



NATIONAL CAPITAL COMMISSION  
COMMISSION DE LA CAPITALE NATIONALE

**SUPPLEMENTAL TERMS AND CONDITIONS  
FOR NCC INFORMATION TECHNOLOGY CONTRACTS**





## A. DEFINED TERMS

The following defined term is added to ARTICLE 1 – INTERPRETATION:

“**Accessibility Conformance Report**” or “**ACR**” means an unredacted report completed by a third-party or by the Contractor’s in-house accessibility specialist, that is based on the Voluntary Product Accessibility Template (VPAT®) or a comparable format, and details the test results of the ICT Solution against the applicable sections of the Accessibility Standard identified in the solicitation documents or, if no Accessibility Standard is specified, the EN 301 549 (2021)(2021).

“**Accessibility Conformance Date**” means the date by which the Solution must conform to the EN 301 549 (2021) as further specified by the Technical Authority. Canada may amend this date at its sole discretion.

“**Accessibility Standard**” means the EN 301 549 (2021), any version of the Web Content Accessibility Guideline (WCAG), or the Revised Section 508 Standards. Unless specified otherwise, the Accessibility Standard is the EN 301 549 (2021).

“**Commercial-Off-The-Shelf (COTS)**” is a hardware or software ICT product which is ready-made and available for commercial purchase, lease or license which may offer further customization to the purchaser.

“**Direct Damages**” include direct or general damages including:

- (a) damages that are reasonably contemplated as being the probable consequences of breach of the Contract, but exclude those damages that, in order to be reasonably contemplated, require knowledge of special circumstances, which are not known by both parties;
- (b) damages that are reasonably foreseeable as being the probable consequences of a tort that falls within the scope of the Contract, subject to any express limitation or negation of the tort duty, or of the right to sue in tort, set out in the Contract; and
- (c) where the Supplier has failed to remedy or correct a deficiency in the Deliverables required under the Contract within the timeframes prescribed under the Contract or under a NCC rectification request, the costs of obtaining replacement Deliverables that are substantially equivalent to the Deliverables required under the Contract including:
  - i. costs incurred by the NCC to remove and return any deficient Deliverables and re-procure deliverables equivalent to the Deliverables required under the Contract including all administrative costs, retraining costs, costs attributable to price increases or other costs arising out of any temporary or interim measures that may be required because of any deficiencies in the Deliverables;
  - ii. costs of restoring, recreating or correcting any lost or damaged records or data provided, however, that the Supplier shall not be liable for any losses incurred as a result of any failure by the NCC to maintain such procedures that it would be reasonably expected to implement for the back-up and recovery of any records or data.

“**EN 301 549 (2021)**” is an Accessibility Standard and means the EN 301 549 V3.2.1 (2021-03) Harmonised European Standard Accessibility requirements for ICT products and services or the most current version.

“**Solution**” means the complete ERP offering proposed by the Proponent and required to meet the requirements of this RFP, whether provided directly by the Proponent or through subcontractors or third-party licensors. The Solution includes, at a minimum:



- The core ERP software;
- All standard and optional modules proposed or required;
- All configured components, parameters, settings, workflows, business rules, reports, and integrations;
- All customizations, extensions, enhancements, or bespoke development required to meet the requirements of this RFP;
- All third-party software, tools, or components embedded in or required for the Solution to function as proposed;
- All updates, patches, releases, and upgrades necessary to support the Solution throughout the contract term; and
- All documentation, training materials, security features, and technical elements necessary to operate, administer, and support the Solution.

Unless otherwise expressly stated, all requirements, pricing, service levels, warranties, and contractual obligations set out in this RFP apply to the Solution as a whole.

## **B. CONFIDENTIALITY**

*The following paragraph replaces paragraph 6.06 of ARTICLE 6 – CONFIDENTIALITY:*

### **6.06 Notice and Protective Order**

TO THE MAXIMUM EXTENT PERMITTED BY LAW, if the Supplier or any of its directors, officers, employees, agents, representatives or advisors become legally compelled to disclose any NCC Confidential Information:

