

COMPUTER SUPPLY AND DEPLOYMENT AGREEMENT

THIS AGREEMENT made as of _____, 2008,

BETWEEN:

CITY OF VANCOUVER, a municipal corporation continued under the *Vancouver Charter* and having an office at 453 West 12th Avenue, Vancouver, British Columbia, V5Y 1V4

(the "City")

AND:

[insert name and address of the Contractor]

(the "Contractor")

WHEREAS:

- A. The City requires the services described herein and wishes to engage the Contractor to perform said services.
- B. The Contractor has agreed to perform the said services in accordance with the terms and conditions of this Agreement.

NOW THEREFORE, in consideration for the mutual covenants and promises made by the parties and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Definitions and Interpretation.

1.1 Definitions. In this Agreement, the following words and terms, unless the context otherwise requires, will have the meanings set out below:

- (a) "Additional Compensation" has the meaning set out in Section 4.1;
- (b) "Agreement" means this agreement inclusive of all schedules, appendices or exhibits attached hereto, as amended from time to time;
- (c) "Applicable Laws" means all statutes, regulations, by-laws, codes, rules, notices, orders, directives, standards and requirements of every competent federal, provincial, regional, municipal and other statutory authority applicable to the Contractor, any Subcontractor and the Services, all as may be in force from time to time;
- (d) "Business Day" means a day other than a Saturday, Sunday or statutory holiday observed in British Columbia;

- (e) **"City IT Staff"** means the City's employees and consultants who are under the direction of the City's Director of Information Technology or who are IT support staff within a particular City department;
- (f) **"City Sites"** means the sites at and in respect of which the Contractor will perform the Services and which are set out in Schedule C hereto which list may be amended from time to time in accordance with the terms and conditions of this Agreement;
- (g) **"Computer Equipment"** means any computer equipment which is supplied by the Contractor to the City pursuant to and in accordance with the terms of this Agreement and includes Desktops, Laptops, Monitors and any Software;
- (h) **"Configuration and Deployment Services"** has the meaning set out in Section 2.1 of Schedule A hereto;
- (i) **"Contract Administrator"** is the person designated by each of the parties to administer this Agreement on their behalf and is named in Section 24 of this Agreement, and is subject to change in accordance with Section 24.5 of this Agreement;
- (j) **"Contract Documents"** means this Agreement, the Response, the RFP and such other documents as listed in this Agreement, including all amendments or addenda agreed to between the parties;
- (k) **"Contractor's Personnel"** means the Contractor's staff who are assigned to this Agreement to undertake the Services;
- (l) **"Contractor's Facility"** means the Contractor's business premises;
- (m) **"Decommissioned Equipment"** means Replaced Equipment in respect of which the Decommissioning Services have or will have been completed by the Contractor;
- (n) **"Decommissioning Services"** has the meaning set out in Section 2.2 of Schedule A hereto;
- (o) **"Deemed Extension Term"** has the meaning set out in Section 3.3;
- (p) **"Delivery Date"** means the date that an item of Computer Equipment is delivered to and installed at a City Site;
- (q) **"Deployment and Decommissioning Schedule"** has the meaning set out in Section 2 of Schedule A hereto;
- (r) **"Desktop"** means one microcomputer designed for static location on an office desk, and includes a keyboard, mouse, disk storage, embedded software and operating system software and utilities;

- (s) "DOA" in respect of an item of Computer Equipment means that the item of Computer Equipment suffers from any of the following defects or failures within 15 Business Days of its Delivery Date:
- (i) is inoperable at power-up due to a non-functioning part or failed power-on self test; or
 - (ii) is functional, but does not meet the specifications of the Computer Equipment which was ordered by the City; or
 - (iii) fails repeatedly during normal operation; or
 - (iv) any parts are missing from the Computer Equipment;
- (t) "DOA Notice" has the meaning set out in Section 1.5(b) of Schedule A;
- (u) "Effective Date" means the first day of the Initial Term;
- (v) "Event of Default" has the meaning set out in Section 22.2 of this Agreement;
- (w) "Extension Term" has the meaning set out in Section 3.3;
- (x) "Fixed Price Period" means the period of time commencing on the Effective Date and ending on the three month anniversary of the Effective Date;
- (y) "GST" means the tax payable and imposed pursuant to Part IX of the *Excise Tax Act* (Canada), as amended, and any successor legislation thereto;
- (z) "Hardware Maintenance Contractor" means the contractor retained by the City to repair and maintain the City's inventory of computer equipment including the Computer Equipment;
- (aa) "Included Services" has the meaning set out in Section 1 of Schedule A hereto;
- (bb) "Initial Deployment Phase" means the period commencing on the Effective Date and ending February, 2009;
- (cc) "Initial Term" has the meaning set out in Section 3.3;
- (dd) "Laptop" means one microcomputer designed to be carried from one work location to the next, and includes an integrated keyboard, display screen, disk storage, mouse, embedded software and operating system software and utilities;
- (ee) "Losses" means in respect of any matter all:
- (i) direct or indirect, as well as
 - (ii) 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);

- (ff) “**Monitor**” means any computer monitor supplied by the Contractor pursuant to this Agreement;
- (gg) “**Partial Deployment**” has the meaning set out in Section 2.1 of Schedule A;
- (hh) “**PST**” means provincial sales tax administered under the *Social Services Act* (British Columbia) and any successor tax or levies therefor in force from time-to-time;
- (ii) “**Purchase Order**” has the meaning set out in Section 7.1;
- (jj) “**Recycling Agency**” means reBoot Vancouver its successors or any similar agency approved by the City in accordance with this Agreement;
- (kk) “**Replaced Equipment**” means any used computer equipment in respect of which the Contractor performs the Decommissioning Services;
- (ll) “**Response**” means the response to the RFP submitted by the Contractor on _____, 2008;
- (mm) “**RFP**” means Request for Proposals PS07132;
- (nn) “**Services**” has the meaning set out in Section 3.1;
- (oo) “**Software**” means a collection of computer programs, procedures and documentation that perform some task on a computer;
- (pp) “**Standard of Work**” means the highest of:
 - (i) the standard imposed by law;
 - (ii) the standard prescribed by the professional and regulatory bodies in the applicable profession, field or discipline;
 - (iii) the standard set forth in the Response;
 - (iv) the standard set forth in the RFP; and
 - (v) the standard otherwise prescribed in this Agreement;
- (qq) “**Subcontractors**” means the independent consultants, agents, associates, subcontractors and other third parties retained by the Contractor to assist in the performance of the Services;
- (rr) “**Technical Services**” means the Configuration and Deployment Services, Partial Deployment and/or the Decommissioning Services;

- (ss) "Term" means the Initial Term and any Extension Term and any Deemed Extension Term, as applicable;
- (tt) "WCB" has the meaning set out in Section 17.1; and
- (uu) "WCB Legislation" means the *Workers Compensation Act* (British Columbia) and all regulations enacted pursuant to the *Workers Compensation Act* (British Columbia).

1.2 Interpretation. In this Agreement, including the recitals, Schedules and appendices to this Agreement, except as expressly stated to the contrary or the context otherwise requires:

- (a) the recitals and headings to Sections and Schedules are for convenience and reference only and will not affect the interpretation of this Agreement;
- (b) each reference in this Agreement to "Section" or "Schedule" is to a Section of and a Schedule to, this Agreement;
- (c) each reference to a statute is deemed to be a reference to that statute and any successor statute, and to any regulations, rules, policies and criteria made under that statute and any successor statute, each as amended or re-enacted from time to time;
- (d) each reference to a rule, guideline, policy, regulation or directive is deemed to be a reference to any successor or replacement of such rule, guideline, policy, regulation or directive;
- (e) words importing the singular include the plural and vice versa and words importing gender include all genders;
- (f) references to time of day or date mean the local date or time in Vancouver, British Columbia;
- (g) all references to money mean lawful currency of Canada;
- (h) the word "written" includes printed, typewritten, faxed, e-mailed or otherwise capable of being visibly reproduced at the point of reception and "in writing" has a corresponding meaning; and
- (i) the words "include" and "including" are to be construed as meaning "including, without limitation".

