

RFP NO. PS20190498
CATEGORY 2
ENTERPRISE SOFTWARE AND RELATED SERVICES

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PART B - SCOPE OF WORK FOR CATEGORY 2

ENTERPRISE SOFTWARE AND RELATED SERVICES

The scope of work stated in this Part B (collectively, the “Scope of Work”) is current as of the date hereof, but may change or be refined in the course of the evaluation of Proposals or otherwise.

Unless otherwise stated, if, and wherever, the Scope of Work states a brand name, a make, the name of a manufacturer, a trade name or a vendor catalogue number, it is for the purpose of establishing a grade or quality of materials, goods or equipment only. It is not intended to rule out the use of other equivalent materials, goods or equipment. If, however, products other than those specified are proposed in any Proposal, the Proposal must explicitly include under the heading “Alternative Solutions” the names of such products and their manufacturers, any trade names and any applicable vendor catalogue numbers, and the City may request that the Proponent provide specific evidence of equivalency. Evidence of quality in the form of samples may also be requested.

To the extent that the Scope of Work expresses estimates of quantities or volumes of goods or services expected to be required by the City, the City cannot offer any assurances that such quantities or volumes will in fact be required.

1.0 PROJECT INTRODUCTION AND SCOPE OF PROCUREMENT

1.1 In-Scope Enterprise Software

The term Enterprise Software is intended to cover a wide variety of software products sold and / or licensed in a wide variety of ways (e.g. subscription, license + maintenance). The City intends to purchase many of the software products it requires through the Proponent including, but not limited to the following descriptions:

- Software requiring license or subscription, including:
 - License types:
 - Per user
 - Per computer
 - Concurrent
 - Site
 - License payment models:
 - Subscription
 - Perpetual License
 - Perpetual License + maintenance
 - Utility-like pricing (e.g. cloud computing)
 - Per transaction
 - Per process
 - Software types:
 - Client/server software
 - Operating system software
 - Database software
 - Server software
 - Desktop applications
 - Web-based applications
 - Different hosting models including:
 - Internal servers and storage
 - External co-located servers and storage
 - Infrastructure as a Service (IaaS)
 - Platform as a Service (PaaS)

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▪ Software as a Service (SaaS)

Some notable exceptions to in-scope Enterprise Software are outlined below:

- A. Enterprise Agreements Direct with Manufacturer: The City has some software products covered under existing agreements the City holds directly with the software manufacturer (e.g. Microsoft Enterprise Agreement). In these cases the City intends to designate the Proponent as the 'Software Advisor' for such agreements.
- B. Enterprise Applications: the City has a number of enterprise application software products in its standard where the City already has a vendor relationship or product specific reseller (e.g. SAP, POSSE, Hansen, TRIM, Tempest, Amanda). For enterprise application software products like these, the City will not expect the Proponent to act as reseller to the City, nor provide many software related services. However, the City reserves the right to engage the Proponent at its discretion to act as a reseller or provide software related services.

1.2 In-Scope Enterprise Software Services

The term Enterprise Software Services is intended to refer the services the Proponent would provide to the City in support of the City's ownership, use and acquisition of Enterprise Software products. Such services should include, though would not be limited to:

Service Category	Service	Description
Software Sales	Resale	Software resale activities including: providing quotations, accepting and fulfilling purchase orders, provisioning purchased software products to the City, providing invoices, maintaining records of all these activities.
	License & Media Provisioning	Provide access to purchased software including copies of or access to: license keys, certificates of ownership, valid subscriptions, and installation media or files.
Agreement Services	Agreement Maintenance	Help the City maintain its various software agreements, notifying the City of upcoming renewals, true ups, terminations in a timely fashion.
	Negotiation & Renewal	Assist the City in the negotiation of new or renewed software agreements and contracts, helping the City to achieve best value for its money.
	Software Advisor	The City has in place some agreements direct with software manufacturers (e.g. Microsoft, Adobe) that identify a company that acts in the role of a 'Software Advisor' or similar. The Software Advisor role entails providing all of the other services listed here except Resale.
	Benefits Tracking	Multi-year software agreements commonly entail benefits in the form of training, professional services. Benefits tracking services would include ensuring the City maximizes the value of these benefits and consumes them prior to any expiration dates.
Entitlement Tracking	Maintain Records of Purchase	Keeping records of software purchase activity and proof of purchase such that the City may prove to a manufacturer how many licenses and or subscriptions it owns or has kept up payments upon.
	Entitlement Reports	Providing entitlement reports; either upon request, or on agreed periodic periods, typically by product family or vendor.
	Audit Assistance	In the event of an audit, the City expects the Proponent to work with the City to minimize the disruption to its regular work to conclude audits in a timely

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		fashion that protects the City's interests.
Strategy & Planning	Strategic Guidance	The City expects the Proponent to help the City with product road mapping and strategy, by providing information like end-of-life, end-of-support, and what the industry trends are. This work may also include reporting on historical and forecast spend, based upon past, current day, and future anticipated product pricing.
	Product Assessment & Recommendation	When the City contemplates acquiring new software, the Proponent is expected to assist the City by providing pricing and feature comparison, industry knowledge on the product space at hand, and what other clients' experiences are with a given software product.
Consultation	Billable Consultation	All of the previously listed services are expected of the Proponent as part of its role as the City's formal software services provider. However, the City may from time to time make use of consultation services from the Proponent on a paid basis.

2.0 CURRENT STATE

The City utilizes a wide array of software and related services across its varying departments. The City anticipates an estimated average spend of \$2M per year.

2.1 Enterprise Class Software

Below is a list of the top software manufacturers & technologies in use at the City, this list is not exhaustive, but does include software manufacturers & technologies which are commonly used by the City. The titles listed in the table below meet either the definition of an Enterprise Application or are covered under an Enterprise Agreement Direct with Manufacturer. Also, the City has some form of direct relationship with all of these software manufacturers.

Software Vendor	Software Technology
Adobe	Creative Cloud, Acrobat Professional, Photoshop, Contribute, Dreamweaver, InDesign, Illustrator, Lightroom, Captivate
Amanda	Concurrent User Licensing, Batch Scheduler, Email Notification Server, Permit, RFS, Web Service Toolkit, Central Address Interface Enterprise Authentication Adaptor
Autodesk	AutoCAD Civil 3D, Map 3D, Topobase, Design Review
ESRI	ArcGIS Desktop Basic, ArcGIS Desktop Standard, ArcGIS Desktop Advanced, ArcGIS Monitor for ArcGIS Server
Hansen	Asset management software used mainly in Engineering
Lagan	Multi-channel citizen service and case management software often used by local governments 311 call centres or as a first contact point for all citizen inquiries and service requests. Citizen Service Representatives use Lagan as the main interface for knowledge management and generating service request workflows triggered by citizen inquiries and requests.
Microfocus	(VanDocs) HPE Content Manager, Trim, Records Administrator. Records Coordinator

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Microsoft	Exchange, SharePoint, Windows Enterprise, Windows Server, SQL Server, Office Professional Plus, Project Standard, Visio Professional, Visio Standard, Visual Studio, OneNote, Systems Center Configuration Manager
Oracle	Oracle Database Enterprise Edition, Oracle Spatial and Graph, Oracle Database Standard Edition
Posse	The City uses open source Posse (supported by Computronix) as a workflow platform to manage the licenses and permits related to building and land development.
SAP	SAP products including: ERP, SRM, PO, MDM, Read Soft, Content / TREX, BOBI, BW, Reporter, Portal, Fiori Mobile Gateway, Success Factors Cloud, Solution Manager
ServiceNow	Enterprise Service Management platform in use at the City.
Solarwinds	Database Performance Analyzer
VMware	VMware vSphere 6 Enterprise, VMware vSphere 6 Standard, VMware vCenter Server 6 Standard, VMware View 5 Enterprise Bundle, VMware Workstation 14 Pro for Linux and Windows, VMware Site Recovery Manager 6 Standard, VMware ThinApp 5 Client Licenses, VMware View 3 Enterprise

The list above is intended to give the Proponent an understanding of the City's current state, but as mentioned in the In-Scope section, the City does not expect the Proponent to provide Resale services for these products. However, the Proponent would be designated the role of 'Software Advisor' for some of the products above that are sold to the City via an enterprise agreement.

2.2 Small User Base Software

In addition to the Enterprise Class software defined in the previous section, the City purchases a large number of products that cannot be defined as enterprise software. Often such titles are made by small to mid-size software manufacturers, and/or are used by a smaller pool of users at the City. The Proponent can expect to act as reseller for these types of products. The list provided immediately below is only a sample of the products the City buys that meet this definition. The City expects the Proponent to provide all of the services identified in Part B Section 1.2. for these 'Small User Base Software' products.

- AGi32
- Bluebeam Revu
- Corel Draw
- EVMS
- EBMS
- ETAP
- Ipswitch WS FTP Pro
- MapPublisher
- PCSWMM
- Quantrix
- SketchUp Pro
- SnagIt & Camtasia

3.0 ENTERPRISE SOFTWARE AND SERVICES REQUIREMENTS

3.1 Enterprise Agreements Direct with Manufacturer

The City has some agreements direct with software manufacturers under which the City purchases needed licenses, subscriptions and/or services from the software manufacturer directly. Such agreements (e.g. Microsoft Enterprise Agreement) commonly include the formal identification of a company as a “Software Advisor” or similar. The City expects the Proponent to fulfil the role of Software Advisor for these agreements. Commonly, the Software Advisor role does not provide Resale services but does provide all other software services identified in Part B Section 1.2.

These agreements are generally renewed on a timed schedule. The City is looking to partner with a Proponent who has experience in the Software Advisor role. The City expects the Proponent to work with the City in the planning and negotiation of new and renewed enterprise software agreements so that the agreements protect the City’s interests, achieve best value for the City, and allow for flexibility and strategic alignment. The City expects to designate the Proponent as ‘Software Advisor’ in all new, renewed agreements. Also, the City expects the Proponent to notify the City 3 to 6 months in advance of such agreements coming to termination, so that the City and the Proponent can commence renewal work well in advance of deadline.

3.2 Third Party Portal License Manager

Some of the City’s larger agreements contain license portals where transactional purchases of licenses are added to a central license portal.

It is the City’s expectation that the Proponent may act as a license manager for these portals to ensure City purchase orders are tracked centrally and license certificates and counts reconcile with City orders. Some examples of these portals include Microsoft Volume License Service Centre, Microsoft Store for Business, Adobe Licensing Website, MyVMware, etc.

3.3 Small User Base Software

Aside from the major agreements, the City has a multitude of software products within its standards that are purchased in a transactional fashion or small batch purchases which are typically managed on a transactional basis. The City has hundreds of software titles managed this way. These software titles have smaller footprints at the City and do not require larger agreements, but are required for work from various departments.

The City expects the Proponent, in its role as reseller for all such products, to perform tracking so as to be able to provide the City with accurate entitlement reports periodically or as needed. Also, the City expects the Proponent to maintain a record of purchase that aligns with and supports the entitlement report. Also, the City expects the Proponent to help it move as many of this small footprint software into a more manageable annual renewal structures.

3.4 Keeping Record of Software Purchase Activity and Proof of Purchase

As the City places orders of software through the Proponent, it is key that records of entitlements be delivered electronically (if available) for each purchase in the form of confirmation of order, license key / serial number, and invoice (containing City PO #). These documents must be sent to the City electronically for retention. Also, the City’s Accounts Payable department will require a copy of all invoices to ensure payment is issued to the Proponent. If any of these documents are not present, payment may be rejected.

The City would like to receive *Monthly Software Purchase Summary Reports* for orders of all purchased software through the Proponent within the last month. These should include City purchase order number, Proponent invoice number, product number, product description, quantity ordered, and date ordered.

The City may request a listing of orders previously placed or copies of documentation including past invoices, order confirmation or license keys. Generally these will be for specific software manufacturers or through a given time period. It's the City's expectation that they can work with the Proponent to gain copies of prior documentation as proof of purchase.

3.5 Provide Software Entitlement Summaries

The City will require Software Entitlement Summaries on a periodic basis, and in some cases upon request. Software Entitlement Summaries should include record of license counts owned by the City (or a count of active subscriptions the City has) for each software product from the software manufacturer. For each license or subscription in the Summary, the Proponent should include the following detail:

- Quantity owned (or actively subscribed to)
- Product manufacturer
- Product title
- License type and details (e.g. Perpetual, Perpetual + maintenance, subscription, concurrent, site, per user, per computer)
- Product edition (e.g. Pro, Standard, Enterprise, etc.)
- Product version (in cases where version assurance is not included as a benefit of maintenance paid)
- If applicable, support end dates (by version)

The purpose of Software Entitlement Summaries is to enable the City to determine its effective license position (ELP) by virtue of comparing the Summary's counts to our client management platform (currently SCCM) counts. Also Software Entitlement Summaries will be used by the City to aid in budget planning, software roadmaps, product consolidation, periodic true ups, historical record and future estimated growth.

Software Entitlement Summaries will be required in the following scenarios:

- On an annual basis, the City requires the Proponent to provide a Software Entitlement Summary for all software manufacturers the City uses for which the Proponent tracks City entitlements
- For Microsoft products, the City requires the Proponent to provide quarterly Software Entitlement Summary
- In the event of audits or for any other reason, the City requires the Proponent to provide up-to-date Software Entitlement Summaries for one or more specific software manufacturers within a two-week timeframe upon request.

3.6 Provide Enterprise Agreement Benefits Summaries

Some enterprise agreements include defined benefits to which the City is entitled. Many benefits do not require the City to do anything to take advantage of them (e.g. being entitled to the latest version of a product by virtue of paid maintenance, or being allowed use of free development versions). However, some benefits come in the form of credits that can be spent, often with an expiry deadline, benefits like:

- training vouchers
- planning services
- support incidents
- professional services

The City expects the Proponent to be knowledgeable of all benefits it has in an agreement for which the Proponent is the Software Advisor. Also, the Proponent is expected to periodically review credit based benefits with the City, to ensure the City is aware of them, and makes use of them in a timely fashion.

3.7 Notifications of Maintenance Renewal

The City requires notifications for all terminations, renewals and ‘True-Ups’ for multi-year software agreements. Also, the City expects notifications for annual maintenance renewals for software not covered under such agreements. Typically, 60 to 90 day notifications will work for Small User Base Software, but larger agreements often require more resource, time and work, so will require more lead time.

The City expects the Proponent to notify the City in a timely fashion whenever there is an upcoming renewal, true-up, or multi-year agreement termination. For each of these events, the City expects that the Proponent provide explanation of all forms that need to be completed and submitted, and provide assistance as well as timeline within which to do this.

3.8 Negotiation of New or Renewed Multi-year Agreements

The City will periodically need to negotiate new or renewed multi-year agreements with software manufacturers. Such agreements are an opportunity for the City to lock in pricing for the length of the agreement. Such agreements also commonly include benefits (mentioned previously) which are often more negotiable than product prices and can greatly benefit the City.

The City expects the assistance of the Proponent in the negotiation of new or renewed software agreements and contracts. The Proponent should help the City to achieve best value for its money, and ensure the agreement’s language benefits the City as much as possible. Negotiation with software manufacturers should leverage the size and brand value of the City to achieve favourable terms and pricing. Also, the Proponent should help the City consider using Federal or Provincial master services contracts that extend to public sector entities when possible and appropriate.

In some cases with these agreements, the City will expect the Proponent to take on the role of Software Advisor once the agreement is finalized. As the Software Advisor, the Proponent may not be allowed to resell the software to the City, but is expected to provide all of the other software services identified in Part B Section 1.2. An important part of the Software Advisor role is to advise the City on any benefits offered as part of the agreement, so as to ensure the City derives maximum value from these benefits.

3.9 Strategic Guidance

Generally speaking, the City seeks to meet the needs of its workforce with as few software products as possible by eliminating competing or redundant software products in favor of enterprise class software that can meet the needs of many of its different business units.

The City expects the Proponent to be a valuable ally that offers strategic guidance. The Proponent should provide the City with road maps for various products spaces that include details like end-of-life, end-of-support, and what the industry trends are. This work may also include reporting on historical and forecast spend, based upon past, current day, and future anticipated product pricing. In its role as strategic ally, the Proponent should provide the City with insight and recommendations based on road maps, price forecast reports, industry trends, and entitlement summaries.

3.10 Audit Assistance

From time to time, software manufacturers will exercise their rights as outlined in their various license agreements to perform an audit with the City, to determine whether the City’s installed foot print or total usage of a given product aligns with current license or subscription levels. These can be time consuming and costly events.

In the event of an audit, the City expects the Proponent to work with the City to minimize the disruption to its regular work to conclude the audit in a timely fashion. This would include providing software manufacturer specific entitlement reports with accompanying proofs of

purchase. Also, in so far as audit processes always cover grey areas, the City expects the Proponent to be its ally in the event of audits, so as to protect the City's interests.