- (a) due to a legal obligation arising out of the laws of any foreign jurisdiction, the Supplier will provide the NCC with prompt notice to that effect and shall not disclose the NCC Confidential Information without prior authorization from the NCC; or
- (b) due to a legal obligation arising under Canadian law the Supplier will provide the NCC with prompt notice to that effect in order to allow the NCC to seek one or more protective orders or other appropriate remedies to prevent or limit such disclosure, and it shall co-operate with the NCC and its legal counsel to the fullest extent. If such protective orders or other remedies are not obtained, the Supplier will disclose only that portion of NCC Confidential Information which the Supplier is legally compelled to disclose, only to such person or persons to which the Supplier is legally compelled to disclose, and the Supplier shall provide notice to each such recipient (in co-operation with legal counsel for the NCC) that such NCC Confidential Information is confidential and subject to non-disclosure on terms and conditions equal to those contained in the Agreement and, if possible, shall obtain each recipient's written agreement to receive and use such NCC Confidential Information subject to those terms and conditions.

*The following paragraphs are added to ARTICLE 6 – CONFIDENTIALITY and the original paragraph 6.08 is renumbered as paragraph 6.10:*

### **6.08 Privacy Safeguards**

In addition to any other specific measures established under paragraph 6.07 or elsewhere under the Contract, the Supplier will take all necessary measures to prevent:



- (a) dissemination of NCC Confidential Information and Records to any third party or to any foreign jurisdiction without the NCC's prior express written approval;
- (b) remote access to NCC Confidential Information and Records from outside of Canada; or
- (c) access by any employee or any other third party to NCC Confidential Information and Records without the NCC's prior express written approval and the execution by the employee or third party in question of a non-disclosure agreement prescribed by the NCC.

### **6.09 Audit of Security Measures and Privacy Safeguards**

The NCC may require the Supplier, at the Supplier's expense, to engage a mutually agreed third party to audit the security measures and privacy safeguards of the Supplier. Any such audits may require the examination of some or all equipment used and some or all Records maintained by the Supplier in connection with the Contract. Any auditor appointed pursuant to this paragraph shall be entitled to examine and verify, both physically and electronically, the Supplier's privacy safeguards and security measures, policies, practices, capabilities and assurances.

The Supplier agrees to cooperate with the NCC and provide reasonable assistance when the NCC conducts any privacy impact assessment (PIA), threat risk assessment (TRA), or other assessment related to the security of the Deliverables.

If at any time, the NCC deems that the Supplier has in place insufficient privacy safeguards and security measures, the result of which, in the NCC's sole opinion, exposes the NCC to unacceptable risk, the Supplier shall promptly implement safeguards and measures satisfactory to the NCC to mitigate the risk exposure.

### **6.10 Survival**

The provisions of this Article shall survive any termination or expiry of the Contract.

## **C. INTELLECTUAL PROPERTY**

*The following Article will replace ARTICLE 7 – INTELLECTUAL PROPERTY:*

### **ARTICLE 7 – INTELLECTUAL PROPERTY**

#### **7.01 NCC Intellectual Property**

The Supplier agrees that all Intellectual Property and every other right, title and interest in and to all concepts, techniques, ideas, information and materials, however recorded, (including images and data) provided by the NCC to the Supplier shall remain the sole property of the NCC at all times.

#### **7.02 No Use of NCC Insignia**

The Supplier shall not use any insignia or logo of the NCC except where required to provide the Deliverables, and only if it has received the prior written permission of the NCC to do so.

#### **7.03 Ownership of Intellectual Property**

Unless the Contract expressly states otherwise, the NCC shall be the sole owner of any Newly Created Intellectual Property, and the following provisions shall apply:



- (a) The Supplier irrevocably assigns to and in favour of the NCC and the NCC accepts every right, title and interest in and to all Newly Created Intellectual Property in the Deliverables, immediately following the creation thereof, for all time and irrevocably waives in favour of the NCC all rights of integrity and other moral rights to all Newly Created Intellectual Property in the Deliverables, immediately following the creation thereof, for all time.
- (b) To the extent that any of the Deliverables include, in whole or in part, the Supplier's Intellectual Property, the Supplier grants to the NCC a licence to use that Supplier Intellectual Property in the manner contemplated in this Article, the total consideration for which shall be payment of the Rates to the Supplier by the NCC.
- (c) At the request of the NCC, at any time or from time to time, the Supplier shall execute and agrees to cause its of its directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors to execute an irrevocable written waiver of any moral rights or other rights of integrity in the applicable Deliverable(s) in favour of the NCC, such waiver to be in the form set out in Schedule 1, and which waiver may be invoked without restriction by any person authorized by the NCC to use the Deliverables. The Supplier shall deliver such written waiver(s) to the NCC within 10 Business Days of the receipt of the request from the NCC.
- (d) The Supplier shall place a copyright notice on all recorded Deliverables it provides to the NCC under the Contract in the following form: "NCC, [year of publication]."
- (e) At the request of the NCC, at any time or from time to time, the Supplier shall execute and agrees to cause its directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors to execute a written assignment of copyright in the applicable Deliverable(s) to the NCC. The Supplier shall deliver such written assignment(s) to the NCC within 10 Business Days of the receipt of the request from the NCC. The Supplier shall assist the NCC in preparing any Canadian copyright registration that the NCC considers appropriate. The Supplier will obtain or execute any other document reasonably required by the NCC to protect the Intellectual Property of the NCC.

