

**VOIP TELEPHONE SYSTEM HARDWARE,  
SOFTWARE AND SERVICES  
CONTRACT**

**BETWEEN**

**THE CITY OF VANCOUVER**

**AND**



**DATED , 2007**

## TABLE OF CONTENTS

<b>ARTICLE 1 DEFINITIONS AND INTERPRETATION .....</b>	<b>2</b>
1.1    DEFINITIONS .....	2
1.2    INTERPRETATION.....	10
1.3    SCHEDULES.....	11
<b>ARTICLE 2 CONTRACT DOCUMENTS AND PRIORITY OF DOCUMENTS.....</b>	<b>11</b>
2.1    PRIORITY OF DOCUMENTS .....	11
<b>ARTICLE 3 GENERAL REQUIREMENTS.....</b>	<b>12</b>
3.1    VENDOR'S SECURITY OBLIGATIONS .....	12
3.2    VENDOR'S GENERAL OBLIGATIONS .....	12
3.3    FIRST CLASS STANDARD .....	12
3.4    VENDOR HAS CONTROL/RESPONSIBILITY.....	12
3.5    DISCREPANCIES.....	13
3.6    VENDOR TO REPORT STATUS .....	13
3.7    DATA MIGRATION .....	13
3.8    TERM OF THE CONTRACT.....	13
<b>ARTICLE 4 INSTALLATION SITE PREPARATION AND PLATFORM.....</b>	<b>13</b>
4.1    CITY TO PREPARE INSTALLATION SITES.....	13
4.2    VENDOR TO PROVIDE SPECIFICATIONS/APPROVE HARDWARE/SOFTWARE PLATFORM.....	14
4.3    CITY RESPONSIBLE FOR CITY TECHNICAL ENVIRONMENT .....	14
4.4    REMAINS PROPERTY OF CITY .....	14
4.5    INTERFACES .....	14
4.6    CITY PERMITTED TO REPLACE/MODIFY CITY TECHNICAL ENVIRONMENT .....	14
<b>ARTICLE 5 VENDOR RESPONSIBILITIES.....</b>	<b>15</b>
5.1    GENERAL RESPONSIBILITIES.....	15
5.2    MATERIAL TO BE DELIVERED.....	15
5.3    SPECIFIC RESPONSIBILITIES .....	15
<b>ARTICLE 6 CITY RESPONSIBILITIES.....</b>	<b>17</b>
6.1    GENERAL RESPONSIBILITIES.....	17
6.2    SPECIFIC RESPONSIBILITIES .....	17
<b>ARTICLE 7 TOTAL PURCHASE PRICE AND PAYMENT.....</b>	<b>18</b>
7.1    PAYMENT ONLY ON PERFORMANCE .....	18
7.2    PAYMENT SCHEDULE .....	19
7.3    PAYMENT OF LICENCE FEE .....	19
7.4    PAYMENT TIED TO IMPLEMENTATION SCHEDULE .....	19
7.5    INTEREST ON LATE PAYMENTS.....	19
7.6    PAYMENT PROCEDURE.....	19
7.7    PRICES SET OUT IN SCHEDULE B [PRICING].....	19
7.8    CANADIAN CURRENCY .....	20
7.9    TAXES .....	20
<b>ARTICLE 8 SERVICE LEVEL/PERFORMANCE GUARANTEES .....</b>	<b>21</b>
8.1    SERVICE LEVELS.....	21
8.2    SERVICE LEVEL REPORTS .....	21
8.3    FAILURES TO MEET SERVICE LEVELS.....	21
8.4    EXCLUSIONS.....	21

<b>ARTICLE 9 LIENS</b> .....	<b>21</b>
9.1    NO LIENS PERMITTED.....	21
9.2    VENDOR TO PROVIDE PROOF .....	22
<b>ARTICLE 10 CHANGE REQUESTS</b> .....	<b>22</b>
10.1   NEED TO NOTIFY VENDOR .....	22
10.2   CHANGES WHERE NO AMENDMENT IS SIGNED .....	22
10.3   VENDOR NOT TO ACT ON ANY INFORMAL OR UNWRITTEN CHANGE REQUESTS.....	23
10.4   DISPUTES OVER CHANGE REQUESTS .....	23
10.5   BALANCING PARTIES' INTERESTS DURING DISPUTE OVER ANY CHANGE REQUEST .....	23
<b>ARTICLE 11 PERFORMANCE SECURITY</b> .....	<b>24</b>
11.1   NO LETTERS OF CREDIT OR PERSONAL GUARANTEES .....	24
11.2   ADDITIONAL PERFORMANCE SECURITY REQUIREMENTS.....	24
<b>ARTICLE 12 INSURANCE</b> .....	<b>25</b>
12.1   GENERAL INSURANCE REQUIREMENTS.....	25
12.2   INSURANCE POLICIES .....	25
12.3   ADDITIONAL INSURANCE .....	25
12.4   OTHER OBLIGATIONS .....	25
12.5   PRIMARY INSURANCE .....	25
12.6   VENDOR TO PROVIDE PROOF .....	25
12.7   SUB-CONTRACTORS .....	26
12.8   COVERAGE ONLY FROM AUTHORIZED INSURERS .....	26
12.9   MINIMUM REQUIREMENTS.....	26
12.10  CITY MAY REMEDY VENDOR'S INSURANCE DEFAULTS .....	27
<b>ARTICLE 13 REPRESENTATIONS, WARRANTIES AND COVENANTS</b> .....	<b>27</b>
13.1   SYSTEM AND DOCUMENTATION WARRANTIES.....	27
13.2   VENDOR-PROVIDED HARDWARE WARRANTIES .....	28
13.3   CITY TECHNICAL ENVIRONMENT AND THIRD PARTY SOFTWARE WARRANTIES.....	29
13.4   VENDOR'S CORPORATE AUTHORITY AND OTHER WARRANTIES.....	30
13.5   EXCLUSION OF OTHER WARRANTIES.....	30
13.6   CITY'S WARRANTIES .....	30
13.7   RELIANCE .....	31
<b>ARTICLE 14 MAINTENANCE</b> .....	<b>31</b>
14.1   SIGN MAINTENANCE AGREEMENT WITH CONTRACT.....	31
14.2   NEED TO MAINTAIN CITY TECHNICAL ENVIRONMENT .....	31
<b>ARTICLE 15 ACCEPTANCE TESTS</b> .....	<b>31</b>
15.1   ACCEPTANCE TESTS PROCESS.....	31
15.2   ACCEPTANCE TESTS FAILURE—DEFINED .....	31
15.3   DELAYS .....	32
15.4   STANDARD OF REVIEW .....	32
15.5   CORRECTION OF DEFECTS/DEFICIENCIES.....	32
15.6   GO LIVE AND POST GO LIVE ACCEPTANCE REQUIREMENTS .....	32
<b>ARTICLE 16 LICENSE AND PROPRIETARY MATERIAL</b> .....	<b>32</b>
16.1   SOFTWARE LICENCE .....	32
16.2   GRANT OF LICENCE.....	33
16.3   ENTERPRISE LICENCE .....	33
16.4   SOFTWARE COPIES—RESTRICTIONS/PROCEDURES ON USE.....	36
16.5   DOCUMENTATION COPIES—RESTRICTION/PROCEDURES ON USE .....	36
16.6   MODIFICATIONS AND EXTENSIONS.....	36