3.11 Integrations with City systems

The City uses SAP as its enterprise resource platform (ERP) and uses ServiceNow as its enterprise service management (ESM) platform. The City records all hardware and software asset purchases through SAP, so that SAP is the authoritative source for the City's asset records. The City is starting to use ServiceNow as a user facing ordering platform that both Technology Services and its clients use to order from a growing catalog of software and hardware items. It is common for organizations like the City to integrate their order placement systems with a Proponent's catalog and order taking systems.

So as to introduce automation and efficiency, the City expects the Proponent to provide a plan and work with the City to integrate its systems with the City's. Such integration allows efficiencies through automation, and defined workflow. Also, these integrations strengthen the City and the Proponent's ability to maximize standardization and ensure the City's spend adheres to them.

3.12 Billable Consultation Services

All other services described above are expected of the Proponent as part of its role as the City's formal software services provider. However, the City may from time to time make use of consultation services from the Proponent on paid basis. Such services are typically sought by the City when introducing new software or new versions of infrastructure related software that is common in the industry, and installed in the City's data centres (e.g. VMWare, SCCM, Exchange). Such services may include planning, design, implementation, deployment, health checks, and similar work. Each use of these Consultation Services would necessitate the creation of a Statement of Work between the City and the Proponent, which would establish an agreed form of payment (i.e. cash, credits, or software agreement benefits), as well as establish an agreed rate or price or price framework for the engagement.

For Enterprise Applications (e.g. SAP, Lagan, Hansen, Posse, Tempest, Amanda, ServiceNow, ESRI, Autodesk), the City is unlikely to use the Proponent's services.

The City maintains the option to use any company for consulting services, and is not obligated to use those of the Proponent.

3.13 Software Purchase Policy and Threshold

The City may at any time during the agreement with the successful Proponent choose to purchase software products and/or services through another Proponent, or opt to purchase software or services directly from the manufacturer (possibly changing the role of the successful Proponent from that of software reseller to Software Advisor).

4.0 VPD ENHANCED SECURITY CLEARANCE

If a Proponent is short-listed during the evaluation process, the City may require the short-listed Proponent's directors, officers or other principals to submit a VPD Consent to Release Information Form (1601B) within five (5) business days of notification of short-listing.

If a Proponent is selected to enter into an Agreement, the Proponent may be asked to first:

- Submit, in respect of each of its directors, officers, or other principals, a VPD Consent to Release Information Form (1601B), if not already submitted in the short-listing stage;
- Submit a VPD Civilian Security Screening Background Information Form (1602) for each of its personnel, including, but not limited to directors, managers, supervisors, and staff who

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- will have access to any VPD site and/or access to any VPD information (including remotely-accessed information); and
- Bear any and all costs associated with the above VPD background security clearance requirements.

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PART C - FORM OF PROPOSAL FOR CATEGORY 2

PART C - FORM OF PROPOSAL

RFP No. PS20190498, PROVISION OF VALUE-ADDED RESELLER FOR ENTERPRISE HARDWARE,
SOFTWARE, AND SERVICES (the "RFP")

Proponent's Full Legal Name: _____
"Proponent"

Address: _____

Jurisdiction of Legal Organization: _____

Key Contact Person: _____

Telephone: _____ Fax: _____

E-mail: _____

The Proponent, having carefully examined and read the RFP, including all amendments and addenda thereto, if any, and all other related information published on the City's website, hereby acknowledges that it has understood all of the foregoing, and in response thereto hereby submits the enclosed Proposal.

The Proponent further acknowledges that it has read and agrees to the Legal Terms & Conditions attached as Appendix 1 to this Form of Proposal.

IN WITNESS WHEREOF the Proponent has executed this Proposal Form:

Signature of Authorized Signatory for the Proponent

Date

Name and Title

Signature of Authorized Signatory for the Proponent

Date

Name and Title

APPENDICES

The Form of Proposal includes the following attached Appendices:

- APPENDIX 1 Legal Terms and Conditions of RFP
- APPENDIX 2 Questionnaire
- APPENDIX 3 Commercial Proposal
- APPENDIX 4 Proponents References
- APPENDIX 5 Certificate of Insurance
- APPENDIX 6 Declaration of Supplier Code of Conduct Compliance
- APPENDIX 7 Personal Information Consent Form(s)
- APPENDIX 8 Subcontractors
- APPENDIX 9 Proposed Amendments to Form of Agreement
- APPENDIX 10 Proof of WorkSafeBC Registration
- APPENDIX 11 Conflicts; Collusion; Lobbying
- APPENDIX 12 Financial Statement

APPENDIX 1
LEGAL TERMS AND CONDITIONS OF RFP

1 APPLICATION OF THESE LEGAL TERMS AND CONDITIONS

These legal terms and conditions set out the City's and the Proponent's legal rights and obligations only with respect to the RFP proposal process and any evaluation, selection, negotiation or other related process. In no event will the legal terms and conditions of this Appendix 1 apply to, or have the effect of supplementing, any Contract formed between the City and the Proponent, or otherwise apply as between the Proponent and the City following the signing of any such Contract.

2 DEFINITIONS

In this Appendix 1, the following terms have the following meanings:

- (a) "City" means the City of Vancouver, a municipal corporation continued pursuant to the Vancouver Charter.
- (b) "Contract" means a legal agreement, if any, entered into between the City and the Proponent following and as a result of the Proponent's selection by the City in the City's RFP process.
- (c) "Losses" means, in respect of any matter, all direct or indirect, as well as consequential: claims, demands, proceedings, losses, damages, liabilities, deficiencies, costs and expenses (including without limitation all legal and other professional fees and disbursements, interest, penalties and amounts paid in settlement whether from a third person or otherwise).
- (d) "Proponent" means the legal entity which has signed the Proposal Form, and "proponent" means any proponent responding to the RFP, excluding or including the Proponent, as the context requires.
- (e) "Proposal" means the package of documents consisting of the Proposal Form (including this Appendix 1), the Proponent's proposal submitted under cover of the Proposal Form, and all schedules, appendices and accompanying documents, and "proposal" means any proposal submitted by any proponent, excluding or including the Proponent, as the context requires.
- (f) "Proposal Form" means that certain Part C of the RFP, completed and executed by the Proponent, to which this Appendix 1 is appended.
- (g) "RFP" means the document issued by the City as Request for Proposals No. PS20190498, as amended from time to time and including all addenda.

3 NO LEGAL OBLIGATION ASSUMED BY THE CITY

Despite any other term of the RFP or the Proposal Form, including this Appendix 1 (except only Sections 7, 8.2 and 10 of this Appendix 1, in each case to the extent applicable), the City assumes no legal duty or obligation to the Proponent or to any proposed subcontractor in respect of the RFP, its subject matter or the Proposal unless and until the City enters into a Contract, which the City may decline to do in the City's sole discretion.

4 NO DUTY OF CARE OR FAIRNESS TO THE PROPONENT

The City is a public body required by law to act in the public interest. In no event, however, does the City owe *to the Proponent or to any of the Proponent's proposed subcontractors* (as opposed to the

public) any contract or tort law duty of care, fairness, impartiality or procedural fairness in the RFP process, or any contract or tort law duty to preserve the integrity of the RFP process. The Proponent hereby waives and releases the City from any and all such duties and expressly assumes the risk of all Losses arising from participating in the RFP process on this basis.

5 EVALUATION OF PROPOSALS

5.1 Compliance / Non-Compliance

Any proposal which contains an error, omission or misstatement, which contains qualifying conditions, which does not fully address all of the requirements or expectations of the RFP, or which otherwise fails to conform to the RFP may or may not be rejected by the City at the City's sole discretion. The City may also invite a proponent to adjust its proposal to remedy any such problem, without providing the other proponents an opportunity to amend their proposals.

5.2 Reservation of Complete Control over Process

The City reserves the right to retain complete control over the RFP and proposal processes at all times. Accordingly, the City is not legally obligated to review, consider or evaluate the proposals, or any particular proposal, and need not necessarily review, consider or evaluate the proposals, or any particular proposal, in accordance with the procedures set out in the RFP, and the City reserves the right to continue, interrupt, cease or modify its review, evaluation and negotiation processes in respect of any or all proposals at any time without further explanation or notification to any proponents.

5.3 Discussions/Negotiations

The City may, at any time prior to signing a Contract, discuss or negotiate changes to the scope of the RFP, any proposal or any proposed agreement with any one or more of the proponents without having any duty or obligation to advise the Proponent or to allow the Proponent to vary its Proposal as a result of such discussions or negotiations with other proponents or changes to the RFP or such proposals or proposed agreements, and, without limiting the general scope of Section 6 of this Appendix 1, the City will have no liability to the Proponent as a result of such discussions, negotiations or changes.

5.4 Acceptance or Rejection of Proposals

The City has in its sole discretion, the unfettered right to: accept any proposal; reject any proposal; reject all proposals; accept a proposal which is not the lowest-price proposal; accept a proposal that deviates from the requirements of the RFP or the conditions specified in the RFP; reject a proposal even if it is the only proposal received by the City; accept all or any part of a proposal; enter into agreements respecting the subject matter of the RFP with one or more proponents; or enter into one or more agreements respecting the subject matter of the RFP with any other person at any time.

6 PROTECTION OF CITY AGAINST LAWSUITS

6.1 Release by the Proponent

Except only and to the extent that the City is in breach of Section 8.2 of this Appendix 1, the Proponent now releases the City, its officials, its agents and its employees from all liability for any Losses incurred in connection with the RFP or the Proposal, including any Losses in connection with:

- (a) any alleged (or judicially determined) breach by the City or its officials, agents or employees of the RFP (it being agreed that, to the best of the parties' knowledge, the City has no obligation or duty under the RFP which it could breach (other than wholly unanticipated obligations or duties merely alleged or actually imposed judicially));

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- (b) any unintentional tort of the City or its officials or employees occurring in the course of conducting the RFP process;
- (c) the Proponent preparing and submitting the Proposal;
- (d) the City accepting or rejecting the Proposal or any other submission; or
- (e) the manner in which the City: reviews, considers, evaluates or negotiates any proposal; addresses or fails to address any proposal or proposals; resolves to enter into a Contract or not enter into a Contract or any similar agreement; or the identity of the proponent(s) or other persons, if any, with whom the City enters any agreement respecting the subject matter of the RFP.

6.2 Indemnity by the Proponent

Except only and to the extent that the City breaches Section 8.2 of this Appendix 1, the Proponent indemnifies and will protect, save and hold harmless the City, its officials, its agents and its employees from and against all Losses, in respect of any claim or threatened claim by the Proponent or any of its proposed subcontractors or agents alleging or pleading:

- (a) any alleged (or judicially determined) breach by the City or its officials or employees of the RFP (it being agreed that, to the best of the parties' knowledge, the City has no obligation or duty under the RFP which it could breach (other than wholly unanticipated obligations or duties merely alleged or actually imposed judicially));
- (b) any unintentional tort of the City or its officials or employees occurring in the course of conducting the RFP process, or
- (c) liability on any other basis related to the RFP or the proposal process.

6.3 Limitation of City Liability

In the event that, with respect to anything relating to the RFP or this proposal process (except only and to the extent that the City breaches Section 8.2 of this Appendix 1), the City or its officials, agents or employees are found to have breached (including fundamentally breached) any duty or obligation of any kind to the Proponent or its subcontractors or agents whether at law or in equity or in contract or in tort, or are found liable to the Proponent or its subcontractors or agents on any basis or legal principle of any kind, the City's liability is limited to a maximum of \$100, despite any other term or agreement to the contrary.

7 DISPUTE RESOLUTION

Any dispute relating in any manner to the RFP or the proposal process (except to the extent that the City breaches this Section 7 or Section 8.2 of this Appendix 1, and also excepting any disputes arising between the City and the Proponent under a Contract (or a similar contract between the City and a proponent other than the Proponent)) will be resolved by arbitration in accordance with the *Commercial Arbitration Act* (British Columbia), amended as follows:

- (a) The arbitrator will be selected by the City's Director of Legal Services;
- (b) Section 6 of this Appendix 1 will: (i) bind the City, the Proponent and the arbitrator; and (ii) survive any and all awards made by the arbitrator; and
- (c) The Proponent will bear all costs of the arbitration.

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8 PROTECTION AND OWNERSHIP OF INFORMATION

8.1 RFP and Proposal Documents City's Property

- (a) All RFP-related documents provided to the Proponent by the City remain the property of the City and must be returned to the City, or destroyed, upon request by the City.
- (b) The documentation containing the Proposal, once submitted to the City, becomes the property of the City, and the City is under no obligation to return the Proposal to the Proponent.

8.2 Proponent's Submission Confidential

Subject to the applicable provisions of the *Freedom of Information and Protection of Privacy Act* (British Columbia), other applicable legal requirements, and the City's right to publicly disclose information about or from the Proposal, including without limitation names and prices, in the course of publicly reporting to the Vancouver City Council about the RFP, the City will treat the Proposal (and the City's evaluation of it), in confidence in substantially the same manner as it treats its own confidential material and information.

8.3 All City Information Confidential

- (a) The Proponent will not divulge or disclose to any third parties any non-public documents or information concerning the affairs of the City which have been or are in the future provided or communicated to the Proponent at any time (whether before, during or after the RFP process). Furthermore, the Proponent agrees that it has not and must not use or exploit any such non-public documents or information in any manner, including in submitting its Proposal.
- (b) The Proponent now irrevocably waives all rights it may have by statute, at law or in equity, to obtain any records produced or kept by the City in evaluating its Proposal (and any other submissions) and now agrees that under no circumstances will it make any application to the City or any court for disclosure of any records pertaining to the receipt, evaluation or selection of its Proposal (or any other submissions) including, without limitation, records relating only to the Proponent.

9 NO CONFLICT OF INTEREST / NO COLLUSION / NO LOBBYING

9.1 Declaration as to no Conflict of Interest in RFP Process

- (a) The Proponent confirms and warrants that there is no officer, director, shareholder, partner, employee or contractor of the Proponent or of any of its proposed subcontractors, or any other person related to the Proponent's or any proposed subcontractor's organization (a "person having an interest") or any spouse, business associate, friend or relative of a person having an interest who is: (i) an official or employee of the City; or (ii) related to or has any business or family relationship with an elected official or employee of the City, in each case, such that there could be any conflict of interest or any appearance of conflict of interest in the evaluation or consideration of the Proposal by the City, and, in each case, except as set out, in all material detail, in a separate section titled "Conflicts; Collusion; Lobbying" in the Proposal in accordance with the form set out in Part C - Appendix 11.
- (b) The Proponent confirms and warrants that there is no person having an interest (as defined above) who is a former official, former employee or former contractor of the City and who has non-public information relevant to the RFP obtained during his or her employment or engagement by the City, except as set out, in all material detail, in a separate section titled "Conflicts; Collusion; Lobbying" in the Proposal in accordance with the form set out in Part C - Appendix 11.

9.2 Declaration as to No Conflict of Interest Respecting Proposed Supply

The Proponent confirms and warrants that neither the Proponent nor any of its proposed subcontractors is currently engaged in supplying (or is proposing to supply) goods or services to a third party such that entering into an agreement with the City in relation to the subject matter of the RFP would create a conflict of interest or the appearance of a conflict of interest between the Proponent's duties to the City and the Proponent's or its subcontractors' duties to such third party, except as set out, in all material detail, in a separate section titled "Conflicts; Collusion; Lobbying" in the Proposal in accordance with the form set out in Part C - Appendix 11.

9.3 Declaration as to No Collusion

The Proponent confirms and warrants that:

- (a) the Proponent is not competing within the RFP process with any entity with which it is legally or financially associated or affiliated, and
- (b) the Proponent is not cooperating in any manner in relation to the RFP with any other proponent responding to the RFP,

in each case, except as set out, in all material detail, in a separate section titled "Conflicts, Collusion, Lobbying" in the Proposal in accordance with the form set out in Part C - Appendix 11.

9.4 Declaration as to No Lobbying

The Proponent confirms and warrants that:

- (a) neither it nor any officer, director, shareholder, partner, employee or agent of the Proponent or any of its proposed subcontractors is registered as a lobbyist under any lobbyist legislation in any jurisdiction in Canada or in the United States of America; and
- (b) neither it nor any officer, director, shareholder, partner, employee or agent of the Proponent or any of its proposed subcontractors has engaged in any form of political or other lobbying whatsoever with respect to the RFP or sought, other than through the submission of the Proposal, to influence the outcome of the RFP process,

in each case, except as set out, in all material detail, in a separate section titled "Conflicts, Collusion, Lobbying" in the Proposal in accordance with the form set out in Part C - Appendix 11.