#### **7.04 Supplier's Grant of Licence**

For those parts of the Deliverables that are Supplier Intellectual Property, the Supplier grants to the NCC a perpetual, world-wide, non-exclusive, irrevocable, transferable, royalty free, fully paid up right and license: (a) to use, modify, reproduce and distribute, in any form, those Deliverables; and (b) to authorize other Persons, including agents, contractors or sub-contractors, to do any of the former on behalf of the NCC.

To the extent that the Deliverables include the licencing of software to the NCC, the Supplier shall grant a licence in the form of a "Software Licence" with terms and conditions satisfactory to the NCC that shall at a minimum include the following:

- (a) a perpetual, irrevocable, world-wide, royalty-free, fully paid up, non-exclusive, unrestricted, fully transferable licence grant to the software (machine-readable object code) and any related documentation;
- (b) the right of the NCC and its designated users (including, without limitation, NCC-authorized third party users) to install, copy, distribute, deploy and otherwise use the software, including without limitation the ability to make such modifications to the software in this context as may be required, with title to the software and any modifications retained by the Supplier;
- (c) the right of access to the software by an unlimited number of third party users, including the general public;
- (d) a licence to use the software in the environments and for the number of instances specified in the Contract;
- (e) a licence to use the software on any hardware and at any capacity;



- (f) a reasonable period of time in which to test and accept the software after it has been installed in the NCC's environment;
- (g) a formal payment protocol that confirms that no licensing fees or other payments under the Contract shall be payable until the software has been formally accepted in writing by the NCC;
- (h) a warranty that the Supplier has exclusive title to the software and documentation or otherwise has the right to grant the licence to the NCC;
- (i) a warranty that the software is free from all encumbrances and does not contain any disabling code;
- (j) a warranty that the software shall be compatible with future versions or releases of the operating system on which it was originally installed and shall be subsequently maintained to remain so compatible;
- (k) a warranty that the software otherwise conforms to the requirements, functional specifications, warranties and standards set out in the Contract;
- (l) a licence to use the software at an internal or third party disaster recovery site;
- (m) a licence to use any other Deliverables provided under the Contract; and
- (n) a licence to use the Deliverables in the manner contemplated by and as otherwise described in the Solicitation Document.

Once executed, the Software Licence shall form part of Schedule 1 and shall be subject to all of the terms and conditions of the Contract. For greater certainty, no parts of the Software Licence shall conflict with the terms of the Contract and any such inconsistencies shall be void and of no legal effect.

#### **7.05 No Restrictive Material in Deliverables**

The Supplier shall not incorporate into any Deliverables anything that would restrict the right of the NCC to modify, further develop or otherwise use the Deliverables in any way that the NCC deems necessary, or that would prevent the NCC from entering into any contract with any contractor other than the Supplier for the modification, further development of or other use of the Deliverables.

#### **7.06 Third-Party Intellectual Property**

The Supplier represents and warrants that the provision of the Deliverables shall not infringe or induce the infringement of any Third-Party Intellectual Property rights. The Supplier further represents and warrants that it has obtained assurances with respect to any Supplier Intellectual Property and Third-Party Intellectual Property that any rights of integrity or any other moral rights associated therewith have been waived.

#### **7.07 Escrow**

To the extent that the Deliverables include an obligation on the part of the Supplier to provide software escrow services to the NCC, the Supplier and the NCC will enter into a "Software Escrow Agreement" on terms satisfactory to the NCC which shall include as a minimum the following provisions and protections:

- (a) The delivery into escrow of all source code, documentation and executables for the software.
- (b) The release of escrow materials in the event that the Supplier becomes bankrupt, insolvent, or ceases to operate as a going concern, or is otherwise unable or unwilling to support, maintain or adequately develop the software.
- (c) The NCC's right to request the Supplier to demonstrate to the NCC that the escrowed materials are indeed what they purport to be.