16.7	FUTURE VERSIONS OF THIRD PARTY SOFTWARE .....	37
16.8	CITY OWNS OTHER DELIVERABLES .....	37
16.9	PROTECTION OF VENDOR’S PROPRIETARY RIGHTS .....	37
16.10	PROTECTION OF CITY’S PROPRIETARY MATERIAL.....	39
16.11	EXCEPTIONS TO NON-DISCLOSURE .....	41
16.12	WHERE CITY DISCONTINUES USE OF SOFTWARE .....	41
<b>ARTICLE 17 WORKERS’ COMPENSATION BOARD.....</b>		<b>42</b>
17.1	MAINTAIN COVERAGE—GENERAL.....	42
17.2	PROVIDE EVIDENCE OF COVERAGE—GENERAL.....	42
17.3	SPECIAL WCB REQUIREMENTS WHERE SERVICES ARE PROVIDED ON CITY SITES.....	42
<b>ARTICLE 18 OCCUPATIONAL HEALTH AND SAFETY.....</b>		<b>43</b>
18.1	MUST CONFORM.....	43
18.2	OHS INDEMNITY .....	43
18.3	LIMITATION OF LIABILITY .....	43
<b>ARTICLE 19 SUB-CONTRACTORS.....</b>		<b>43</b>
19.1	CONSENT REQUIRED FOR SUB-CONTRACTORS .....	43
19.2	VENDOR RESPONSIBLE FOR SUB-CONTRACTORS .....	43
19.3	NO CONTRACT FORMED BETWEEN CITY AND SUB-CONTRACTORS .....	44
<b>ARTICLE 20 PROJECT TEAM MANAGEMENT.....</b>		<b>44</b>
20.1	TEAM COMPOSITION.....	44
20.2	TEAM SUBSTITUTIONS .....	44
20.3	SUBSTITUTION REQUESTS .....	45
20.4	COST OF SUBSTITUTIONS .....	45
20.5	CONDUCT STANDARDS.....	45
20.6	INDEPENDENT OR DEPENDENT CONTRACTORS.....	46
20.7	CITY RESOURCES .....	46
20.8	VENDOR PROJECT MANAGER .....	46
<b>ARTICLE 21 INDEMNITY AND LIABILITY.....</b>		<b>46</b>
21.1	INDEMNITY FOR PERSONAL/PROPERTY LOSS .....	46
21.2	RELEASES .....	47
21.3	LIABILITY LIMITED.....	47
21.4	VENDOR’S LIMITATION ON LIABILITY FOR SYSTEM/SERVICES DEFAULTS.....	47
21.5	CITY’S LIMITATION ON LIABILITY FOR PAYMENT DEFAULTS .....	48
21.6	PARTIES NOT LIABLE FOR INDIRECT LOSSES .....	48
21.7	DATA CORRUPTION OR LOSS.....	49
21.8	INTEREST LIABILITY OUTSIDE OF LIABILITY LIMITS .....	49
<b>ARTICLE 22 VENDOR DEFAULTS.....</b>		<b>49</b>
22.1	EVENT OF DEFAULT—DEFINED.....	49
22.2	DEFAULT REMEDIES ON VENDOR’S DEFAULT.....	50
22.3	MAJOR VENDOR DEFAULT .....	50
22.4	DEFAULT REMEDIES LIMITED .....	51
<b>ARTICLE 23 CITY DEFAULTS/DELAYS .....</b>		<b>51</b>
23.1	DEFAULT OF CITY’S OBLIGATIONS .....	51
23.2	MAJOR CITY DEFAULT .....	53
23.3	DEFAULT REMEDIES LIMITED .....	54
23.4	EXCESSIVE CITY-CAUSED DELAYS/ABANDONMENT.....	54
23.5	CITY RIGHT TO SUSPEND .....	55
23.6	ENTIRE LIABILITY OF CITY.....	55

<b>ARTICLE 24 INTELLECTUAL PROPERTY PROTECTION.....</b>	<b>55</b>
24.1    VENDOR TO ASSUME DEFENCE OF SUITS AGAINST CITY .....	55
24.2    CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT .....	56
24.3    TEMPORARY PROVISION OF SOFTWARE .....	56
24.4    LIMITATION OF LIABILITY DOES NOT APPLY .....	57
<b>ARTICLE 25 RECORDS.....</b>	<b>57</b>
25.1    FULL AUDIT RIGHTS AND ACCESS .....	57
<b>ARTICLE 26 COMPLIANCE WITH LAWS .....</b>	<b>58</b>
26.1    VENDOR TO COMPLY .....	58
26.2    VENDOR WILL PAY AND DISCHARGE .....	58
<b>ARTICLE 27 ARBITRATION.....</b>	<b>58</b>
27.1    ARBITRATION .....	58
27.2    ALTERNATIVE IF NO BCICAC.....	58
<b>ARTICLE 28 GENERAL PROVISIONS .....</b>	<b>59</b>
28.1    PERMITS AND LICENSES .....	59
28.2    NON-SOLICITATION .....	59
28.3    VENDOR NOT AGENT OR EMPLOYEE.....	59
28.4    NO ASSIGNMENT BY VENDOR WITHOUT CONSENT .....	59
28.5    COMPLIANCE WITH LAW.....	60
28.6    NON-WAIVER OF RIGHTS.....	60
28.7    FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT (BRITISH COLUMBIA) .....	60
28.8    TERMS OF CONTRACT CONFIDENTIAL.....	60
28.9    NOTICE.....	60
28.10   CHANGES IN LAWS AND REGULATIONS.....	61
28.11   SEVERABILITY—ENFORCEABILITY PRESERVED .....	62
28.12   SURVIVAL .....	62
28.13   CONTRACT EXTENSION AND MODIFICATION.....	62
28.14   UNAVOIDABLE DELAYS.....	62
28.15   TIME IS OF THE ESSENCE .....	63
28.16   PUBLICITY AND MARKETING.....	63
28.17   BRITISH COLUMBIA LAWS GOVERN .....	66
28.18   FURTHER ASSURANCES .....	67
28.19   SUCCESSORS AND ASSIGNS .....	67
28.20   ENTIRE CONTRACT .....	67
28.21   COUNTERPARTS .....	67
Schedule A	Requirements [TO BE IMPORTED FROM RFP PROPOSAL]
Schedule B	Pricing [TO BE IMPORTED FROM RFP PROPOSAL]
Schedule C	Implementation [TO BE IMPORTED FROM RFP PROPOSAL]
Schedule C1	Payment Schedule [TO BE IMPORTED FROM RFP PROPOSAL]
Schedule D	City Technical Environment and 311 Contact Centre Overview [TO BE IMPORTED FROM RFP]
Schedule E	Subcontractors [TO BE IMPORTED FROM RFP PROPOSAL]
Schedule E1	Affiliated Organizations [TO BE SUPPLIED - STAGE THREE]
Schedule F	Key Personnel [TO BE IMPORTED FROM RFP PROPOSAL]
Schedule G	Training [TO BE IMPORTED FROM RFP PROPOSAL]
Schedule G1	Documentation [TO BE IMPORTED FROM RFP PROPOSAL]
Schedule H	Performance Standard Warranties [TO BE IMPORTED FROM RFP PROPOSAL]