10 GENERAL

- (a) All of the terms of this Appendix 1 to this Proposal Form which by their nature require performance or fulfillment following the conclusion of the proposal process will survive the conclusion of such process and will remain legally enforceable by and against the Proponent and the City.
- (b) The legal invalidity or unenforceability of any provision of this Appendix 1 will not affect the validity or enforceability of any other provision of this Appendix 1, which will remain in full force and effect.
- (c) The Proponent now assumes and agrees to bear all costs and expenses incurred by the Proponent in preparing its Proposal and participating in the RFP process.

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APPENDIX 2
QUESTIONNAIRE

Complete this Appendix 2 - Questionnaire in the form set out below.

A. Company Profile

Q1.	Provide a brief description of the Proponent's company; include a description of your experience with and knowledge of software products and related services; number of years in business, size of company and experience with similar and/or other municipal accounts.
A1.	
Q2.	Provide an executive summary of your overall proposal and comment on how your experience and knowledge as it pertains to the supply of software products and related services meets the City's requirements; comment specifically on your core competencies and how you differentiate yourself from your competitors.
A2.	
Q3.	How will the Proponent manage the City's account? Provide an organizational chart with names, titles, locations, clear lines of accountability, escalation points and a brief description of each individual's role. In addition, describe their knowledge, professional qualifications and relevant experience.
A3.	
Q4.	How will the Proponent ensure the relationship with the City will require minimal administration? Provide two (2) examples of recent process or administrative changes you have made to reduce the administrative burden for your clients.
A4.	

B. Proponent Experience & Knowledge

Q5.	Explain how the Proponent can support and add value to the City with the acquisition, delivery, management and renewal of Enterprise Agreements Direct with Manufacturer?
A5.	
Q6.	Explain how the Proponent can support and add value to the City as a Third Party Portal License Manager? Comment on how the Proponent would maintain our licensed and/or subscribed portal based assets or software subscriptions?

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A6.	
Q7.	Explain how you can help support the City with the acquisition, delivery, and entitlement tracking of Small User Base Software.
A7.	
Q8.	Confirm you can meet the City's requirement with regards to keeping records of Software Purchase Activity and Proof of Purchase; comment if you have a more efficient methodology to achieve the same outcome and provide an example of a monthly report could provide the City.
A8.	
Q9.	Explain the Proponent's process for providing Software Entitlement Summaries and how this process will provide value to the City; comment on the information that can be provided, the proposed frequency of the information and that you can meet the City's requirement. Also, provide two examples of an entitlement report: 1) one for a specific product (e.g. Adobe or Microsoft) 2) one for a wider scope of many software makers
A9.	
Q10.	Explain the Proponent's process for providing Enterprise Agreement Benefit Summaries and how this process will provide value to the City. Also; 1) Provide an example of a report summarizing benefits. 2) How will you ensure the City derives maximum value from such benefits?
A10.	
Q11.	Explain the Proponent's process for providing Notification of Maintenance Renewal and how this process will provide value to the City. Comment on your process for small user based software and larger enterprise based software renewals.
A11.	
Q12.	Describe the Proponent's experience and capability to act as a Software Advisor to support the City in the negotiation of new and renewed large multi-year software agreements. Comment specifically on; 1) The number and type of organizations you currently support. 2) What methods you use to ensure your clients get the best possible pricing and value written into their enterprise agreements? 3) What methods do you use to counter or mitigate the risks associated with moving to

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	multi-year subscription based software agreement that limit client leverage on pricing and service?
A12.	
Q13.	Explain the Proponent's process for providing Strategic Guidance and how this process will provide value to the City. Also; Provide an example of strategic guidance or a future roadmap for a given software space that you have provided for a client like the City
A13.	
Q14.	Explain the Proponent's process for providing Audit Assistance and how this process will provide value to the City.
A14.	
Q15.	Describe the Proponent's ability to provide a web-based ordering technology as outlined in Part B Section 3.11 Integration with City System that will allow the City to order, receive, track, report and pay for client hardware products and related services. Describe and illustrate in detail the functionality the Proponent's web-based ordering technology offers and how it differentiates you from your competitors.
A15.	
Q16.	Can the Proponent's web-based ordering technology be integrated with SAP and ServiceNow? If yes; How is it integrated and what are the challenges associated with this integration? Provide examples of other customers that you have integrated with SAP and ServiceNow.
A16.	
Q17.	Review and confirm your organization's web-based ordering technology is compatible with the City's Technical Requirements for Service Now API Standard (New York Version) as outlined in the following link. https://docs.servicenow.com/bundle/london-application-development/page/integrate/web-services/reference/r_AvailableWebServices.html
A17.	
Q18.	Download the separate attachment - PS20190498 - RFP Part C Appendix 2 Section B - Technical Requirements. Complete (in Excel format, not PDF) and include in your Proposal submission.

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C. Reporting

Q19.	Describe the Proponent's ability to meet the City's requirements with regards to Reporting as outlined in section 4.0. Please include comments on; Proponent's ability to provide near real-time and post activity status reports and detailed management reports. What reports are available? How frequently are the reports available? Does the Proponent have a technology that will allow its clients to access these report on-line?
A19.	

D. Performance Management

Q20.	Describe the Proponent’s overall approach to performance management for the services provided.																						
A20.																							
Q21.	How do you determine, implement, measure and report on Service Level Agreements (SLA’s) and the associated Key Performance Indicators (KPIs)?																						
A21.																							
Q22.	<p>Provide your proposed SLA and associated KPI’s framework for the City. The tables below are only a sample to provide guidance. Can the Proponent provide financial compensation for not meeting its SLA and KPI commitments?</p> <p>Product Delivery</p> <table><tr><th>Category</th><th>Item</th><th>KPI</th><th>Service Level</th></tr><tr><td rowspan="2">Standard Products</td><td rowspan="2">Desktop / Laptop / Tablets *includes asset tagging, BIOS updates and imaging</td><td>On-time Delivery</td><td>≥ 95 % of all orders shall be received within 2 business days from the time the order is received</td></tr><tr><td>Fill rate accuracy</td><td>≥ 95 % of all orders filled without requiring a back-order</td></tr></table> <p>Customer Support</p> <table><tr><th>Category</th><th>Item</th><th>KPI</th><th>Service Level</th></tr><tr><td rowspan="2">Call Center</td><td rowspan="2">Responsiveness</td><td>Responsiveness to general inquiry</td><td>≥ 90 % of all calls responded to within ≤ 1 hour</td></tr><tr><td>Time for the replacement of a returned product</td><td>≥ 90 % of all replacements within 2 business days upon the receipt of the request</td></tr></table>			Category	Item	KPI	Service Level	Standard Products	Desktop / Laptop / Tablets *includes asset tagging, BIOS updates and imaging	On-time Delivery	≥ 95 % of all orders shall be received within 2 business days from the time the order is received	Fill rate accuracy	≥ 95 % of all orders filled without requiring a back-order	Category	Item	KPI	Service Level	Call Center	Responsiveness	Responsiveness to general inquiry	≥ 90 % of all calls responded to within ≤ 1 hour	Time for the replacement of a returned product	≥ 90 % of all replacements within 2 business days upon the receipt of the request
Category	Item	KPI	Service Level																				
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A22.	
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E. Transition Plan

Q23.	Detail the sequential process by which the Proponent proposes to onboard its services; including a detailed timeline with action items and accountabilities. If you are the incumbent, detail the sequential process by which your services will be re-launched in accordance with the incumbent's Proposal. (Attach information to this Form of Proposal if space below does not suffice)
A23.	

F. Innovation

Q24.	Notwithstanding any other provision hereof, the City welcomes proposals respecting innovative or novel approaches to the City's requirements and may consider value-creating proposals that derogate from the requirements. Provide any proposed innovative approaches to meeting the City's requirements.
A24.	
Q25.	The Proponent can provide any information on additional services that are not contemplated in the RFP that the Proponent feels will add value to the City.
A25.	

G. Sustainability

Beyond the product, the City is committed to protecting the environment and seeking to do business with Proponents that have similar commitments to improve environmental conditions, have fair, inclusive and equitable work environments for their employees and demonstrate leadership in all aspects of sustainability. As such, this RFP seeks to identify Proponents who are proactively managing the environmental and social impacts of their operations. This includes advancing environmental and human rights practices and diversity within the supply chain, including manufacturing and production facilities. Please note that Proponents are required to answer the following questions, which will be kept confidential in accordance with the Legal Terms and Conditions of this RFP.

SOCIAL SUSTAINABILITY

SUPPLIER DIVERSITY

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Q26.	In the space below, indicate the vendor's company profile with regards to recognized certifications and/or if social or diverse owned/controlled.	
A26.	Majority owned/controlled/ by: <ul style="list-style-type: none"> <input type="checkbox"/> Women <input type="checkbox"/> Indigenous Peoples <input type="checkbox"/> Non-Profit/Charity (Social Enterprise) <input type="checkbox"/> Coop <input type="checkbox"/> Community Contribution Corporation (3C/CCC) <input type="checkbox"/> Ethno-cultural Persons <input type="checkbox"/> People with Disabilities <input type="checkbox"/> LGBTQ2+ <input type="checkbox"/> Other: please indicate <input type="checkbox"/> None of the above 	<div style="border-bottom: 1px solid black; padding-bottom: 5px;"> Social / Diverse Certifications <ul style="list-style-type: none"> <input type="checkbox"/> BCorp <input type="checkbox"/> Supplier Diversity Certification <input type="checkbox"/> None of the above </div> <div style="padding-top: 5px;"> Enviro / Other Certifications <ul style="list-style-type: none"> <input type="checkbox"/> BuySocial <input type="checkbox"/> Living Wage <input type="checkbox"/> Fairtrade <input type="checkbox"/> Green Business Certification (ie. LEED, ClimateSmart) <input type="checkbox"/> Other: please indicate <input type="checkbox"/> None of the above </div>
Q27.	Do you have a Supplier Diversity program for your suppliers and sub-contractors? If yes, please describe the program.	
A27.		

EMPLOYMENT EQUITY

Q28.	Do you have formal policies and/or programs that advance employee equity or workforce diversity and inclusion? If yes, please describe or provide the policies and/or programs.
A28.	
Q29.	Do you source/hire employees from organization that support people who are under-represented and/or face barriers to traditional employment with employment? If so, name these organizations.
A29.	

WORKFORCE DIVERSITY

Q30.	As best known, in the space below, indicate your company profile with regards to workforce.
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A30.	<u>Overall Workforce Diversity:</u> <ul style="list-style-type: none"> <input type="checkbox"/> Women <input type="checkbox"/> Indigenous Peoples <input type="checkbox"/> Ethno-cultural People <input type="checkbox"/> People with Disabilities <input type="checkbox"/> LGBTQ2+ <input type="checkbox"/> Other: please indicate <input type="checkbox"/> None of the above <input type="checkbox"/> We do not track this information <input type="checkbox"/> We are too small to track this information <input type="checkbox"/> We choose not to provide this information 	<u>Leadership/Management/Executive/Board Diversity:</u> <ul style="list-style-type: none"> <input type="checkbox"/> Women <input type="checkbox"/> Indigenous Peoples <input type="checkbox"/> Ethno-cultural People <input type="checkbox"/> People with Disabilities <input type="checkbox"/> LGBTQ2+ <input type="checkbox"/> Other: please indicate <input type="checkbox"/> None of the above <input type="checkbox"/> We do not track this information <input type="checkbox"/> We are too small to track this information <input type="checkbox"/> We choose not to provide this information
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ENVIRONMENTAL SUSTAINABILITY

ENVIRONMENTAL OPERATIONS

The City is committed to being the Greenest City and values the environmental impact and sustainability of Proponents in addition to the goods or services offered with regards to Healthy Ecosystems (minimizing pollution/toxicity, conserving natural resources, and regenerating ecological; local food; clean water / water consumption), Zero Waste (reducing and/or diverting) and Zero Carbon (reducing/eliminating greenhouse gases).

Q31.	Describe how your company proposes to reduce vehicle GHG emissions year-over-year for the life of the contract? Describe specific actions, initiatives and time lines. Do you track or report on vehicle GHG emissions?
A31.	
Q32.	Describe how your company has or proposes to “green” and/or reduce the GHG emissions of owned/leased buildings (include specific actions, initiatives and time lines). Do you track or report on building GHG emissions?
A32.	

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APPENDIX 3
COMMERCIAL PROPOSAL

Complete this Appendix 3 - Commercial Proposal in the form set in the excel file titled “RFP Part C Appendix 3 Commercial Proposal (Category 2 - Software)”.

Proponent to provide proposed pricing and payment terms, which should be in accordance with Part A, Section 7 of the RFP (as well as any other sections of the RFP imposing requirements as to pricing).

When submitting its Proposal by email, please ensure Appendix 3 - Commercial Proposal is provided as a separate excel file to the entire Proposal without password protection and etc.

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APPENDIX 4
PROPONENT'S REFERENCES

Complete this Appendix 4 - Proponents References in the form set out below with references that are relevant to the Scope of Work set out in this RFP. By submitting this form, the Proponent is providing consent to the City to contact these references and the organizations.

Client Name # 1	
Address (City and Country)	
Contact Name	
Title of Contact	
Telephone No.	
E-mail Address	
Length of Relationship	
Type of Goods and/or Services provided to this Client	

Client Name # 2	
Address (City and Country)	
Contact Name	
Title of Contact	
Telephone No.	
E-mail Address	
Length of Relationship	
Type of Goods and/or Services provided to this Client	

Client Name # 3	
Address (City and Country)	
Contact Name	
Title of Contact	
Telephone No.	
E-mail Address	
Length of Relationship	
Type of Goods and/or Services provided to this Client	

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APPENDIX 5
CERTIFICATE OF INSURANCE

Appendix 5 is to be duly completed and signed by the Proponent's insurance agent.

Section 2 through 8 – to be completed and executed by the Insurer or its Authorized Representative

1. **THIS CERTIFICATE IS ISSUED TO:** City of Vancouver, 453 W 12th Avenue, Vancouver, BC, V5Y 1V4
and certifies that the insurance policy (policies) as listed herein has/have been issued to the Named Insured and is/are in full force and effect.
2. **NAMED INSURED** *(must be the same name as the Proponent/bidder and is either an individual or a legally incorporated company)*

BUSINESS TRADE NAME or DOING BUSINESS AS

BUSINESS ADDRESS

DESCRIPTION OF OPERATION

3. **PROPERTY INSURANCE (All Risks Coverage including Earthquake and Flood)**

INSURER _____	Insured Values (Replacement Cost) -
TYPE OF COVERAGE _____	Building and Tenants' Improvements \$ _____
POLICY NUMBER _____	Contents and Equipment \$ _____
POLICY PERIOD From _____ to _____	Deductible Per Loss \$ _____

4. **COMMERCIAL GENERAL LIABILITY INSURANCE (Occurrence Form)**

Including the following extensions:	INSURER _____
✓ Personal Injury	POLICY NUMBER _____
✓ Property Damage including Loss of Use	POLICY PERIOD From _____ to _____
✓ Products and Completed Operations	Limits of Liability (Bodily Injury and Property Damage Inclusive) -
✓ Cross Liability or Severability of Interest	Per Occurrence \$ _____
✓ Employees as Additional Insureds	Aggregate \$ _____
✓ Blanket Contractual Liability	All Risk Tenants' Legal Liability \$ _____
✓ Non-Owned Auto Liability	Deductible Per Occurrence \$ _____

5. **AUTOMOBILE LIABILITY INSURANCE** for operation of owned and/or leased vehicles

INSURER _____	Limits of Liability -
POLICY NUMBER _____	Combined Single Limit \$ _____
POLICY PERIOD From _____ to _____	<i>If vehicles are insured by ICBC, complete and provide Form APV-47.</i>

6. ☐ **UMBRELLA OR** ☐ **EXCESS LIABILITY INSURANCE** **Limits of Liability (Bodily Injury and Property Damage Inclusive)**

INSURER _____	Per Occurrence \$ _____
POLICY NUMBER _____	Aggregate \$ _____
POLICY PERIOD From _____ to _____	Self-Insured Retention \$ _____

7. **PROFESSIONAL LIABILITY INSURANCE**

INSURER _____	Limits of Liability
POLICY NUMBER _____	Per Occurrence/Claim \$ _____
POLICY PERIOD From _____ to _____	Aggregate \$ _____
	Deductible Per Occurrence/Claim \$ _____

If the policy is in a "CLAIMS MADE" form, please specify the applicable Retroactive Date: _____

8. **OTHER INSURANCE**

TYPE OF INSURANCE _____	Limits of Liability
INSURER _____	Per Occurrence \$ _____
POLICY NUMBER _____	Aggregate \$ _____
POLICY PERIOD From _____ to _____	Deductible Per Loss \$ _____
TYPE OF INSURANCE _____	Limits of Liability
INSURER _____	Per Occurrence \$ _____
POLICY NUMBER _____	Aggregate \$ _____
POLICY PERIOD From _____ to _____	Deductible Per Loss \$ _____

SIGNED BY THE INSURER OR ITS AUTHORIZED REPRESENTATIVE

Dated _____

PRINT NAME OF INSURER OR ITS AUTHORIZED REPRESENTATIVE, ADDRESS AND PHONE NUMBER

REQUEST FOR PROPOSALS NO. PS20190498
PROVISION OF VALUE-ADDED RESELLER FOR ENTERPRISE HARDWARE, SOFTWARE, AND SERVICES
PART C - FORM OF PROPOSAL FOR CATEGORY 2

APPENDIX 6
DECLARATION OF SUPPLIER CODE OF CONDUCT COMPLIANCE

Complete this Appendix 6 - Declaration of Supplier Code of Conduct Compliance in the form set out below.