(d) The NCC's right to approve the Supplier's proposed escrow agent.

#### **7.08 NCC May Prescribe Further Compliance**

The NCC reserves the right to prescribe the specific manner in which the Supplier shall perform its obligations relating to this Article

#### **7.09 Survival**

The obligations contained in this Article shall survive the termination or expiry of the Contract.

### **D. INDEMNITIES AND LIABILITY**

*The following paragraph replaces paragraph 8.01 of ARTICLE 8 – INDEMNITIES AND INSURANCE:*

#### **8.01 Supplier Indemnity**

The Supplier hereby agrees to indemnify and hold harmless the Indemnified Parties from and against any and all liability, loss, costs, damages and expenses (including legal, expert and consultant fees), causes of action, actions, claims, demands, lawsuits or other proceedings, (collectively, "Claims"), by whomever made, sustained, incurred, brought or prosecuted, including for breaches of confidentiality or privacy or Intellectual Property rights or for third party bodily injury (including death), personal injury and property damage, in any way based upon, occasioned by or attributable to anything done or omitted to be done by the Supplier, its subcontractors or their respective directors, officers, agents, employees, partners, affiliates, volunteers or independent contractors in the course of performance of the Supplier's obligations under, or otherwise in connection with, the Contract. The obligations contained in this paragraph shall survive the termination or expiry of the Contract.

*The following paragraph is added to ARTICLE 8 – INDEMNITIES AND INSURANCE:*

#### **8.05 Limitation of Liability**

Neither party shall be liable for any consequential, indirect, incidental or special damages (meaning damages requiring special knowledge by one party of the other's circumstances), including lost profits or lost opportunity costs, suffered by the other party with respect to any Claims arising out of or in connection with the Contract but this shall not limit liability for Direct Damages. Liability under the Contract for all Claims whether they be Direct Damages or otherwise, shall not exceed **ten million dollars (\$10,000,000)** in Canadian funds, inclusive of the amounts recovered or recoverable through the insurance prescribed under the Contract, but none of these limitations shall restrict or limit liability for the following:

- (a) damages and costs arising from infringement or inducement of infringement of Third Party Intellectual Property rights;
- (b) claims for liens, attachments, charges or other encumbrances resulting from claims against the Supplier upon or in respect of any Deliverables furnished to the NCC;
- (c) damages and costs applicable to any breach of the confidentiality and privacy provisions set out in the Contract;
- (d) damages and costs for (i) personal injury (including bodily injury or death); or (ii) physical harm to tangible personal property and real property, to the extent caused by breach of contract, negligence or willful misconduct or other tortious acts or omissions of the Supplier;



and the Supplier agrees that the Indemnified Parties shall not be liable for any property damage, bodily injury (including death) or personal injury to the Supplier or for any Proceeding by any third party against the Supplier arising in the course of the performance of the Supplier's obligations under the Contract or arising otherwise in connection with the Contract, except to the extent the damage or injury is caused by the negligence or willful misconduct of any of the Indemnified Parties.

## **E. SUPPLIER'S OBLIGATIONS ON TERMINATION**

*The following paragraph replaces paragraph 9.04 of ARTICLE 9 – TERMINATION, EXPIRY AND EXTENSION:*

### **9.04 Supplier's Obligations on Termination**

On termination of the Contract, the Supplier shall, in addition to its other obligations under the Contract and at law:

- (a) at the request of the NCC, provide the NCC with any completed or partially completed Deliverables;
- (b) provide the NCC with a report detailing: (i) the current state of the provision of Deliverables by the Supplier at the date of termination; and (ii) any other information requested by the NCC pertaining to the provision of the Deliverables and performance of the Contract;
- (c) execute such documentation as may be required by the NCC to give effect to the termination of the Contract;
- (d) comply with all obligations with respect to the handling of records and information under the Contract;
- (e) comply with any other instructions provided by the NCC, including but not limited to instructions for facilitating the transfer of its obligations to another Person; and
- (f) carry out any termination transition services provided for in Schedule 1 – Deliverables, Pricing and Specific Provisions or elsewhere in the Contract.

This paragraph shall survive any termination of the Contract.

