



## Table of Contents

1. Requirements....	3
2. Term, Termination and Auto Renewal....	3
3. Authorities....	7
4. Priority of Documents....	11
5. Financial Requirements....	12
6. Cloud Services ....	17
7. Professional Services....	22
8. Service Levels....	25
9. Service Level Agreements....	26
10. General Provisions....	26
11. Documentation....	27
12. Ongoing Qualification Requirements and Certifications....	28
13. Appendix A – Deliverables ....	29
<u>Annex B – Security and Privacy Obligations.;</u>	
<u>Annex C – SRCL and Security Classification Guide;</u>	
<u>Annex D – Supply Chain Integrity;</u>	
<u>Annex E – Defined Terms;</u>	
<u>Annex F – Service Level Agreements;</u>	
<u>Annex G – Additional Vendor Service Terms</u>	
<u>Annex H – ICT Accessibility Requirements</u>	
<u>Annex I – ICT Accessibility Evaluation</u>	

## GENERAL PROCUREMENT CLAUSES FOR CLOUD SERVICES

**Note to Contracting Authority:** If Professional Services are in scope for this contract, please include Section 1.3 and 7 and all inclusions of “and/ or Work”. Should Professional Services not be in scope, these sections/call-outs can be removed.

### 1. Requirements

- 1.1. \_\_\_\_\_ (“The Contractor”) agrees to provide the Cloud Services described in the Contract in accordance with and at the prices set out in Appendix A - Deliverables. Any pricing information included elsewhere in the Contract, including in Annex F –Service Level Agreement shall be deemed stricken and is of no force or effect.
- 1.2. **Client:** Under this Contract, \_\_\_\_\_,
- 1.3. **Professional Services.** The Contractor agrees to provide Professional Services, as and when requested by Canada, using the Task Authorization process
- 1.4. **Reorganization of Client:** The Contractor's obligation to provide the Cloud Services 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 or restructuring of the Client includes the privatization of any 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
- 1.5. **Defined Term.:** Words and expressions used in this Contract are defined in Annex: E.

### 2. Term, Termination and Auto Renewal

**Note to Contracting Authority:** Please adjust Section 2 prior to Contract award as applicable to the commercial terms submitted by the Contractor. Usage of “option periods” would be a business decision and can be removed if not needed.

**Select:** 2.1 – 2.5 If a fixed contract term is required.

**Or:**

**Select:** 2.5.1 -2.5.7 If you are utilizing Subscription or On-Demand Services which do not require a fixed contract term.

- 2.1. **Contract Period.** The Contract Period includes the entire period of time during which the Contractor is obliged to provide the Services and perform the Work
- 2.2. **Initial Term.** This Contract begins on the date the Contract is awarded and ends on [TERM expiry \DATE/ # of years].
- 2.3. **Option Periods.** The Contractor grants to Canada the irrevocable option to extend the term of the Contract by up to [Number of extensions] [Period of extensions]-periods 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 the option(s) at any time by sending a written notice to the Contractor at least 90 calendar days before the expiry date of the Contract. The option may be exercised only by the Contracting Authority, and will be evidenced, for administrative purposes only, through an amendment to the Contract.

## GENERAL PROCUREMENT CLAUSES FOR CLOUD SERVICES

- 2.4. **Change in Consumption:** The Contractor grants to Canada the irrevocable option to increase or decrease their consumption of the Cloud Services detailed in Appendix A at the time of renewal. Where Canada's consumption of the Cloud Services is decreased, the Contractor agrees that no penalties shall apply as a result, although per unit pricing may be adjusted given the decrease in consumption.
- 2.5. **Auto-Renewal Opt-Out:** Canada hereby provides notice to the Contractor that it opts out of any auto-renewal of the term obligation. The Contractor acknowledges receipt of the notice, and represents that this Contract will be valid only until the end of the Contract Period, as defined above.

**OR**

### **[Subscription] or [On-Demand] Terms**

- 2.5.1. **[If applicable] Subscription Services.** Canada acknowledges that the Contractor will deliver the Cloud Services on a subscription basis without a prescribed Contract Period. Canada further understands that even if a defined Contract Period is identified, that the Contractor's commercial offering may provide for an automatic renewal of the subscription services.
- [If applicable] On-Demand Services.** Canada acknowledges that the Contractor will deliver the Cloud Services within an On-Demand basis without a prescribed Contract Period.
- 2.5.2. **Metrics.** The Contractor agrees to provide Canada with access to the Cloud Services on a subscription basis, all at the prices set out in Appendix A – Deliverables.
- 2.5.3. **Auto-Renewal Notification.** The Contractor acknowledges that, despite Canada's agreement to the Contractor's standard commercial terms, Canada is subject to a legal regulatory framework governing financial expenditure authority.
- 2.5.3.1. The Contractor agrees to provide notification functionality or tool to Canada as part of the Cloud Services, to assist Canada in administering the Contract. The Contractor further agrees to send notifications to both the Contracting Authority and the Technical Authority at least 60 days in advance of the expiry of the Contract Period.
- 2.5.4. **Grace Period.** The Contractor agrees to provide Canada with an optional grace period of 4 weeks to terminate the Contract Period, in the event that Canada fails to stop its usage of the Cloud Service on or before the end of the defined Contract Period. At any time before the expiry of the grace period, and notwithstanding any auto-renewal clause elsewhere in the Contract, the Contracting Authority may terminate the Contract by providing written notice to the Contractor of Canada's decision to terminate the Contract. Upon delivery of the notice, the termination will take effect immediately or, at the time specified in the termination notice. Canada will be released from further obligation under the Contract after the termination date, and will be specifically released from any extended term resulting from an auto-renewal clause. The Contractor will apply no penalty or additional fees in these circumstances.
- 2.5.5. **Canada's Responsibility.** Notwithstanding the provision of the grace period, Canada remains responsible to monitor its obligations under the Contract, including fees, renewal and expiry dates, consumption, usage, payment, termination and renewals.

## GENERAL PROCUREMENT CLAUSES FOR CLOUD SERVICES

- 2.5.6. Change in Consumption:** The Contractor grants to Canada the irrevocable option to increase or decrease their consumption of the Cloud Services detailed in Appendix A at the time of renewal. Where Canada's consumption of the Cloud Services is decreased, the Contractor agrees that no penalties shall apply as a result, although per unit pricing may be adjusted given the decrease in consumption.

### 2.6. Termination

- 2.6.1. Termination for Convenience** Canada may terminate the Contract for convenience after written notice is given to the Contractor or using the termination or cancellation functionality provided through the Contractor's online portal, where such functionality is available. If the Contract is terminated in part only, the Contractor must continue to provide the **Cloud Services and / or Work** that are not affected by the termination notice. The Contractor may withdraw from the Contract at its option by providing the Contracting Authority with 30 days written notice of termination. Any such termination will not terminate any **Cloud Services and/or Work** not related to the termination notice.

If Canada terminates the Contract convenience, the Contractor will be entitled to be paid for the balance owing for any Cloud Services provided pursuant to the Contract (less any applicable credits it has applied for and is entitled to receive).

