Data Use**

13.1. In providing the Software or delivering the Work, the Contractor's tools and systems used to provide the Software will generate, process and store Canada's Data.

The Parties agree that, when requested to provide Software to Canada, the Contractor may require access to Canada's Data.

13.2. The Contractor agrees that, under any other circumstance than those mentioned in 13.1, the Contractor is strictly prohibited from accessing Canada's Data, or permitting any third party (including a foreign government) to access Canada's Data, unless the Contractor has received written consent of the Contracting Authority or are required by law.

13.3. Canada agrees that it is solely responsible for the accuracy of the data it inputs into the Services and for intellectual property ownership or right to use all of Canada's Data.

#### **14. Data Retrieval and Destruction**

14.1. **Data Retrieval.** On Canada's request, the Contractor must deliver to Canada a full copy of the Canada Data, in a format the parties agree on in writing.

14.2. **Data Destruction.** On the expiration or termination of this Contract, or on Canada's request, the Contractor must (i) promptly destroy all Canada Data in its control, and (ii) if requested by Canada, deliver to Canada a certificate executed by the Contractor confirming compliance with the destruction obligation.

#### **15. Insurance**

15.1. **Insurance Requirements.** 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.

#### **16. Intellectual Property Ownership**

16.1. **Contractor Software.** Contractor retains all right in and to the Software.

16.2. **Work Delivered to Canada.** All Work delivered by the Contractor to Canada including all derivatives and cognitive insights shall be the property of Canada.

16.3. **Canada's Data.** Canada retains all rights to any of Canada's Data. Canada grants the Contractor a limited, revocable, non-exclusive, non-sublicensable, non-transferable license to host Canada's Data solely in accordance with the terms of this contract.

## 17. Certifications and Additional Information

**17.1. Compliance with Certifications.** Unless specified otherwise, the continuous compliance with the certifications provided by the Contractor in its bid or precedent to contract award, and the ongoing cooperation in providing additional information are conditions of the Contract and failure to comply will constitute the Contractor in default. Certifications are subject to verification by Canada during the entire period of the Contract.

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

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

**17.4. Federal Contractors Program for Employment Equity - Default by the Contractor (Optional subclause).** The Contractor understands and agrees that, when an Contract 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 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 ESDC will constitute the Contractor in default as per the terms of the Contract.

## 18. Suspension and Termination

### 18.1. Suspension of the Work

(a) **Right to Suspend Work.** The Contracting Authority may at any time, by written notice, order the Contractor to suspend or stop the Work or part of the Work under the Contract for a period of up to 180 days. The Contractor must immediately comply with any such order in a way that minimizes the cost of doing so. While such an order is in effect, the Contractor must not limit access to any part of the Work or Software without first obtaining the written consent of the Contracting Authority. Within these 180 days, the Contracting Authority must either cancel the order or terminate the Contract in accordance with the Termination terms of this Contract.

(b) **Effect of Suspension.** When an order is made to suspend the Work, the Contractor will be entitled to be paid its additional costs incurred as a result of the suspension plus

a fair and reasonable profit, unless the Contracting Authority terminates the Contract by reason of default by the Contractor or the Contractor abandons the Contract.

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

**18.2. Termination for Convenience.** Canada may terminate this Contract in whole or in part for any reason on notice to the other party. Once such a notice of termination for convenience is given, the Contractor must comply with the requirements of the termination notice. If the Contract is terminated in part only, the Contractor must proceed to complete any part of the Work that is not affected by the termination notice.

**18.3. Canada's Right to Termination on Default or upon Insolvency.** Canada may terminate this Contract with immediate effect by delivering notice of the termination to the other party, if (a) the Contractor fails to perform, has made or makes any inaccuracy in, or otherwise materially breaches, any of its obligations, covenants, or representations, and the failure, inaccuracy, or breach continues for a period of [BREACH CONTINUATION DAYS] Business Days' after the injured party delivers notice to the breaching party reasonably detailing the breach, or (b) the Contractor party becomes insolvent, bankrupt, or enters receivership, dissolution, or liquidation, the other party may terminate this agreement with immediate effect.