Schedule I	Acceptance Tests [TO BE SUPPLIED - STAGE THREE]
Schedule J	Maintenance Agreement [ATTACHED]
Schedule K	RFP
Schedule L	Proposal [EXCLUDING PARTS ALREADY IMPORTED AS SET OUT ABOVE]
Schedule M	Certificate of Insurance [TO BE SUPPLIED BY VENDOR'S BROKER – STAGE THREE]

**THIS VoIP TELEPHONE SYSTEM HARDWARE, SOFTWARE AND SERVICES CONTRACT** (this “Contract”) dated ◆

**BETWEEN:**

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

(the “City”)

**AND:**

◆, a ◆ having an office at ◆

(the “Vendor”)

**BACKGROUND:**

(A) Pursuant to the City's Request for Proposals, No. PS07033—The Supply and Installation of VoIP Telephone System (the “RFP”), the City invited from qualified Proponents proposals to provide a VoIP telephone system comprised of the hardware, software and services as set out in the RFP.

(B) In response to the RFP, the Vendor submitted a proposal (the “Proposal”) offering to provide specified VoIP telephone system hardware, software and services to the City.

(C) Based on the City's evaluations of the Proposal, the City and Vendor entered into discussions with a view to entering a contract to supply the specified VoIP telephone system hardware, software and services to the City.

(D) The City and the Vendor have now agreed on the legal terms and conditions on which the Vendor will supply the VoIP telephone system hardware, software and services to the City as provided in this Contract.

IN CONSIDERATION OF THE MUTUAL PREMISES AND AGREEMENTS IN THIS CONTRACT, THE CITY AND THE VENDOR NOW LEGALLY AGREE AS FOLLOWS:

## ARTICLE 1

### DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

Except where a contrary meaning is expressly indicated elsewhere or the context otherwise requires, the following words in the Contract Documents have the meanings set out below:

(a) **“Acceptance Tests”** means the tests or processes, as applicable, outlined in **Schedule I [Acceptance Tests]** by which the City will evaluate, as applicable, whether the System, or any part thereof, or Services, or any part thereof, have been provided in compliance with the requirements of this Contract.

(b) **“Affiliated Organizations”** means any legal entity or incorporated association falling within the following categories:

(i) non-profit corporations or incorporated associations to whom substantial funding or subsidies are provided by the City,

(ii) any “affiliate” (as defined below) of the City which provides services authorized or required by the Vancouver Charter, or

(iii) governmental authorities to whom the City is required to provide administrative services as a result of provincial legislation mandating or authorizing the provision of such services, and

by way of example only and without limiting the generality of the above categories, the following are Affiliated Organizations:

(iv) Vancouver Board of Parks and Recreation,

(v) Vancouver Parking Corporation,

(vi) Emergency Communications for Southwest British Columbia,

(vii) Vancouver Civic Development Corporation,

(viii) Vancouver Police Board,

(ix) Vancouver Public Library Board

(x) Hastings Institute,



- (xi) Harbour Park Corporation,
- (xii) Public Housing Corporation, and
- (xiii) those organizations listed in the attached **Schedule E1 [Affiliated Organizations]**,

provided that, in this definition, the word “**affiliate**” means any corporation the shares of which are held by the City, other than by way of security only, and (i) the votes carried by such shares are sufficient, if exercised, to elect or appoint one or more of the directors of the corporation, or (ii) the enabling legislation for such corporation permits the City as of right to appoint one or more directors of the corporation.

(c) “**Amendment**” means a change in any of the Contract Documents which has been agreed upon in writing by the City and the Vendor including without limitation and by way of example only any Certificate of Acceptance.

(d) “**Business Day**” means any day that is not a Saturday, Sunday, statutory holiday in British Columbia, Easter Monday, or Boxing Day.

(e) “**Business Third Party**” means a third party with whom the City conducts its ordinary and customary business.

(f) “**Certificate**” means a Certificate of Acceptance or Certificate of Final Acceptance.


(g) “**Certificate of Acceptance**” means each certificate issued or deemed issued by the City Project Manager or the City’s General Manager of Corporate Services, as applicable, in accordance with the Contract Documents, indicating successful completion of each Acceptance Test to which such Certificate of Acceptance relates, including without limitation and by way of example only, the Certificate of Go Live (System) Acceptance and the Certificate of Post Go Live (Final) Acceptance.

(h) “**Certificate of Go Live (System) Acceptance**” means the Certificate issued or deemed issued by the City’s General Manager of Corporate Services in accordance with the Contract Documents when the System and Services have successfully passed the Go Live (System) Acceptance Test.


(i) “**Certificate of Post Go Live (Final) Acceptance**” means the Certificate to be issued or deemed issued by the City’s General Manager of Corporate Services in accordance with the Contract Documents when the System and Services have successfully passed the Post Go Live (Final) Acceptance Test.

(j) “**City**” means the City of Vancouver, a municipal corporation and the customer who is entering into this Contract with the Vendor.

- (k) “**City-Caused Delay**” means a delay described in **Section 23.1(c)(i)**.
- (l) “**City Project Manager**” means the person appointed by the City to act as the sole contact for the City with the Vendor throughout the Project.
- (m) “**City Records**” means the records described in **Section 16.10(a)**.
- (n) “**City Technical Environment**” means, collectively, the City’s Telecommunications Network, desktop, server, computer network and current development environment as generally described in **Schedule D [City Technical Environment and 311 Contact Centre Overview]**.
- (o) “**City’s Proprietary Material**” means all materials and information created, acquired (other than from the Vendor or anyone on behalf of the Vendor) or developed by the City including, without limitation, all materials and information provided to the Vendor in or with the RFP (including without limitation, the “Security Sensitive Materials” as defined in the RFP), in preparation for Contract discussions, during Contract discussions, or during the Project, unless expressly indicated otherwise.
- (p) “**Contract**” means this Contract, including all Schedules, all of which are now incorporated by this reference and made an integral part of this Contract, and all Amendments to this Contract.
- (q) “**Contract Documents**” means, collectively, this Contract and the executed Maintenance Agreement.
- (r) “**Conversion Data**” means the set of data files prepared by the City in accordance with **Section 3.7 [Data Migration]** and as further set out in the Implementation Schedule.
- (s) “**Customization Services**” means the Services provided by the Vendor in respect of the Custom Development.
- (t) “**Customized Software**” means that portion of the Software comprised of the Custom Development and includes, depending on the context, that portion of the Software having the Go Live Functionality and the Post Go Live Functionality.
- (u) “**Custom Development**” means the modifications, extensions and other enhancements to the Software or Vendor-Provided Hardware to be developed by the Vendor for the City pursuant to this Contract.
- (v) “**Database Conversion**” means the procedures and software to be used by the Vendor and the City in order to accurately import the Conversion Data into the Software Database as more particularly described in **Section 3.7 [Data Migration]** and the Implementation Schedule.

