

Supplemental Conditions
Contractor to Own Intellectual Property Rights in Foreground Information

Article 1 Interpretation

Section 1.01 - Definition

1.01.01 In the Contract, unless the context otherwise requires:

"Background Information" means all Intellectual Property that is not Foreground Information that is incorporated into the Work or necessary for the performance of the Work and that is proprietary to or the confidential information of the Contractor, its subcontractors or any other third party;

"Firmware" means computer programs that are stored in integrated circuits, read-only memory or other similar devices within the hardware or other equipment;

"Foreground Information" means all Intellectual Property first conceived, developed, produced or reduced to practice as part of the Work under the Contract;

"General Conditions" means the general conditions that form part of the Contract;

"Intellectual Property" means any information or knowledge of an industrial, scientific, technical, commercial, literary, dramatic, artistic or otherwise creative nature relating to the Work, whether oral or recorded in any form or medium and whether or not subject to copyright; this includes but is not limited to any inventions, designs, methods, processes, techniques, know-how, show-how, models, prototypes, patterns, samples, schematics, experimental or test data, reports, drawings, plans, specifications, photographs, manuals and any other documents, Software, and Firmware;

"Intellectual Property Right" means any intellectual property right recognized by law, including any intellectual property right protected by legislation such as patents, copyright, industrial design, integrated circuit topography, and plant breeders' rights, or subject to protection under the law as trade secrets and confidential information.

"Software" means any computer program whether in source or object code (including Firmware), any computer program documentation recorded in any form or upon any medium, and any computer database, including any modification.

1.01.02 Elections Canada's primary objective in entering into the Contract is to receive the deliverables contracted for, to be able to use those deliverables, and any Intellectual Property arising by virtue of the Contract for Elections Canada's activities, including future contracts, procurements and to protect or advance the broader public interest. These

supplemental general conditions do not affect any existing Intellectual Property Rights in any information belonging to Elections Canada, the Contractor or a third party.

- 1.01.03 Words and expressions defined in the General Conditions and used in these supplemental general conditions have the meanings given to them in the General Conditions. In the event of any inconsistency between the General Conditions and these supplemental general conditions, the applicable provisions of these supplemental general conditions will prevail. If the General Conditions include a section on "Copyright", they are amended by deleting the section in its entirety.
- 1.01.04 If supplemental general conditions 4001, 4003 and 4004 are also incorporated in the Contract, the provisions of those supplemental general conditions concerning the ownership of Intellectual Property will prevail in relation to the subject matter of those supplemental general conditions.
- 1.01.05 References in these supplemental general conditions to the Contractor owning the Foreground Information or any rights in it refer to the Contractor, its subcontractors, its suppliers, its agents, its representatives or any of their employees owning such information or rights, as applicable.

Article 2 Records and disclosure of Foreground Information

- 2.01.01 During and after the performance of the Contract, the Contractor must keep detailed records of the Foreground Information, including details of its creation, ownership and about any sale or transfer of any right in the Foreground Information. The Contractor must report and fully disclose to Elections Canada all Foreground Information as required by the Contract. If the Contract does not specifically state when and how the Contractor must do so, the Contractor must provide this information when requested by the Contracting Authority or a representative of the department or agency for which the Contract is performed, whether before or after the completion of the Contract.
- 2.01.02 Before and after final payment to the Contractor, the Contractor must provide Elections Canada with access to all records and supporting data that Elections Canada considers pertinent to the identification of Foreground Information.
- 2.01.03 For any Intellectual Property that was developed or created in relation to the Work, Elections Canada will be entitled to assume that it was developed or created by Elections Canada, if the Contractor's records do not list that Intellectual Property or do not indicate that it was created by the Contractor, or by someone on behalf of the Contractor, other than Elections Canada.

Article 3 Ownership of Intellectual Property Rights in Foreground Information

- 3.01.01 All Intellectual Property Rights in the Foreground Information belong to the Contractor as soon as they come into existence.