All proposed suppliers are to complete and submit this form to certify compliance with the supplier performance standards set out in the Supplier Code of Conduct.

The City of Vancouver expects each supplier of goods and services to the City to comply with the supplier performance standards set out in the City's Supplier Code of Conduct (SCC) <http://vancouver.ca/policy_pdf/AF01401P1.pdf>. The SCC defines minimum labour and environmental standards for City suppliers and their subcontractors.

Suppliers are expected to comply with the aforementioned standards upon submitting a tender, proposal, application, expression of interest or quotation to the City, or have a plan in place to comply within a specific period of time. The City reserves the right to determine an appropriate timeframe in which suppliers must come into compliance with these standards. To give effect to these requirements, an authorized signatory of each proposed vendor must complete the following declaration and include this declaration with its submission:

As an authorized signatory of _____ (*vendor name*), I declare that I have reviewed the SCC and to the best of my knowledge, _____ (*vendor name*) and its proposed subcontractors have not been and are not currently in violation of the SCC or convicted of an offence under national and other applicable laws referred to in the SCC, other than as noted in the table below (*include all violations/convictions that have occurred in the past three years as well as plans for corrective action*).

Section of SCC / title of law	Date of violation /conviction	Description of violation / conviction	Regulatory / adjudication body and document file number	Corrective action plan

I understand that a false declaration and/or lack of a corrective action plan may result in no further consideration being given to the submission of _____ (*vendor name*).

Signature: _____

Name and Title: _____

REQUEST FOR PROPOSALS NO. PS20190498
PROVISION OF VALUE-ADDED RESELLER FOR ENTERPRISE HARDWARE, SOFTWARE, AND SERVICES
PART C - FORM OF PROPOSAL FOR CATEGORY 2

APPENDIX 7
PERSONAL INFORMATION CONSENT FORM(S)

Complete one copy of this Appendix 7 - Personal Information Consent Form(s), in the form set out below, for each key personnel for whom a CV or other information regarding employment history and qualifications has been included in the Proposal.

PERSONAL INFORMATION CONSENT FORM

Reference #PS20190498

Title: PROVISION OF VALUE-ADDED RESELLER FOR ENTERPRISE HARDWARE/SOFTWARE & SERVICES

With the provision of my signature at the foot of this statement I, _____

_____ (Print Name)

consent to the indirect collection from _____

_____ (Print Name of Proponent) of

my personal information in the form of a work history, resume or summary of qualifications.

In consenting to this indirect collection, I understand that my personal information, so collected, will be used by the City for the sole purpose of evaluating the submitted response to the above-noted procurement process. I understand further that my personal information, once collected by the City, will be handled by the City in accordance with the provisions of the (BC) *Freedom of Information and Protection of Privacy Act*.

_____ Print Name	_____ Signature	_____ Date
_____ Print Name	_____ Signature	_____ Date
_____ Print Name	_____ Signature	_____ Date
_____ Print Name	_____ Signature	_____ Date
_____ Print Name	_____ Signature	_____ Date
_____ Print Name	_____ Signature	_____ Date

REQUEST FOR PROPOSALS NO. PS20190498
PROVISION OF VALUE-ADDED RESELLER FOR ENTERPRISE HARDWARE, SOFTWARE, AND SERVICES
PART C - FORM OF PROPOSAL FOR CATEGORY 2

APPENDIX 8
SUBCONTRACTORS

Complete this Appendix 8 - Subcontractors in the form set out below by listing all of the subcontractors that the Proponent proposes to use in carrying out its work under an Agreement, or state that the Proponent does not propose to use any subcontractors. If selected to enter into an Agreement with the City, the Proponent may be limited to using subcontractors listed in its Proposal. If the City objects to a subcontractor listed in a Proposal, the City may permit a Proponent to propose a substitute Subcontractor acceptable to the City.

Subcontracted Scope		
Subcontractor		
Contact (name, title, email, telephone no.)		
Approximate Percent of the Work to be Subcontracted		
The Subcontractor's Relevant Experience (identify at least three similar projects within the last five years, including the client)	1. Project Name:	
	Client:	
	Nature of Work:	
	Value:	
	Client Contact:	
	2. Project Name:	
	Client:	
	Nature of Work:	
	Value:	
	Client Contact:	
	3. Project Name:	
	Client:	
	Nature of Work:	
	Value:	
	Client Contact:	

REQUEST FOR PROPOSALS NO. PS20190498
PROVISION OF VALUE-ADDED RESELLER FOR ENTERPRISE HARDWARE, SOFTWARE, AND SERVICES
PART C - FORM OF PROPOSAL FOR CATEGORY 2

APPENDIX 9
PROPOSED AMENDMENTS TO FORM OF AGREEMENT

Complete this Appendix 9 - Proposed Amendments to Form of Agreement in the form set out below by detailing any proposed amendments to the Form of Agreement attached as Part D. If no amendments to the Form of Agreement are proposed, state "none". It is at the City's sole discretion whether or not these proposed amendments will be considered for the Form of Agreement.

Section / General Condition	Proposed Amendment	Rationale and Benefit

APPENDIX 10
PROOF OF WORKSAFEBC REGISTRATION

Attached as Appendix 10 to this Form of Proposal proof of valid WorkSafeBC registration.

NOTE:

Please refer to the link below if your organization is required to register with Worksafe BC

<https://www.worksafebc.com/en/for-employers>

REQUEST FOR PROPOSALS NO. PS20190498
PROVISION OF VALUE-ADDED RESELLER FOR ENTERPRISE HARDWARE, SOFTWARE, AND SERVICES
PART C - FORM OF PROPOSAL FOR CATEGORY 2

APPENDIX 11
CONFLICTS; COLLUSION; LOBBYING

Complete this Appendix 11 - Conflicts; Collusion; Lobbying in the form set out below by setting out any exceptions to the declarations in Section 9 of the Legal Terms and Conditions attached as 0 to this Part C - Form of Proposal or indicate that there are no exceptions, as applicable.

Exceptions to Declaration as to no Conflict of Interest in RFP Process (Section 9.1 of Legal Terms and Conditions)	
Exceptions to Declaration as to No Conflict of Interest Respecting Proposed Supply (Section 9.2 of Legal Terms and Conditions)	
Exceptions to Declaration as to No Collusion (Section 9.3 of Legal Terms and Conditions)	
Exceptions to Declarations as to No Lobbying (Section 9.4 of Legal Terms and Conditions)	

APPENDIX 12
FINANCIAL STATEMENTS

Attached as Appendix 12 to this Form of Proposal, the Proponent's financial statements prepared by an Accountant and cover at least the prior two years.

PART D
FORM OF AGREEMENT

RESELLER SERVICES AGREEMENT

THIS AGREEMENT is made as of _____, 2020 (the “Effective Date”).

BETWEEN:

CITY OF VANCOUVER,
453 West 12th Avenue
Vancouver, British Columbia
V5Y 1V4

AND:

<CONTRACTOR NAME>

(the “Contractor”)

WHEREAS:

- A. The Contractor is in the business of <[icon]>;
- B. The City wishes to engage the Contractor to provide services to the City upon and subject to the terms and conditions hereinafter set forth,

THEREFORE, in consideration of the premises and the covenants herein contained, the parties hereto agree as set forth herein.

ARTICLE 1
INTERPRETATION

1.1 Definitions

In this Agreement, unless something in the subject matter or context is inconsistent therewith:

- (a) “Agreement” means this agreement, including the schedules hereto, and all amendments made hereto or thereto by written agreement between the Contractor and the City;
- (b) “Background IP” has the meaning ascribed thereto in Section 14.4;

- (c) “Business Day” means a day on which banks are open for business in Vancouver, British Columbia, except a Saturday, Sunday or statutory holiday;
- (d) “Change in Control” means an occurrence whereby a person (or persons acting in concert) acquires control of the relevant entity;
- (e) “City’s Manager” means a manager who at the relevant time carries such designation from the City under, or in accordance with, ARTICLE 5;
- (f) “Competent Authority” means:
 - (i) any multinational, federal, provincial, state, regional, municipal, local or other government or governmental body and any ministry, department, division, bureau, agent, agency, commission, board or authority of any government or governmental body, domestic or foreign;
 - (ii) any domestic, foreign or international judicial, quasi-judicial or administrative court, tribunal, commission, board, panel, arbitrator or arbitral body acting under the authority of any of the foregoing; or
 - (iii) any quasi-governmental or private body exercising any statutory, regulatory, expropriation or taxing authority under the authority of any of the foregoing;
- (g) “Confidential Information” means all or any confidential information (however recorded, preserved or apparent) disclosed before, on or after the date of this Agreement by either Party or any of its Representatives to the other Party or its Representatives in connection with this Agreement, concerning:
 - (i) this Agreement; or
 - (ii) the affairs, operations, processes, know-how, Contractors, plans or intentions of the disclosing Party or of any member of the disclosing Party’s Group, including, without limitation, any information which is not generally known to the public or which has been specifically identified as confidential or proprietary by the disclosing Party, but does not include:
 - (iii) any information that is or becomes generally available to the public or to industry professionals (other than as a result of its disclosure by the receiving Party or its Representatives in breach of this Agreement);
 - (iv) any information that was available to the receiving Party on a non-confidential basis prior to disclosure by the disclosing Party;
 - (v) any information that was, is or becomes available to the receiving Party on a non-confidential basis from a person who, to the receiving Party’s knowledge, is not bound by a confidentiality agreement or other duty of confidentiality with or to the disclosing Party or a member of the disclosing Party’s Group or otherwise prohibited from disclosing the information to the receiving Party;

- (vi) any information that was known to the receiving Party before the information was disclosed to it by the disclosing Party or its Representatives and was not subject to a confidentiality agreement or other duty of confidentiality (including any obligation under this Agreement) with or to the disclosing Party or a member of the disclosing Party's Group;
- (vii) any information that the Parties agree in writing is not confidential or may be disclosed; and
- (viii) any information unrelated to this Agreement that is developed by or for the receiving Party independently of and without reference to the information disclosed by the disclosing Party;
- (h) "Consent" means an approval, clearance, registration, franchise, right, privilege, certification, quota, consent, permit, licence, qualification, filing, exemption, certificate or permission and any such other matter or authorization whatsoever, including any condition thereof, that is lawfully and necessarily required under any Law or from any Competent Authority in connection with the Services or the Site;
- (i) "Contractor's Manager" means a manager who at the relevant time carries such designation from the Contractor under, or in accordance with, ARTICLE 5;
- (j) "Contract Price" means the amounts payable (subject to and in accordance with the terms of this Agreement) by the City to the Contractor in return for the proper performance by the Contractor of its obligations under this Agreement, as detailed in Schedule E;
- (k) "Documentation" means calculations, computer programs and other software, drawings, designs, plans, manuals, records, reports, documents, papers, photos, typographical arrangements, models, contract documents, deliverables, agreements, tender/enquiry documents, and all other materials in whatever form, including but not limited to tangible copies and electronic forms, supplied either by or on behalf of the Contractor or generated collaboratively by the Parties in the course of the provision of the Services under this Agreement;
- (l) "Effective Date" has the meaning given above herein;
- (m) "Encumbrance" means any mortgage, charge, pledge, hypothecation, security interest, assignment, lien or claim of lien (statutory or otherwise), easement, deemed or statutory trust, restrictive covenant, adverse claim, exception, reservation, right of occupation, any matter capable of registration against title, right of pre-emption, privilege or other encumbrance or third party right of any nature or any other arrangement or condition that, in substance, secures payment or performance of an obligation;
- (n) "Environmental Law" means any Law which imposes any obligations relating to:

- (i) the protection, management, conservation or restoration of the natural environment;
 - (ii) reporting, licensing, permitting, investigating, remediating and cleaning up in connection with any presence or Release, or the threat of the same, of Hazardous Substances; and
 - (iii) the manufacture, processing, distribution, use, treatment, storage, disposal, transport, handling and the like of Hazardous Substances, including those pertaining to occupational health and safety.
- (o) “Force Majeure” means, exhaustively, any:
 - (i) war, hostilities (whether war is declared or not), invasion, act of foreign enemies;
 - (ii) rebellion, terrorism (or threat of terrorism), revolution, insurrection, military or usurped power or civil war;
 - (iii) riot, civil commotion or disorder, strike or lockout by persons other than the Contractor’s personnel and other employees, Subcontractors or any other person for whom the Contractor is responsible;
 - (iv) natural catastrophe such as an earthquake, forest fire, landslide or flood; or
 - (v) change in Law or action by a Competent Authority, which makes it illegal or impossible for either Party to perform its obligations under this Agreement;
- (p) “Good Industry Practice” means, in relation to the Services or the performance of any other obligation under this Agreement, the practices, and the application of the skill, care, diligence, prudence and foresight, which would reasonably and ordinarily be expected from a skilled and experienced international contractor carrying out or procuring equivalent services of similar type, scope and value, in the same or similar location and in similar circumstances to those pertaining to the Contractor;
- (q) “Group” means:
 - (i) in respect of the Contractor, the group constituted from time to time by:
 - (A) the Contractor;
 - (B) all persons that directly or indirectly control or are controlled by the Contractor; and
 - (C) all persons that are directly or indirectly controlled by any person that directly or indirectly controls the Contractor; and

- (ii) in respect of the City, the group constituted from time to time by:
 - (A) the City; and
 - (B) all bodies corporate directly or indirectly controlled by the City;
 - (C) the Other City Entities.
- (r) “Hazardous Substance” means any substance or material that is prohibited, controlled or regulated by any Competent Authority pursuant to any Environmental Law including pollutants, contaminants, dangerous goods or substances, toxic or hazardous substances or materials, wastes (including solid non-hazardous wastes and subject wastes), petroleum and its derivatives and by-products and other hydrocarbons, all as defined in or pursuant to any Environmental Law;
- (s) “Intellectual Property Rights” means any and all current and future proprietary rights provided under patent law, copyright law, design patent or industrial design law, or any other applicable statutory provision or common law principle, including trade secret law, that may provide a right in ideas, formulae, algorithms, concepts, inventions, know-how, computer software, database or design, or the expression or use thereof, whether registered or unregistered, together with any right to apply for or register any of the foregoing;
- (t) “Key Project Personnel” means the persons named in Schedule D (Key Project Personnel) and any replacement(s) approved by the City in accordance with ARTICLE 7;
- (u) “KPI’s” means Services related key performance indicators as described in Schedule F hereto;
- (v) “Laws” means all laws, statutes, codes, ordinances, decrees, rules, regulations, by-laws, judicial or arbitral or administrative or ministerial or departmental or regulatory judgments, orders, decisions, rulings, determinations or awards of any Competent Authority whether or not having the force of law and any legal requirements or bases of liability under the common law or civil law, including all such Laws relating to Taxes, the environment, human health or safety, pollution and other environmental degradation, and hazardous materials , which affect or are otherwise applicable to the Services, the Contractor, the Site or any other lands affected by the Services;
- (w) “Notice of Acceptance” means a written notice by which the City shall confirm that the Contractor has completed in accordance with this Agreement such of the Services as are identified in the Notice;
- (x) “OHS Requirements” means all Laws applicable to the Services and related to occupational health or safety, and all of the City Policies that relate to occupational health or safety, and includes without limitation the WCA;

- (y) “Other City Entities” means, for purposes of this Agreement, the Vancouver Public Library Board, the Vancouver Police Board and the Vancouver Board of Parks and Recreation;
- (z) “Parties” means the City and the Contractor and “Party” means one or the other of them;
- (aa) “Permitted Purpose” has the meaning ascribed thereto in Section 15.3;
- (bb) “Proposal” means the Contractor’s proposal dated <redacted>, submitted to the City in response to the RFP;
- (cc) “Representative” means a Group member of a Party, or an official, officer, employee, agent, subcontractor or other representative of a Party or any member of its Group, or any other person for whom the Party is responsible;
- (dd) “RFP” means the City’s Request for Proposal number PS<redacted>;
- (ee) “Safety Incident” means:
 - (i) a failure by the Contractor or any Subcontractor to comply with any OHS Requirements; or
 - (ii) any hazard, incident or accident caused by the Contractor or a Subcontractor.
- (ff) “Sales Tax” has the meaning ascribed to such term in Section 16.1;
- (gg) “Service Level Requirements” means Services related standards and requirements described in Schedule G hereto;
- (hh) “Services” means the services, the goods and the user rights the Contractor is to provide to and/or arrange for the City pursuant to this Agreement, as described in the RFP and the Proposal, and includes the performance of any other services not specifically described therein but which are incidental to and reasonably necessary for the Contractor’s performance of its primary obligations hereunder as explicitly described in the RFP and Proposal;
- (ii) “Subcontractor” means any person identified in this Agreement as a subcontractor to the Contractor, or any other person not an employee to the Contractor who is otherwise engaged or appointed by the Contractor, in accordance with this Agreement, to perform any part of the Services;
- (jj) “Taxes” means all taxes, duties, imposts, levies, assessments, tariffs and other charges imposed, assessed or collected by a Competent Authority, including:
 - (i) any gross income, net income, gross receipts, business, royalty, capital, capital gains, goods and services, harmonized sales, value added, severance, stamp, franchise, occupation, premium, capital stock, sales and use, real property, land transfer, personal property, ad valorem, transfer, licence, import, customs, profits, windfall profits,

environmental, carbon, emissions, pollution, payroll, employment, employer health, pension plan, anti-dumping, countervailing, or excise tax, duty, import, levy, assessment, tariff or other charge;

- (ii) all withholdings on amounts paid to or by the relevant person;
- (iii) all statutory remittances, employment insurance premiums and social security or pension plan contributions or premiums and Canada pension plan contributions;
- (iv) any fine, penalty, interest or addition to tax;
- (v) any tax imposed, assessed, or collected or payable pursuant to any tax-sharing agreement or any other contract relating to the sharing or payment of any such tax, levy, assessment, tariff, duty, deficiency or fee; and
- (vi) any liability for any of the foregoing as a transferee, successor, guarantor, or by contract or by operation of law;
- (kk) “Time(s) for Completion” means the time(s) stated in Schedule C by which the Services or any particular Supply or part thereof must be completed, as such time(s) may be adjusted (including in relation to a particular instance of Supply), strictly in accordance with this Agreement;
- (ll) “Variation” has the meaning ascribed to such term in Section 3.9(a); and
- (mm) “WCA” means the *Workers Compensation Act* (British Columbia) and the regulations thereunder.