1.3 Contract Documents. The terms and conditions of the Contract Documents, whether or not attached to this Agreement, will be deemed to be incorporated into this Agreement. The Contract Documents are complementary, and what is called for by any one will be as binding as if called for by all. In the event of any inconsistency or conflict between or among any of the Contract Documents, the Contract Documents will be interpreted in the following order from highest to lowest:

- (a) this Agreement including any amendments to this Agreement;

- (b) the schedules and appendices attached hereto including any amendments to the schedules and appendices attached hereto;
- (c) the RFP; and
- (d) the Response.

2. Contractor's Representations and Warranties

2.1 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 corporation duly incorporated, organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or continuance and is lawfully registered and licensed 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 and/or performance of this Agreement does or will constitute or result in a violation or breach;
- (d) all statements made by the Contractor in its Response are true and accurate;
- (e) the Contractor is an authorized **[names of Computer Equipment manufacturer to be inserted based on Response]** reseller;
- (f) the Contractor and the Contractor's Personnel and Subcontractors have the skills, training, experience and expertise which are necessary to complete the Services in accordance with the terms of this Agreement;
- (g) the Computer Equipment meets or exceeds the City's requirements as set out in the Contract Documents or otherwise set by the City and the Contractor has conducted all such tests as are required to confirm that the Computer Equipment meets the warranties provided by the manufacturers of the Computer Equipment;
- (h) all Computer Equipment will be new and the model approved by the City;
- (i) the Contractor has taken all steps which a prudent supplier would take to ensure that the Computer Equipment does not contain any computer viruses or other malware which could reasonably be expected to harm the City's computer systems;
- (j) all Software supplied by the Contractor will be the latest version specified by the City and the City will have the ability to upgrade to the latest version as upgrades become available and apply software patches and fixes as required; and

- (k) all Computer Equipment supplied by the Contractor to the City pursuant to this Agreement will be delivered to the City along with all intellectual property rights, including any licences, licence keys and documentation which are necessary to permit the City to freely own, use and operate such Computer Equipment in accordance with the terms of this Agreement.
- 2.2 Survival. The representation and warranties in Section 2.1 will survive the expiry or earlier termination of this Agreement.
3. **Services.**
- 3.1 Description of Services. The Contractor will provide and be fully responsible for the following services (collectively, the "Services"), as may be modified or amended pursuant to the terms of this Agreement:
- (a) the services described in Schedule "A" attached hereto including the Included Services and the Technical Services;
 - (b) the services described in the RFP;
 - (c) the services which the Contractor agreed to provide in the Response; and
 - (d) any services not specifically covered in (a), (b) or (c) above, but reasonably inferable therefrom, or reasonably necessary for the safe and efficient completion of the Services.
- 3.2 Provision of Service Inputs and Personnel. The Contractor will provide all labour, supervision, management, facilities, equipment, tools, supplies, fuel and materials necessary, appropriate or incidental to the proper and complete execution of the Services. The requirements in Schedule "A" describe in general terms how the Contractor is to perform the Services. However, if there is any discrepancy in the description of the requirements or any omission of criteria, whether or not identified by the City, which would be detrimental to the benefits intended to be provided to the City by this Agreement then the Contractor will rectify such discrepancy or omission to the satisfaction of the City without further compensation.
- 3.3 Term. The Contractor will perform and complete the Services commencing on _____, 2008 and ending on _____, 2012 (the "Initial Term") subject to extension or earlier termination in accordance with the provisions of this Agreement. The City and the Contractor may extend the Agreement for a further period (an "Extension Term") in which case the terms and conditions of this Agreement will continue to apply during the Extension Term except that the pricing for Computer Equipment will be agreed upon by the parties.

Notwithstanding any other term of this Agreement, if the City and the Contractor continue to deal with each other following the expiry of the Term or an Extension Term, as the case may be, without entering into a written extension of this Agreement, then this Agreement will be deemed to be renewed on a year-to-year basis (a "Deemed Extension Term") on the terms and conditions of this Agreement. In the absence of a written agreement between the parties, the fees for the Services

during such Deemed Extension Terms will be the rates effective under the immediately preceding Initial Term or Extension Term as the case may be.

- 3.4 Standard of Care. The Contractor will exercise such degree of care, skill, diligence and efficiency in the performance of the Services as is required by the Standard of Work. The Contractor represents and warrants that it has all the skills, qualifications, certifications and experience necessary to perform the Services to the Standard of Work as contemplated by this Agreement and acknowledges that its skills, qualifications, certifications and experience were a major factor in the selection of the Contractor for the work set out in this Agreement. The parties will act with utmost good faith towards each other in connection with this Agreement.
 - 3.5 Remedy for Deficient Services. Without limiting any other remedy which the City may have under this Agreement or at law, the Contractor at its sole cost upon written request of the City will rectify any of the Services which have not been performed in accordance with the care, skill, diligence and efficiency set out in Section 3.4 or which have not otherwise been performed in accordance with the terms of this Agreement, and will do all such things that may be reasonably required by the City to satisfy the City that the Services have been duly performed or rectified in accordance with the terms of this Agreement.
 - 3.6 Cooperation and Coordination Regarding Performance of Services. The Contractor will cooperate, and coordinate the performance of the Services with the City's personnel and the City's contractors, subcontractors, consultants and suppliers, with a view to optimizing efficiency, achieving cost reductions, ensuring safety, and minimizing inconvenience to City personnel and the general public. Notwithstanding the foregoing, the Contractor will have no liability for the acts or omissions of any persons for whom it is not responsible under the terms of this Agreement or at law.
4. **Changes to Services.**
 - 4.1 Right to Make Changes. City IT Staff may request special additional installation services, such as reconfiguring or transfer of data and software from other computers at the City Sites. Such arrangements will be identified on the individual Purchase Orders, and at the time the order is placed, the City and the Contractor will agree, in writing, upon a reasonable estimate of the time the additional services will require and the cost of such services ("**Additional Compensation**"). Actual charges for the additional services will not exceed the amount of the Additional Compensation agreed upon between the City and the Contractor.
 - 4.2 Personnel. The City may from time to time request reasonable changes to the Contractor's Personnel, and the Contractor will comply with any such request. The Contractor will not change any of the Contractor's Personnel without the prior written approval of the City, which approval will not be unreasonably withheld.
5. **Computer Equipment**
 - 5.1 Requirements. All Computer Equipment supplied to the City by the Contractor pursuant to this Agreement must comply with the specifications and requirements set out in the Contract Documents.

5.2 Other Technical Requirements. Without limiting the Contractor's obligation in Section 5.1, the Contractor will:

- (a) CSA Approval - ensure that all electrical items have been approved by the Canadian Standards Association and or British Columbia Electrical Safety Branch and bear the appropriate label prior to deliver to a City Site;
- (b) Noise Emission Level - ensure that the Computer Equipment does not exceed the class B limits for radio noise emissions from digital apparatus set out in the Radio Interference Regulations of the Department of Communications; and
- (c) Radiation Level - ensure that all Monitors meet the Swedish MPR II Standard.

6. Compensation.

6.1 Fees. Subject to the terms and conditions of this Agreement, and in consideration for the satisfactory performance of the Services, the City will pay the Contractor in accordance with Schedule "B".

6.2 Included Services. Without limiting any other term of this Agreement, the Contractor Acknowledges that it will not invoice the City separately for the Included Services rather the cost of performing the Included Services is deemed to be included in the unit prices for the Computer Equipment and the Technical Services.

6.3 Manner of Payment. The Contractor will be paid on the basis and at the times set out in Schedule "B" and Section 16 of this Agreement.

6.4 Prices for Technical Services. All Technical Services performed by the Contractor will be based on the unit rates set out in Schedule B and will be fixed for the Term.

6.5 Prices for Desktops, Laptops and Monitors. The unit prices for Desktops, Laptops and Monitors are fixed for the Fixed Price Period and thereafter price changes will be based on the pricing methodology set out in Section 4 of Schedule B. Notwithstanding the foregoing, under no circumstances will the unit cost for a Desktop, Laptop or Monitor which is purchased following the Fixed Price Period exceed the price which the City would have paid for an identical make and model during the Fixed Price Period.

6.6 Prices for Other Equipment. The unit prices for all other equipment purchased by the City during the Term will be based on the pricing methodology set out in Section 4 of Schedule B.