- (w) “**Delivery Date**” means any date referred to in the Implementation Schedule or **Schedule G1 [Documentation]** as a “Delivery Date”, “Start Date”, or “Finish Date”.
- (x) “**Documentation**” means the program design sheets, as built diagrams, user guides, manuals and other documentation required to be delivered with the System, or any part thereof, or Source Code and any Custom Development or Release of any System component or Source Code all as more particularly described in **Schedule G1 [Documentation]**.
- (y) “**Effective Date**” means the date set out on the title page and first page of this Contract.
- (z) “**Event of Default**”, with respect to the Vendor, has the meaning ascribed in **Section 22.1 [Event of Default—Defined]**.
- (aa) “**Existing Database**” means the City’s existing database which resides  and which houses all of the City’s existing **[telephony]** records in machine-readable form.
- (bb) “**Finish Date**” means any date referred to in the Table set out in the Implementation Schedule as a “Finish Date”.
- (cc) “**Functional Requirements**” means the functionality that the System must have when operated in conjunction with the City Technical Environment in order to comply with this Contract, subject to **Section 2.1 [Priority of Documents]** as outlined in **Schedule L [Proposal]** pursuant to **Schedule K [RFP]**, and then further modified and clarified by the following provisions of this Contract:
- (i) **Schedule A [Requirements]**;
  - (ii) **Section 3.1 [Vendor’s Security Obligations]**; and
  - (iii) **Section 13.1 [Software Warranties]**.
- (dd) “**Go Live Date**” means the date referred to in the Implementation Schedule as the “Go Live Date”.
- (ee) “**Go Live Functionality**” means the functionality that the Software must have on the Go Live Date as described in **Schedule A [Requirements]**.
- (ff) “**Holdback**” means the holdback amount as set out in **Schedule C1 [Payment Schedule]** which amount is intended to secure the performance of the Vendor’s obligations under this Contract.
- (gg) “**Implementation Schedule**” means the chronological list of all major tasks/activities with description, scheduled dates of completion and responsibilities of each party as outlined in **Schedule C [Implementation]**.

(hh) **“Implementation Services”** means the Services to be provided by the Vendor in respect of the implementation of the System, but excludes the Customization Services.

(ii) **“Installation Sites”** means the Installation Sites for the City Technical Environment, namely .

(jj) **“Intellectual Property Rights”** means all of the following and all rights in, arising out of, or associated with:

(i) all inventions, methods, and processes (collectively, the “patentable subject matter”) and all patents issued in respect of patentable subject matter and all associated utility models and patent applications as well as all reissues, divisions, re-examinations, renewals, extensions, provisionals, continuations and continuations-in-part and equivalent or similar rights anywhere in the world in inventions and discoveries including without limitation invention disclosures,

(ii) all trade secrets and other rights in know-how and other confidential or proprietary information,

(iii) all literary, artistic, and other copyright protected works, registrations and applications for registration of copyright protected works, and all other corresponding rights throughout the world,

(iv) all trade-marks (including word marks, design marks, logos, common law trade-marks and service marks) and trade names, and all registrations and applications for same and all associated goodwill throughout the world, and

(v) any similar, corresponding or equivalent rights to any of the above anywhere in the world.

(kk) **“Intentional City Fundamental Breach”** means a default of the type described in **Section 23.2 [Major City Default]**.

(ll) **“Interfaces”** means any programming interface between the System and third party or City-owned or licensed software or systems that facilitates the import and export of data.

(mm) **“Laws and Regulations”** means all present and future laws, statutes, by-laws, regulations, treaties, judgments and decrees and, whether or not having the force of law, all official directives, rules, consents, approvals, authorizations, guidelines, orders and policies of any domestic government, including any federal, provincial, regional or municipal government, and any government agency, tribunal, commission or other authority exercising executive, legislative, judicial, regulatory or administrative functions.

(nn) “**Licence**” means the licence from the Vendor to the City to use the Software, Source Code and Documentation as set out in **Article 16 [License and Proprietary Material]**, and “**Licensed**” will have a corresponding meaning.

(oo) “**Licence Fee**” means the consideration payable by the City to the Vendor for the Licence as set out in **Article 16 [License and Proprietary Material]** and **Schedule B [Pricing]**.

(pp) “**Losses**” means, in respect of any matter, all

(i) direct and indirect, as well as

(ii) consequential,

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).

(qq) “**Maintenance Agreement**” means the separate agreement in the form of **Schedule J [Maintenance Agreement]** for the ongoing provision of Maintenance Services as more particularly described in **Article 14 [Maintenance]**.

(rr) “**Maintenance Fee**” means the amounts payable by the City to the Vendor in consideration for the Maintenance Services to be provided by the Vendor pursuant to the Maintenance Agreement.

(ss) “**Maintenance Services**” means the services to be provided by the Vendor pursuant to the Maintenance Agreement, which services are separate and apart from the Services.

(tt) “**Module**” means a component of the Software which provides a segregate set of functionality, and for certainty, a Module includes any and all Custom Development or Releases related to that Module.

(uu) “**Operating Hours of the City**” means the hours the City is normally staffed, namely 8:00 A.M. - 5:30 P.M. on Business Days.


(vv) “**Post Go Live Date**” means the date referred to in the Implementation Schedule as the “Post Go Live Date”.

(ww) “**Post Go Live Functionality**” means the functionality that the Software must have on the Post Go Live Date as described in **Schedule A [Requirements]**.

(xx) “**Project**” means the implementation of the System in accordance with the Contract starting on the Effective Date and ending with the issuance of the Certificate of Post Go Live (Final) Acceptance.

(yy) “**Project Office**” means the office located at 1800 Spyglass Place, Vancouver, to be used by the City and Vendor via the Telecommunications Network in conjunction with the Installation Sites for the Project, or such other site within City of Vancouver in the event that the City requires the Project Office to be moved to an alternate site.

(zz) “**Project Team Member**” means any individual employed by the Vendor or the City to assist the Vendor Project Manager or City Project Manager in carrying out the Project.

(aaa) “**Proposal**” means the Vendor's proposal dated as of , together with all accompanying schedules, and other attachments, as submitted by the Vendor to the City in response to the RFP, which proposal is attached as **Schedule L [Proposal]**.

(bbb) “**Release**” means any modification or extension of the Software or Vendor-Provided Hardware (including updated or enhanced functionality and firmware updates) that (a) with respect to Software, the Vendor or its licensors periodically provide to customers who subscribe for Software maintenance services and are current with respect to their applicable Software Maintenance Fees, or (b) with respect to Vendor-Provided Hardware, the manufacturer provides to its customers as updates generally during the term of the Maintenance Agreement.

(ccc) “**RFP**” means Request for Proposals, No. PS07033—The Supply and Installation of VoIP Telephone System issued by the City on May 25, 2007, and attached as **Schedule K [RFP]**.

(ddd) “**Services**” means all services to be provided by the Vendor in accordance with the Vendor’s obligations under this Contract, and comprised of Customization Services and Implementation Services, but expressly excluding Maintenance Services.