1.2 Headings

This division of this Agreement into articles and sections and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement. The terms “hereof”, “hereunder” and similar expressions refer to this Agreement, including its schedules, and not to any particular article, section or other portion hereof. Unless something in the subject matter or context is inconsistent therewith, references herein to articles, sections and schedules are to articles, sections and schedules of this Agreement.

1.3 Extended Meanings

In this Agreement:

- (a) words importing the singular include the plural and vice versa, words importing a gender include all genders and words importing persons include individuals, partnerships, associations, trusts, unincorporated organizations and corporations, except where the context requires otherwise;
- (b) any provision calling for “agreement” requires the relevant agreement to be recorded in writing and signed by both Parties;

- (c) the words “include”, “includes”, “including” and “included” shall be construed without implying limitation by the words which follow those words and without prejudice to the generality of the provisions to which such words relate, unless inconsistent with the context, and the rule of interpretation known as ejusdem generis shall not apply;
- (d) each reference to a specific statute, regulation, law or any subordinate instrument or statutory or regulatory provision shall be construed as including any legal or regulatory provision which subsequently amends or replaces the same, and shall include any and all subordinate instruments, orders, rules, regulations and bylaws made thereunder or guidelines issued in respect thereof;
- (e) each reference to a writing means a writing that is hand-written, type-written, printed or electronically made, and which results in a permanent un-editable record; and
- (f) “control” when used to describe a relationship between one person and any other person, has the following meanings:
 - (i) a person controls a body corporate if securities of the body corporate to which are attached more than 50% of the votes that may be cast to elect directors of the body corporate are beneficially owned by the person and the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the body corporate;
 - (ii) a person controls an unincorporated entity, other than a limited partnership, if more than 50% of the ownership interests, however designated, into which the entity is divided are beneficially owned by that person and the person is able to direct the business and affairs of the entity;
 - (iii) the general partner of a limited partnership controls the limited partnership; and
 - (iv) a person who controls an entity is deemed to control any entity that is controlled, or deemed to be controlled, by the entity.

1.4 Schedules

The following are the schedules hereto, each of which is deemed to be part hereof:

Schedule A	RFP
Schedule B	Proposal
Schedule C	Time for Performance of Services
Schedule D	Key Personnel
Schedule E	Contract Price
Schedule F	KPI's
Schedule G	Service Level Requirements

**ARTICLE 2
EFFECTIVENESS**

2.1 Effective Date

This Agreement shall come into full force and effect on the Effective Date.

2.2 Term

- (a) Unless earlier terminated pursuant to ARTICLE 12, this Agreement shall terminate on the [•] anniversary of the Effective Date or on such later date as the Parties may agree in writing.
- (b) Notwithstanding the foregoing, if the City and the Contractor continue to deal with each other in respect of the subject matter of this Agreement following the expiry of this Agreement, without any additional or other written agreement in respect thereof, this Agreement shall be deemed to have been renewed on a month-to-month basis on the same terms and conditions as before the expiry of the Agreement and it may be cancelled without cause by either party on thirty (30) days' prior written notice to the other.

**ARTICLE 3
GENERAL**

3.1 Services

- (a) During the term of effectiveness of this Agreement, the Contractor shall provide the Services to the City in accordance with this Agreement.
- (b) Notwithstanding any other provision hereof, the Contractor will commence the performance of the Services only after it has received from the City a purchase order pursuant to Section 5.1.

3.2 Application to Prior Acts

Insofar as the Contractor has commenced any part of the Services prior to the Effective Date, such services shall, as of the Effective Date, be deemed to be performed under and subject to the terms of this Agreement, unless otherwise expressly agreed between the Contractor and the City.

3.3 Sufficiency and Competence of Personnel

- (a) The Contractor shall have and maintain at all times sufficient numbers of fit, skilled, qualified and experienced personnel to carry out the Services within the times and in the manner required hereunder.
- (b) The Contractor warrants that it has (and its Subcontractors, if any, have) the experience, competence, qualifications and capacity necessary for the Services.

- (c) Insofar as the Services involves the Contractor in performing design work, such design work shall be carried out by qualified designers who are engineers or other professionals or, where not so stated, in accordance with Good Industry Practice.

3.4 Design Review

- (a) If and to the extent that the Services include design work of any kind, the Contractor shall submit design-related Documentation for prior review by the City, and shall not proceed with work on the basis of such design Documentation until the City's approval of such Documentation has been received in writing.
- (b) None of:
 - (i) the submission of Documentation to the City by the Contractor;
 - (ii) its examination by or on behalf of the City; or
 - (iii) the making of any comment thereon (including any approval thereof) shall in any way relieve the Contractor of any of its obligations under this Agreement or of its duty to take reasonable steps to ensure the accuracy and correctness of such Documentation, and its suitability to the matter to which it relates.

3.5 Standards and Requirements

The Contractor shall (and shall ensure that its Subcontractors) provide the Services and perform all other obligations under this Agreement in an expeditious manner and at all times in accordance with:

- (a) all applicable Laws and Consents;
- (b) the specific requirements of this Agreement, including the Service Level Requirements and KPI's; and
- (c) where no higher standard is expressly required of the Contractor under this Agreement, Good Industry Practice.

3.6 Consents

The Contractor shall, at the Contractor's sole expense, obtain, maintain and comply with all Consents required by Law to enable it to perform its obligations under this Agreement.

3.7 Warranties

- (a) The Contractor warrants that the Services shall be performed in accordance with this Agreement and to the best practice standards of diligence, skill, care and efficiency expected of a competent contractor performing work of a similar nature to the Services.

- (b) All goods and materials provided under the Agreement as part of the Services shall be new and fully warranted for a period of ~~< 3 >~~ year[s] from the time of delivery to the City, against defects in design, manufacturing, materials, workmanship and performance, and the Contractor affirms and covenants that such warranty is, and shall be, provided by the Contractor if and to the extent it is not fully and effectively provided to the City by third-party manufacturers or Contractors of the goods or materials.
- (c) All goods, works and materials provided under the Agreement as part of the Services shall be non-defective and fit for their intended purposes and shall function safely in all respects.
- (d) All costs associated with warranty replacements or repairs shall be the responsibility of the Contractor, including repair, adjustment, and shipping costs, and replacements of goods or materials.
- (e) If requested by the City, the Contractor shall handle and manage any claim on a manufacturer warranty for any defect in goods or materials provided as part of the Services.
- (f) The Contractor shall deliver to the City all such documentation as the City may require to evidence any warranty required by this Section 3.7 or to evidence the Contractor's compliance with this Section 3.7, and the Contractor shall assign all warranties, and do all other things necessary, to ensure that the City receives the full benefit of each warranty or other covenant set forth in this Section 3.7.

3.8 Relationship Between the Parties

- (a) The Contractor in its provision of the Services and its performance of its obligations under this Agreement shall at all times act as an independent contractor on its own account and shall have no authority to act as the City's agent unless expressly empowered to do so by the City. This Agreement shall not be deemed to create any relationship of partnership, agency, joint enterprise or other like relationship between the Parties, and the Contractor shall be solely responsible for all employment-related obligations in connection with its employees, its other Representatives and its Subcontractors and their employees.
- (b) The City is not bound to treat the Contractor as its exclusive Contractor of any goods or services.

3.9 Variations Requested by the City

- (a) Any instruction given by the City which constitutes or gives rise to a material variation in the scope of Services or the time for performance thereof as provided for herein shall constitute a "Variation" and shall be governed by and subject to this Section 3.9.
- (b) During the term of this Agreement, the City may at any time effect a Variation by notice in writing to the Contractor, and the Contractor shall not be entitled

to refuse to implement any Variation unless the carrying out of such Variation would contravene any Law (in which case the Contractor shall promptly give notice to the City).

- (c) If the Contractor is of the opinion that a Variation justifies an increase to the Contract Price or a change to any of the Time(s) for Completion, the Contractor must, as a condition to being entitled to any such increase to the Contract Price or change to the Time(s) for Completion, no later than 10 Business Days after the City gives notice of the Variation, submit a claim to the City which sets out the Contractor's assessment of the impact the Variation should have on the Contract Price due for such Supply and on the Time(s) for Completion for such Supply, and thereafter:
 - (i) the City shall consider that claim as soon as possible and may request the Contractor to supply such further evidence as is reasonably required to confirm the details of such claim (and, as soon as practicable after such further evidence is available to it, the Contractor shall provide it to the City); and
 - (ii) within ten Business Days after the receipt of all the information requested by the City, the Contractor and the City shall meet in order to agree in writing to any changes to the Contract Price for such variations.
- (d) If no agreement is reached under 3.9(c)(ii) within 20 Business Days of the Parties' first meeting (or such other period as the Parties may agree), the Parties may then refer the matter for arbitration in accordance with ARTICLE 17.
- (e) Notwithstanding the foregoing, the City shall be entitled to replace, revise, expand or modify the City Policies at any time upon notice to the Contractor, and no such change shall be considered to be a Variation.

3.10 Tests; Defects and Acceptance

- (a) When, in the Contractor's judgement, the Services have or a portion of them identified in the Schedules hereto as being achievable and usefully operable by itself has been completed in accordance herewith, the Contractor may give written notice to that effect to the City, after which the City shall reasonably promptly perform such practical tests of with respect to such Services as the City reasonably deems necessary, and the Contractor shall assist the City with all such tests, if and to the extent so requested by the City.
- (b) If the City determines that the Services in question are in any way defective or deficient, the City shall promptly notify the Contractor accordingly.
- (c) The Contractor shall remedy at its own cost and risk such defects and deficiencies as soon as reasonably practicable following discovery or notification thereof.

- (d) If the Contractor fails to remedy any such defects and deficiencies within a reasonable time, the City, on written notice to the Contractor, may fix a date on or by which they are to be remedied.
- (e) If the Contractor fails, without reasonable excuse, to remedy any such defects and deficiencies by this notified date, the City may (at its option) elect to carry out the work itself or by others and shall be entitled to recover from the Contractor all direct, proper and reasonable costs of so doing (as a debt due on demand). The City's exercise of its election under this Section 3.10(e) shall in no event absolve the Contractor of its responsibility for remediation of other defects and deficiencies in the Services or otherwise constitute a waiver by the City of its rights and remedies in relation to other defects and deficiencies, nor shall it preclude or restrict the further exercise of such rights or remedies.
- (f) When the City is reasonably satisfied that the Services in question have been completed as required hereunder, the City shall promptly issue to the Contractor a Notice of Acceptance for such Services.
- (g) Without prejudice to any right or remedy of the City under this Agreement, performance of the Contractor's obligations in respect of such Services shall not be considered to have been completed until a corresponding Notice of Acceptance has been issued in accordance with Section 3.10(f).

3.11 Title and Risk

- (a) The Contractor warrants that ownership title to all of the goods to be supplied by the Contractor hereunder, when it passes to the City hereunder, shall be free and clear of Encumbrances.
- (b) Title to goods supplied by the Contractor hereunder shall pass to the City upon the City's payment to the Contractor of that part of the Contract Price applicable thereto.
- (c) The Contractor shall deliver to the City any documentation, including a bill of sale, which the City may reasonably require to evidence the transfer of title in and to such goods to the City, free and clear of all Encumbrances.
- (d) The Contractor must not enter any contract that reserves ownership of goods or materials supplied by the Contractor hereunder in favour of any third party and, at the request of the City, the Contractor must provide evidence that no such contract has been entered into.
- (e) Notwithstanding the foregoing provisions of this Section 3.11, the Contractor is responsible for the care of, and bears all of the risk of loss or damage to, each good supplied hereunder in the performance of the Services, until a Certificate of Completion has been issued therefor.

ARTICLE 4
Reserved

ARTICLE 5
CONTRACT MANAGERS

5.1 City's Managers

- (a) The City hereby designates each of <[redacted]> and <[redacted]> as a "City's Manager." Each City's Manager, including any additional City's Managers designated by the City in accordance herewith, has, for so long as he or she remains a City's Manager, full authority to act on behalf of the City in relation to all matters arising under this Agreement.
- (b) Any instruction from the City to the Contractor pursuant to this Agreement shall be issued through an executive officer of the City or through a City's Manager and shall be effective if in writing or confirmed in writing within seven days of oral instruction. Failure to comply with this Section 5.1 shall render any purported City's instruction invalid, unless it is later ratified by the City. However, this restriction does not apply to any instruction issued in an emergency situation or which relates to a threat or potential threat to the life, health or safety of any individual.
- (c) Notwithstanding the foregoing, each City's Manager may, in writing, delegate his or her authority hereunder to others.

5.2 Contractor's Managers

- (a) The Contractor hereby designates each of <[redacted]> and <[redacted]> as a "Contractor's Manager." Each Contractor's Manager, including any additional Contractor's Managers designated by the Contractor in accordance herewith, has, for so long as he or she remains a Contractor's Manager, full authority to act on behalf of the Contractor in relation to all matters arising under this Agreement, and any instruction given by the City to either of them shall be deemed to be valid and effective.
- (b) Each Contractor's manager may, in writing, delegate his or her authority hereunder to others, upon the written agreement of the City.

5.3 Designation of New Managers

The City may designate new City's Managers, or remove that designation from any individual, and the Contractor may designate new Contractor's Managers, or remove that designation from any individual, from time to time, each at its own discretion, through notice to the other Party. In the case of the Contractor, any such designation or removal must be in writing to the City.