6.7 No Additional Compensation unless Pre-Approved. No Additional Compensation whatsoever will be payable by the City for work performed by the Contractor which has not been approved in accordance with Section 4.1 hereof.

7. Ordering Computer Equipment

7.1 Purchase Order. The City will issue a purchase order (the "Purchase Order") for the Computer Equipment that it wishes to purchase from the Contractor. The Purchase

Order will specify the types and quantities of Computer Equipment to be supplied by the Contractor and the City Sites to which the Computer Equipment is to be deployed.

7.2 Effect of Purchase Order. In the event of any conflict between the terms of an individual Purchase Order and the terms of any other Contract Document, the terms of the other Contract Document will have priority.

7.3 Delivery Time. The Contractor will deliver each item of Computer Equipment to the applicable City Site within 15 Business Days of the date of the Purchase Order for that item of Computer Equipment. The foregoing time requirement does not abrogate from the Contractor's obligations to delivery the quantities specified in Section 11.1.

8. Title and Risk

8.1 Risk. The Computer Equipment will be at the Contractor's sole risk for any loss or damage until the Contractor has completed the Configuration and Deployment Services in respect of the Computer Equipment. In the case of a Partial Deployment the risk of loss or damage to the Computer Equipment will automatically pass to the City upon delivery of the Computer Equipment to the staging area designated by the City.

8.2 Title. Title to an item of Computer Equipment will automatically pass to the City upon completion of the Configuration and Deployment Services in respect of that Computer Equipment. In the case of a Partial Deployment title to an item of Computer Equipment will automatically pass to the City upon delivery of the Computer Equipment to the staging area designated by the City. The Contractor will 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 the Computer Equipment to the City, free and clear of all liens, charges and encumbrances.

8.3 DOA. For Computer Equipment in respect of which the City has delivered a DOA Notice to the Contractor, the risk of loss or damage to the DOA Computer Equipment and title in and to the DOA Computer Equipment will automatically transfer back to the Contractor upon pickup of such DOA Computer Equipment from the City Site by the Contractor.

9. Computer Equipment Warranty

9.1 Warranty. The Contractor will deliver to the City all such documentation as the City may reasonably require to evidence that the Computer Equipment is subject to a manufacturer's warranty and if applicable, a Contractor's extended warranty, on terms which are acceptable to the City. If any warranties are issued to the Contractor and not the City, the Contractor will take all such further steps and actions as may be required to assign the benefit of such warranties to the City.

9.2 Warranty Effective Date. The warranty on any Computer Equipment supplied by the Contractor will commence on the date that the particular Computer Equipment is delivered to the City Site as indicated on the Purchase Order. In the case of DOA Computer Equipment, the warranty will not commence until the replacement Computer Equipment has been delivered to the applicable City Site by the Contractor.

10. City Sites

10.1 City Sites. The Contractor will perform the Services at the City Sites listed in Schedule C. The City will be entitled, in its sole discretion, on written notice to the Contractor, to add new City Sites to or remove City Sites from the list set out in Schedule C hereto.

11. Quantities and Exclusivity

11.1 Quantities are Estimates Only. The Contractor acknowledges and agrees that the City has made no representations about the quantities of Computer Equipment that it will buy from the Contractor during the Term. Notwithstanding the foregoing, during the Initial Deployment Phase, the Contractor will complete Configuration and Deployment Services and Decommissioning Services in respect of a minimum of one hundred (100) Desktops and/or Laptops and Monitors per week and will complete Partial Deployment and Decommissioning Services in respect of a minimum of fifty (50) Desktops and/or Laptops and Monitors per week. If the Contractor fails to meet these required volumes at any time during the Initial Deployment Phase then **[insert remedy proposed by Contractor in Response.]**

11.2 Not an Exclusive Supply Contract. The City intends to purchase the majority of its Desktops, Laptops and Monitors from the Contractor during the Term, however, under no circumstances will this Agreement be deemed to be an exclusive contract between the City and the Contractor for the purchase of the Computer Equipment or the performance of the Services. If the Contractor is unable to supply a particular item of equipment to the City, is unable to meet the City's volume requirements in Section 11.1, is unable to perform any of the Services when and where required by the City or is unable to supply the Computer Equipment at a competitive price, as determined by the City in its sole discretion, then the City will be entitled, in its sole discretion, to purchase such items or services from any other supplier.

12. Subcontractors.

12.1 Use of Subcontractors. The Contractor may retain Subcontractors to assist in the performance of the Services, provided that:

- (a) the Contractor will not subcontract all or substantially all of the Services to a Subcontractor;
- (b) the Contractor will require that the terms of this Agreement apply to the Subcontractors; and
- (c) the Contractor will be wholly responsible for the professional standards, performance, acts, defaults and neglects of such Subcontractors.

12.2 Standard of Care of Subcontractors. The Contractor represents to the City that all Subcontractors are competent and have the qualifications, designations, experience and capabilities necessary to carry out the Services to the Standard of Work. The Contractor will cause all Subcontractors to exercise the degree of care, skill, diligence and efficiency in the performance of the Services as is required by the Standard of Work.

- 12.3 Subcontractor Approvals. The Contractor will only retain Subcontractors approved by the City in writing.
- 12.4 Subcontractor Changes. The Contractor will not change any Subcontractor without the prior written approval of the City. The City may, from time to time, where it reasonably believes performance to the Standard of Work is not being met by any Subcontractor(s), request changes to the Contractor's Subcontractors, and the Contractor will comply with any such request.
- 13. Compliance with Laws and Taxes.**
- 13.1 Compliance with Laws. In carrying out its obligations hereunder, the Contractor will comply with, and will cause all Subcontractors to comply with, all Applicable Laws.
- 13.2 Regulatory Compliance. The Contractor will upon request by the City provide certificates of compliance from regulatory bodies or other evidence of compliance, including as pertaining to any of the Subcontractors. The Contractor accepts full and exclusive responsibility and liability, and will cause all Subcontractors to accept full and exclusive responsibility and liability, for payment of federal and provincial payroll taxes and for contributions for employment insurance, old age pensions, retirement annuities, workers' compensation, health and hospitalization plans and other benefits expressed under any provision of any law or any agreement to which the Contractor and the Subcontractors are subject.
- 13.3 Permits and Licenses. The Contractor represents and warrants that it has obtained and is in compliance with all requisite permits, professional designations, authorizations and licenses necessary for the Contractor to supply and provide the Services.
- 13.4 The Contractor represents and warrants that it has a valid City of Vancouver business licence and will maintain such business licence in good standing for the Term.
- 14. Policies, Rules and Regulations.**
- 14.1 Rules and Procedures. The City may prescribe, and the Contractor will comply with (and cause any person for whom it is responsible at law or pursuant to the provisions of this Agreement to comply with) all rules, regulations, policies and procedures from time to time for:
- (a) matters pertaining to safety and security, including data and network security and issuance of passes, vehicle operating permits, keys, badges, and like devices;
 - (b) environmental matters;
 - (c) accessibility matters;
 - (d) sustainability matters;
 - (e) the use of specific materials, goods or services;
 - (f) public information and communications; and

- (g) such other matters as the City may from time to time deem necessary or desirable in its reasonable determination.

14.2 Changes to Rules and Procedures. The City may at any time upon notice to the Contractor amend the rules, regulations, policies and procedures relating to the Services, and may at any time prescribe specific stipulations regarding the Services applicable to the Contractor and its Subcontractors.

14.3 Security. The Contractor agrees that, as a condition of working with the City:

- (a) 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, 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 Services which involves, or may involve, access to the City 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 Services which involves, or may involve, access to the City Sites (for the purposes of this section, (i) through (iv) are collectively, the “Contractor Parties”);
- (b) the Contractor will cause all Contractor Parties, as a condition of having access to or performing, directly or indirectly, any part of the Services which involves, or may involve, access to the City Sites, 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; and
- (c) without limiting any other term of this Agreement, the Contractor agrees that each of: (i) the failure of any Contractor Parties to deliver any consent or authorization required hereunder; and (ii) receipt by the City of notice from the VPD that the outcome of any of the Searches is not satisfactory, will be deemed to be an Event of Default and in such event the City may, but will 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 to Section 22.1(b) or denying access to any Contractor Parties to the City Sites.