- 2.6.2.** The total of the amounts, to which the Contractor is entitled to be paid under this section, together with any amounts paid, due or becoming due to the Contractor, must not exceed the Contract Price. The Contractor will have no claim for damages, compensation, loss of profit, allowance arising out of any termination notice given by Canada under this section except to the extent that this section expressly provides. The Contractor agrees to repay immediately to Canada the portion of any advance payment that is unliquidated on the date of termination.
- 2.6.3.** The termination of the Contract for convenience does not terminate any individual **Cloud Services and/ or Work** for convenience. Any individual **Cloud Service and/ or Work** would be separately terminated for convenience. The termination of the Contract shall not affect or terminate an individual Cloud Service entered into prior to the termination date of the Contract, unless the event giving rise to termination of the Contact results directly from a breach of the Contractor's or Canada's obligations.
- 2.6.4.** The Contractor agrees to immediately repay the portion of any advance payment that is unliquidated at the date of the termination to Canada.
- 2.6.5.** If, under (2.6.1), Canada terminates all of a portion of the **Services and/or Work**, Canada will pay the Contractor reasonable costs incidental to the termination of the Cloud Services incurred by the Contractor, specifically excluding costs related to severance of employees, unless the Contractor establishes those costs arise from statutory obligations.
- 2.6.6.** The parties agree that these amounts represent a genuine estimate of liquidated damages that would result to the Contractor for early termination of the Contract, and not a penalty.

#### Termination for Default

## GENERAL PROCUREMENT CLAUSES FOR CLOUD SERVICES

**2.6.7.** The Contracting Authority may terminate the Contract with immediate effect by delivering notice of termination to the Contractor, in the following circumstances:

**2.6.7.1.** The Contractor does not meet the on-going qualification requirements described in this Contract within Section 12;

**2.6.7.2.** The Contractor has breached any of the specific terms and conditions detailed in the Contract; or

**2.6.7.3.** The Contractor becomes bankrupt or insolvent.

**2.6.8. Notice of Default:** The Contracting Authority may serve the Contractor with written Notice of Termination for Default of part or all of the Contract. The Notice will identify the breach, the relevant circumstances, any proposed cure period, the affected **Services and/or Work** (if partial termination), any action plan requirement, any required Transition or Migration Services, and the effective date of termination. The Notice will also identify whether Canada reserves any additional damages claim.

**2.6.9. Contractor Compliance:** The Contractor must comply with the requirements of the Notice.

**2.6.9.1. Total Breach:** If, in Canada's reasonable opinion, the Contractor's default is a total or material breach of the Contract, Canada may immediately terminate the Contract by the Notice. For clarity, Canada's opinion may be based on circumstances including but not limited to:

**2.6.9.2.** the Contractor's non-performance of a material contract obligation;

**2.6.9.3.** the Contractor irrefutably appears unable to perform a material contract obligation, due to factors beyond the Contractor's control. For clarity, this includes, actual or apparent insolvency, repeated failure to produce acceptable deliverables under this or other similar contracts with Canada,

**2.6.9.4.** the Contractor's multiple or repeated, uncured breach of an intermediate contract obligation(s), and

**2.6.9.5.** the Contractor's default adversely impacting government operations.

## **2.7. Other Default**

**2.7.1.** If the Contractor defaults are not a Total Breach, Canada will identify a cure period during which the Contractor must remedy the default and may require an action plan. Except where the breach is by its nature not curable within **30 days**, the terminating party must give the other party 30 days' notice of its intent to terminate and an opportunity to cure the breach

**2.7.2.** If, in response to the Notice, the Contractor indicates its inability or unwillingness to cure the default, Canada may terminate the Contract for default immediately.

**2.7.3.** If the Contract specifies that a specific default will be subject to no cure period, Canada may terminate the Contract for default immediately without providing any opportunity to cure the default..

## GENERAL PROCUREMENT CLAUSES FOR CLOUD SERVICES

- 2.7.4.** Canada is not required to notify the Contractor of any or every default. The Parties agree Canada may choose to not use this formal notification process or may choose to extend time to the Contractor, and neither will be construed as Canada waiving any rights or acquiescing in the Contractor's default.
- 2.7.5.** Canada is not required to notify the Contractor of any or every default. The Parties agree Canada may choose to not use this formal notification process or may choose to extend time to the Contractor, and neither will be construed as Canada waiving any rights or acquiescing in the Contractor's default.
- 2.7.6.** If Canada terminates the Contract for default, Canada will only pay for completed **Cloud Services and/or Work** delivered and accepted, prior to the termination date. Canada will not pay any amount exceeding the value of the **Cloud Services and/or Work** accepted. The Contractor agrees to immediately repay the portion of any advance payment that is unliquidated at the date of the termination to Canada.

**Note to Contracting Authority:** Please adjust **Section 2.8.2** prior to Contract award as it is a business decision on how long is required to retrieve data once the contract has lapsed. Although it is a business decision and it is recommended to ask for a minimum of 60 days – Cloud Service Providers have indicated they would like to offer this ability within differing time periods. Contracting Authorities should consult their TA's to better understand their requirement.

### 2.8. Retrieval of Canada's Data at Termination

- 2.8.1.** At all times during the Contract Period, Canada must have the ability to access and extract all Canada's Data stored in the Cloud Service.
- 2.8.2.** Upon termination of the contract, the Contractor must retain Canada's Data stored in the Cloud Service for a minimum of **90 calendar days** and provide Canada with a limited function account, similar to the GC Master Account, which provides Canada the ability to extract its data during that period.
- 2.8.3.** Canada must have the ability to securely extract its data and Metadata in a machine-readable and usable format acceptable to Canada. Where the Contract is terminated for default, in whole or in part, this must be provided at no additional cost. After the retention period ends, the Contractor must, upon request by Canada, disable Canada's account.
- 2.8.4.** If the Contracting Authority terminates the Contract for convenience, Canada will be responsible for all fees and charges incurred up to the date that Canada extracts all of its data.

**Note to Contracting Authority:** Please note within **Section 3.1**, it is a business decision if only want the CA is to receive invoices. Please note **Section 3.3** is a business decision as to whether this authority is used.

## 3. Authorities

### 3.1. Contracting Authority

## GENERAL PROCUREMENT CLAUSES FOR CLOUD SERVICES

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 Cloud Services 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

### 3.2. Technical Authority

The Technical Authority for the Contract is:

Name:

Title:

Organization:

Address:

Telephone:

E-mail address:

The Technical Authority is the representative of the department or agency for whom the service is being carried out under the Contract and is responsible for all matters concerning the technical content of the service 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 service. Changes to the scope of the service can only be made through a contract amendment issued by the Contracting Authority.

### 3.3. **Client Administrative Contact**

The Client Administrative Contact is:

Name:

Title:

Organization:

Address:

## GENERAL PROCUREMENT CLAUSES FOR CLOUD SERVICES

Telephone:

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.

### 3.4. Contractors Representative

The Contractor's Representative is:

Name:

Title:

Telephone:

Facsimile:

E-mail address:

### 3.5. Grant of Agent Authority

**Note to Contracting Authority:** Section 3.5 – 3.7.2 is a business decision, to be used where the Contractor wishes to appoint an authorized agent for the purposes of managing the contract, invoicing, etc. **The use of Agents is at the discretion of the Contracting and Technical Authorities.**

The Contractor advises Canada, and Canada acknowledges that the Contractor intends to appoint one of its Authorized Agents ("Agent") to fulfill certain contractual obligations on behalf of the Contractor during the Contract, as defined in the Scope section below.