**18.4. Contractor Right to Terminate.** The Contractor may terminate Canada's license with respect to the Software by giving the Contracting Authority written notice to that effect if Canada is in breach of its license with respect to the Software or fails to pay for the license in accordance with the Contract, and if that breach continues for a period of thirty (30) days after the Contracting Authority receives written notice from the Contractor giving particulars of the breach.

## **19. Effect of Termination**

**19.1. No Further Payment.** If Canada terminates the Contract for default or insolvency, the Contractor will have no claim for further payment except as provided in this section.

### **19.2. Pay Outstanding Amounts**

(a) **Eligible Costs.** If Canada terminates the Contract for convenience, Canada shall pay to the Contractor costs that have been reasonably and properly incurred by the Contractor to perform the Contract plus a fair and reasonable profit as determined by PWGSC Supply Manual section 10.65 (<https://buyandsell.gc.ca/policy-and-guidelines/supply-manual/section/10/65>) Calculation of profit on negotiated contracts for any part of the Work commenced, but not completed, prior to the date of the termination notice;

(b) **Ineligible Costs.** The Contractor agrees that it is not entitled to: (i) any anticipated profit on any part of the Contract terminated; (ii) cost of severance payments or damages to employees whose services are no longer required, except wages that the Contractor is obligated by statute to pay; and (iii) damages, compensation and allowance resulting from the termination except to the extent that this section expressly provides.

19.3. **Refund Amounts.** The Contractor must promptly refund to Canada any amounts paid in advance covering the remainder of the term of this Contract after the effective date of termination.

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

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

(a) the value, of all completed parts of the Work delivered to and accepted by Canada, based on the Contract Price, including the proportionate part of the Contractor's profit or fee included in the Contract Price; and

(b) the cost to the Contractor that Canada considers fair and reasonable in, in accordance with subsection *Pay Outstanding Amounts herein*, in respect of anything else delivered to and accepted by Canada.

19.6 **Termination in Error.** If the Contract is terminated for default or insolvency, but it is later determined that grounds did not exist for a termination for default, the notice will be considered a notice of termination for convenience.

## 20. Indemnification

The Contractor must indemnify Canada against all losses and expenses (including reasonable attorneys' fees) arising out of any proceeding (i) brought by a third party, and (ii) arising out of a claim that the Software infringes the third party's Intellectual Property rights.

## 21. Limitation on Liability

21.1. Except as expressly provided in paragraph 21.2, the Contractor is liable to Canada for all direct damages it causes in performing or failing to perform the Contract in relation to:

- (a) the Contractor's acts or omissions under the Contract affecting real or tangible personal property owned, possessed or occupied by Canada;
- (b) the Contractor's breach of confidentiality obligations under the Contract, but such limitation does not apply to the disclosure by Contractor of the trade secrets of Canada or a third party related to information technology;
- (c) Liens or encumbrances relating to any portion of the Work under the Contract, not including claims or encumbrances relating to intellectual property rights; and
- (d) Contractor's breach of warranty obligations;

However, the Contractor is not liable to Canada for indirect, special or consequential damages caused by items (a) to (d) above.

21.2. With respect to all direct damages not listed above, including direct damages related to the Contractor's breach of warranty obligations, the Contractor's maximum liability to Canada is the total estimated cost of the Contract (meaning the dollar amount shown on the first page of the Contract in the block titled "Total Estimated Cost"). Within this maximum, all direct damages not listed above that do not relate to breach of warranty are subject to a maximum of X times the Total Estimated Cost (*the applicable IT commodity grouping will apply*).

21.3. 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.

21.4. None of the above limitations apply to damages based on loss of life or injury or claims based on infringement of intellectual property.

## 22. General Provisions

**22.1. Entire Contract.** This Contract is the entire and only Contract between the parties and supersedes all previous communications and agreements, whether written or oral. There are no terms, covenants, representations, statements or conditions binding on the Parties other than those contained in the Contract.

**22.2. Amendment.** Amendments to this Contract must be in writing and signed by the Contracting Authority and the authorized representative of the Contractor. While the Contractor may discuss any proposed modifications to the Work with other representatives of Canada, Canada will not be responsible for the cost of any modification unless it has been incorporated into the Contract as an Amendment.