- 3.01.02 Despite the Contractor's ownership of all the Intellectual Property Rights in the Foreground Information, Elections Canada has unrestricted ownership rights in any prototype, model, custom or customized system or equipment that is a deliverable under the Contract, including manuals and other operating and maintenance documents. This includes the right to make them available for public use, whether for a fee or otherwise, sell them or otherwise transfer ownership in them.
- 3.01.03 Any personal information, as defined in the Privacy Act, R.S., 1985, c. P-21, collected by the Contractor in the execution of the Work under the Contract becomes the property of Elections Canada immediately upon collection and must be used only for the performance of the Work. The Contractor has no right in any such personal information.
- 3.01.04 If the Work under the Contract involves the preparation of a database or other compilation using information or data supplied by Elections Canada and any personal information referred to above, the Intellectual Property Rights in the database or compilation containing such information will belong to Elections Canada. The Contractor's Intellectual Property Rights in the Foreground Information are restricted to those capable of being exploited without the use of the information or data supplied by Elections Canada and the personal information.
- 3.01.05 The Contractor must maintain the confidentiality of the information or data supplied by Elections Canada and the personal information as required in the General Conditions. The Contractor must return all the information belonging to Elections Canada on request or on completion or termination of the Contract. This includes returning all hard copies and electronic copies as well as any paper or electronic record that contains any part of the information or information derived from it.

Article 4 Licenses to Intellectual Property Rights in Foreground and Background Information

- 4.01.01 As Elections Canada has contributed to the cost of developing the Foreground Information, the Contractor grants to Elections Canada a license to exercise all Intellectual Property Rights in the Foreground Information for Elections Canada's activities. Subject to any exception described in the Contract, this license allows Elections Canada to do anything that it would be able to do if it were the owner of the Foreground Information, other than exploit it commercially and transfer or assign ownership of it. The Contractor also grants to Elections Canada a license to use the Background Information to the extent that it is reasonably necessary for Elections Canada to exercise fully all its rights in the deliverables and in the Foreground Information.
- 4.01.02 These licenses are non-exclusive, perpetual, irrevocable, worldwide, fully-paid and royalty-free. Neither license can be restricted in any way by the Contractor providing any form of notice to the contrary, including the wording on any shrink-wrap or click-wrap license or any other kind of packaging, attached to any deliverable.
- 4.01.03 For greater certainty, Elections Canada's licenses include, but are not limited to:

- (a) the right to disclose the Foreground and Background Information to third parties bidding on or negotiating contracts with Elections Canada and to sublicense or otherwise authorize the use of that information by any contractor engaged by Elections Canada solely for the purpose of carrying out such contracts. Elections Canada will require these third parties and contractors not to use or disclose that information except as may be necessary to bid on, negotiate or carry out those contracts;
- (b) the right to disclose the Foreground and Background Information to other governments for information purposes;
- (c) the right to reproduce, modify, improve, develop or translate the Foreground and Background Information or have it done by a person hired by Elections Canada. Elections Canada, or a person designated by Elections Canada, will own the Intellectual Property Rights associated with the reproduction, modification, improvement, development or translation;
- (d) without restricting the scope of any license or other right in the Background Information that Elections Canada may otherwise hold, the right, in relation to any custom-designed or custom-manufactured part of the Work, to exercise such of the Intellectual Property Rights in the Background Information as may be required for the following purposes:
 - i. for the use, operation, maintenance, repair or overhaul of the custom-designed or custom-manufactured parts of the Work;
 - ii. in the manufacturing of spare parts for maintenance, repair or overhaul of any custom-designed or custom-manufactured part of the Work by Elections Canada, if those parts are not available on reasonable commercial terms to enable timely maintenance, repair or overhaul;
- (e) for Software that is custom designed for Elections Canada, the right to use any source code the Contractor must deliver to Elections Canada under the Contract.

4.01.04 The Contractor agrees to make the Background Information, including in the case of Software, the source code promptly available to Elections Canada for any purpose mentioned above. The license does not apply to any Software that is subject to detailed license conditions that are set out elsewhere in the Contract. Furthermore, in the case of commercial off-the-shelf software, the Contractor's obligation to make the source code promptly available to Elections Canada applies only to source code that is within the control of or can be obtained by the Contractor or any subcontractor.