The Contractor appoints its Agent Authority **(to be completed at Contract Award)** as its Authorized Agent under the Contract.

The Authorized Agent Contact is:

Name:

Title:

Telephone:

Facsimile:

E-mail address:

The Contractor agrees to provide 30-days advance written notice to the Contracting Authority of any of the following:

- its replacement of any Authorized Agent,
- any change to the scope of power delegated to the Authorized Agent, and
- the termination of the Authorized Agent.

## GENERAL PROCUREMENT CLAUSES FOR CLOUD SERVICES

The Contractor agrees, upon request by the Contracting Authority, to immediately remove or replace the Authorized Agent. Removal or replacement of the Authorized Agent is in addition to any other remedy Canada may invoke. A breach by an Authorized Agent is a breach by the Contractor itself.

### 3.6. Agents

- 3.6.1. The Contractor must ensure the adequate protection of the billing management process used to deliver and support the Cloud Services for Canada, including applying security measures for Agents that:
- 3.6.2. Limits access to only authorized users who are permitted to execute transactions and functions related to billing management including invoicing
- 3.6.3. Ensures the separation of duties of individuals;
- 3.6.4. Employs the principle of least privilege, including for specific security functions and privileged accounts;
- 3.6.5. Ensures that authorized users are provided with security awareness and training as part of employment onboarding and when their roles change;
- 3.6.6. Creates, protects, and retains audit records related to the activities that support billing management of Cloud Services provisioned to Canada; and
- 3.6.7. Provides Canada with reports on audited events for actions related to the billing management process used by personnel to manage GC consumption and invoicing.

### 3.7. Scope of Agent Authority

- 3.7.1. The Contractor declares that the named Authorized Agent is authorized to transact business on the Contractor's behalf in matters relating to the supply of the Cloud Services under the Contract, limited to negotiating prices, providing billing information, invoicing, providing consumption reporting services, and receiving payment.
- 3.7.2. The Contractor agrees that, upon proof of payment, any payment made by Canada to the Authorized Agent will be considered payment to the Contractor itself. This agency relationship (through which the Authorized Agent performs contractual obligations on behalf of the Contractor) does not amend, diminish or modify any of the responsibilities of the Contractor under the Contract. The Contractor agrees and understands that it is solely responsible for ensuring that all of its Authorized Agents comply with the applicable terms and conditions of the Contract, if the Authorized Agent fails to comply with the applicable terms and conditions, the Contractor must, upon written notification from the Contracting Authority, immediately complete and fulfill those obligations at no additional cost to Canada.

## GENERAL PROCUREMENT CLAUSES FOR CLOUD SERVICES

### **Note to Contracting Authority:**

**Annex B):** *These security and privacy obligations were provided by requirements from the tripartite established for cloud services for inclusion in Cloud Contracts across the Federal Government. They are required when procuring cloud services that will process or store GC information.*

**Annex C):** *Sample Cloud SRCL & CISD Clauses can be provided if requested. Clients may have additional security requirements – in this case their SRCL would be attached and additional clauses may be added to those in Appendix C/D). Tier 1 or Tier 2 security requirements from the tripartite established for cloud services, to be assessed prior to Contract Award in accordance with the tiered assurance model. Localized assessments by the Client department are required where the procurement is not considered an enterprise procurement (2 depts or more) at a level of Protected B or higher. Information regarding localized assessments is available through CCCS. Not applicable to Tier 0 (Unclassified).*

**Annex F):** *In some scenarios, additional vendor specific service terms may be outlined within this annex. Pending legal review, this can be acceptable as long as Canada's Terms & Conditions supersede the Vendor documentation within the priority of documents.*

#### 4. Priority of Documents

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

These Contract Terms, including all Appendices, Annexes, Amendments, and issued against the Contract;

Annex B, Security & Privacy Obligations;

Annex C, SRCL and Security Classification Guide;

Annex D, Supply Chain Integrity; (If applicable – see instructions in Annex D)

Annex E, Defined Terms;

Annex F Service Level Agreement;

Annex G, Additional Cloud Service Usage Terms;

Annex H, ICT Accessibility Requirements;

Annex I, ICT Accessibility Evaluation.

## GENERAL PROCUREMENT CLAUSES FOR CLOUD SERVICES

**Note to Contracting Authority:** This section will be adjusted at Contract award to include the Basis and Method of Payment applicable to the **Cloud Services and/or Work** being requested.

**Section 5.6** – Please update the Time Zone based on the applicability of your requirement.

### 5. Financial Requirements

For the Commercially Available Public Cloud Services provided under this Contract, the Basis of Payment below will apply. Regardless of Cloud Services being provided, the Contractor must provide, at minimum, an online portal to allow review of consumption details. The online portal must also allow the Client the ability to set thresholds and alerts related to Cloud Service usage and consumption.

- 5.1. **[if applicable] Subscription Cloud Services.** For the Subscription Cloud Services, including access to and use of the Cloud Services, Cloud Services Documentation, Support Services, and incidental and additionally required information technology infrastructure services (all the Services described in this Contract that is not Work), Canada shall pay the prices detailed in Appendix A - Deliverables.
- [if applicable] On-Demand Services:** For On-Demand Cloud Services requested by Canada, in accordance with the Contract, Canada shall pay the Contractor the prices detailed in Appendix A – Deliverables and pay the Contractor **[monthly or annually]** in **[arrears or in advance]** applicable taxes extra. All of the prices set out in Appendix A – Deliverables and on the front page of the contract are considered ceiling price. The ceiling price is subject to downward adjustment so as not to exceed the actual costs reasonably incurred in the delivery of Cloud Services and is reviewed in accordance with **Section 6.17** Service Portal Reports. Upon completion of the delivery of Cloud Services, the price will be adjusted to the extent necessary to reflect the actual consumption. If there has been any overpayment, it must be promptly refunded to Canada.
- 5.2. **[if applicable] 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 per diem rates set out in Appendix A - Deliverables. Applicable Taxes extra.
- 5.3. **[if applicable] 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.
- 5.4. **Currency:** All **Cloud Services and /or Work** must be payable in Canadian dollars. In cases where the CSP's commercially available pricing for Cloud Services are not in Canadian dollars, the CSP must include functionality to allow pricing to be converted to Canadian dollars. The conversion rate must be established by the Bank of Canada at 4:00 p.m. **Eastern Time** each day during the calendar month immediately before the calendar month in which payment is made.

## GENERAL PROCUREMENT CLAUSES FOR CLOUD SERVICES

### 5.5. Pricing Stability:

5.5.1. The Contractor acknowledges that it is important to Canada to be able to continue to access the Cloud Services detailed in Appendix A after the Term of Contract. The Contractor accordingly offers to continue to provide the Cloud Services at reasonable rates and on all of the other terms and conditions set out in this Contract, subject to execution by the parties of a formal contract(s) therefor. For each of the 2 years that follow the Term of Contract, the Contractor hereby offers annual rates that are the lesser of:

5.5.2. the Contractor's then current published rates; and

5.5.2.1. the previously contracted rates adjusted by the percentage difference in the Consumer Price Index (CPI) as determined by Statistics Canada, for the 12-month period immediately preceding the date on which the price change is to be effective; and

5.5.2.2. 3% more than the annual rates provided to Canada in the preceding year under this Contract or under any extension entered into pursuant to this Article;

5.5.2.3. and the Contractor's obligations under this Article shall survive termination or expiry of this Contract.