**ARTICLE 6
FURTHER WARRANTIES AND COVENANTS**

6.1 General Representations and Warranties

The Contractor represents and warrants that:

- (a) the Contractor has the full right, power, and authority to enter into this Agreement and to perform the Services;
- (b) the Contractor is a company duly organized, validly existing and in good standing under the laws of and is lawfully authorized to do business in the Province of British Columbia;
- (c) the Contractor is not a party to or bound by any agreement (written or oral), indenture, instrument, licence, permit or understanding or other obligation or restriction under the terms of which the execution, delivery or performance of this Agreement does or shall constitute or result in a violation or breach;
- (d) the Contractor has a valid City of Vancouver business license or a Metro West Inter-Municipal business license that applies to all of the Services;
- (e) all statements made by the Contractor in the Proposal are true and accurate;
- (f) the Contractor is fully experienced in the design and management of projects or works of a similar scope, purpose, complexity, size and technical sophistication as the Services;
- (g) the Contractor possesses a level of skill and expertise commensurate with Good Industry Practice, which it shall utilize in the performance of its obligations under this Agreement;
- (h) the Contractor understands that the City is relying upon the skill, judgment and expertise of the Contractor and its Subcontractors (if any) in the carrying out of the Services and the co-ordination and planning thereof;
- (i) the Contractor's and any Subcontractors' employees are accredited to carry out the relevant portions of the Services to the extent required by applicable Laws and all of them are appropriately skilled, competent and experienced and possess relevant qualifications having regard to the nature and extent of the Services and the Sites;

6.2 General Health and Safety-Related Acknowledgements and Covenants

The Contractor shall:

- (a) in the provision of the Services, comply at all times with the OHS Requirements and take all reasonably necessary steps to ensure similar compliance from its Representatives and its Subcontractors, if any;

- (b) if the Services involves any type of manual labour, prior to their attendance at any Site, deliver to each of its Representatives and each of its Subcontractors, if any, and to their employees, if applicable, copies of the OHS Requirements relevant to the Site;
- (c) at all times take all reasonable precautions to maintain the health and safety of workers;
- (d) be at all times registered and in good standing with the relevant workers' compensation insurance Competent Authorities, and provide to the City copies of any notices, correspondence or directions issued by any government or Competent Authority relating to workplace-related employment, human rights, labour, immigration policy, health, safety or environmental matters within 24 hours of the Contractor's receipt of such notice, correspondence or direction;
- (e) appoint a qualified health and safety coordinator to ensure coordination of health and safety activities in the provision of the Services;
- (f) report (with full details) any accident, injury, illness or other incident relating to workplace health and safety or the environment to the City as soon as reasonably practicable, investigate the accident, injury, illness or other incident reasonably thoroughly (and in any event in accordance with any applicable OHS Requirements) and promptly report to the City the results of each such investigation;
- (g) maintain such records and make such reports concerning health, safety and welfare of persons, and damage to property, or the natural, physical or biological environment, as the City may reasonably require; and

6.3 Covenants Regarding Violations of Health and Safety Requirements

Without prejudice to any remedies available to the City hereunder, if any Subcontractor or person employed or engaged by the Contractor (or by a Subcontractor) violates any OHS Requirement, the Contractor shall:

- (a) ensure that the violation is promptly resolved;
- (b) ensure the violation is promptly and appropriately reported to the City and to the applicable competent authorities (if and to the extent required by the OHS Requirements);
- (c) promptly take all reasonable steps necessary to avoid recurrence of the violation;
- (d) communicate to the City its plan to avoid recurrence of the violation; and
- (e) without prejudice to the foregoing Section 6.3(c), promptly remove any person responsible for the violation from the provision of the Services if reasonable to do so or if requested to do so by the City.

6.4 Covenants Regarding the Environment

(a) The Contractor shall:

- (i) at all times, be conscious of the importance of the protection of the natural, physical and biological environment at and in the vicinity of the Sites;
- (ii) conduct, and cause its Representatives to conduct, their respective activities that relate to the Services in a manner that shall have the least possible adverse effect on the natural environment and in compliance with all Environmental Laws and Consents, all at the Contractor's expense;
- (iii) perform the Services with the least degree of environmental degradation during and as a result of such performance; and
- (iv) without restricting the generality or application of any other provisions of this Agreement, comply, and cause its Representatives to comply, with all applicable Laws and Consents and with all plans and instructions contained in this Agreement or issued in writing by the City concerning the existence, Release, removal, handling, transport, storage, disposal and treatment of any Hazardous Substances or other materials that are or may be hazardous to the life or health of any person or that endanger the environment or that are regulated by applicable Law.

- (b) During the term of this Agreement, the Contractor shall not bring or store or permit to be used at any Site, any Hazardous Substances unless such Hazardous Substances are (i) reasonably required to carry out the Services, and (ii) brought or stored or permitted to be used at any Site in compliance with all Laws (including Environmental Laws). The Contractor shall not Release nor permit the Release of any Hazardous Substances into the environment. The Contractor is solely responsible for all Hazardous Substances introduced to the Sites or the environment by the Contractor or its Representatives or Subcontractors, and the Contractor shall promptly and fully remediate, to the City's satisfaction, any release of Hazardous Substances on or from any Site, or in the vicinity of any Site.

6.5 Reserved

6.6 Covenants Against Encumbrances

- (a) The Contractor shall keep the goods included in the Services, and each part thereof, free of all Encumbrances filed pursuant to any Law or otherwise in respect of any such work or materials. In any event, if any Encumbrance has been filed in relation to any goods included in the Services, the Contractor shall cause any such Encumbrance to be discharged within 30 days after the Encumbrance has come to the notice of the Contractor.

- (b) The Contractor acknowledges and agrees that, in the event the Contractor fails to discharge any Encumbrance contemplated in Section 6.6(a) within 60 days of written notice of such Encumbrance being given by the City, in addition to any other right or remedy, the City may, but shall not be obligated to, discharge the Encumbrance by paying to the applicable Competent Authority, the amount claimed to be due or the amount due, together with a reasonable amount for costs and the amount paid by the City shall be paid by the Contractor to the City forthwith upon demand. In no case shall the City be required to investigate the validity of the Encumbrance prior to discharging the same in accordance with this Section 6.6(b).

6.7 Absence of Conflicts of Interest

- (a) Neither the Contractor, nor any of its Representatives has given or shall give or offer to give to the City or any official, officer, employee or agent of the City any gratuity, reward, advantage or benefit of any kind as consideration for doing or forbearing to do, or for having done or forborne to do, any act in connection with this Agreement.
- (b) To the best of the Contractor's knowledge, the Contractor, its Subcontractors, and their respective directors, officers, employees and agents have no pecuniary interests or any other current or past interests or dealings, including with any officials, officers or employees of the City, that would cause any conflict of interest or be seen to cause a conflict of interest in respect of the Services. Should such a conflict or perceived conflict arise during the term of this Agreement, the Contractor shall declare it immediately in writing to the City. The City may direct the Contractor to resolve any conflict or perceived conflict to the satisfaction of the City. The Contractor warrants that neither the Contractor nor any of its Subcontractors, or any of their respective directors, officers, employees or agents, has any predisposition, affinity or association with any third party which would impair or be seen to impair or qualify the Contractor's provision of the Services.

ARTICLE 7 PERSONNEL

7.1 Separate Personnel

- (a) It is the intention of the Parties that any personnel utilized or supplied by the Contractor or any Subcontractor hereunder shall remain employees of the Contractor or Subcontractor, respectively, for the purposes of any applicable Law and no activity performed by such personnel shall be deemed to create or imply any employment or other like relationship between such personnel and the City. If contrary to this intention such personnel are treated as employees of the City for the purposes of any applicable Law, the Contractor shall indemnify the City against any loss, cost, expense, complaint, claim, levy, assessment, penalty or fine (including any Tax liability) resulting therefrom.
- (b) Neither the City nor the Contractor shall, and the Contractor shall ensure that none of its Representatives or Subcontractors shall, induce any employee of the

other, who may work in connection with the Services, to leave his or her current employer, and neither of them shall, and the Contractor shall ensure that none of its Representatives or Subcontractors shall, employ or make an offer of employment to any such employee of the other during the term of this Agreement or the period of 365 days after the termination of this Agreement without the express prior approval in writing of the employee's current employer.

- (c) If any persons are brought by the Contractor into Canada for purposes of the Services, the Contractor shall be responsible for all immigration matters, and for the expatriation and repatriation of such personnel, and the costs of the same shall be deemed included in the Contract Price.

7.2 Changes in Personnel

The City may request the removal or replacement of any personnel engaged by the Contractor or any Subcontractor in relation to any part of the Services, provided that such request is made in writing stating the City's detailed reasons. The Contractor shall comply with such request as soon as reasonably practicable and shall bear the cost of replacement where the City is of the opinion that the personnel in question are guilty of misconduct, do not have acceptable qualifications or are otherwise unable or unfit to perform satisfactorily and safely. If the City requests a replacement for a reason other than the immediately aforementioned reasons, the City shall reimburse the Contractor its reasonable properly incurred costs of replacement.

7.3 Key Project Personnel

- (a) Where there are Key Project Personnel the Contractor shall:
 - (i) use best endeavours to retain Key Project Personnel for the duration of the provision of the Services;
 - (ii) take reasonable steps to ensure that Key Project Personnel dedicate their time fully to the Services (unless otherwise agreed or approved by the City in writing);
 - (iii) promptly inform the City should any of the Key Project Personnel leave, or give notice of an intention to leave the Contractor, and obtain a substitute or substitutes;
 - (iv) not reassign or allow the reassignment of the Key Project Personnel to other projects during the term of this Agreement without the City's prior written consent (such consent not to be unreasonably withheld or delayed); and
 - (v) take all reasonable steps to ensure that the Key Project Personnel perform their roles and responsibilities in accordance with any organisational structure agreed in writing between the Parties.
- (b) If:

- (i) the Contractor wishes to reassign or to replace an individual designated as Key Project Personnel; or
- (ii) an individual designated as Key Project Personnel gives notice of his or her intention to leave or is otherwise no longer able to perform the duties, including for reasons of illness, injury or personal hardship,

the Contractor shall provide a substitute with experience and qualifications equivalent or greater than the Key Project Personnel to be replaced, and shall provide documentation to the City to establish such experience and qualifications.

- (c) Key Project Personnel who are reassigned to other work shall, to the extent possible, remain available to the project team until completion of the Services.
- (d) All the Contractor's Key Project Personnel must be fluent in both spoken and written English, except as may be agreed to the contrary between the City and Contractor in relation to specific individuals or positions to be filled from time to time.

**ARTICLE 8
RESERVED**

**ARTICLE 9
PAYMENT; AUDITS**

9.1 Payment to the Contractor

- (a) Subject to ARTICLE 12 and Section 9.3, the City shall pay the Contractor for the Services in accordance with the pricing set out therefor in the Proposal, following the receipt of invoices prepared and delivered in accordance with Section 9.2(b) and Section 9.3.
- (b) Reserved
- (c) Reserved
- (d) Unless otherwise expressly stated elsewhere herein, the Contractor shall pay any and all costs, including freight, marine and transit insurance, Taxes, and transportation and delivery charges on all equipment or things of whatsoever nature provided by the Contractor as required by it for the purposes of the Services and any other incidental costs and all such costs shall be deemed to be included in the Contract Price.
- (e) The Contractor shall be deemed to have satisfied itself as to the correctness and sufficiency of Contract Price and to have obtained all information and to have taken into account all circumstances, risks and other contingencies that may affect the cost of performing the Services (including any circumstances, risks or contingencies that a contractor exercising Good Industry Practice would

typically expect to encounter) and any other obligation under this Agreement. The Contractor shall not be entitled to any additional compensation beyond the Contract Price (including without limitation for escalation in the prices of goods, materials and labour) except as otherwise expressly stated in this Agreement.

- (f) Notwithstanding any other provisions of this Agreement, the Contractor shall not be entitled to payment for any Services that have not been performed in compliance with the provisions of this Agreement.

9.2 Purchase Orders; Content of Invoices

- (a) The City may from time to time issue purchase orders to the Contractor in relation to the Services. These shall not have the effect of amending or waiving the application of any provision of this Agreement.
- (b) Notwithstanding anything else herein, in order to receive payment of any part of the Contract Price at any time, the Contractor's shall first submit to the City an invoice therefor which shall set out at minimum (and in such form or format as may be required by the City):
 - (i) the City purchase order number(s) relating to the particular Supply to which the invoice relates;
 - (ii) an itemized list of the amounts owing;
 - (iii) the invoice date and the time period to which the invoice relates;
 - (iv) a description of the portion of the Services to which the invoice relates;
 - (i) the total amounts payable under the invoice and details of any applicable taxes;
 - (ii) all supporting documentation relating to disbursements; and
 - (iii) such other information as the City may require from time to time.
- (c) Any terms or conditions proposed by the Contractor to govern the Services that are contained in any invoice (or in any shipping document, packing list or similar document) are void and of no effect, notwithstanding any statement in such document concerning the means by which the City may accept or be deemed to accept such terms or conditions.

9.3 Procedure for Invoices

- (a) The Contractor shall address each of its invoices to the City, Attention: Accounts Payable, and email it to APInvoice@vancouver.ca, or to such other address as is specified in an applicable purchase order. The City shall thereafter pay the invoice within 30 days, provided the other requirements of this Agreement have been satisfied and subject to the other provisions hereof.

- (b) The City shall not be liable for any interest on any invoice amount in respect of any period for any reason.
- (c) The City expects to make payments by electronic funds transfer and the Contractor shall provide banking information to the City to enable it to do so.

9.4 Currency of Payment

All currency amounts stated herein are denominated in, all invoices hereunder shall be stated in, and all payments hereunder shall be made in, Canadian dollars.

9.5 Contested Claims for Payment

If any item contained in an invoice submitted by the Contractor is contested by the City, the City shall give prompt notice thereof, together with reasons to the Contractor.

9.6 Audits

- (a) The Contractor shall maintain up-to-date records and accounts which clearly document the provision of the Services and shall make the same available to the City upon request. The City may request copies of all such records and accounts which shall be provided to the City by the Contractor (subject to reimbursement of the Contractor's reasonable copying costs and any other direct costs and expenses, if any) at any time prior to the expiry of 365 days after completion of all of the Services or earlier termination of this Agreement. For avoidance of doubt, any records and accounts provided by the Contractor in accordance with this Section 9.6(a) shall be deemed to be Confidential Information;
- (b) Not later than three years after the completion of all of the Services or earlier termination of this Agreement, the City can itself, on notice of not less than 14 days, require that a firm of accountants, surveyors or other auditors nominated by it audit any such records and accounts of the Contractor by attending during normal working hours at the office where the records are maintained. For avoidance of doubt, any records and accounts or other documents provided by the Contractor in accordance with this Section 9.6(b) shall be provided only subject to the accountants, surveyors or other auditors, and each of them, being subject to and agreeing to meet such of the Contractor's reasonable requirements as to confidentiality as the Contractor deems (at its sole discretion) to be appropriate in the circumstances; and
- (c) Any overpayments by the City discovered during the course of any such audit pursuant to Section 9.6(b) shall be payable by the Contractor to the City within 30 days of such discovery, and if the overpayments have been caused by an act or omission of the Contractor and the amount of those overpayments is no less than one quarter of the total amount paid by the City to the Contractor in respect of the Services, then the costs of the relevant audit shall be for the account of the Contractor.

9.7 Set Off

Notwithstanding any provision to the contrary in this Agreement and without prejudice to any other remedy which the City may have (whether in common law or equity), the City shall be entitled to deduct from and set off against any sum(s) otherwise due to the Contractor hereunder any sums which are due from the Contractor to the City or which the Contractor is liable to pay to the City under this Agreement or in connection herewith (including without limitation any monies overpaid to the Contractor under this Agreement or otherwise due and payable to the City by reason of any error in payment under this Agreement).

ARTICLE 10 CERTAIN ADDITIONAL OBLIGATIONS OF THE CITY

10.1 City's Project Related Resources

The City, at its expense, as the recipient of the Services, shall make available and assign to the project(s) which is the subject matter of the Services, such personnel, equipment, facilities, services (including services of third parties) and information as are reasonably necessary so that, for its part, the City may effectively and efficiently receive the Services as intended hereunder.

10.2 Other Information

The City shall, within a reasonable time following a written request by the Contractor, provide to the Contractor free of cost such further information, which the City considers relevant to provision of the Services and which is either already in its possession or reasonably within its power to obtain.

10.3 Decisions in Writing

On all matters properly referred to it in writing by the Contractor, the City shall (wherever practicable) give its decision in writing within a reasonable time having regard to the Time(s) for Completion and the Contractor's obligations with regard to the Services.

10.4 Access to the Site

- (a) Subject to the following paragraphs of this Section 10.4, the City shall grant to the Contractor non-exclusive, timely and in accordance with any agreed schedule, access (as the City is reasonably able to provide) to all necessary areas of the Sites (as the City determines), in order to allow the Contractor to perform the Supply and the Contractor's other obligations in accordance with this Agreement.
- (b) The Contractor acknowledges and agrees that the Vancouver Police Department ("VPD") or any other provincial, federal, regional, or municipal police force, police department or other law enforcement bodies (collectively, "Law Enforcement Agencies") may at any time and from time to time during or after the term of this Agreement, conduct criminal records searches, police history information searches and/or other background checks, investigations and searches (collectively, "Searches") pertaining to: (i) the Contractor; (ii)

any principals, directors, managers, employees and agents of the Contractor performing, directly or indirectly, any part of the Supply which involves, or may involve, access to Sites; (iii) the Subcontractor(s); or (iv) any principals, directors, managers, employees and agents of the Subcontractor(s) performing, directly or indirectly, any part of the Supply which involves, or may involve, access to the Sites (for the purposes of this Section 10.4 collectively, the "Contractor Parties").