14.4 Safety. The Contractor acknowledges the City’s commitment to a superior standard of workplace safety. In addition to complying with all of the Contractor’s health and safety obligations specified in this Agreement or otherwise prescribed by Applicable Law, the Contractor agrees to provide support for the City’s safety objectives by making efforts to elevate the priority it places on the creation of a safe work environment and embedding health and safety principles into its work.

15. Relationship of the Parties.

- 15.1 Status. The Contractor is engaged as an independent contractor to the City for the sole purpose of providing the Services. Neither the Contractor nor any of the Contractor's personnel is engaged as an official, officer, employee, servant or agent of the City, and neither the Contractor nor any of the Contractor's personnel will enter into or purport to enter into any contract or subcontract on behalf of the City. All Subcontractors will be consultants, agents, associates or subcontractors, as the case may be, of the Contractor and will not be consultants, agents, associates or subcontractors of the City. It is understood and agreed that the Contractor will act as an independent contractor to the City and that no joint venture, partnership or principal-and-agent relationship exists between them in connection with this Agreement or otherwise, and the parties covenant that they will not assert otherwise. It is further understood and agreed that the Contractor is entitled to no other benefits or payments whatsoever other than those specified in this Agreement.
- 15.2 No Acceptance of Advantages or Benefits. Neither the Contractor, nor any of its agents or employees (including any Subcontractors) will 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 or the Services. Contravention of this provision will be deemed an Event of Default (as defined in Section 22.2) and will permit the City to terminate this Agreement pursuant to Section 22.1(b).
- 15.3 No Conflicts of Interest. The Contractor declares that to the best of its knowledge the Contractor and its Subcontractors, and their respective directors, officers, employees and agents, have no pecuniary interest or any other current or past interest or dealings, including with any officials, officers or employees of the City, that would cause a conflict of interest or be seen to cause a conflict of interest in carrying out the Services. Should such a conflict or potential conflict arise during the term of this Agreement, the Contractor will declare it immediately in writing to the City. The City may direct the Contractor to resolve any conflict or potential 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 qualify the provision of the Services
- 15.4 No Third Party Rights. Except as expressly set forth herein, nothing in this Agreement will be construed to give any rights or benefits to anyone other than the City and the Contractor.
16. **Payment.**
- 16.1 Submission of Invoices. The Contractor will submit invoices to the City in respect of the performance of the Services by the Contractor in accordance with the fees set forth in Schedule "B". Each invoice will be clearly itemized to show this contract number, the Services performed, Computer Equipment supplied, the GST and PST, if applicable, and the Contractor's GST registration number. The Contractor will customize its invoices as required by the City including itemizing charges by City Site. The Contractor will also provide to the City all receipts, bills, invoices or other evidence in support of each invoice as the City may require to verify the Contractor's costs.

16.2 Address for Invoices. All invoices will be directed to the following address:

Corporate Services - Information Technology Purchasing
#200 - 515 West 10th Avenue
Vancouver, BC
V5Z 4A8

or such other address as the City may communicate to the Contractor from time to time.

16.3 Time For Payment. Except for any amounts which the City is in good faith disputing, any set off which the City may claim, any amounts in respect of which the City has requested and not received supporting evidence under Section 16.4, and any holdback required to be made under Applicable Law, the City will pay invoices submitted by the Contractor for the Services within 30 days of receipt thereof.

16.4 Maintenance of Records. The Contractor will keep, and will cause any Subcontractors to keep, books, records, documents, invoices, receipts and other evidence relevant to the provision of the Services in accordance with generally accepted accounting principles and practices consistently applied. This information will include reports of the Services performed by the Contractor, invoices for all Computer Equipment purchased by the Contractor, records or timesheets showing the Services performed at each City Site by the Contractor's Personnel and any other information which the City reasonably requires to verify that the amounts claimed by the Contractor are in accordance with the Contract Documents. The City and any of its duly authorized representatives will, for the purpose of audit and examination, have access to and be permitted, upon reasonable notice to the Contractor, to inspect such books, records, documents and other evidence for review, copying and audit at any time and from time to time while this Agreement is in effect and for a period of three years after the expiry or termination of this Agreement for any reason.

17. Workers' Compensation Board Compliance

17.1 Prior to commencing the Services, the Contractor must provide evidence that it is in good standing with the Workers' Compensation Board of British Columbia (the "WCB").

17.2 *Payment of WCB Assessments* - The Contractor agrees that it will at its own expense procure and carry or cause to be procured and carried and paid for, full WCB coverage for itself and all workers, employees, servants and others engaged in or upon the Services. The Contractor agrees that the City has the unfettered right to set off the amount of any unpaid premiums and assessments for such WCB coverage against any monies owing by the City to the Contractor. The City will have the right to withhold payment under this Agreement until the WCB premiums, assessments or penalties in respect of the Services have been paid in full.

(a) *Initial Proof of WCB Registration/Good Standing* - Within five (5) Business Days of the Effective Date, the Contractor will provide the City with the Contractor's and all Sub-Contractor's WCB registration numbers and with written confirmation from the WCB that the Contractor and all Subcontractors are

registered and in good standing with the WCB and that all premiums, assessments and penalties have been paid to date.

- (b) *Subsequent Proof of WCB Registration/Good Standing* - Within five (5) Business Days of a request by the City the Contractor will provide the City with written confirmation from the WCB that the Contractor and all Subcontractors are registered and in good standing with the WCB and that all premiums, assessments and penalties have been paid to date.
- (c) *Special Indemnity Against WCB Non-Compliance* - The Contractor will indemnify and hold harmless the City from and against all manner of claims, demands, costs, losses, penalties and proceedings arising out of or in any way related to:
 - (i) Unpaid WCB assessments of the Contractor or any other employer for whom the Contractor is responsible under this Agreement;
 - (ii) The acts or omissions of any person engaged directly or indirectly by the Contractor in the performance of the Services, or for whom the Contractor is responsible at law and which acts or omissions are or are alleged by the WCB to constitute a breach of the WCB Legislation or any other failure to observe the safety rules, regulations and practices of WCB, including any and all fines and penalties levied by the WCB, or
 - (iii) Any breach of this Section 17.

This indemnity will survive the expiry or earlier termination of this Agreement.

18. Insurance and Indemnity.

18.1 Contractor's Insurance. Without limiting any of its obligations or liabilities under this Agreement, the Contractor will obtain and continuously carry and will cause its Subcontractors to obtain and continuously carry during the term of the Agreement at its own expense and cost, the following insurance coverages with minimum limits of not less than those shown in the respective items set out below:

- (a) Commercial General Liability insurance in sufficient amounts and description to protect the Contractor, its Subcontractors, the City of Vancouver and their respective officers, officials, employees, and agents against claims for damages, personal injury including death, bodily injury and property damage which may arise under this Agreement.

The limit of commercial general liability insurance will be not less than \$5,000,000 per occurrence, or such higher amount as the City may require from time to time, inclusive for personal injury, death, bodily injury or property damage and in the aggregate with respect to products and complete operations. The deductible will not exceed \$5,000 per occurrence.

The policy of insurance will:

- (i) be on an occurrence form;

- (ii) add the City of Vancouver and its officials, officers, employees and agents as additional insureds;
 - (iii) contain a cross-liability or severability of interest clause;
 - (iv) extend to cover non-owned automobile, contingent employer's liability, blanket contractual liability, contractor's protective liability, broad form property damage, broad form completed operations and operations of attached machinery.
 - (b) Automobile insurance covering all vehicles owned, leased or operated by the Contractor in connection with this Agreement including Third Party Legal Liability Insurance in an amount not less than \$2,000,000 per occurrence, or such higher amount as the City may require from time to time.
 - (c) Property insurance, in an amount acceptable to the City's Director of Risk Management, covering all supplies, equipment and other property of the Contractor. Such policy will include a waiver of subrogation against the City of Vancouver.
- 18.2 All insurance policies required by this Agreement will be in a form, in amounts and with insurers acceptable to the City's Director of Risk Management. All policies will provide that the insurer will provide the Manager, Materials Management with sixty (60) days prior written notice of any material change, lapse or cancellation of the policy. Notice must identify the contract title, number, policy holder, and scope of work.
- 18.3 The Contractor and each of its Subcontractors will provide at its own cost any additional insurance which it is required by law to provide or which it considers necessary.
- 18.4 Neither the providing of insurance by the Contractor in accordance with this Agreement, nor the insolvency, bankruptcy or the failure of any insurance company to pay any claim accruing will be held to relieve the Contractor from any other provisions of the Contract Documents with respect to liability of the Contractor or otherwise.
- 18.5 The insurance coverage will be primary insurance as respects the City. Any insurance or self-insurance maintained by or on behalf of the City or its officers, officials, employees, or agents will be excess of the Contractor's insurance and will not contribute with it.
- 18.6 Prior to the Effective Date, the Contractor will provide the City with evidence of all required insurance to be taken out in the form of a "Certificate of Insurance" (on the City's form) and supported by a certified copy(s) of the policy(s). The Certificate of Insurance will identify the contract title, number, policyholder and scope of work and must not contain any qualifications or disclaimers. The Contractor will provide proof of insurance, in the form of a Certificate of Insurance or certified copies of all insurance policies to the Manager, Materials Management at any time during the Term immediately upon request.