**Note to Contracting Authority:** : The clause below is required by policy for contracts valued at over \$50K CAD, including Applicable Taxes and option years. This clause can be used for contracts under \$50K at the Contracting Authority's discretion if they feel additional price support is required to justify that the price is fair and reasonable.

**ADDITIONAL NOTE:** If Contractor does not accept wording below, Director Approval is required for all modifications to the Price Certification clause.

### 5.6. Price Certification

**[Option 1 - Foreign Contractor - C0001T]** The Contractor certifies that the price quoted is not in excess of the lowest price charged anyone else, including the Contractor's most favoured customer, for the like quality and quantity of the, Cloud Services.

**[Option 2 - Canadian Cloud Service provider without agent) or Value-add Reseller with appropriate Software Publisher designation-C0002T]** The Contractor certifies that the price quoted:

5.6.1. is not in excess of the lowest price charged anyone else, including the Contractor's most favoured customer, for the like quality and quantity of the, Cloud Services;

5.6.2. does not include an element of profit on the sale in excess of that normally obtained by the Contractor on the sale of, Cloud Services of like quality and quantity; and

5.6.3. does not include any provision for discounts to selling agents.

**[Option 3 - Canadian Cloud Service Provider - with agent with appropriate Cloud Service Provider designation-C0004T]** The Contractor certifies that the price quoted:

is not in excess of the lowest price charged anyone else, including the Contractor's most favoured customer, for the like quality and quantity of the Cloud Services; and

## GENERAL PROCUREMENT CLAUSES FOR CLOUD SERVICES

does not include an element of profit on the sale in excess of that normally obtained by the Contractor on the sale of Cloud Services of like quality and quantity.

**Note to Contracting Authority:** The clause below (SACC C0705C) is to be used for Contracts valued at over \$50K CAD, including Applicable Taxes and option years, where the Contractor is Canadian (coinciding with options 2 and 3 above). Remove if Contractor is a Foreign Contractor.

### 5.7. Discretionary Audit

- 5.7.1. The Contractor's certification that the price or rate is not in excess of the lowest price or rate charged anyone else, including the Contractor's most favoured customer, for the like quality and quantity of the Cloud Services, is subject to verification by government audit, at the discretion of Canada, before or after payment is made to the Contractor.
- 5.7.2. If the audit demonstrates that the certification is in error after payment is made to the Contractor, the Contractor must, at the discretion of Canada, make repayment to Canada in the amount found to be in excess of the lowest price or rate or authorize the retention by Canada of that amount by way of deduction from any sum of money that may be due or payable to the Contractor pursuant to the Contract.
- 5.7.3. If the audit demonstrates that the certification is in error before payment is made, the Contractor agrees that any pending invoice will be adjusted by Canada in accordance with the results of the audit. It is further agreed that if the Contract is still in effect at the time of the verification, the price or rate will be lowered in accordance with the results of the audit.

### Payments

### 5.8. Method of Payment

- 5.8.1. **[if applicable]** Canada will make payment to the Contractor for the **Professional Services** and On-Site Support Services in arrears, upon submission of a valid invoice.
- 5.8.2. Canada will make payment to the Contractor for the Cloud Services either in advance or in arrears, in accordance with Appendix A – Deliverables. Where payment is made in advance, the advance payment period shall not exceed 12 months. Payment in advance does not prevent Canada from exercising any or all potential remedies in relation to this payment or the delivery of the Cloud Services.
- 5.8.3. 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 5.11.6 once the dispute is resolved

### 5.9. Invoices

- 5.9.1. **Invoice Submission.** The Contractor must submit invoices for all **Cloud Services and/ or Work** for which payment is due in accordance with the Contract. The Contractor must provide the original invoice to the Client. The Contractor must also provide a copy of all invoices to the Contracting Authority.

## GENERAL PROCUREMENT CLAUSES FOR CLOUD SERVICES

### 5.9.2. Invoicing Instructions

- 5.9.2.1. All invoice pricing and payment must be in Canadian dollars.
- 5.9.2.2. By submitting invoices (other than for any items subject to an advance payment), the Contractor is certifying that the Cloud Services have been provided, and charges calculated, in accordance with the contract.
- 5.9.2.3. The Contractor must apply any applicable service credits owing to Canada following submission of a valid claim in accordance with the Contractor's commercially available published process, as defined in Annex F – Service Level Agreement, to the Contract invoice that follows the month after the service credits accrue under that contract.

### 5.9.3. Invoice Requirements. Invoices must be submitted in the Contractor's name and contain:

- 5.9.3.1. the date, the name and address of the client department, item or reference numbers, deliverable/description of the **Cloud Services and/or Work**, contract number, Client Reference Number (CRN), Procurement Business Number (PBN), and financial code(s);
- 5.9.3.2. 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;
- 5.9.3.3. 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
- 5.9.3.4. deduction for holdback, if applicable; and
- 5.9.3.5. the extension of the totals, if applicable.

### 5.9.4. Taxes

- 5.9.4.1. **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.
- 5.9.4.2. **Withholding for Non-Residents.** Canada must withhold 15 percent of the amount to be paid to the Contractor in respect of Cloud 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.
- 5.9.4.3. **Certification of Invoices.** By submitting an invoice, the Contractor certifies that the invoice is consistent with the Cloud Services delivered and is in accordance with the Contract.

## GENERAL PROCUREMENT CLAUSES FOR CLOUD SERVICES

- 5.9.4.4. Payment Period.** Canada will pay the Contractor's undisputed invoice amount within 30 days of receipt. In the event, an invoice is not in acceptable form and content, Canada will notify the Contractor and the 30 day payment period will begin on receipt of a conforming invoice.
- 5.9.4.5. Interest on Late Payments.** Canada will pay to the Contractor simple interest at the Average Rate (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 month in which payment is made) 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.
- 5.9.4.6. Electronic Payment of Invoices.** The Contractor accepts to be paid using any of the following Electronic Payment Instrument(s):
- 5.9.4.6.1. Visa Acquisition Card:
  - 5.9.4.6.2. MasterCard Acquisition Card;
  - 5.9.4.6.3. Direct Deposit (Domestic and International);
  - 5.9.4.6.4. Electronic Data Interchange (EDI);
  - 5.9.4.6.5. Wire Transfer (International Only);

**Note to Contracting Authority:** Section 5.10.5 is a business decision, to be used where the Contractor wishes to appoint an authorized agent for the purposes of managing the contract, invoicing, etc. **The use of Agents is also at the discretion of the Contracting and Technical Authorities.**

- 5.9.5. Payment to Agents:** Any payment made by Canada to an authorized Agent will be considered payment to the Contractor itself.

**Note to Contracting Authority:** Should you select "On-Demand Services" within Section 5.1 , please consider the alternative Limitation of Expenditure within the Guidance Document.