- (c) The Contractor shall cause all Contractor Parties, as a condition of having access to or performing, directly or indirectly, any part of the Supply which involves, or may involve, access to any Site, to execute and deliver to the VPD, or on the request of the VPD, to any other Law Enforcement Agencies, a consent document setting out the individual's consent and authorization to conduct any Searches, including without limitation consent to the collection and submission of such personal data and information as may be required to enable the VPD or other Law Enforcement Agencies to perform such Searches.
- (d) Without limiting any other term of this Agreement, the Contractor agrees that each of:
 - (i) the failure of any Contractor Party to deliver any consent or authorization required hereunder; or
 - (ii) receipt by the City of notice from the VPD that the outcome of any Search is not satisfactory,

shall be deemed to be a material default under this Agreement and in such event the City may, but shall not be obligated to, exercise any right or remedy that the City may have under this Agreement or at law, including without limitation, terminating this Agreement pursuant the termination provisions hereof or denying access to any Contractor Parties to the Sites.

ARTICLE 11 LIABILITY AND INSURANCE

11.1 Covenants of Indemnification by the Contractor

- (a) The Contractor shall indemnify and keep indemnified and hold the City, the Other City Entities and their respective officials, officers, employees and agents harmless against all losses, liabilities, claims, demands, costs and expenses (including legal fees), fines, penalties and charges (including those imposed by statute or otherwise imposed), arising out of or in connection with, or consisting of:
 - (i) any:
 - (A) damage to a Site or any part thereof, or any property whether located at a Site or otherwise, which occurs during the provision of the Services;

- (B) damage to the natural environment, including any remediation cost recovery claims;
 - (C) loss or damage arising from a claim by any third party concerning or arising out of the Services, or by any employee or Subcontractor of the Contractor for any reason;
 - (D) occupational illness, injury or death of any person, whether at a Site or otherwise, which occurs during, or as a result of, the provision of the Services;
 - (E) failure by the Contractor to fully comply with the provisions of this Agreement;
 - (F) breach by the Contractor or any Subcontractor of any Law in the course of, or as a result of, the provision of the Services;
 - (G) actual or alleged infringement of any Intellectual Property Rights caused by the provision of the Services or the use of any process, work, material, matter, thing or method used or supplied by the Contractor or any Subcontractor in the provision of the Services; or
 - (H) breach of the warranties of the Contractor contained herein, in each case to the extent that it is due to any act, omission or default, or any breach of Law or this Agreement, of the Contractor, a Subcontractor or any Representative of the Contractor or any employee, agent or contractor of any of them; or
 - (ii) any defect in a good, work or material provided as part of the Services or any failure of any such good, work or material to function safely or to satisfy any applicable safety standard.
- (b) Nothing in this Section 11.1 nor otherwise in this Agreement shall limit or exclude any direct liability (whether in contract, tort, for breach of statutory duty or any other legal basis) of the Contractor to any person, including without limitation any liability for:
- (i) the Contractor's default hereunder or fraud, fraudulent misrepresentation or reckless misconduct in the provision of the Services; or
 - (ii) any loss or damage flowing from the termination of this Agreement.
- (c) The Contractor appoints the City as the trustee of the Other City Entities and of their and the City's officials, officers, employees and agents in relation to the covenants of indemnification of the Contractor contained in this Section 11.1 and the City accepts such appointment.

11.2 Reserved

11.3 Conduct of Claims

In the event of any claims, statutory fees, costs, charges, penalties (including without limitation any legal costs), contributions, compensations, cost recoveries, expenses or fines being levied or claimed from a person in respect of which an indemnity is provided by the Contractor pursuant to ARTICLE 11, the following provisions shall apply:

- (a) subject to Sections 11.3(b), 11.3(c) and 11.3(d), where it appears that a person is or may be entitled to indemnification from the Contractor in respect of all (but not part only) of the liability arising out of a claim, such person entitled to indemnification may at its sole election and subject to:
 - (i) approval by any relevant insurers (without prejudice to Section 11.3(f); and
 - (ii) the Contractor providing the party entitled to indemnification with a secured indemnity to its reasonable satisfaction against all costs and expenses (including legal expenses) that it may incur by reason of such action,permit or require the Contractor to dispute the claim on behalf of the person entitled to indemnification at the Contractor's own expense and take conduct of any defence, dispute, compromise, or appeal of the claim and of any incidental negotiations; provided that the person entitled to indemnification shall give the Contractor (provided at the Contractor's cost) all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim;
- (b) with respect to any claim conducted by the Contractor pursuant to Section 11.3(a):
 - (i) the Contractor shall keep the person entitled to indemnification fully informed and consult with it about material elements of the conduct of the claim;
 - (ii) the Contractor shall not bring the name of the person entitled to indemnification (or any Group Member thereof) into disrepute; and
 - (iii) the Contractor shall not pay or settle such claims without the prior consent of the person entitled to indemnification, such consent not to be unreasonably withheld or delayed;
- (c) a person entitled to indemnification shall be free to pay or settle any claim on such terms as it thinks fit (and without prejudice to its rights and remedies under this Agreement) if:
 - (i) the Contractor is not entitled to, or is not permitted or instructed, take conduct of the claim in accordance with Section 11.3(a); or
 - (ii) the Contractor fails to comply in any material respect with the provisions of Sections 11.3(a) or 11.3(b);

- (d) the person entitled to indemnification pursuant to ARTICLE 11 shall be free at any time to give notice to the Contractor that it is retaining or taking over (as the case may be) the conduct of any defence, dispute, compromise or appeal of any claim (or of any incidental negotiations) to which Section 11.3(a) applies. On receipt of such notice the Contractor shall promptly take all steps necessary to transfer the conduct of such claim to the person entitled to indemnification, and shall provide to the person entitled to indemnification all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim;
- (e) if the Contractor pays to the person entitled to indemnification an amount in respect of an indemnity and the person entitled to indemnification subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the claim under the indemnity, the person entitled to indemnification shall forthwith repay to the Contractor whichever is the lesser of:
 - (i) an amount equal to the sum recovered (or the value of the saving or benefit obtained) less any out-of-pocket costs and expenses (including legal expenses) properly incurred by the person entitled to indemnification in recovering the same; and
 - (ii) the amount paid to the person entitled to indemnification by the Contractor in respect of the claim under the relevant indemnity, provided that there shall be no obligation on the part of the person entitled to indemnification to pursue such recovery and that the Contractor is repaid only to the extent that the amount of such recovery aggregated with any sum recovered from the Contractor exceeds any loss sustained by the person entitled to indemnification;
- (f) the Contractor shall inform the person entitled to indemnification of the requirements of any insurer who may have an obligation to provide an indemnity in respect of any liability arising under this Agreement and in relation to such the person entitled to indemnification shall issue instructions accordingly; and
- (g) any person entitled to an indemnity from the Contractor must take all reasonable measures to mitigate any loss, damage or liability that it may suffer in respect of any such matter.

11.4 Insurance

- (a) The Contractor shall take out and maintain in force, with a reputable insurance company legally authorized to conduct business in British Columbia, during the term of this Agreement and for a period of five years afterwards, commercial general liability insurance with coverage of not less than \$5 million per occurrence and at least \$5 million of annual aggregate coverage against all claims for bodily injury including death, personal injury, advertising liability, completed operations, product liability, sudden & accidental pollution liability,

and property damage or loss arising out of the operations of the Contractor or the actions of the Contractor or Contractor's personnel. The policy must:

- (i) Name the City and the City's officials, employees and agents as additional insureds;
 - (ii) Include cross-liability or severability of interest clause or endorsement in favour of the City;
 - (iii) Include a waiver of subrogation in favour of the City;
 - (iv) Include blanket contractual liability coverage; and
 - (v) Be primary with respect to all claims arising out of the Contractor, and any insurance or self-insurance maintained by the City will be in excess of this insurance and not contribute to such insurance.
- (b) The Contractor shall purchase and maintain during the entire term of this Agreement automobile liability insurance on all licensed vehicle owned or leased to the Supplier with a limit of not less than \$5,000,000 per occurrence or other such amount as the City may approve from time to time protecting against damages arising from bodily injury including death, and from claims for property damage arising from the operations of the Contractor or the Contractor's personnel.
- (c) The Contractor shall ensure that any Subcontractors also maintain the same insurance as the Contractor, having regard to the obligations under this Agreement which they are contracted to fulfil.
- (d) The Contractor and any Subcontractors will purchase and maintain, any additional insurance which it is required by law, or other lines of insurance coverages, endorsements or increased limits of insurance as deemed necessary by the City and as a reasonable and prudent distributor, vendor, manufacturer or similar supplier would require to protect their performance of Services or their operations.
- (e) The Contractor's liabilities under this agreement shall not be deemed to be released or limited by the Contractor taking out the insurance policies referred to in Section Error! Reference source not found..
- (f) The cost of the insurances arising under this Section 11.4 shall be deemed to be incorporated into the Contract Price.
- (g) As a condition precedent to any payment from the City to the Contractor under this Agreement, and as and when reasonably requested by the City, the Contractor shall provide documentary evidence (to the reasonable satisfaction of the City, including by completing the City's standard reporting documents used for this purpose) that the insurances required by this Section 11.4 have been taken out and are being maintained.

ARTICLE 12
FORCE MAJEURE; TERMINATION

12.1 Force Majeure

- (a) Neither Party shall be deemed to be in breach of this Agreement or otherwise liable to the other Party in any manner whatsoever for any failure or delay in performing its obligations under this Agreement reasonably due to Force Majeure.
- (b) If either Party's performance of its obligations under this Agreement is affected by an event of Force Majeure, then:
 - (i) it shall give written notice to the other Party, specifying the nature and extent of the event of Force Majeure, within ten days after becoming aware of the event of Force Majeure;
 - (ii) performance of such obligation(s) shall be deemed suspended but only for a period equal to the delay reasonably caused by such event;
 - (iii) it shall not be entitled to payment from the other Party in respect of extra costs and expenses incurred by virtue of the event of Force Majeure;
 - (iv) the Time(s) for Completion shall be extended to take into account such delay; and
 - (v) within five days of the cessation of any Force Majeure event, the Party affected thereby shall submit a written notice to the other Party, specifying the actual duration of the delay of its obligations caused by the event of Force Majeure and the consequences resulting from such delay, and submit a specific plan to minimize and mitigate those consequences.
- (c) The affected Party shall use all reasonable diligence in accordance with Good Industry Practice to mitigate the cause and the result of an event of Force Majeure and to remedy the situation and resume its obligations under this Agreement, including complying with any instructions from the City, as to how to do so.
- (d) Notwithstanding the obligations of a Party affected by an event of Force Majeure pursuant to Sections 12.1(b) and 12.1(c), if the event of Force Majeure renders it impossible or impractical for the Contractor to provide the Services in accordance with this Agreement for a period of at least 45 days, the City may terminate this Agreement upon notice delivered to the Contractor at any time following the expiration of such period of 45 days.

12.2 City Suspension and Termination Rights

The City shall have the following rights:

- (a) The City may order the suspension of all or part of the Services at any time and for such period as it determines, by notice with immediate effect to the Contractor, in the event of a Safety Incident; and upon receipt of any such notice of suspension, the Contractor shall immediately cease performing the Services, minimise expenditure and comply with any reasonable instructions of the City relating to such Safety Incident, including any investigations.
- (b) Without prejudice to Section 12.2(a), the City may suspend all or part of the Services (for such period as it determines) or terminate this Agreement at any time (and for its convenience) upon written notice to the Contractor, which shall immediately upon receipt of such notice take all reasonable steps to wind down the performance of the Services and to minimise expenditure, including complying with any instructions from the City as to how to do so.
- (c) If the City reasonably considers that the Contractor is not discharging any of its material obligations under this Agreement, the City may inform the Contractor by notice stating the grounds for the notice. If evidence of remediation satisfactory to the City, is not received as soon as practicable or in any case within 14 days or such longer period as agreed by the Parties, the City may by a further notice to the Contractor of at least 14 days terminate this Agreement.
- (d) The City may terminate this Agreement with immediate effect if:
 - (i) the Contractor becomes bankrupt or insolvent, goes into liquidation, has a receiver or administrator appointed over it or any of its assets of undertaking, enters into any arrangement for the benefit of its creditors, becomes the subject of any moratorium or carries on business under a receiver, trustee, manager or arrangement for the benefit of its creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events; or
 - (ii) a Change in Control of the Contractor occurs and the City reasonably considers that the Change in Control shall substantively affect the Contractor's ability to perform its obligations under this Agreement.

12.3 Contractor Termination Rights

After giving at least seven days' written notice to the City, the Contractor may terminate this Agreement, or at its discretion and without prejudice to the right to terminate, may suspend or continue suspension of performance of the whole or part of the Services when:

- (a) 90 days after the due date for payment of an invoice, it has not received payment of that part which has not by that time been contested in writing by the City and provided always that:
 - (i) the Contractor has issued a notice of reminder to the City following the due date for payment in relation to such unpaid sum; and
 - (ii) the termination notice may not be issued until the expiry of 30 days following the issue of such reminder notice; or

- (b) the City commits any material or persistent breach(es) of its obligations under this Agreement which render(s) performance by the Contractor of its obligations under this Agreement or a substantial part thereof impossible or significantly adversely affect(s) such performance of this Agreement as a whole and further which, remain(s) irremediable after 60 days.

12.4 Consequences of Termination

The following consequences shall apply upon a termination:

- (a) On termination of this Agreement for any reason, the Contractor shall, as soon as reasonably practicable:
 - (i) deliver to the City all work and Documentation produced by or on behalf of the Contractor during the course of performing the Services;
 - (ii) return (or destroy if otherwise directed by the City in writing) all Confidential Information provided to it for the purposes of this Agreement;
 - (iii) return all of the City's Site access cards, equipment and other items provided under this Agreement, failing which, the City may enter the relevant premises and take possession thereof, and, until any such access cards, equipment and other items have been returned or repossessed, the Contractor shall be solely responsible for its or their safe-keeping;
 - (iv) if so requested by the City, take reasonable steps to assign any Subcontractor contracts to the City and do all things and execute all documents necessary to give effect thereto; and
 - (v) otherwise comply with all reasonable requirements of the City arising from the cessation of the Services or the continuing development of the Site.
- (b) The Contractor shall be entitled to be paid its reasonable properly incurred costs of compliance with Section 12.4(a) and its reasonable demobilization costs, up to a maximum of \$5,000.00, in aggregate, save in circumstances in which the City reasonably claims that the termination was a consequence of a Safety Incident or a default by the Contractor in the provision of any part of the Services, in which case all such costs shall be for the Contractor's own account.
- (c) On termination of this Agreement for any reason, the Contractor shall be entitled to payment for any completed portion of the Services rendered in full compliance herewith prior to the time of termination, in accordance with the pricing provided therefor in this Agreement.

12.5 Other Surviving Rights and Liabilities of Parties

- (a) Termination of this Agreement shall not prejudice or affect the accrued rights or claims and liabilities of the Parties.
- (b) After termination of this Agreement, the provisions of Sections 3.7 and 9.6, ARTICLE 11, ARTICLE 14, ARTICLE 15 and ARTICLE 17 shall remain in force.

ARTICLE 13 ASSIGNMENT AND SUBCONTRACTING

13.1 Assignment

Neither Party shall assign, transfer, mortgage, charge or deal in any other manner with this Agreement or any of its rights and obligations under or arising out of the Agreement (or any document referred to herein), or purport to take any such action without the prior written consent of the other.

13.2 Subcontracting

- (a) The Contractor shall not subcontract the whole or substantially all of the Services.
- (b) Without prejudice to the foregoing Section 13.2(a), save in the case of Subcontractor(s) whose role in the provision of the Services is expressly provided for in the schedules hereto (and only to the extent so provided for), the Contractor may not subcontract any part of the Services without the City's prior written consent.
- (c) The Contractor shall include in each contract by which it engages a Subcontractor a provision allowing the benefit of such contract to be assigned by the Contractor to the City upon request.
- (d) The Contractor shall not without the written consent of the City (which shall not be unreasonably withheld or delayed) initiate or terminate any contract with a Subcontractor.
- (e) If the Contractor is unable to enter into a contract with a Subcontractor whose role in the provision of the Services is expressly provided for in the schedules hereto, it shall as soon as reasonably practicable inform the City of the reason for such inability and procure the services of a replacement subcontractor that is acceptable to the City, acting reasonably.
- (f) The Contractor shall be responsible for the acts, defaults or neglect or any omission of each Subcontractor, its employees and agents in all respects as if they were the acts and defaults or neglect or omission of the Contractor its employees or agents themselves.