(eee) “**Software**” means the computer instructions and programs (including without limitation and by way of example only, such instructions and programs for each of the Modules) designed to perform the software-related Functional Requirements when operated as part of the System on the City Technical Environment and which is owned by or licensed to the Vendor (as set out in **Section 13.1 [Software Warranties]**).

(fff) “**Source Code**” means the human readable commented form of the Software, including programs and flowcharts.

(ggg) “**Start Date**” means any date referred to in the Table set out in the Implementation Schedule as a “Start Date”.

(hhh) **“System”** means the VoIP telephony system, including all Vendor-Provided Hardware, third party software, Software, Modules, Custom Development, Documentation and other deliverables required to be delivered by the Vendor pursuant to the Contract, designed to perform the Functional Requirements when operated on the City Technical Environment.

(iii) **“Telecommunications Network”** means the switches, hubs, routers, terminal servers, Ethernet boards, leased PRI and PSTN circuits, City owned fibre and copper lines and other voice and data telecommunication equipment provided by the City as listed in **Schedule D [City Technical Environment and 311 Contact Centre Overview]**.

(jjj) **“Third Party Database Software”** means any third party proprietary database software now or at any time in the future licensed directly by the City or the Vendor from the licensor of such third party proprietary database software and approved by the Vendor in the Documentation for use with the Software (in accordance with the Documentation), including without limitation, third party database software licensed by Oracle Corporation and ♦.

(kkk) **“Third Party Software”** means computer software programs (other than the Modules) that are owned by third parties, including:

(i) software that is not used by the Vendor and is not part of the Software and that the City must license directly from the owner, including, without limitation, ♦, ♦, and ♦;

(ii) all components of the Software which are used by the Vendor under licence from third parties and for which the City may obtain a license from the owner thereof, including, without limitation, Third Party Database Software, ♦, ♦ and ♦.

(lll) **“Total Purchase Price”** means the total purchase price listed on **Schedule B [Pricing]**.

(mmm) **“Unavoidable Delay”** means a delay defined by **Section 28.14 [Unavoidable Delay]**.

(nnn) **“Vendor-Provided Hardware”** means any computers, telecommunications or telephony equipment, cabling, peripherals, devices or other hardware to be provided by the Vendor pursuant to **Schedule A [Requirements]** or **Schedule C [Implementation]** and, for greater certainty, includes any Custom Development and Releases related to that Vendor-Provided Hardware.

(ooo) **“Vendor Project Manager”** means the person appointed by the Vendor to act as the sole contact for the Vendor with the City throughout the Project.

(ppp) “**Vendor’s Proprietary Material**” means all materials and information created, acquired (other than from the City or anyone on behalf of the City) or developed by the Vendor, including without limitation, the Software, Source Code, Documentation, and Proposal unless expressly indicated otherwise.

(qqq) “**Warranty Period**” means the period of time defined in the Maintenance Agreement as the “Free Maintenance Period”.

(rrr) “**WCB OHS Regulation**” means the *Workers Compensation Act* (British Columbia), including without limitation, the Occupational Health & Safety Regulation (British Columbia Regulation 296/97, as amended by British Columbia Regulation 185/9) enacted pursuant to such Act, all as such Act or Regulations are amended or re-enacted from time-to-time.

## 1.2 Interpretation

Except as otherwise expressly provided or as the context otherwise requires, in this Contract,

(a) **Parts of Contract**—a reference to an “**Article**” is to an Article of this Contract, and the word “**Section**”, “**Paragraph**”, followed by a number or some combination of numbers and letters refers to the section, paragraph, subparagraph, clause or subclause of this Contract so designated,

(b) **Headings and Titles**—headings and titles used in this Contract are for reference purposes only and shall not be deemed a part of this Contract,

(c) “**Including**” and “**Or**”—the word “**including**”, when following a general statement or term (whether or not non-limiting language such as “without limitation” or “but not limited to” or other words of similar import are used with reference thereto), is not to be construed as limiting the general statement or term to any specific item or matter set forth or to similar items or matters, but rather as permitting the general statement or term to refer also to all other items or matters that could reasonably fall within its broadest possible scope, and the word “**or**” does not imply an exclusive relationship between the items being connected,

(d) **Successors**—a reference to an entity includes any successor to that entity,

(e) **Gender, Number, etc.**—a word importing the masculine gender includes the feminine and neuter, a word in the singular includes the plural, a word importing a corporate entity includes an individual, and vice versa and “**person**” will mean an individual, partnership, corporation (including a business trust), joint stock company, trust unincorporated association, joint venture, or other entity or a government or any agency, department or instrumentality thereof and vice versa, and



(f) **Technical Terminology**—words, phrases and acronyms not otherwise defined herein that have a meaning commonly understood and accepted by persons familiar with the business of information technology will be interpreted and understood to have that meaning herein.

### **1.3 Schedules**

The following Schedules to this Contract are incorporated by reference into and form part of this Contract:

Schedule A	Requirements
Schedule B	Pricing
Schedule C	Implementation
Schedule C1	Payment Schedule
Schedule D	City Technical Environment and 311 Contact Centre Overview
Schedule E	Subcontractors
Schedule E1	Affiliated Organizations
Schedule F	Key Personnel
Schedule G	Training
Schedule G1	Documentation
Schedule H	Performance Standard Warranties
Schedule I	Acceptance Tests
Schedule J	Maintenance Agreement
Schedule K	RFP
Schedule L	Proposal
Schedule M	Certificate of Insurance

## **ARTICLE 2**

### **CONTRACT DOCUMENTS AND PRIORITY OF DOCUMENTS**

#### **2.1 Priority of Documents**

The Contract Documents are complementary, and what is called for by any one shall be as binding as if called for by all. In the event of any inconsistency or conflict between one of the terms and conditions of this Contract and any other of the terms or conditions of this Contract, such terms and conditions will take precedence and govern in the following order of priority from highest to lowest:

- (a) any and all Amendments from the most recent to the earliest,
- (b) this Contract, excluding all Schedules,
- (c) Schedule J – Maintenance Agreement,
- (d) Schedule B – Pricing,

- (e) Schedule C1 – Payment Schedule,
- (f) Schedule A – Requirements,
- (g) Schedule C – Implementation,
- (h) Schedules D through I,
- (i) the RFP (as amended by any addenda), and
- (j) the Proposal (as amended by any addenda).

### **ARTICLE 3**

#### **GENERAL REQUIREMENTS**

##### **3.1 Vendor's Security Obligations**

The Vendor will ensure that the System includes a user-based security system which controls access to Vendor-Provided Hardware, Software, Modules and functions through individualized user identification codes and passwords in accordance with the Functional Requirements. The Vendor will not install on the System any Vendor password which is not unique to the City.

##### **3.2 Vendor's General Obligations**

Subject to the other terms of this Contract, the Vendor will deliver the System and perform the Services in accordance with the Vendor's obligations under this Contract all for the Total Purchase Price. If anything additional to the Vendor's obligations under this Contract is requested by the City, such request will be governed by **Article 10 [Change Requests]**, and the Total Purchase Price will be adjusted as set out in **Article 10 [Change Requests]**.