### 5.10. Limitation of Expenditure

- 5.10.1.** Canada's total liability to the Contractor under the Contract must not exceed the amount set out in the Contract, applicable taxes included.
- 5.10.2.** The Contractor must provide reporting capabilities within its service that allow the Client to assess the adequacy of the amount set out in each Contract and determine whether they need to reduce usage or increase funding in order to permit provision of the Cloud Services within budget.
- 5.10.3.** Canada will not pay the Contractor for any design changes, modifications or interpretations of the Cloud Services unless they have been approved, in writing, by the Contracting Authority before their incorporation into the Cloud Services

## GENERAL PROCUREMENT CLAUSES FOR CLOUD SERVICES

- 5.11. 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.

**Note to Contracting Authority:** *The public cloud Limitation of Liability (LoL) language included below is to be used for all public cloud contracts. Deviations from the standard public cloud LoL will require a risk assessment from the client department and approval from the Senior Director)*

### 5.12. Limitation of Liability

#### 5.13. First Party Liability

- 5.13.1. Contract Performance:** The Contractor is fully liable for all damages to Canada, arising from the Contractor's performance or failure to perform the Contract.
- 5.13.2. Data Breach:** The Contractor is fully liable for all damages to Canada resulting from its breach of security or confidentiality obligations resulting in unauthorized access to or unauthorized disclosure of records or data or information owned by Canada or a third party.
- 5.13.3. Limitation Per Incident:** Subject to the following section, irrespective of the basis or the nature of the claim, the Contractor's total liability per incident will not exceed the cumulative value of the Contract invoices for 12 months preceding the incident.
- 5.13.4. No Limitation:** The above limitation of Contractor liability does not apply to:
- 5.13.5.** wilful misconduct or deliberate acts of wrongdoing, and
- 5.13.6.** any breach of warranty obligations.

#### 5.14. Third Party Liability

- 5.14.1.** Regardless whether the third party claims against Canada, the Contractor or both, each Party agrees that it will accept full liability for damages that it causes to the third party in connection with the Contract. The apportionment of liability will be the amount set out by agreement of the Parties or determined by a court. The Parties agree to reimburse each other for any payment to a third party in respect of damages caused by the other, the other Party agrees to promptly reimburse for its share of the liability.

**Note to Contracting Authority:** *Common service delivery methods of Cloud Services (s), are defined within Annex E.*

## 6. Cloud Services

- 6.1. Commercially-Available Cloud Services.** Canada acknowledges that the Cloud Services are a commercially-available and provided to other customers. As part of the subscription to use the Cloud

## GENERAL PROCUREMENT CLAUSES FOR CLOUD SERVICES

Services, the Contractor agrees to make available to Canada all the features and functionalities included in the commercially available version of the Cloud Service, and the incidental and required information technology infrastructure services required to deliver the Cloud Services, all of which is included in the subscription price.

- 6.2. Cloud Services Application Evolution;** Features or Functionalities. Canada acknowledges that the Cloud Services, underlying software application or associated infrastructure may evolve during the course of the Contract Period. The Contractor agrees to continue to provide the **commercially available** Cloud **Services**, with functionality or features and on with terms that are no less favourable than as at the time of Contract award.
- 6.3. Improvements to and Evolution of the Cloud Services.** The parties acknowledge that technology and business models evolve quickly and that any Cloud Service provided at the beginning of the Contract Period inevitably will be different from the Cloud Service provided at the end of the Contract Period and the method(s) by which the Cloud Service and any potential peripherals are delivered to Canada are likely to change or evolve and that, at the time of entering into this Contract, the parties cannot possibly contemplate all the Cloud Services that may be delivered under this Contract, other than they will be connected to delivering to Users. With that in mind, the parties agree that:
- 6.3.1.** The Contractor must maintain and continuously improve the Cloud Service and infrastructure throughout the Contract Period on a commercially reasonable basis, and must provide those improvements and enhancements to Canada as part of Canada's subscription, with no price adjustment if those improvements and enhancements are also offered to other customers at no additional cost.
- 6.3.2.** If the Contractor removes any functions from the commercial offering to the Cloud Services and offers those functions in any new or other Cloud Services or products, the Contractor must continue to provide those functions to Canada as part of Canada's subscription to the Cloud Services, under the existing terms and conditions of the Contract regardless of whether those other Cloud Services or products also contain new or additional functions. Contractor has no obligation to comply with this paragraph if the Cloud Services acquired by Canada is still offered by Contractor in parallel with the new Cloud Services offered to other customers
- 6.4. Downgrade.** If the Contractor is unable to provide the Cloud Services with no less favourable core features and functionality, the Contractor will provide written Notice to Canada identifying the circumstance, and alternative options, specifically including a reduction in pricing. If no proposed alternative option is acceptable to Canada, the Contractor agrees to consent to a termination of the Contract. The Contractor agrees to immediately repay the portion of any advance payment for the Cloud Services that is unliquidated at the date of the termination to Canada.
- 6.5.** **"Insert service delivery type(SaaS,IaaS,PaaS)";** The Contractor will provide all Services required for Canada to access and use the Cloud Services as specified in Appendix A - Deliverables.

## GENERAL PROCUREMENT CLAUSES FOR CLOUD SERVICES

- 6.6. Commercial Cloud Service Offering.** *Canada acknowledges that it will accept the Contractor's commercial Cloud Service offering, and states that, unless explicitly identified as Work or Cloud Services to be delivered under this Contract, Canada does not require custom development, alternative services, service levels, functionalities or features.*
- 6.7. Authority.** The Contractor represents and certifies that it owns or has obtained and will maintain throughout the Contract Period, all necessary authority specifically including intellectual property rights required to provide the Cloud Services in accordance with the terms of this Contract.
- 6.8. Indemnification.** The Contractor agrees to indemnify Canada against all losses and expenses (including legal fees) arising out of any intellectual property infringement claim by a third party based on Canada's use of the Cloud Services.

**Note to Contracting Authority:** *Please engage your Technical Authority and Accessibility Subject Matter Experts to ensure Section 6.9 meets your Accessibility requirements. If additional requirements are needed, update this section to include them.*

- 6.9. Accessibility:** The Contractor must ensure that the Cloud Services do not interfere with accessibility standards compliance, as specified in the Standard on Web Accessibility: <https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=23601#>.
- 6.10. Usage Grant.** The Contractor grants to Canada the non-exclusive, non-assignable right to access and use the Cloud Services from an unlimited number of locations, devices and operating environments, through secure, wireless, mobile or other connection, via the internet, a web browser or other access connection technology which may become available.
- 6.11. Included.** The Contractor represents and certifies that the Cloud Services include
- 6.11.1.** hosting and maintenance of the Cloud Services,
  - 6.11.2.** provision of all incidental and additional required information technology infrastructure services, in compliance with all required security standards,
  - 6.11.3.** the technical infrastructure that complies with all required security standards, allowing Canada to use the Cloud Services to process any of Canada's Data in compliance with its expressed security standards, and
  - 6.11.4.** unfettered access and use by the Client, regardless of the amount of data created, processed or stored by the Cloud Services, all of which is included in the price.
- 6.12. Restricted Usage Rights.** Canada acknowledges that in providing the Cloud Services, the Contractor is not delivering ownership rights to any software product, component of the Cloud Services or infrastructure used by the Contractor to provide the Cloud Services, except as expressly provided by written notice. Canada will not knowingly:
- 6.12.1.** distribute, license, loan, or sell the Cloud Service;

## GENERAL PROCUREMENT CLAUSES FOR CLOUD SERVICES

- 6.12.1.1. impair or circumvent the Cloud Service's security mechanisms; or
- 6.12.1.2. remove, alter, or obscure any copyright, trademark, or other proprietary rights notice on or in the Cloud Service.