Article 5 Contractor's Right to Grant Licenses

5.01.01 The Contractor represents and warrants that it has the right to grant to Elections Canada the licenses and any other rights to use the Foreground and Background Information. If

the Intellectual Property Rights in any Foreground or Background Information are or will be owned by a subcontractor or any other third party, the Contractor must have or obtain promptly a license from that subcontractor or third party that permits compliance with section 4 or arrange, without delay, for the subcontractor or third party to grant promptly any required license directly to Elections Canada.

Article 6 Waiver of Moral Rights

If requested by Elections Canada, during and after the Contract, the Contractor must provide a written permanent waiver of moral rights, as defined in the Copyright Act, R.S., 1985, c. C-42, from every author that contributes to any Foreground Information subject to copyright protection that is a deliverable to Elections Canada under the Contract. If the Contractor is an author of the Foreground Information, the Contractor permanently waives the Contractor's moral rights in that Foreground Information.

Article 7 License to Intellectual Property Rights to Elections Canada's Information

- 7.01.01 Any information supplied by Elections Canada to the Contractor for the performance of the Work remains the property of Elections Canada. The Contractor must use Elections Canada's Information only to perform the Contract.
- 7.01.02 If the Contractor wants to use any information owned by Elections Canada for the commercial exploitation or further development of the Foreground Information, the Contractor must obtain a license from the department or agency for which the Contract is performed. In its request for a license to that department or agency, the Contractor must explain why the license is required and how the Contractor intends to use the information. If the department or agency agrees to grant a license, conditions will be negotiated between the Contractor and that department or agency and may include the payment of a compensation to Elections Canada.

Article 8 Transfer or License of Contractor's Rights

- 8.01.01 During the Contract, the Contractor must not sell, transfer, assign or license the Foreground Information without first obtaining the Contracting Authority's written permission.
- 8.01.02 After the Contract, if the Contractor transfer ownership in the Foreground Information, the Contractor is not required to obtain Elections Canada's permission, but must notify the department or agency for whom the Contract is performed in writing of the transfer by referring to the serial number of the Contract and its date and by providing details about the transferee, including the conditions of the transfer. The Contractor must ensure that the transfer requires the transferee to notify the Elections Canada of any future transfer. Any transfer must be subject to all Elections Canada's rights to use the Foreground Information.
- 8.01.03 After the Contract, if the Contractor grants a license or any other right (other than a

transfer of ownership) to a third party to use the Foreground Information, the Contractor is not required to notify Elections Canada, but the license or right granted must not affect Elections Canada's rights in any way.

- 8.01.04 If the Contractor at any time transfers ownership of or grants rights in the Foreground Information that interfere in any way with Elections Canada's rights to use the Foreground Information, the Contractor must, if requested by Elections Canada, immediately take all steps necessary to restore Elections Canada's rights. If the Contractor is not successful in doing so, within the time reasonably required by Elections Canada, the Contractor must immediately reimburse Elections Canada for all costs Elections Canada incurs to do so itself.

Article 9 Transfer of Intellectual Property Rights upon Termination of the Contract for Default

- 9.01.01 If Elections Canada terminates the Contract in whole or in part for default, Elections Canada may, by giving notice to the Contractor, require the Contractor to transfer to Elections Canada all the Intellectual Property Rights in the Foreground Information, including the rights owned by subcontractors. In the case of Intellectual Property Rights in the Foreground Information that have been sold or assigned to a third party, the Contractor must pay to Elections Canada on demand, at Elections Canada's discretion, the fair market value of the Intellectual Property Rights in the Foreground Information or an amount equal to the payment received by the Contractor from the sale or assignment of the Intellectual Property Rights in the Foreground Information.
- 9.01.02 In the event of the issuance of a notice under subsection 1, the Contractor must, at its own expense and without delay, execute such documents relating to ownership of the Intellectual Property Rights as Elections Canada may require. The Contractor must, at Elections Canada's expense, provide all reasonable assistance in the preparation of applications and in the prosecution of any applications for registration of any Intellectual Property Rights in any jurisdiction, including the assistance of the inventor in the case of an invention.

Article 10 Products created using the Foreground Information

If the Contractor uses the Foreground Information to develop any new product or any improvement in any existing product, the Contractor agrees that, if Elections Canada wishes to purchase such new or improved product, the Contractor must sell them to Elections Canada at a discount off the lowest price for which it has sold those products to other customers, to recognize Elections Canada's financial contribution to the development of those products.