##### **3.3 First Class Standard**

The Vendor will at all times maintain a first class standard of care, skill and diligence in performing the Vendor's obligations under this Contract, warranting that the Vendor's obligations under the Contract Documents will be performed to the standard of experienced and skilled professionals in the Vendor's field.

##### **3.4 Vendor has Control/Responsibility**

The Vendor will have complete control over its performance of the Services and will direct and supervise and do the work to ensure conformance with the Contract Documents. The Vendor will be solely responsible for all methods, techniques, sequences and procedures in connection with the furnishing of the System and

Services and for coordinating all parts of the performance of this Contract, excluding those parts that are expressly stated in this Contract to be the responsibility of the City.

### **3.5 Discrepancies**

The Functional Requirements have been prepared by the City to describe, in general terms, the criteria that the Vendor must satisfy through the performance of the Services. However, despite **Article 1 [Definitions and Interpretation]**, and in recognition of the Vendor's greater expertise in describing the Services and Requirements, if the Vendor is aware of any discrepancy or deficiency in the description of the Functional Requirements or any omission of criteria which would be detrimental to the achievement of benefits intended to be obtained by the City upon completion of the Project as described by the RFP, the Vendor will notify the City and rectify such a discrepancy, deficiency or omission as required to achieve those benefits as part of the Services.



### **3.6 Vendor to Report Status**

The Vendor will provide the City with monthly status reports regarding the Services. Each report will indicate the percentage complete of the items set out in **Schedule A [Functional Requirements]** and will include such other information as the City may reasonably request.

### **3.7 Data Migration**

The City's and Vendor's respective roles and responsibilities for migrating all of the Conversion Data from the Existing Database to the Software Database are as set out in the Implementation Schedule.

### **3.8 Term of the Contract**

The term of this Contract will be for the period beginning , 2007 and ending on the date that is  after the issuance of the Certificate of Go Live (System) Acceptance, unless terminated earlier or extended in accordance with the terms of this Contract.

## **ARTICLE 4**

### **INSTALLATION SITE PREPARATION AND PLATFORM**

#### **4.1 City to Prepare Installation Sites**

The City will, at its sole expense and prior to the first Delivery Date, provide all necessary electrical and other installations and fittings, air conditioning, special flooring, telephone connection and the like, at the Installation Sites which will be required for proper functioning of the City Technical Environment and proper performance of the Services.

#### **4.2 Vendor to Provide Specifications/Approve Hardware/Software Platform**

(a) The Vendor now confirms that the specifications for the City Technical Environment required for the proper functioning of the System during and after the Project are as set out in **Schedule D [City Technical Environment and 311 Contact Centre Overview]**.

(b) If the City is required to make any modifications or return and replace the City Technical Environment due to its lack of or deficiency in interoperability with the System, or any part thereof, or Services, any and all direct, out-of-pocket costs of doing so will be borne by the Vendor, provided that the Vendor will have no such liability if such lack of or deficiency in interoperability is due to any cause that is not within the reasonable control of the Vendor, including the combination of the System with other software or hardware not supplied by the Vendor, other than the City Technical Environment.

#### **4.3 City Responsible for City Technical Environment**

The City will continue to be solely responsible for maintaining and operating the City Technical Environment during the Project.

#### **4.4 Remains Property of City**

Despite any other term of this Contract, the City Technical Environment will remain at all times the property of the City and the Vendor will acquire no right or interest in same.

#### **4.5 Interfaces**

The City's and Vendor's respective roles and responsibilities for the Interfaces are as set out in the Implementation Schedule.

#### **4.6 City Permitted to Replace/Modify City Technical Environment**

The City is authorized to replace or modify the City Technical Environment and to replace and attach new peripheral devices to the System at its option provided such changes do not adversely affect the System. The City acknowledges that, to the extent that such changes do adversely affect the System, the Vendor will be released from its obligations under this Contract, but only to such an extent and no further.

## ARTICLE 5

### VENDOR RESPONSIBILITIES

#### 5.1 General Responsibilities

(a) Commencing on the Start Dates, the Vendor will provide the Services in accordance with the Contract Documents and complete the Services on or before the Delivery Dates and Finish Dates applicable to those Services as set out in the Implementation Schedule.

(b) The Vendor's obligations under the Contract Documents have been set out in the Contract Documents following extensive consultations between the parties, to describe the obligations of the Vendor and to the extent that the Vendor's obligations under the Contract Documents fail to expressly state anything that would "reasonably be implied or inferred" in order to comply with the Vendor's obligations under the Contract Documents, the Vendor now agrees that such thing will be deemed to be implied and included in the Total Purchase Price, provided always that the determination of whether or not such thing would "reasonably be implied or inferred" will be made by taking into account the fact that the Vendor is deemed to be the expert in determining the capabilities and limitations of its System and Services and the City is deemed to be the expert in determining the general business processes for which it requires the System and the Services.

#### 5.2 Material to be Delivered

The Vendor will deliver the

- (a) current unmodified version of the Software, Source Code and Documentation on the first of the
- (b) modified versions of the Software, Source Code, and Documentation as required under this Contract, on each of the successive, and
- (c) Vendor-Provided Hardware and other components of the System as required under this Contract, on each of the applicable

Delivery Dates set out in the Implementation Schedule.

#### 5.3 Specific Responsibilities

Without limiting or derogating from the obligations of the Vendor set out elsewhere in the Contract Documents, the following is a list of specific obligations of the Vendor. The Vendor will and covenants as conditions of this Contract to

- (a) appoint a Vendor Project Manager, who will have full authority for implementing this Contract and who will be the principal point of contact between

the City and the Vendor, provided that, if the Vendor Project Manager becomes unable to fulfill this obligation, the Vendor will appoint a successor Vendor Project Manager,

- (b) provide and pre-test all Custom Development, as part of the System,
- (c) import the Conversion Data records to the new Software Database,
- (d) provide the Documentation,
- (e) provide change management consulting services,
- (f) train groups of designated City personnel as set out in **Schedule G [Training]**,
- (g) provide regular progress reports as required by this Contract,
- (h) supply the System and Services, complete and fully Vendor tested, as set out in this Contract,
- (i) deliver, install, pre-test and configure the System and complete the Custom Development so that the System operates and interfaces with the City Technical Environment, and other software as specified in this Contract, and in accordance with the Acceptance Tests, the Implementation Schedule, and in a manner designed to cause minimal disruption to the Operating Hours of the City,
- (j) do everything required by the Contract Documents by the time stipulated in the Contract Documents and to a first class standard,
- (k) in addition to the Functional Requirements, deliver anything else necessary for or incidental to the Functional Requirements, including supplying all labour, supervision, management, overhead, materials, supplies, and all other things necessary for or incidental to the Functional Requirements,
- (l) comply, and ensure that all of its employees, contractors and agents comply, with all Laws and Regulations in carrying out this Contract,
- (m) restrict its employees, contractors and agents from unduly interfering with the City's business operations when they are working at any Installation Site or Project Office,
- (n) comply with, and ensure that its employees, contractors and agents comply with, the City's standard security procedures to maintain the security of the City's Proprietary Information,
- (o) notify the City of, as appropriate, and seek the City's prior written consent to, any material changes to the Vendor's methodology in the provision of Services,

- (p) be in attendance at any Installation Site or the Project Office at all reasonable times as may be required to provide the Services and to complete the Project in accordance with the Delivery Dates,
- (q) restrict the Vendor's employees, contractors and agents from any unauthorized use of, or from interfering with, software, equipment and other property that is owned by the City, in the City's possession, under the City's control or for which the City is otherwise responsible,
- (r) ensure that all materials, goods and equipment incorporated into the System or any deliverable hereunder are sourced from suppliers or manufacturers of established reputation engaged in the supply or manufacture of such materials or equipment, and
- (s) pay all of its employees, subcontractors, suppliers and materialmen all amounts properly owing when due and keep the System free of all liens, charges, encumbrances and adverse claims.