- 18.7 The Contractor will provide in its agreements with its Subcontractors clauses in the same form as in this Section 18. Upon request, the Contractor will deposit with the City's Director of Risk Management detailed certificates of insurance for the policies it has obtained from its Subcontractors and a copy of the applicable insurance clauses from its sub-contract agreements.
- 18.8 The Contractor will ensure that the required insurance is provided only by a company duly registered and authorized to conduct insurance business in the Province of British Columbia.
- 18.9 Responsibility and Liability. The Contractor hereby assumes the entire responsibility and liability for all damage and injury of any kind and nature whatsoever, caused by, resulting from, arising out of, incidental to, or accruing in connection with any wilful misconduct or negligent act, error or omission of the Contractor or any person for whom the Contractor is responsible at law or pursuant to the terms of this Agreement.
- 18.10 Indemnity. The Contractor will defend, indemnify and hold harmless the City and all of its past and present directors, officers, officials, employees, agents and representatives from and against all Losses, of any nature or kind whatsoever, either before or after the expiration or termination of this Agreement, arising out of or in connection with:
- (a) the performance of the Services by the Contractor or the failure by the Contractor to perform the Services;
 - (b) any wilful misconduct or any negligent act, error or omission of the Contractor or any person for whom the Contractor is responsible at law or pursuant to the provisions of this Agreement, including without limitation, injury or death to anyone, loss or damage to property of any person, any claim or matter in dispute between the Contractor and any Subcontractor, and any failure or deficiency by the Contractor or any Subcontractor in providing the Services;
 - (c) any infringement or alleged infringement of any copyright, patent, trademark, industrial design, trade secret or other intellectual property rights of any person, or of any obligation of confidentiality, in connection with the Services and or the sale of the Computer Equipment to the City; and
 - (d) any claim which may be made for a lien or charge at law or in equity or to any claim or liability under the Builders Lien Act, or to any attachment for debt, garnishee process or otherwise.

This indemnity will survive the expiry or earlier termination of this Agreement.

- 18.11 Rectification of Damage. The Contractor will rectify any loss or damage caused by the Contractor in the performance of the Services at no charge to the City and to the satisfaction of the City. Alternatively, the City may repair the loss or damage and the Contractor will then pay to the City the costs of repairing the loss or damage promptly upon demand by the City. Where, in the opinion of the City it is not practical or desirable to repair the loss or damage, the City may estimate the cost of repairing the loss or damage and deduct such estimated amount from any amount owing to the Contractor.

19. Freedom of Information and Protection of Privacy Act.

19.1 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.

20. No Promotion

20.1 No Promotion of Relationship. The Contractor will not disclose or promote its relationship with the City, including by means of any verbal declarations, announcements, sales, marketing or other literature, letters, client lists, press releases, brochures or other written materials (the "Communications") without the express prior written consent of the City (except as may be necessary for the Contractor to perform the Contractor's obligations under the terms of this Agreement).

The Contractor undertakes not to disclose or promote its relationship with the City in any Communications in a manner which could suggest or create an association, express or implied, between the Contractor and the International Olympic Committee, the 2010 Olympic and Paralympic Winter Games, the Olympic Movement or the Vancouver Organizing Committee for the 2010 Olympic and Paralympic Winter Games (also known as "VANOC"). Without limiting the generality of the foregoing, the Contractor will not refer to "VANOC", "Vancouver 2010", the "2010 Games", the "Games", "Host City", "Olympic" or "Olympics", and will not use any official emblem, logo or mascot of the 2010 Games or the City, in any Communications, without the express prior written consent of the City, which consent may be arbitrarily withheld.

21. Sustainability

21.1 The Contractor acknowledges the City's commitment to sustainability as set out in the RFP. The Contractor agrees that it will not use any products, cleaning supplies, chemicals or Consumables in the course of performing the Services which have not been approved in writing by the City.

22. Termination.

22.1 Rights of Termination. This Agreement may be terminated before completion of the Services and before the expiry of the Term, anything to the contrary herein notwithstanding, as follows:

- (a) by the City, at its option and for any reason in its sole discretion, upon 15 Business Days' notice to the Contractor; or
- (b) by the City at its option, at any time after the happening of an Event of Default.

22.2 Events of Default. For the purposes hereof, an "Event of Default" will be deemed to occur if:

- (a) the Contractor is in breach of any covenant, obligation or representation hereunder and such breach persists unremedied for a period of ten (10) Business Days after the City has provided the Contractor with written notice of and particulars of the breach or alleged breach, provided that the City may terminate without providing a cure period with respect to actions of the Contractor that are part of a continuing course of conduct in respect of which prior written notice has been given;
- (b) there occurs or, in the reasonable opinion of the City, there exists a threat of, a strike, lockout, work slowdown, labour disturbance, or refusal to work by the employees or Subcontractors of the Contractor;
- (c) the Contractor is adjudged bankrupt, becomes insolvent or unable to discharge its liabilities as they become due, makes an assignment for the benefit of its creditors, is subject to the appointment of a receiver, or a petition of bankruptcy is made against it; or
- (d) any Subcontractor becomes insolvent or unable to discharge its liabilities as they become due or makes an assignment for the benefit of its creditors or a petition of bankruptcy is made against it, and such situation will, in the City's reasonable determination, have an adverse impact on the delivery of the Services.

22.3 Termination Payment. Where this Agreement is terminated under Section 22.1, the City will pay to the Contractor such part of the compensation as the City, acting reasonably, determines has been earned by the Contractor to the date of termination less any amounts held by the City on account of damages, losses or costs resulting from an Event of Default. Payment pursuant to this Section will not include any amounts for lost revenue or lost profit of the Contractor. Upon the termination of this Agreement and payment as required hereunder, the City will have no further obligation or liability to the Contractor with respect to compensation payable to the Contractor hereunder and may as a condition of final payment under this Agreement require the Contractor to execute and deliver a release and discharge in favour of the City in relation to the compensation payable to the Contractor hereunder.

22.4 Remedy for Default. In the case of an Event of Default or if the Contractor fails to supply and provide the Services or any part thereof in accordance with this Agreement, the City may, without limiting any other rights it may have, remedy any deficiency and may engage others to do so, and may charge against the Contractor all extra costs and expenses in doing so. The City will be under no obligation to remedy any failure or deficiency on the part of the Contractor and will not incur any liability to the Contractor for any action or omission in the course of its remedying or attempting to remedy any such failure or deficiency.

22.5 Effect of Termination. Termination of this Agreement for any reason will not prejudice, limit or affect any claim or matter outstanding prior to termination or obligations consequent upon termination or which by their nature survive termination as provided for herein.

22.6 Suspension of Services. The City may, at any time and from time to time by delivery of notice in writing to the Contractor, suspend the performance of the Services for the

period of time specified in such notice. In that event the City will pay to the Contractor such part of the compensation as can reasonably be considered to have been earned by the Contractor to the date of the suspension, and any costs or expenses directly incurred and not reasonably avoidable as a result of such suspension. The Contractor will have no claim against the City for any costs, expenses, damages or other liabilities suffered or incurred by the Contractor as a result of any suspension hereunder unless otherwise agreed by the City in writing.