ARTICLE 14
IP

14.1 Assignment

The Contractor acknowledges and agrees that the City is the exclusive owner of all right, title, and interests in and to the Documentation, including, without limitation, all Intellectual Property Rights therein. The Contractor shall assign and hereby assigns to the City all right, title, and interests in and to the Documentation, including, without limitation, all existing and future Intellectual Property Rights in and to the Documentation, effective upon their creation to the fullest extent permitted by Law. Insofar as such right, title, and interest do not so vest automatically or immediately in the City by operation of law or under this Agreement, subject to Section 14.2, the Contractor holds legal title of all right, title, and interests in and to the Documentation, including, without limitation, all Intellectual Property Rights therein, in trust for the City and grants to the City an irrevocable, perpetual, fully paid-up, royalty-free, worldwide, transferable and non-exclusive licence to, itself and through contractors and agents, use, copy, amend, reproduce, modify and create derivative works of such Documentation for any purpose. Such licence shall include the right to sub licence to any third party without restriction.

14.2 Further Assistance

If and to the extent that any of the right, title, and interest in and to the Documentation, including, without limitation, all Intellectual Property Rights therein, is not assigned automatically or immediately to the City under Section 14.1, the Contractor undertakes, at the expense of the City and at any time either during or after this Agreement upon request from the City (notwithstanding that the City may do so in its own name and at its own cost), to execute all documents, make all applications, give all assistance and do all acts and things as may, in the reasonable opinion of the City, be necessary or desirable to vest all right, title, and interest in and to the Documentation, including, without limitation, all Intellectual Property Rights therein, in the City and to register them in, the name of the City and otherwise to protect and maintain such right, title, and interest. The Contractor further agrees to cooperate fully with the City both during and after the termination of this Agreement, with respect to signing further documents and doing such acts and other things reasonably requested by the City to confirm the transfer of ownership of the Documentation or to obtain or enforce patent, copyright, trade secret, or other protection for the Documentation. The Contractor shall not receive any consideration or royalties in respect of such transfer of ownership, beyond the fees, provided that the expense of obtaining or enforcing intellectual property protection shall be borne by the City.

14.3 Contractor Undertakings and Representations and Warranties

- (a) The Contractor undertakes:
 - (i) to notify the City in writing of the full details of Documentation promptly upon its creation;
 - (ii) whenever requested to do so by the City and in any event on the termination of this Agreement (as provided for in ARTICLE 12), promptly to deliver to the City all correspondence, documents, papers and

records on all media (and all copies or abstracts of them), recording or relating to any parts of the Documentation which are in its possession, custody or power;

- (iii) that the Contractor shall not, either during the term of this Agreement or thereafter, directly or indirectly, contest, or assist any third party to contest, the City's ownership of the Documentation or of any Intellectual Property Rights related thereto, and
 - (iv) not to register nor attempt to register any Intellectual Property Rights in the Documentation unless requested to do so by the City.
- (b) The Contractor represents and warrants to the City that:
- (i) it has not given and shall not give permission to any Subcontractor or third party to use any of the Documentation, nor any of the Intellectual Property Rights in the Documentation, other than as provided for in this Agreement or otherwise in accordance with the instructions of the City;
 - (ii) it has not given, and shall not give, to the City, nor shall it use in the provision of the Services, any confidential material or documents of any former client or customer of the Contractor or of any other third party, unless the Contractor has received prior written authorization to do so from the City and from the owner of the confidential material or documents;
 - (iii) it has the absolute right to make the assignments of the right, title, and interest in and to the Documentation contemplated in this Agreement and to grant the rights granted under this Agreement;
 - (iv) it is unaware of any use by any third party or any unauthorized use by a Subcontractor of any of the Documentation or any Intellectual Property Rights in the Documentation; and
 - (v) the use of the Documentation or the Intellectual Property Rights in the Documentation by the City shall not, to the knowledge of the Contractor, infringe any Intellectual Property Rights of any third party.

14.4 Background Intellectual Property

Notwithstanding and superseding anything to the contrary in this ARTICLE 14, each Party retains title to all Intellectual Property Rights owned or possessed by it or any of its affiliates prior to or independent of performance of this Agreement and used by it in fulfilling its obligations under this Agreement, as well as any modifications or improvements made thereto in the course of performing this Agreement ("Background IP"). To the extent that one Party acquires any right, title, or interest in and to any aspect of the modifications or improvements to the Background IP of the other Party, such first Party shall assign such right, title, and interest to the second Party, immediately following such acquisition. If any of the Contractor's Background IP is included in or required to use the Documentation provided by the Contractor to the City, the Contractor hereby grants to the City an irrevocable, perpetual, fully paid-up, royalty-free, worldwide, transferable and non-exclusive licence

(including the right to sub-licence only to members of the City's Group) to, itself and through contractors and agents, use, copy, amend, reproduce, modify, create derivative works of, use, commercialize, and otherwise exploit the Contractor's Background IP but only to the extent required to use such Documentation for the purpose (or any reasonably inferred purpose) for which it has been provided or for the provision of the Services under this Agreement (excluding any software source code).

14.5 Contractor Employees' and Subcontractors' Rights

The Contractor:

- (a) warrants that the Contractor's employees, Subcontractors and agents have waived or shall have waived in whole all moral rights (including, without limitation, any similar rights allowing the rights holder to restrain or claim damages for any distortion, mutilation, or other modification of works or any part thereof, and to restrain use or reproduction of works in any manner) they may have in the Documentation;
- (b) indemnifies the City, its officers, agents, contractors and employees against any liability, cost, loss or damage (including legal costs on a solicitor-client basis) suffered or incurred that arises under any breach of the warranty contained in Section 14.5(a); and
- (c) must do all things requested by the City, including signing or procuring the signature of particular forms, to give full effect to Section 14.5(a).

14.6 No Additional Remuneration

The Contractor acknowledges that, except as provided by Law, no further remuneration or compensation (beyond that expressly provided for in this Agreement) is or may become due to the Contractor in respect of the performance of its obligations under this ARTICLE 14.

ARTICLE 15 PRIVACY; CONFIDENTIALITY

15.1 Freedom of Information and Protection of Privacy Act

The Contractor acknowledges that the City is subject to the *Freedom of Information and Protection of Privacy Act* (British Columbia), which imposes significant obligations on the City's contractors to protect all personal information acquired from the City in the course of providing any service to the City.

15.2 No Promotion

The Contractor shall not, and shall ensure that its Subcontractors shall not, disclose or promote any relationship with the City, including by means of any oral declarations, announcements, sales literature, letters, client lists, press releases, brochures or other written materials, without, in each case, the express prior written consent of the City. The Contractor shall not use the City's logo or any of the City's official marks without the express prior written consent of the City.

15.3 Confidentiality Obligations

Each Party shall keep the Confidential Information of the other Party confidential and each Party shall not use such Confidential Information except for the purpose of exercising or performing its rights and obligations under this Agreement or where, in the case of the City, otherwise necessary to pursue the public business of the City (a “Permitted Purpose”), or disclose the Confidential Information in whole or in part to any third party, except as expressly permitted by this ARTICLE 15.

15.4 Disclosure to Representatives

A Party may disclose the other Party’s Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that it informs such Representatives of the confidential nature of the Confidential Information prior to disclosure, and at all times it is responsible for such Representatives’ compliance with the confidentiality obligations set out in this ARTICLE 15.

15.5 Disclosures Required by Law

A Party may disclose Confidential Information to the extent required by any applicable Laws or by any Competent Authority provided that, where legally permitted, it notifies the other Party before doing so, gives the other Party a reasonable opportunity to take any steps that the Party considers necessary to protect the confidentiality of that information, and notifies the third person that the information is Confidential Information. In any event, a Party shall furnish only that portion of the Confidential Information which it is legally required to disclose and shall use its reasonable endeavours to obtain a protective order or other reliable assurance that the Confidential Information shall be accorded confidential treatment.

15.6 Other Disclosures by the City

The City’s obligations under this ARTICLE 15 are wholly subject to and qualified by, the applicable provisions of the *Freedom of Information and Protection of Privacy Act* (British Columbia) and, notwithstanding any other provision of this ARTICLE 15, the City may disclose Confidential Information in any manner compliant with such statute or otherwise in furtherance of its public role or duties, including in the course of publicly reporting to the Vancouver City Council.

15.7 Interpretation; Enforcement and Survival

- (a) Notwithstanding anything in this ARTICLE 15 to the contrary, nothing in this ARTICLE 15 shall affect the Parties’ rights and obligations under ARTICLE 14.
- (b) The Parties acknowledge that a breach of any of the obligations or provisions contained in this ARTICLE 15 could cause the other Party to suffer loss which may not be adequately compensated for by damages and that the other Party may, in addition to any other remedy or relief, enforce the performance of this Agreement by injunction or specific performance upon application to a court of competent jurisdiction without proof of actual or special damage and notwithstanding that in any particular case damages may be readily

quantifiable, and such breaching Party must not plead sufficiency of damages as a defence in the proceeding for such injunctive relief.

**ARTICLE 16
TAXES**

16.1 Taxes for Own Accounts

Unless otherwise expressly stated in this Agreement, any Taxes becoming due and payable by either Party pursuant to any applicable Laws as a result of the entering into, the performance of obligations under or the taking of payment pursuant to this Agreement, shall be for the account of that Party, and for greater certainty the Contract Price includes all such Taxes, except for applicable Taxes arising under all sales, excise and value added tax legislation (including, without limitation, the *Excise Tax Act* (Canada) and similar Canadian provincial legislation) (collectively, "Sales Tax") as a result of the sale of the Services within Canada hereunder, unless it is clearly stated that they are intended to be Sales Tax-inclusive.

16.2 Withholding Taxes

- (a) Notwithstanding any other provision to the contrary, if the City determines that it is necessary to satisfy its obligations under any Law relating to Taxes, the City may:
 - (i) withhold an amount from a payment made to the Contractor; and
 - (ii) pay the withheld amount directly to the relevant Competent Authority.
- (b) If an amount withheld in accordance with Section 16.2(a) is paid by the City to the relevant Competent Authority, it is deemed to have been paid to the Contractor on the date on which the remainder of the payment to which it relates was paid to the Contractor.
- (c) The Contractor agrees and acknowledges that it has no claim against the City for any amounts withheld and paid to the relevant Competent Authority in accordance with Section 16.2(a).
- (d) If the City does not withhold an amount under Section 16.2(a) which it is required to withhold pursuant to any laws relating to Taxes, the Contractor agrees to pay that amount to the City, upon request by the City.
- (e) The Contractor agrees that the City shall not be required to increase any payment to the Contractor by the amount withheld by the City under Section 16.2(a)

**ARTICLE 17
DISPUTE RESOLUTION**

17.1 Optional Procedure

All claims, disputes or issues in dispute between the City and the Contractor in relation to this Agreement shall be decided by mediation or arbitration, if the Parties so

agree in writing, or, failing any such agreement, by the courts of competent jurisdiction in the Province of British Columbia.

17.2 Arbitration

In the event that Parties agree to arbitration pursuant to Section 17.1:

- (a) the arbitration shall be conducted pursuant to the *Commercial Arbitration Act* (British Columbia) and shall be governed by the rules of the British Columbia International Commercial Arbitration Centre, except that the arbitrator or arbitrators shall be agreed upon by the Parties, and failing agreement by the Parties, shall be appointed by a court of competent jurisdiction within the Province of British Columbia;
- (b) the parties shall share equally the costs of the arbitration but shall be responsible for their own separate costs and expenses in relation to the arbitration including legal fees and disbursements; and
- (c) the arbitration shall take place in Vancouver, British Columbia and shall be governed by the laws of British Columbia.

ARTICLE 18 MISCELLANEOUS

18.1 Time of the Essence

Time is of the essence of this Agreement, including without limitation in relation to the Time(s) for Completion.

18.2 Costs

Each of the Parties hereto shall pay their respective legal fees and other costs and expenses incurred in connection with the preparation, execution and delivery of this Agreement and all documents and instruments executed pursuant hereto and any other costs and expenses whatsoever and howsoever incurred.

18.3 Benefit of this Agreement

- (a) This Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the Parties hereto.
- (b) Except as expressly set forth in the foregoing Sections 18.3(a) or 11.1, nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and the Contractor.

18.4 Entire Agreement

This Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof and cancels and supersedes any prior understandings and agreements between the Parties hereto with respect thereto. There are no representations, warranties, terms, conditions, undertakings or collateral agreements,

express, implied or statutory, between the Parties in relation to the subject matter hereof other than as expressly set forth in this Agreement.

18.5 Amendments and Waiver

Subject to Section 3.9, no modification of or amendment to this Agreement is valid or binding unless set forth in writing and fully executed by both of the Parties hereto and no waiver of any breach of any term or provision of this Agreement is effective or binding unless made in writing and signed by the Party purporting to give such waiver and, unless otherwise provided, is limited to the specific breach waiver.

18.6 Notices

- (a) Any order, demand, notice or other similar communication to be given to a Party in connection with this Agreement must be given in writing and shall be deemed to be validly given if given by personal delivery to a City's Manager or a Contractor's Manager, as applicable, or delivered by registered mail, by courier or by electronic transmission (with delivery confirmation or receipt of a reply email effectively acknowledging delivery), addressed to a City's Manager or a Contractor's Manager, as the case may be, or, in each case to such other individual as is designated in writing by the relevant recipient Party (including as designated in writing below herein) at the relevant address or facsimile number listed below:

- (i) if to the Contractor:
<Contractor's Name>
<address>

Attention: < >
Facsimile: < >
Email: < >

- (ii) if to the City:
City of Vancouver
<Department>
453 West 12th Avenue
Vancouver, BC V5Y 1V4

Attention: < >
Facsimile: < >

or such other address or facsimile number as may be designated by notice given by either Party to the other, provided that, notwithstanding the foregoing, the Contractor's invoices shall be addressed as specified in Section 9.3 or as otherwise specified in the relevant City purchase order.

- (b) Any order, demand, notice or other communication given (and, in the case of electronic transmission, confirmed or acknowledged) in accordance with Section 18.6(a) shall be conclusively deemed to have been given:

- (i) if given by personal delivery, on the day of actual delivery thereof;
- (ii) if given by registered mail or courier, on the Business Day following confirmation by the postal service or the courier that the notice has been delivered; and
- (iii) if given by electronic transmission, on the day of transmittal thereof if given during the normal business hours of the recipient and on the Business Day during which such normal business hours next occur if not given during such hours on any day.

Notwithstanding the foregoing, if the Party giving any demand, notice or other communication knows or ought reasonably to know of any difficulties with the postal system which might affect the delivery of mail, any such demand, notice or other communication must not be mailed but must be given by personal delivery, courier or electronic transmission.

18.7 Governing Law and Jurisdiction

- (a) This Agreement is governed by and must be construed in accordance with the laws of the Province of British Columbia.
- (b) All provisions of the *International Sale of Goods Act* (British Columbia) are specifically excluded from application to this Agreement.
- (c) This Agreement is subject to the exclusive jurisdiction of the courts in the Province of British Columbia except:
 - (i) as otherwise agreed by the Parties pursuant to ARTICLE 17; and
 - (ii) to the extent necessary to enforce, in another jurisdiction, any decision or award made pursuant to ARTICLE 17 or any judgment of any court in the Province of British Columbia.

18.8 Further Assurances

Each Party agrees to do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of this Agreement and the transactions contemplated by it.

18.9 Severance

If any term or condition of this Agreement is for any reason held to be illegal, invalid, ineffective, inoperable or otherwise unenforceable, it shall be severed and deemed to be deleted from this Agreement and the validity and enforceability of the remainder of this Agreement shall not be affected or impaired thereby. If any term or condition of this Agreement is found to be illegal, invalid ineffective, inoperable or otherwise unenforceable, but would not be so if some part of it were deleted, the term or condition shall apply with such modifications as may be necessary to make it enforceable.

18.10 Counterparts

This Agreement may be executed in any number of counterparts. All counterparts, taken together, constitute one instrument. A Party may execute this Agreement by signing any counterpart.

18.11 Independent Legal Advice

THE CONTRACTOR ACKNOWLEDGES THAT THE CONTRACTOR HAS BEEN GIVEN THE OPPORTUNITY TO SEEK INDEPENDENT LEGAL ADVICE BEFORE EXECUTING THIS AGREEMENT.

18.12 Electronic Execution

Delivery of an executed signature page to this Agreement by either Party by electronic transmission shall be as effective as delivery of a manually executed copy of this Agreement by such party.

IN WITNESS WHEREOF this Agreement has been executed as of the day and year first above written by and on behalf of the Parties by their duly authorized signatories.

<CONTRACTOR'S NAME>

Signature

Print Name and Title

Signature

Print Name and Title

CITY OF VANCOUVER

Signature

Print Name and Title

Signature

Print Name and Title

SCHEDULE A
RFP

SAMPLE

SCHEDULE B
PROPOSAL

SAMPLE

SCHEDULE C
TIME FOR PERFORMANCE OF SERVICES

SAMPLE

SCHEDULE D
KEY PERSONNEL

SAMPLE

SCHEDULE E
CONTRACT PRICE

SAMPLE

SCHEDULE F
KPI's

SAMPLE

SCHEDULE G
SERVICE LEVEL REQUIREMENTS

SAMPLE