**6.13. Applicable Terms and Conditions.** The Contractor has advised and Canada acknowledges that the Contractor may unilaterally modify the terms under which it provides its commercial offering of the Cloud Services, without notice to its customers, including Canada. The Contractor represents and certifies that any such modification will not result in less favourable terms, specifically including price, service levels and remedies, regardless of any notification to the contrary.

**6.14. Additional Terms and Conditions.** The parties agree that any terms and conditions, including any "click-through" or "pop-up" notices, that apply to the Contractor's commercial offering of the Cloud Services, including third party tools or incidental infrastructure, will not apply to Canada's use of the Cloud Services if those terms conflict with the express terms of this Contract. The terms and conditions of third party tools not specified in Appendix A are not subject to this section.

**Note to Contracting Authority:** Tier 1 (Protected A) and Tier 2 (Protected B) requirements.

Subsection (6.15- 6.17) is optional for Tier 0 (Unclassified) requirements, but recommended for Tier 1 (Protected A) and required for Tier 2 (Protected B) requirements.

**6.15. Application Programming Interfaces (API):** The Contractor must:

- 6.15.1. Provide Cloud Services that use open, published, supported, and documented Application Programming Interfaces (API) to support activities such as interoperability between components and to facilitate migration of applications; and,
- 6.15.2. Provide a means via API for applications to provision Cloud Services, and extract reporting, billing and financial data pertaining to the Cloud Services consumed by the Client
- 6.15.3. Take reasonable measures to protect both internal and external APIs through secure authentication methods. This includes ensuring that all externally exposed API queries require successful authentication before they can be called and providing the ability for the GC to meet the GC's standards on API (<https://www.canada.ca/en/government/system/digital-government/modern-emerging-technologies/government-canada-standards-apis.html>).
- 6.15.4. For Cloud Services the Contractor must provide APIs that provide the ability to:
  - 6.15.4.1. Interrogate data at rest in Cloud Services; and,
  - 6.15.4.2. Assess events and incidents stored in Cloud Service logs

## GENERAL PROCUREMENT CLAUSES FOR CLOUD SERVICES

### 6.16. Service Portal – General

The Cloud Service Provider must provide a secure, web-based, self-service online portal that enables Canada to remotely administer the Cloud Services. This portal must include, at a minimum:

- 6.16.1. Service Provisioning;
- 6.16.2. Trouble ticketing with email-based notifications;
- 6.16.3. Account management and user provisioning including:
- 6.16.4. Ability to manage users and associated data; and,
- 6.16.5. creating, deleting, and modifying user accounts and permissions;
- 6.16.6. Authentication including ability to enable SSO experience;
- 6.16.7. Ability to securely access the portal using multi-factor authentication mechanisms to authenticate users;
- 6.16.8. Service health or status information including resource usage statistics, reporting on performance, thresholds and alerts; and
- 6.16.9. Service state transitions including starting and stopping.  
Cloud Service provisioning/de-provisioning must be available via an Application Programming Interface (API). In addition, the Contractor must provide links to documentation, articles, tutorials and guidance in order to help the GC in the use of the API services.

### 6.17. Service Portal Reports

The service must provide the Government of Canada with the ability to generate the following reports:

- 6.17.1. Service management reports (e.g. service availability, cost, usage, consumption);
- 6.17.2. Asset and configuration management information such as configuration audit reports, configuration change reports, inventory, file integrity monitoring reports, etc.; and
- 6.17.3. Help Desk / Service Requests / problem tickets received (service impacting and other), including but not limited to:
- 6.17.4. Number of Tickets opened;
  - 6.17.4.1. Number of tickets closed;
  - 6.17.4.2. Average time to respond to Tickets (time between ticket opened and the first contact with customer); Average time to resolve ticket; and Description of issue.

## GENERAL PROCUREMENT CLAUSES FOR CLOUD SERVICES

### 6.18. Master Account Management

The Contractor must ensure the adequate protection of the account management process used to deliver and support the Cloud Services for Canada. Security measures must include, but are not limited to:

- 6.18.1. Limiting access to only authorized users who are permitted to execute transactions and functions such as Master account creation and issuance;
  - 6.18.2. Ensuring the separation of duties of individuals;
  - 6.18.3. Employing the principle of least privilege, including for specific security functions and privileged accounts;
  - 6.18.4. Ensuring that authorized users are provided with security awareness and training as part of employment onboarding and when their roles change;
  - 6.18.5. Creating, protecting, and retaining audit records related to the activities that support account management of Cloud Services provisioned to Canada;
  - 6.18.6. Providing Canada with reports on audited events for actions related to the issuance and management of Master accounts delivered under the Contract; and
- 6.19. Ensuring that Canada's Data is protected during and after personnel actions such as terminations and transfers.

### 6.20. Language of Choice

The Contractor of the **Commercially Available Public Cloud Service** must provide the ability for the GC to choose the official language of their choice, French or English, when browsing, ordering and contacting the Cloud Service Provider. The Contractor must provide these Cloud Services directly and not through a partner, reseller, agent or other representative. This includes but is not limited to the following:

- 6.20.1. Browsing the service(s) on their website(s);
- 6.20.2. Ordering Cloud Services;
- 6.20.3. Contacting the company for assistance via phone, email or chat.
- 6.20.4. Ability for Canada to request technical or support documentation in their language or choice.

## GENERAL PROCUREMENT CLAUSES FOR CLOUD SERVICES

### 7. Professional Services

- 7.1.1. **Professional Services.** The Contractor must perform and deliver such Professional Services (the "Work") to Canada as detailed in a Task Authorization.
- 7.1.2. **Conduct of the Work; Warranty.** The Contractor represents and certifies 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.
- 7.1.3. **Time is of the Essence:** It is essential that the Work be delivered within or at the time stated in a Task Authorization.
- 7.1.4. **Remedies**
  - 7.1.4.1. **Work.** If at any time during the Contract 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.
  - 7.1.4.2. **Documentation.** If at any time during the Contract Period, Canada discovers a defect or non-conformance in any part of the documentation delivered with the Work, the Contractor must as soon as possible correct at its own expense the defect or non-conformance.
  - 7.1.4.3. **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.

### 7.2. Subcontracting

- 7.2.1.1. **Conditions to Subcontracting.** The Contractor may subcontract the performance of the Work, provided
  - 7.2.1.1.1. ;The Contractor obtains the Contracting Authority's prior written consent,
  - 7.2.1.1.2. the subcontractor is bound by the terms of this Contract, and
  - 7.2.1.1.3. the Contractor remains liable to Canada for all the Work performed by the subcontractor.
- 7.2.2. **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:
  - 7.2.2.1. purchase "off-the-shelf" items and any standard articles and materials that are ordinarily produced by manufacturers in the normal course of business
  - 7.2.2.2. subcontract any incidental services that would ordinarily be subcontracted in performing the Work; and
- 7.2.3. permit its subcontractors at any tier to make purchases or subcontract as permitted in paragraphs (7.18.2.1) and (7.18.2.2)

### 7.3. Excusable Delay

- 7.3.1. **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 (referred to as an "Excusable Delay").