23. Assignment.

23.1 No Assignment by Contractor without Consent. The Contractor will not assign this Agreement, in whole or in part, or any payments due or to become due under this Agreement, either voluntarily, involuntarily or by operation of law, without the express prior written consent of the City, which consent may be unreasonably or arbitrarily withheld.

23.2 Change of Control. If the Contractor is a company, then any change in the control of the company will be deemed to constitute an assignment for the purposes of Section 23.1.

23.3 Effect of Assignment. No assignment permitted by the City will relieve the Contractor from any obligation under this Agreement or impose any liability upon the City.

23.4 Assignment by the City. The City may at any time and from time to time assign this Agreement, in whole or in part, upon notice to (and without the consent of) the Contractor.

24. Contract Administration.

24.1 City Contract Administrator. For the purposes of this Agreement, the City designates the [] or his or her delegate as its Contract Administrator.

24.2 Contractor Contract Administrator. For the purposes of this Agreement, the Contractor designates as its Contract Administrator:

[]

24.3 The Contract Administrator will be the primary point of contact for each party in the administration of this Agreement.

24.4 The Contractor's Contract Administrator will meet with the City's Contract Administrator(s) on a regular basis and at the time and place requested by the City to address any issues which may arise under this Agreement.

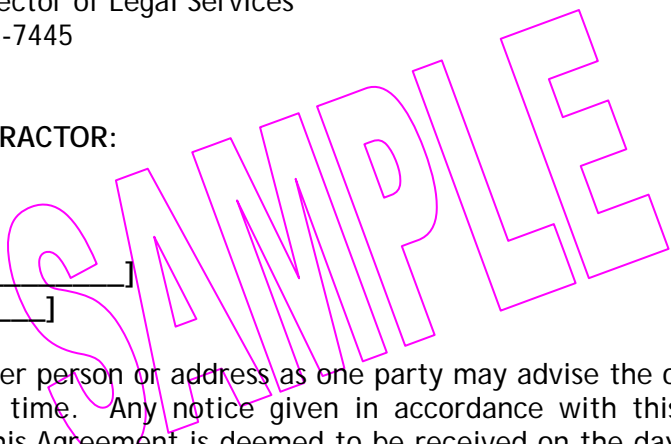
24.5 Changes in Contract Administrator. Either party may change its Contract Administrator and/or its Contract Administrator's address, telephone and/or fax number by written notice to the other party given in accordance with Section 25.1 of this Agreement.

25. Notices.

25.1 Addresses for Notice. Any notice required or permitted to be given by one party to another pursuant to this Agreement must be in writing and will be validly given if delivered, transmitted by facsimile or mailed in British Columbia by pre-paid registered post to the parties as follows:

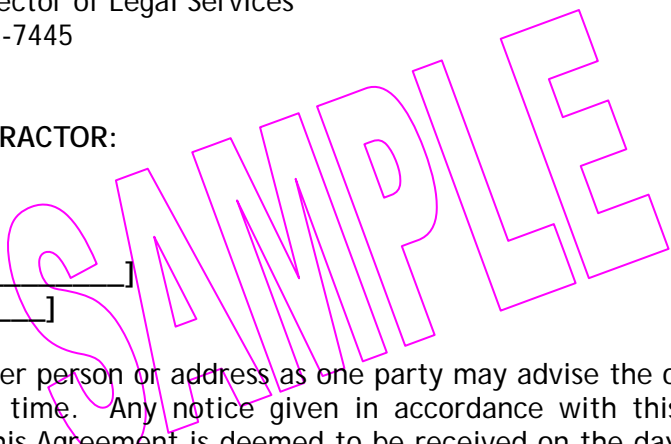
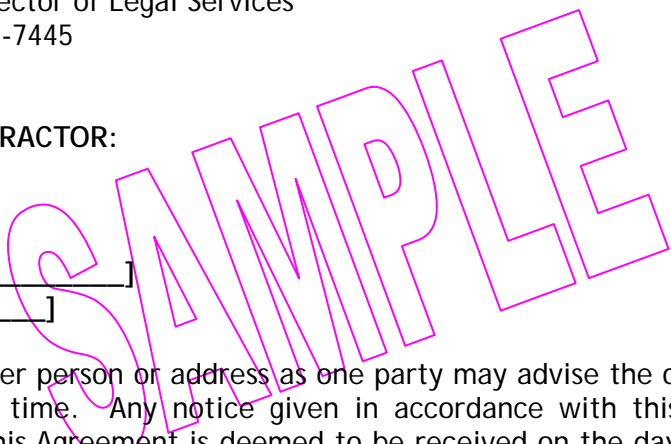
TO THE CITY:

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

Attention: [_____] 
Fax: (604) [_____]

Attention: Director of Legal Services
Fax: (604) 873-7445

TO THE CONTRACTOR:

[_____] 
Attention: [_____] 
Fax: [_____]

or to such other person or address as one party may advise the other in writing from time to time. Any notice given in accordance with this or any other provision of this Agreement is deemed to be received on the day of delivery or transmission by facsimile if a Business Day and if not a Business Day then on the next Business Day or if mailed, on the third Business Day following the posting thereof, provided that if there is a postal strike, dispute or slowdown, notices will only be effective if delivered or transmitted by facsimile.

25.2 Notice of Actions against Contractor. The Contractor will provide written notice to the City immediately upon the written threat or commencement of any actions brought against the Contractor or any of its Subcontractors or their respective affiliates, the outcome of which may affect the rights of the City or the ability of the Contractor to comply with its obligations under this Agreement.

26. Time for Performance.

26.1 Time of the Essence. Time will be of the essence of this Agreement.

26.2 Unavoidable Delay. Notwithstanding Section 26.1, except for the performance of obligations to pay money, the time periods for the City and the Contractor's performance under this Agreement will be extended for periods of time during which their performance is delayed or prevented due to an Unavoidable Delay. For the purposes of this Section, an "Unavoidable Delay" means any circumstances beyond the reasonable control of the party trying to perform (such as, for example, acts of God, war or other strife or governmental action) but in the case of the Contractor,

expressly excludes any and all delays caused by the Contractor's lack of financial resources or insolvency, strikes, lockouts or other withdrawals of services arising out of a labour dispute (including a strike, lockout, or other labour dispute involving the Vancouver Board of Parks and Recreation and/or the City of Vancouver and their respective employees) or labour affiliations of the Contractor's employees or Subcontractors' employees, or governmental action taken in the enforcement of law specifically against the Contractor or its Subcontractors. If an Unavoidable Delay occurs, the non-performing party will, as soon as possible after the occurrence of the Unavoidable Delay, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of its obligations under this Agreement.

27. Dispute Resolution.

- 27.1 All claims, disputes or issues in dispute between the City and the Contractor in relation to this Agreement will be decided by mediation or arbitration, if the parties agree, or failing agreement, by the courts pursuant to Section 27.5.
- 27.2 Subject to Section 27.7, in the event that (i) the parties agree to arbitration pursuant to Section 27.1, the arbitration will be conducted pursuant to the *Commercial Arbitration Act* (British Columbia) and will be governed by the rules of the British Columbia International Commercial Arbitration Centre, except that the arbitrator or arbitrators will be agreed upon by the parties, and failing agreement by the parties, will be appointed by a court of competent jurisdiction within the Province of British Columbia. The parties will share equally the costs of the arbitration but will be responsible for their own separate costs and expenses in relation to the arbitration including legal fees and disbursements.
- 27.3 If the parties agree to arbitration, the arbitration will take place in Vancouver, British Columbia and will be governed by the laws of British Columbia.
- 27.4 The procedure set out in this section is not meant to preclude or discourage informal resolution of disagreements between the City and the Contractor.
- 27.5 The laws of British Columbia will govern all disputes under this Agreement and the courts of British Columbia will have exclusive jurisdiction to determine all disputes arising under this Agreement unless and until the parties agree in writing to mediate or arbitrate any specific dispute.
- 27.6 All provisions of the *International Sale of Goods Act* (British Columbia) are specifically excluded from application to this Agreement.
- 27.7 No arbitration pursuant to Section 27.2 will be binding on the City (but will, at the City's option be binding on the Contractor) until the Contractor has permitted the City to conduct an audit of the Contractor's records pursuant to generally accepted auditing standards.