**22.3. Assignment.** The Contractor may only assign this Contract if (a) the Contracting Authority agrees to the assignment in a signed writing and (b) the Contractor remains responsible for the assignee's performance.

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

**22.5. Applicable Laws.** This Contract will be interpreted and governed by the laws of [PROVINCE].

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

### 22.7. Excusable Delay

(a) **No Liability.** The Contractor will not be liable for performance delays nor for non-performance due to causes beyond its reasonable control that could not reasonably have been foreseen or prevented by means reasonably available to the Contractor, provided the Contractor advises the Contracting Authority of the occurrence of the delay or of the likelihood of the delay as soon as the Contractor becomes aware of it.

(b) **Notification of Circumstances.** The Contractor must also advise the Contracting Authority, within 15 working days, of all the circumstances relating to the delay and provide to the Contracting Authority for approval a clear work around plan explaining in

detail the steps that the Contractor proposes to take in order to minimize the impact of the event causing the delay.

(c) **Delivery and Due Dates.** Any delivery date or other date that is directly affected by an Excusable Delay will be postponed for a reasonable time that will not exceed the duration of the Excusable Delay.

(d) **Right to Terminate.** In the event such an event prevents performance thereunder for a period in excess of 30 calendar days, then the Contracting Authority may elect to terminate this Contract with the effect of a termination for default.

22.8. **Severability.** If any provision of this Contract is declared unenforceable by an authoritative court, the remainder of this Contract will remain in force.

22.9 **Successors and assigns.** The Contract is to the benefit of and binds the successors and permitted assignees of Canada and of the Contractor.

22.10. **Waiver.** The failure or neglect by a party to enforce any of rights under this Contract will not be deemed to be a waiver of that party's rights.

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

(a) The Contractor must provide representatives of Canada access to all locations where any part of the Work is being performed at any time during working hours.

(b) The Contractor must keep accurate and complete inspection records that must be made available to Canada on request for up to three years after the end of the Contract.

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

22.13. **Contingency Fees.** The Contractor certifies that it has not, directly or indirectly, paid or agreed to pay and agrees that it will not, directly or indirectly, pay a contingency fee for the solicitation, negotiation or obtaining of the Contract to any person, other than an employee of the Contractor acting in the normal course of the employee's duties. In this section, "contingency fee" means any payment or other compensation that depends

or is calculated based on a degree of success in soliciting, negotiating or obtaining the Contract and "person" includes any individual who is required to file a return with the registrar pursuant to section 5 of the [Lobbying Act](#), 1985, c. 44 (4th Supplement).

#### 22.14. **International Sanctions.**

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

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

(c) The Contractor must comply with changes to the regulations imposed during the period of the Contract. The Contractor must immediately advise Canada if it is unable to perform the Work as a result of the imposition of economic sanctions against a country or person or the addition of a good or service to the list of sanctioned goods or services. If the Parties cannot agree on a work around plan, the Contract will be terminated for the convenience of Canada in accordance with section 18.2.

**22.15. Integrity Provisions - Contract.** The *Ineligibility and Suspension Policy* (the "Policy") and all related Directives incorporated by reference into the bid solicitation on its closing date are incorporated into, and form a binding part of the Contract. The Contractor must comply with the provisions of the Policy and Directives, which can be found on Public Works and Government Services Canada's website at [Ineligibility and Suspension Policy](#).

**22.16. Code of Conduct for Procurement - Contract.** The Contractor agrees to comply with the [Code of Conduct for Procurement](#) and to be bound by its terms for the period of the Contract.

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

#### 22.18. **Authorities**

##### ***Contracting Authority***

Contract No. - N° du contrat  
EN578-191593/C

Amd. No. - N° de la modif.  
002

Buyer ID - Id de l'acheteur  
039eem

Client Ref. No. - N° de réf. du client

File No. - N° du dossier

CCC No./N° CCC - FMS No./N° VME

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The Contracting Authority for the Contract is:

Name:

Title:

Organization:

Address:

Telephone:

E-mail address:

The Contracting Authority must receive a copy of the Invoice for Canada's record and review.