## GENERAL PROCUREMENT CLAUSES FOR CLOUD SERVICES

- 7.3.2. **Notice.** The Contractor must also advise the Contracting Authority, within 15 business 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.
- 7.3.3. **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.
- 7.3.4. **Canada not responsible for Costs:** Unless Canada has caused the delay by failing to meet an obligation under the Contract, Canada will not be responsible for any costs incurred by the Contractor or any of its subcontractors or agents as a result of an Excusable Delay.
- 7.3.5. **Right to Terminate.** If such an event prevents performance under the Contract for more than 30 calendar days, then the Contracting Authority may elect to terminate the TA, or part or all of this Contract on a "no fault" basis, meaning neither party will be liable to the other in connection with the Excusable Delay or resulting termination, and Canada will only be responsible for paying for the Work received up to the effective date of the termination.

### 7.4. Professional Services: Transition Services

- 7.4.1. **Migration.** The Contractor acknowledges that the nature of the Work provided under the Contract, Canada may require continuity. Prior to the transition to the new contractor or to Canada, the Contractor must provide all operational, technical, design and configuration information and documentation for all Work required to complete the transition, provided that it is not Contractor confidential information. The Contractor represents and certifies that it will not directly or indirectly interfere with or impede Canada's access to or transfer of Canada's Data.
- 7.4.2. **Migration and Transition Services.** The Contractor agrees that, in the period leading up to the end of the Contract Period, if Migration or Transition Services are requested by Canada, it will reasonably assist Canada in the transition from the Contract to a new contract with another Contractor and or migrate Canada's Data to a new Contractor environment, that there will be no charge for the services other than those charges set out in the Basis of Payment.

### 7.5. Inspection and Acceptance of Work

- 7.5.1. **Inspection by Canada:** All the Work is subject to inspection and acceptance by Canada. Canada's inspection and acceptance of the Work does 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 the Contractor is required to correct or replace it at its own expense.
- 7.5.2. **Acceptance Procedures:** Unless provided otherwise in the Contract, the acceptance procedures are as follows
- 7.5.3. when the Work is complete, the Contractor must notify the Technical Authority in writing, with a copy to the Contracting Authority, by referring to this provision of the Contract and requesting acceptance of the Work;
- 7.5.4. Canada will have 30 days from receipt of the notice to perform its inspection (the "Acceptance Period").
- 7.5.5. **Deficiencies and Resubmission of Deliverable:** If Canada provides notice of a deficiency during the Acceptance Period, the Contractor must address the deficiency as soon as possible and notify Canada in writing once the Work is complete, at which time Canada will be entitled to re-inspect the Work before acceptance and the Acceptance Period will begin again. If Canada determines that a deliverable is incomplete or deficient, Canada is not required to identify all missing items or all deficiencies before rejecting the deliverable.

## GENERAL PROCUREMENT CLAUSES FOR CLOUD SERVICES

- 7.5.6. Access to Locations:** The Contractor must provide representatives of Canada access to all locations where any part of the Work is being performed, other than multi-tenant data centres, at any time during working hours. Representatives of Canada may make examinations and such tests of the Work as they may think fit. The Contractor must provide all assistance and facilities, test pieces, samples and documentation that the representatives of Canada may reasonably require for the carrying out of the inspection. The Contractor must forward such test pieces and samples to such person or location as Canada specifies.
- 7.5.7. Contractor Inspection for Quality:** The Contractor must inspect and approve any part of the Work before submitting it for acceptance or delivering it to Canada. All deliverables submitted by the Contractor must be of a professional quality, free of typographical and other errors, and consistent with the highest industry standards.
- 7.5.8. Inspection Records:** The Contractor must keep accurate and complete inspection records that must be made available to Canada on request. Representatives of Canada may make copies and take extracts of the records during the performance of the Contract and for up to three years after the end of the Contract.
- 7.6. Informal Feedback:**
- 7.6.1.** Upon request by the Contractor, Canada may provide informal feedback prior to any deliverable being formally submitted for acceptance. However, this must not be used as a form of quality control for the Contractor's Work. Canada is not obliged to provide informal feedback.
- 7.7. Task Authorization (TA):**
- 7.7.1.** The Contractor's professional services performed under this Contract will be on an "as and when requested basis" using a Task Authorization.
- 7.7.2.** 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.
- 7.7.3.** 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.
- 7.7.4.** TA Limit and Authorities for Validly Issuing TAs. A validly issued TA must be signed by the appropriate Canadian 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.
- 7.7.5.** 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.
- 7.7.6.** 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

## 8. Service Levels

**Annex F, Service Level Agreement contains the specific information defining the levels and standards for processes and performance expectations for the Services to be delivered under the Contract, and must be read in conjunction with the following section.**

**Note to Contracting Authority:** *Provided by the Contractor and included as Annex F prior to Contract Award.*

## GENERAL PROCUREMENT CLAUSES FOR CLOUD SERVICES

- 8.1. Availability:** The Contractor will make the Service available to Canada in strict compliance with Cloud Services Documentation and Annex F, Service Level Agreement.
- 8.2. Exclusions:** The Contractor will expressly specify any exclusions to the Cloud Services Availability levels identified in Annex F, Service Level Agreement.
- 8.3. Support Services:** The Contractor will provide technical support assistance in strict compliance with Annex F Service Level Agreement.
- 8.4. Escalation:** The Contractor will provide an escalation process for dispute resolution, which is identified in Annex F Service Level Agreement.
- 8.5. No Infringement.** The Contractor certifies that nothing in the Cloud Services, or in Canada's use of the Cloud Services, will infringe or constitute a misappropriation of the intellectual property or other rights of a third party.
- 8.6. Service Credits:** If the Cloud Services does not meet the Minimum Availability Level in any given month, Canada will be entitled to claim credits in accordance with the Contractor's commercially available published service level agreement and service credit process.

**Note to Contracting Authority:** *You will be responsible for reviewing the SLA and Software Usage Rights with your Technical Authority and Legal Counsel prior to acceptance into Annex F.*

### 9. Service Level Agreements

- 9.1.** The Contractor's Published Cloud Service Level Agreement is attached in Annex F The service level commitments (detailed in Annex F) must provide commercial client support which includes, at the minimum, any published and commercially available support (i.e. warranty, maintenance and support services) typically provided to customers who provision the Cloud Services.
- 9.2.** The following terms must be addressed in the Annex F, Service Level Agreement, as applicable:
- 9.2.1.** period during which the Contractor will provide warranty and support;
  - 9.2.2.** contact and procedure information for accessing support;
  - 9.2.3.** procedures for resolution of problems;
  - 9.2.4.** response times;
  - 9.2.5.** procedures on how and when all telephone, fax or email communications will be responded to;
  - 9.2.6.** Escalation path and procedures;
  - 9.2.7.** Downtime definition, scheduled and unscheduled
  - 9.2.8.** Available disaster recovery system;
  - 9.2.9.** Service credits – triggers and calculation; and; maintenance entitlements (e.g. patches, updates, major/minor releases, etc.)