28. General.

- 28.1 No Waiver. No action or failure to act by the City will constitute a waiver of any right or duty under this Agreement, or constitute an approval or acquiescence in any breach thereunder, except as may be specifically agreed in writing by the City.
- 28.2 Severability. The invalidity, illegality or unenforceability of any portion or provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void will in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void portion or provision will be deemed severed from this Agreement and the balance of this Agreement will be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken position.
- 28.3 Governing Law. This Agreement will be construed under and according to the laws of the Province of British Columbia and the parties agree to irrevocably attorn to the jurisdiction of the Courts of the Province of British Columbia.
- 28.4 Remedies Cumulative. The remedies of the parties provided for in this Agreement are cumulative and are in addition to any remedies available to the parties at law or in equity. No remedy will be deemed to exclude or restrict the right of a party to any other remedies against the other party and a party may from time to time have recourse to one or more of the remedies specified in this Agreement or at law notwithstanding the termination of this Agreement.
- 28.5 Further Assurances. Each party will execute such further and other documents and instruments and do such further and other acts as may be necessary to implement and carry out the provisions and intent of this Agreement.
- 28.6 Entire Agreement. The Contract Documents constitute the entire agreement between the parties with respect to the subject matter hereof, and supersede all previous communications, representations and agreements, whether oral or written, with respect to the subject matter hereof.
- 28.7 Amendment. This Agreement will not be amended except as specifically agreed in writing by both the City and the Contractor.
- 28.8 Joint and Several Liability of Joint Venture Participants. If the Contractor is a joint venture of two or more entities, it is understood and agreed that the grants, covenants, provisos, claims, rights, powers, privileges and liabilities of the Contractor will be joint and several.
- 28.9 Enurement. This Agreement will enure to the benefit of and be binding upon the City and the Contractor and their respective heirs, executors, legal representatives, administrators, successors and permitted assigns.
- 28.10 Schedules and Appendices. The Schedules and appendices attached hereto are hereby incorporated by reference in and form an integral part of this Agreement.
- 28.11 Representation. By executing this Agreement, the Contractor represents that it has carefully examined this Agreement, acquainted itself with all conditions relevant to

the Services, made all evaluations and investigations necessary for a full understanding of any difficulties which may be encountered in performing the Services, and been given the opportunity to receive independent legal advice. The Contractor further acknowledges that this Agreement is sufficient for the proper and complete execution of the Services.

28.12 Set-Off. The City may at its option, withhold and set-off against any amount owing to the Contractor (whether under this Agreement or otherwise) any amounts payable by the Contractor to the City (whether under this Agreement or otherwise) and the amount of any damages suffered or claims made or to be made by the City as a result of any other claim it may have against the Contractor, whether such claim is at law or in equity or tort or on any other basis.

28.13 Counterparts. This Agreement may be executed in one or more counterparts, each of which will constitute an original and together will constitute one and the same Agreement.

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 officers.

CITY OF VANCOUVER,
by its Authorized Signatory(ies)

Director of Legal Services

[CONTRACTOR]
By its Authorized Signatory(ies)

Authorized Signatory

Authorized Signatory

This Agreement has been authorized by a resolution of Vancouver City Council dated _____, 2008

SCHEDULE A

SERVICES

1. Included Services

The Contractor will perform and provide the Services set out in this Section 1 (the "Included Services") during the Term. The Contractor will not invoice the City for the Included Services, the cost of which is incorporated into the cost of the Technical Services and the unit cost of each piece of Computer Equipment.

1.1 Ordering and Order Tracking

- (a) The Contractor will operate a full time sales desk, staffed with knowledgeable and customer oriented Contractor Personnel who can advise the City on brands, models, pricing, availability, product information and order status.
- (b) The Contractor will maintain strong relationships with the manufacturers so that equipment that is in short supply can be sourced, technical support provided as necessary, and advance notice provided of product changes that may impact deployment.
- (c) The Contractor will update the status of all Purchase Orders on the City's call tracking system with the estimated date that each order of Computer Equipment will arrive at the Contractor's Facility and, as they become known, the delivery dates for each order of Computer Equipment.
- (d) The Contractor will provide the City with access to on-line tools that facilitate the ordering process, including:
 - (i) a customized online catalogue of Computer Equipment displaying City of Vancouver pricing;
 - (ii) a secure online ordering system;
 - (iii) order tracking; and
 - (iv) reporting.
- (e) If requested by the City, the Contractor will work with the City to develop interfaces:
 - (i) to bring the Contractor's price list into the City's SAP ordering system automatically ensuring that the City's web site is continually updated with current specifications and prices; and
 - (ii) between the Contractor's ordering and order tracking system, MasterCard level 111 purchase card reporting, and the City's SAP ERP financials and asset tracking systems.

1.2 Account/Project Manager and Meetings

The Contractor will delegate to its Contract Administrator the full responsibility for administering/implementing the terms of this Agreement and the performance of the Services by the Contractor. The Contract Administrator will be available at all times as the principal contact for the City. The Contractor will ensure that a backup is always

available if the designated Contract Administrator is temporarily unavailable. If the Contractor's Contract Administrator becomes unable to fulfill this obligation, the Contractor will immediately appoint a replacement.

The Contractor's Contract Administrator will meet with City IT Staff as required and when requested by City IT Staff to discuss any matters relating to this Agreement and the performance of the Services.

1.3 Pre-Sales Support

At all times during the Term, the Contractor will:

- (a) provide telephone consultation to any member of the City IT Staff, during the City's normal business hours (Monday to Friday, 8:30 a.m. to 5:30 p.m., Vancouver, B.C. time), for questions regarding any Computer Equipment supplied or to be supplied to the City;
- (b) provide on-line product catalogues (preferably web-based);
- (c) provide order status reports which may fall outside the scope of an automated on-line system and provide the City with asset management reports that can be customized to include:
 - (i) equipment make, model, hardware configuration and serial number(s);
 - (ii) installation or delivery location;
 - (iii) software loaded (including software license number);
 - (iv) purchase order number and order date; and
 - (v) invoice number and invoice amount.
- (d) ensure that the Contractor's Personnel are knowledgeable computer experts able to answer questions relating to all Computer Equipment supplied by the Contractor;
- (e) have a testing and research facility within Greater Vancouver equipped with both reference materials and hardware to permit speedy investigation and resolution of technical and compatibility problems that may be encountered by the Contractor in carrying out the Services;
- (f) return all telephone calls from City IT Staff within four (4) hours on Business Days;
- (g) continuously assist City IT Staff to source products not available from the Contractor;
- (h) continuously provide City IT Staff with new or revised customized price lists (and by fax or E-mail, specific price changes) as soon as they are available;
- (i) notify City IT Staff promptly of any reduction in prices and provide the City with the full benefit of same if they pertain to any item or group of items on order on the effective date of the reductions; and
- (j) advise the City of any requirements necessary to qualify for promotions, free upgrades and other special offers (and assist the City to qualify by providing such proofs of purchase as may be required, and by making sure that purchases made towards the end of qualification periods are invoiced during the qualification period).

1.4 Order Fulfillment

The Contractor will:

- (a) maintain sufficient warehousing facilities to buffer the flow of both incoming and outgoing (surplus) equipment;
- (b) for all Computer Equipment ordered, as applicable to the equipment type, uncrate, assemble, test, record serial numbers, affix and record City asset control tags, re-crate and deliver to the City Site specified in the Purchase Order. For purchases of Desktops, Laptops and Monitors, the Configuration and Deployment Services set out below will apply and the Contractor will invoice the City on a "unit basis" for such services. For all other Computer Equipment purchased by the City, the Contractor will deliver the Computer Equipment to the address specified in the Purchase Order but will not be required to perform Configuration and Deployment Services in respect of such Computer Equipment and the delivery will be at no additional cost to the City; and
- (c) for server systems, provide the services set out in subsection (b) above and optionally provide configuration and testing of the network operating system and related software.