## **ARTICLE 6**

### **CITY RESPONSIBILITIES**

#### **6.1 General Responsibilities**

Commencing on the Start Dates, the City will provide the instructions, decisions, and comments required of it pursuant to the Contract Documents on or, whenever reasonably practical, before the Delivery Dates and Finish Dates applicable to the City. Without limiting the foregoing, the City will (subject always to **Section 2.1 [Priority of Documents]** and the Implementation Schedule) carry out in a timely, efficient and first class manner, all of its responsibilities and roles specified in the Implementation Schedule.

#### **6.2 Specific Responsibilities**

The City will throughout the term of the Project

- (a) pay the costs of owning or leasing and maintaining the premises in which the Project Office and Installation Sites are located,
- (b) designate a City Project Manager, who will have full authority for implementing this Contract and who will be the principal point of contact between the Vendor and the City, provided that, if the City Project Manager becomes unable to fulfill this obligation, the City will appoint a successor City Project Manager,
- (c) perform structural, electrical, air-conditioning, and other necessary modifications to the designated Installation Sites, all in accordance with the site

specifications as provided by the applicable manufacturers of the City Technical Environment,

- (d) provide all necessary network connections, power and telephone lines in accordance with the specifications as provided by the applicable manufacturers of the City Technical Environment,
- (e) provide reasonable physical and remote access to and from to the Installation Sites and to and from any and all equipment installed in them for use by the Vendor, when and as requested by the Vendor, subject to mutual agreement by the Vendor and the City Project Manager, each acting reasonably,
- (f) provide reasonable physical and remote access to and from the Project Office and to and from any and all equipment installed in the Project Office for use by the Vendor, when and as requested by the Vendor, subject to mutual agreement by the Vendor and the City Project Manager, each acting reasonably,
- (g) provide such physical working space within the Project Office and in or near to the Installation Sites, including desks, chairs and other related facilities, as is reasonably requested by the Vendor,
- (h) take reasonable steps to restrict the City's employees, contractors and agents from any unauthorized use of, or from interfering with, software, equipment and other property that is owned by the Vendor, in the Vendor's possession, or under the Vendor's control,
- (i) allocate the necessary personnel, including the personnel specified in the Implementation Schedule, funds, facilities and other resources required to carry out its obligations under this Contract in a timely, efficient and first class manner, and
- (j) comply, and will ensure that all of its employees and contractors comply, with all Laws and Regulations in carrying out this Contract.

## **ARTICLE 7**

### **TOTAL PURCHASE PRICE AND PAYMENT**

#### **7.1 Payment Only on Performance**

Subject to the partial and interim payment obligations of the City as set out in **Schedule C1 [Payment Schedule]**, the City will have no obligation to pay any money to the Vendor in connection with this Contract unless and until the Vendor has fully and completely complied with all of its obligations required by this Contract to be performed and all covenants on the part of the Vendor are in good standing up to the date that such payment is due.



## **7.2 Payment Schedule**

The City will make payments on account of the Total Purchase Price in the amounts and at the milestones outlined in **Schedule C1 [Payment Schedule]**, subject to the Holdbacks.

## **7.3 Payment of Licence Fee**

The City will pay the Vendor, in consideration for the Licence, the amounts set out in **Schedule C1 [Payment Schedule]**, subject to the terms of this Contract.

## **7.4 Payment Tied to Implementation Schedule**

Any delay from the times set out in the Implementation Schedule due to the Vendor not meeting the Implementation Schedule will result in the corresponding payment dates being extended by the length of the delay. For certainty, nothing in this Section modifies either party's rights and obligations pursuant to **Article 22 [Vendor Defaults]**, **Article 23 [City Defaults/Delays]**, **Article 24 [Intellectual Property Protection]** or **Section 28.14 [Unavoidable Delay]**.

## **7.5 Interest on Late Payments**

If either party is in default of any payment required to be made under this Contract, interest will be payable from the due date to the date of payment at the 90 Day LIBOR (London Inter-Bank Offered Rate) plus 3% per annum simple interest calculated monthly, prorated for any periods less than a full month.

## **7.6 Payment Procedure**

The submission of a proper invoice will constitute a condition precedent to the obligation of the City to pay any money under this Contract. For the purposes of this Contract, a proper invoice must comply with the following requirements:

- (a) the invoice must correctly reference the City's Purchase Order number; and
- (b) must be signed by an officer of the Vendor and contain a statement certifying that the Vendor has achieved a specified milestone or specified percentage of completion of same in accordance with the terms of **Schedule C1 [Payment Schedule]**, and sufficiently describe the specified milestone or percentage of completion of same.

## **7.7 Prices Set Out in Schedule B [Pricing]**

**Schedule B [Pricing]** lists all System components, including Vendor-Provided Hardware, Documentation, Software and Services together with their associated prices. The Total Purchase Price is fixed and may not be changed by either party except by Amendment pursuant to **Article 10 [Change Requests]**.

## 7.8 Canadian Currency

All references to currency in the Contract Documents are expressed in terms of lawful money of Canada, and all payments to be made under the Contract Documents will be made in lawful money of Canada in Vancouver, British Columbia.

## 7.9 Taxes

(a) **City Liable for GST, PST, etc.**—The prices set out in this Contract are exclusive of all federal, provincial, municipal, or other Canadian government, excise, sales, use, occupational, or like taxes specific to the transactions under this Contract now in force or enacted in the future in respect to amounts payable by the City to the Vendor relating to the System or Services, all of which the City will be liable to pay to the Vendor wherever the Vendor is required to collect and remit such amount to any governmental authority as a result of this Contract.

(b) **Co-operate on Rebates/Exemptions**—Each party will on the other's reasonable request and at the other party's expense act diligently and expeditiously to pursue or obtain any certificate of exemption or similar document or benefit where such action or proceeding might result in a rebate or exemption from such amount.

(c) **Vendor Liable For Corporate, Income, Capital, and Other General Taxes and Other Amounts**—Nothing in this Section or this Contract will make, or be interpreted so as to make the City liable to pay

(i) general (as opposed to those being specific to this Contract) Canadian or foreign taxes, duties, excise, customs, penalties or interest amounts imposed on the Vendor or its Affiliates on account of the Vendor's or its Affiliate's import of goods, services or labour, income, capital, transfers or transactions,

(ii) the wages (inclusive of all benefits, withholding taxes, CPP contributions and WCB assessments) or fees of any employees, consultants, contractors, agents or other persons employed by it to provide Services, or

(iii) all out-of-pocket expenses and disbursements incurred by the Vendor on behalf of the City in the performance of its obligations under this Contract, including travel and living expenses, charges for courier services and long distance telephone services, together with the Vendor's then current administration fee on such expenses.