**Note to Contracting Authority:** *This section is mandatory for Protected A and Protected B requirements.*

### 9.3. Notifications Required for Tier 1 (Protected A) and Tier 2 (Protected B) requirements.

The Contractor must provide the following:

- 9.3.1.** Notification of any interruption that is expected to impact service availability and performance, as agreed to by the parties and included in the Service Level Agreements (SLAs);
- 9.3.2.** Regular updates on the status of returning the Cloud Services to an operating state according to the agreed upon SLAs and System availability requirements, both as advance alerts and post-implementation alerts;

## GENERAL PROCUREMENT CLAUSES FOR CLOUD SERVICES

- 9.3.3. Notification for Cloud Services that will be discontinued and that have an impact on customer Cloud Services;
- 9.3.4. Information system security alerts, advisories, and directives for vulnerabilities that pose a threat to the Cloud Services.
- 9.3.5. Any terms contained in Annex F that purport to interpret the Contract, are the same or similar subject matter, or are related to the terms contained in Contract, are deemed stricken and are of no force or effect.

**Note to Contracting Authority:** *Input the province in accordance with the applicable legislation of your requirement.*

### 10. General Provisions

- 10.1. **Applicable Law:** The Contract must be interpreted and governed, and the relations between the parties determined, by the laws in force in Canada and in the province of [REDACTED].
- 10.2. **Foreign Nationals:** The Contractor must comply with Canadian immigration requirements applicable to foreign nationals entering Canada to work temporarily in fulfillment of the Contract. If the Contractor wishes to hire a foreign national to work in Canada to fulfill the Contract, the Contractor should immediately contact the nearest Service Canada regional office to enquire about Immigration, Refugees and Citizenship Canada's requirements to issue a temporary work permit to a foreign national. The Contractor is responsible for all costs incurred as a result of non-compliance with immigration requirements.
- 10.3. **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.
- 10.4. **Severability.** If any provision of this Contract is declared unenforceable by an authoritative court, the remainder of this Contract will remain in force.
- 10.5. **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.
- 10.6. **No Bribe.** The Contractor certifies 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.
- 10.7. **Contingency Fees.** The Contractor represents 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).
- 10.8. **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.

## GENERAL PROCUREMENT CLAUSES FOR CLOUD SERVICES

- 10.9. International Sanctions.**
- 10.9.1.** Persons in Canada, and Canadians outside of Canada, are bound by economic sanctions imposed by Canada. As a result, the Government of Canada cannot accept delivery of Cloud Services that originate, either directly or indirectly, from the countries or persons subject to economic sanctions
- 10.9.2.** The Contractor must not supply to the Government of Canada any Cloud Services which are subject to [economic sanctions](#).
- 10.10.** 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 Services 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 Cloud Services. If the Parties cannot agree on a work around plan, the Contract will be terminated.
- 10.11. Code of Conduct or 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.
- 10.12. Conflict of interest and Values and Ethics Codes for the Public Service**
- 10.12.1.** 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.
- 11. Documentation**
- 11.1. Cloud Services Documentation.** The Contractor must provide or deliver access to the commercially available Cloud Services Documentation to Canada upon Contract Award. The Contractor must update Cloud Services Documentation on a commercially reasonable basis.
- 11.2. Other Documentation.** The Contractor must provide or deliver access to any documentation required in performance of the Cloud Services.
- 11.3. Translation Rights.** The Contractor agrees that Canada may translate any written deliverable, including the Cloud Services Documentation or Training Materials into English or French. The Contractor acknowledges that 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 will not be responsible for technical errors that arise as a result of any translation made by Canada.
- 11.4. Moral Rights.** At the request of Canada, the Contractor may provide a written permanent waiver of moral rights, in a form acceptable to Canada, from every author that contributed to the written deliverable. If the Contractor is unable or unwilling to obtain the requested waivers, the Contractor agrees to indemnify Canada against all losses and expenses (including legal fees) arising out of any moral rights infringement claim by a third party based on Canada's translation of written documentation.
- 11.5. Defective Documentation.** If at any time during the Contract Period, Canada advises the Contractor a defect or non-conformance in any part of the documentation delivered with the Cloud Services, the Contractor will correct the defect or non-conformance must as soon as possible and at its own expense. Canada may provide the Contractor with information about defects or non-conformance in other documentation, including the Cloud Services Documentation, for information purposes only.

## GENERAL PROCUREMENT CLAUSES FOR CLOUD SERVICES

### 12. Ongoing Qualification Requirements and Certifications.

- 12.1.** The Contractor must continue to meet and comply with the certifications and requirements against which the Contractor was assessed prior to Contract award as well as any Contract amendments throughout the life of the Contract. These certifications and requirements are subject to verification by Canada during the entire Contract period. If the Contractor no longer remains qualified, does not comply with any certification or it is determined that any certification made by the Contractor during assessment is untrue, whether made knowingly or unknowingly, Canada has the right, under the default provision of the Contract, to terminate the Contract default.
- 12.2.** The Contractor must provide any information requested by Canada with respect to whether it continues to meet the on-going certifications and requirements within a reasonable period requested by Canada, not to exceed 15 Federal Government Working Days or as otherwise mutually agreed upon.
- 12.3.** The Contractor must comply and ensure that its employees and subcontractors comply with all security measures, standing orders, policies or other rules in force at the site where the Work is performed.

**Note to Contracting Authority:** Please note that clause 12.4-12.4.2 is an optional clause if your requirement is < \$20M. TBS is in the process of further defining policy for Environmental considerations and this clause will be updated once finalized.

### 12.4. The Government of Canada's Green House Gas Reduction Targets

- 12.4.1.** The Government of Canada is committed to reducing Canada's Greenhouse Gas (GHG) emissions by 40% from 2005 levels by 2030, and putting Canada on a path to reach net-zero emissions by 2050 in line with the ratified Paris Agreement. GHG's are gases that trap heat in the Earth's atmosphere, contributing to Climate Change.
- 12.4.2.** The Contractor must have science-based Greenhouse Gas (GHG) Reduction targets set in-line with the Paris Agreement and verified by an independent third-party. The Contractor must provide a certification from an independent third party, or a letter attesting to the verification, that they have Science-Based GHG reduction targets set in-line with the Paris Agreement, or Net-Zero targets set for 2050 or before. At its discretion, Canada may audit the Contractor by requesting certifications or letters to validate that the Contractor is in compliance with this requirement. Canada is committed to reducing Canada's Greenhouse Gas (GHG) emissions by 40% from 2005 levels by 2030, and putting Canada on a path to reach net-zero emissions by 2050 in line with the ratified Paris Agreement. GHG's are gases that trap heat in the Earth's atmosphere, contributing to Climate Change.

**GENERAL PROCUREMENT CLAUSES FOR CLOUD SERVICES**

**Note to Contracting Authority:** Based on the Selection in Section 5.1 – please select “extended” pricing for Subscription Services and “Ceiling” for On-Demand Services.

**APPENDIX A – Deliverables**

**1. TABLE 1 - DELIVERABLES**

Table 1 - List of Deliverables							
Item No.	Product Name	Part No.	Unit of Measure	Period	Qty	Unit Price	Extended or Ceiling Price
1							
...							
Sub-Total:							\$0.00

**2. TABLE 2 - LIST OF OPTIONAL DELIVERABLES (if applicable)**

Table 2 - List of Optional Deliverables							
Item No.	Product Name	Part No.	Unit of Measure	Period	Qty	Unit Price	Extended or Ceiling Price
1							
...							
Sub-Total:							\$0.00