1.5 Warranty Services and Extended Warranty Services

- (a) For all Desktops and Laptops, the Contractor will supplement the manufacturer's 3-year on-site warranty to provide 8-hour response and next Business Day resolution 95% of the time.
- (b) If the City determines that any Computer Equipment is DOA, then the City will issue a notice ("DOA Notice") to the Contractor.
- (c) Within one (1) Business Day of the receipt by the Contractor of the DOA Notice the Contractor will remove the subject Computer Equipment from the City Site and replace it with the same make and model as the DOA Computer Equipment, unless otherwise directed by the City.
- (d) Upon replacement of the DOA Computer Equipment the Contractor will provide the City with confirmation in writing that the DOA Computer Equipment has been replaced. Notwithstanding any other provision of this Agreement, the City will not be required to pay the Contractor for any DOA Computer Equipment until it has been replaced in accordance with this Section.
- (e) Except for Computer Equipment which is DOA, for which the Contractor is solely responsible, the Contractor will cooperate and work with the Hardware Maintenance Contractor to coordinate all warranty maintenance, repair and replacement of all Computer Equipment by the Hardware Maintenance Contractor. To facilitate the foregoing, the Contractor will make all arrangements and take all such further actions as are required to ensure that the City has a single point of contact via the Hardware Maintenance Contractor for all warranty service in respect of the Computer Equipment.

2. Technical Services

The Contractor will undertake the Technical Services in accordance with the schedule determined by the City from time to time. The City will provide the Contractor with a

schedule (the “**Deployment and Decommissioning Schedule**”) which will specify the City Site to which the Computer Equipment is to be delivered and installed, the delivery and installation date for each piece of Computer Equipment and the location to which Replaced Equipment is to be delivered to the Recycling Agency or another City Site following completion of the Decommissioning Services. The Contractor will check the Deployment and Decommissioning Schedule against the Purchase Orders and notify City IT Staff immediately if there are any discrepancies.

The Contractor will invoice the City for the Technical Services at the unit prices set out in Schedule B hereto.

2.1 Configuration and Deployment Services

The Contractor will complete the Services (the “**Configuration and Deployment Services**”) described in this Section 2.1 in respect of each Desktop, Laptop and Monitor ordered by the City from the Contractor. The Contractor will:

- (a) receive all shipments of Desktops, Laptops and Monitors from the manufacturers at the Contractor’s Facility;
- (b) prepare all Desktops, Laptops and Monitors for deployment at the Contractor’s Facility prior to delivering the Desktops, Laptops and Monitors to the City Site;
- (c) configure each Desktop and Laptop with a standard image provided by the City in a format to be agreed between the City and the Contractor;
- (d) attach the City’s asset control and other identification tags to each Desktop, Laptop or Monitor according to procedures specified by the City’s Contract Administrator;
- (e) test all Desktops, Laptops and Monitors prior to deployment to a City Site to ensure that it is free from defect. Under no circumstances will the Contractor deliver any defective Computer Equipment to a City Site;
- (f) deliver and install each Desktop, Laptop or Monitor to the City Site and on the date specified by the City in the Deployment and Decommissioning Schedule or as otherwise directed by the City IT Staff;
- (g) deliver with each Desktop, Laptop or Monitor all accessories, manuals and documents necessary for the immediate use of the Desktop, Laptop or Monitor by the City;
- (h) remove the Replaced Equipment (including the CPU, keyboard, mouse and monitor and laptop docking station, as applicable) from the City’s network;
- (i) connect the Desktop, Laptop or Monitor to the City’s network and request the administrator to assign it to appropriate application, security and printer groups;
- (j) reboot the Desktop or Laptop, causing MSI-installable applications, driven by the Active Directory Group Policy, to be installed from a network server;
- (k) migrate all user data from the Replaced Equipment to the new Desktop, Laptop or Monitor as applicable;
- (l) test the installed Desktop, Laptop or Monitor using procedures provided by the City’s Contract Administrator;

- (m) have a designated member of City staff sign off on the Desktop, Laptop or Monitor installation and the restoration of user data before leaving the City Site. The City's Contract Administrator will provide the Contractor with the contact person at each City Site for sign off purposes;
- (n) remove any packaging or other garbage derived from the installation of the Desktops, Laptops and Monitors and dispose of same as directed by the City's Contract Administrator;
- (o) verify to the City's Contract Administrator the successful completion of both the installation and the restoration of user data on the Desktop, Laptop or Monitor; and
- (p) provide the City's Contract Administrator with a daily report listing model, serial number and asset control number by City Site for each Desktop, Laptop or Monitor deployed and for each item of Replaced Equipment which is removed.

In some cases, including for example, Computer Equipment destined for the Vancouver Police Department, the City may require the Contractor to deliver the Computer Equipment to a staging area from which City staff will deploy and install the Computer Equipment. Where the City requires the Contractor to deploy a particular item of Computer Equipment in this manner, the Contractor will complete the Deployment and Decommissioning Services set out in Section 2.1(a) to (e) above and then deliver the Computer Equipment to the staging area designated by the City. In these cases, the completion of the Configuration and Deployment Services set out in Section 2.1(a) to (e) will be referred to in this Agreement as a "Partial Deployment". The City will deliver old equipment to the staging area for the Contractor to pickup and perform the Decommissioning Services.

2.2 Decommissioning Services

The Contractor will complete the Services (the "Decommissioning Services") described in this Section 2.2 in respect of each item of Replaced Equipment. The Contractor will:

- (a) package the Replaced Equipment (including the CPU, keyboard, mouse and monitor and laptop docking station, as applicable) in preparation for the Contractor to deliver to the Contractor's Facility. The Contractor will work from a list specifying the City asset tag of the Replaced Equipment. The Contractor will record the model number, the City asset tag number and the serial number of the Replaced Equipment before it is removed from any City Site;
- (b) check the equipment model, serial number and asset control number against the information set out on the Deployment and Decommissioning Schedule and advise the City's Contract Administrator if there are any discrepancies;
- (c) remove the Replaced Equipment from the City Site;
- (d) store the Replaced Equipment for a minimum of two weeks at the Contractor's Facility prior to performing any further Decommissioning Services so that it may be retrieved promptly in the event that any data files were missed in the migration. Alternatively, with the consent of City IT Staff, the Contractor may take and retain for two weeks a complete image backup of all hard drives for such purposes;

- (e) once the item of Replaced Equipment has been at the Contractor's Facility for a minimum of two weeks, remove any City decals, including asset control tags from the Replaced Equipment;
- (f) remove all files on the Replaced Equipment using OnTrack DataEraser Version 2.0, or such equivalent software or later version as the City may from time to time specify, for unrecoverable destruction of all files contained on the hard disk, using three (3) overwrites;
- (g) not place an image on the cleaned hard disk;
- (h) package the Replaced Equipment in preparation for delivery;
- (i) deliver the Decommissioned Equipment to the Recycling Agency or otherwise directed by the City on the Deployment and Decommissioning Schedule;
- (j) provide the City with a weekly report listing models, serial numbers and asset control numbers of all Decommissioned Equipment.

3. Recycling of Replaced Equipment

The Contractor will follow the City's instructions for disposal or handling of each piece of Decommissioned Equipment. Except as permitted herein, the Contractor will not deliver or dispose of or otherwise transfer the Decommissioned Equipment to any entity other than the Recycling Agency.

If reBoot Vancouver discontinues its operations then the Contractor will locate and establish a relationship with another Recycling Agency, approved by the City in writing, which has a mandate similar to that of reBoot Vancouver. Thereafter the Contractor will deliver all Decommissioned Equipment to the new Recycling Agency.

The Contractor will recycle and/or dispose of any Decommissioned Equipment, or parts or components thereof, which are not accepted by the Recycling Agency in an environmentally-friendly manner, in accordance with all Applicable Laws and the guidelines of the Recycling Council of British Columbia.

4. Title to Decommissioned Equipment

Title in and to the Decommissioned Equipment will vest in the Contractor upon the removal of the Decommissioned Equipment from the City Site. The Contractor will be solely responsible for the Decommissioned Equipment upon removal from the City Site.

SCHEDULE B

PRICING

[This Schedule will be completed based on Response from Contractor.]

1. Unit Prices for Desktops, Laptops and Monitors during the Fixed Price Period
[insert unit rates]
2. Unit Rates for Configuration and Deployment Services
[insert unit rates]
3. Unit Rates for Decommissioning Services
[insert unit rates]
4. Pricing for Other Equipment Purchases (including Desktops, Laptops and Monitors following the Fixed Price Period)
[insert pricing methodology]

SAMPLE

SCHEDULE C

CITY SITES

[list of City Sites to be inserted here.]

SAMPLE