## **F. ACCEPTANCE TESTING**

*The following Article is added to the Standard Terms and Conditions:*

### **ARTICLE 10 – ACCEPTANCE TESTING**

#### **10.01 Acceptance Testing Requirement**

The Deliverables in their entirety, and each part of the Deliverables, shall be subject to testing by the NCC ("Acceptance Testing"). The NCC may, at its sole discretion, decide not to subject any or all of the Deliverables to Acceptance Testing, provided such decision is communicated to the Supplier in writing. Unless the Contract sets out a different process for Acceptance Testing that expressly supersedes this Article, the process described in this Article will apply.

#### **10.02 Preliminary Acceptance Testing Plan**

Acting reasonably and prior to any part of the Deliverables being ready for Acceptance Testing, the Supplier and the NCC will together develop a mutually agreeable plan for Acceptance Testing of the Deliverables ("Acceptance Testing Plan"). Each Acceptance Testing Plan shall be set out in writing and include:



- (a) the duration of the Acceptance Testing period;
- (b) the name(s) or title of the person(s) who will conduct the Acceptance Testing;
- (c) a description of how the Acceptance Testing and the results will be documented;
- (d) a list of success criteria; and
- (e) who will be responsible for developing appropriate test data (which test data will be subject to the reasonable approval of the other party).

The Supplier shall give the NCC written notice when any part of the Deliverables is ready for Acceptance Testing.

### **10.03 Acceptance Testing Plan Review**

Upon the NCC's receipt of a notice that any part of the Deliverables is ready for Acceptance Testing, the Supplier will, if requested by the NCC, review the Acceptance Testing Plan with the NCC. The Acceptance Testing Plan shall apply unless the Parties agree to amend it. The NCC and the Supplier will set a mutually agreeable time and place for performing the Acceptance Testing.

### **10.04 Conduct of Acceptance Testing**

A representative nominated by the NCC must be present for every Acceptance Testing, unless the NCC indicates to the Supplier in writing that it does not require a representative to be present. The NCC may use external users as testers during any Acceptance Testing. During Acceptance Testing, the Supplier shall perform any tasks specified by the NCC that are consistent with the Acceptance Testing Plan as promptly as possible.

### **10.05 Certification Of Acceptance, And Notices Of Deficiencies**

As soon as practicable after completion of an Acceptance Testing period the NCC shall either:

- (a) certify to the Supplier in writing that the applicable Acceptance Testing has been successfully completed, or
- (b) notify the Supplier of all defects and deficiencies in the Deliverables made apparent to the NCC by the Acceptance Testing.

Acceptance of all or any part of the Deliverables will only occur when the NCC certifies to the Supplier in writing that the applicable Acceptance Testing has been successfully completed.

### **10.06 Conditional Acceptance**

In the case of Acceptance Testing for a part of the Deliverables that is a component of, or must interface with, another part of the Deliverables, the NCC may provide a conditional acceptance of that part of the Deliverables that will be dependent upon the NCC's acceptance of the other part(s) of the Deliverables.

### **10.07 Corrections**

As promptly as possible, but not later than twenty (20) Business Days following the date of receipt by the Supplier of any notice of defects or deficiencies, the Supplier shall correct the defects and deficiencies identified in such notice at the Supplier's expense and notify the NCC in writing when such corrections have been completed. Upon receipt of such notice by the NCC, the Acceptance Testing shall be repeated in accordance with the Acceptance Testing Plan.



### **10.08 Unacceptable Deliverables**

If all or any part of the Deliverables are not accepted by the NCC after the second or any subsequent Acceptance Testing, the NCC may, at its option, exercisable by written notice to the Supplier within thirty (30) calendar days of the end of Acceptance Testing period:

- (a) Allow the Supplier a further opportunity to correct the defects or deficiencies and repeat the Acceptance Testing;
- (b) Accept all or any part of the Deliverables (although of diminished value) as the case may be, at a revised cost acceptable to both the NCC and the Supplier;
- (c) Terminate the Contract by notice in writing to the Supplier; or
- (d) Permit the Supplier to replace the Deliverables with a substitute that, in the NCC's sole opinion, is functionally equivalent or superior.

If the Contract is terminated pursuant to this paragraph, the Supplier shall refund to the NCC all monies paid in respect of the unacceptable Deliverables within fifteen (15) calendar days of the Supplier's receipt of the notice of termination.