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.

### ***Technical Authority***

The Technical Authority for the Contract is:

Name:

Title:

Organization:

Address:

Telephone:

Facsimile:

E-mail address:

The Technical 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 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.

### ***Client Administrative Contact***

The Client Administrative Contact is:

Contract No. - N° du contrat  
EN578-191593/C

Amd. No. - N° de la modif.  
002

Buyer ID - Id de l'acheteur  
039eem

Client Ref. No. - N° de réf. du client

File No. - N° du dossier

CCC No./N° CCC - FMS No./N° VME

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Name:

Title:

Organization:

Address:

Telephone:

Facsimile:

E-mail address:

The Client Administrative Contact must receive the original Invoice. All inquiries for request for payment must be made to the Client Administrative Contact.

***Contractor's Representative***

The Contractor's Representative is:

Name:

Title:

Telephone:

Facsimile:

E-mail address:

This Contract has been executed by the parties.

[CONTRACTOR NAME]

[CONTRACTING AUTHORITY]]

By:

By:

Name:

Name:

Title:

Title:

## **ANNEX A - DEFINITIONS AND INTERPRETATIONS**

In this Contract, unless the context otherwise requires, the following terms shall have the following meanings:

“Applicable Taxes” means the Goods and Services Tax (GST), the Harmonized Sales Tax (HST), and any provincial tax, by law, payable by Canada such as, the Quebec Sales Tax (QST) as of April 1, 2013.

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

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

“Canada”, “Crown”, “Her Majesty” or “the Government” means Her Majesty the Queen in right of Canada as represented by the Minister of Public Works and Government Services and any other person duly authorized to act on behalf of that minister or, if applicable, an appropriate minister to whom the Minister of Public Works and Government Services has delegated his or her powers, duties or functions and any other person duly authorized to act on behalf of that minister.

“Canada’s Data” means (i) any data provided to the Contractor by Canada or at its direction in connection with the Software and (ii) all content that the Contractor develops and delivers to Canada, and that Canada accepts, in accordance with this Contract.

“Client” means the department or agency for which the Work is performed.

“Contract” means the Articles of Contract, any general conditions, any supplemental general conditions, annexes and any other document specified or referred to as forming part of the Contract, all as amended by agreement of the Parties from time to time.

“Contracting Authority” means the person designated by that title in the Contract, or by notice to the Contractor, to act as Canada's representative to manage the Contract.

“Contractor” means the person, entity or entities named in the Contract to supply goods, services or both to Canada.

“Contract Price” means the amount stated in the Contract to be payable to the Contractor for the Work, exclusive of Applicable Taxes.

“Cost” means cost determined according to Contract Cost Principles 1031-2 as revised to the date of the bid solicitation or, if there was no bid solicitation, the date of the Contract.

“Date of payment” means the date of the negotiable instrument drawn by the Receiver General for Canada to pay any amount under the Contract.

“Device” means equipment having a physical central processor unit (CPU), mass storage and input output devices such as keyboard and monitor and includes servers, desktops, workstations, notebooks, laptops, personal digital assistants and mobile computing equipment.

“Party” means Canada, the Contractor, or any other signatory to the Contract and “Parties” means all of them.

“Overdue” means the time when an amount is unpaid on the first day following the day on which it is due and payable according to the Contract.

“Software as a Service” means the capability provided to the consumer is to use the provider’s applications running on a cloud infrastructure.

“Software Availability” means the percentage of minutes in a month that the Software is operational.

“Software Documentation” means all of the manuals, handbooks, user guides and other human-readable material to be provided by the Contractor to Canada under the Contract for use with the Software.

“Software Error” means any software instruction or statement contained in or absent from the Software, which, by its presence or absence, prevents the Software from operating in accordance with the Specifications.

“Specifications” means the description of the essential, functional or technical requirements of the Work in the Contract, including the procedures for determining whether the requirements have been met.

“User” means an individual authorized by the Client to use the Software under the Contract and for the purposes of this contract, includes any employee, agent or contractor authorized to use the Software.

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