## ARTICLE 8

### SERVICE LEVEL/PERFORMANCE GUARANTEES

#### 8.1 Service Levels

The parties acknowledge that service level targets have been established with respect to the Services, Maintenance Services and System and will be used to assess the performance of the Vendor in delivering the Requirements at an optimal service level for the City. The minimum service levels as well as the optimal service level targets are set forth in **Schedule H [Performance Standard Warranties]**.

#### 8.2 Service Level Reports

The Vendor will prepare and deliver to the City a monthly report on the Vendor's actual performance levels measured against the minimum service levels and optimal service level targets during the Term including the term of the Maintenance Agreement and the cost of preparing and delivering and responding to City enquiries on same will be deemed to be included in the Total Purchase Price.

#### 8.3 Failures to Meet Service Levels

The failure by the Vendor to meet or exceed the minimum service levels or the failure by the Vendor to make commercially reasonable efforts to meet or exceed the optimal service level targets will constitute a default and will become an Event of Default if not rectified in the manner set out in **Article 22 [Vendor Defaults]**.

#### 8.4 Exclusions

As set out elsewhere in this Contract, the Vendor is not responsible for any failure to meet or exceed the minimum service levels or the failure by the Vendor to make commercially reasonable efforts to meet or exceed the optimal service level targets where the Vendor is expressly exempted from liability for such failures.

## ARTICLE 9

### LIENS

#### 9.1 No Liens Permitted

The Vendor will not at any time, before or after receipt of payment, suffer or permit any liens to be registered in the name of the Vendor or its suppliers against the name of the City or the title to any City property, including for further certainty, the Proprietary Rights—City or the City's Intellectual Property Rights. The Vendor agrees to fully pay, satisfy and release all such liens.

## **9.2 Vendor to Provide Proof**

If at any time it appears that any lien contrary to this Article exists, the Vendor will furnish evidence satisfactory to the City's Director of Legal Services that all liabilities in respect of such lien have been paid in full and that the lien has been duly released and discharged.

# **ARTICLE 10**

## **CHANGE REQUESTS**

### **10.1 Need to Notify Vendor**

(a) The City will, by giving written notice to the Vendor Project Manager with reasonable particulars as to the nature of the request, be entitled to request changes to the Vendor's obligations under this Contract.

(b) Upon receipt of such notice, the Vendor will, as soon as reasonably practicable after receipt of such notice, inform the City in writing of any adjustments to the Total Purchase Price, either increasing or decreasing the Total Purchase Price, and of any adjustments either sooner or later of the Delivery Dates, that would be necessitated by such change in the Vendor's obligations under this Contract, or will notify the City in writing that no adjustments are necessary.

(c) If adjustments to the Total Purchase Price or Delivery Dates are necessary and the City confirms in writing that such adjustments are acceptable to it, then the change in the Vendor's obligations under this Contract and the change to the Total Purchase Price and Delivery Dates will be recorded in an Amendment. Except where **Section 10.2 [Changes where No Amendment is Signed]** below applies, if the City does not confirm in writing that such adjustments are acceptable to it within five (5) Business Days of the date that the Vendor informs the City that such adjustments are necessary, then the City's change request will be deemed cancelled.

### **10.2 Changes where No Amendment is Signed**

If the City has issued a notice under **Section 10.1 [Need to Notify Vendor]** but is of the opinion (in the City's sole discretion) that the Vendor is taking too long to reply or that the reply is not sufficient or where the City disagrees with the Vendor's assessment of how the Vendor's obligations under this Contract, the Total Purchase Price or Delivery Dates should be adjusted, then provided it does so prior to the expiry of the five (5) Business Day period referred to in **Section 10.1(c)**, and provided it gives prior written notice that it is proceeding pursuant to **Section 10.4 [Disputes over Change Requests]**, then **Section 10.4 [Disputes over Change Requests]** will apply.

### **10.3 Vendor Not to Act on Any Informal or Unwritten Change Requests**

If the Vendor considers that the City has requested a change in the Vendor's obligations under this Contract but the City has not issued a notice under **Section 10.1 [Need to Notify Vendor]**, then the Vendor must give a written notice to the City prior to acting on such request. The notice shall refer in reasonable detail to the applicable request and state that the Vendor considers the request to be a request to change the Vendor's obligations under this Contract. If the City agrees, then the parties will proceed in accordance with **Section 10.1 [Need to Notify Vendor]**. If the City does not agree, then **Section 10.4 [Disputes over Change Requests]** will apply.

### **10.4 Disputes over Change Requests**

If the City does not agree with the Vendor under **Section 10.1 [Need to Notify Vendor]**, then (subject always to **Section 10.5 [Balancing Parties' Interests During Dispute Over Any Change Request]**) the Vendor will nonetheless promptly act on the request and the parties will attempt to agree on an Amendment or failing agreement, the Total Purchase Price and Delivery Dates will remain the same but will be subject to adjustment after the Post Go Live Date if either party elects to refer the matter to arbitration pursuant to **Article 27 [Arbitration]** and the arbitrator(s) determines that such adjustment (up, down, sooner or later) is warranted. The arbitrator will, as part of the arbitration order, include interest from the date that the adjustment to the Total Purchase Price would have been payable or refundable and on the basis of the Delivery Dates that would have applied if the parties had promptly agreed to the changes and paid or refunded the adjustment. Any dispute arising out of **Section 10.3 [Vendor Not to Act on Any Informal or Unwritten Change Requests]** will be determined in accordance with the principle set out in paragraph (b) of **Section 5.1 [General Responsibilities]** as well as this Section and **Section 10.5 [Balancing Parties' Interests During Dispute Over Any Change Request]**.

### **10.5 Balancing Parties' Interests During Dispute Over Any Change Request**

(a) **Disputes Where Parties Agree Change Request is a Change Request**—Despite **Section 10.4 [Disputes over Change Requests]** above, in no event will

(i) the Vendor be obligated to act on any one or more change requests made by the City under **Section 10.1 [Need to Notify Vendor]** where such change or changes

(A) is a change or are changes that the City agrees are change requests, and

(B) would result in the aggregate in a change of more than 25% in the Total Purchase Price or would (using commercially reasonable efforts) in the aggregate delay the Go Live Date at all or

the Post Go Live Date by more than one hundred and twenty (120) days, and

(ii) the City be obligated to pay any amounts other than the Vendor's direct out-of-pocket costs for acting on the disputed change request, pending resolution of the dispute pursuant to **Section 10.4 [Disputes over Change Requests]**.

(b) **Disputes Where Parties Dispute Whether Change Request is a Change Request**—Despite **Section 10.4 [Disputes over Change Requests]**, in no event will the Vendor be obligated to act on any one or more requests made by the City under **Section 10.4 [Disputes over Change Requests]** where such request or requests are requests that the City is making pursuant to a dispute pursuant to **Section 10.3 [Vendor Not to Act on Any Informal or Unwritten Change Requests]** except to the extent that, pending the resolution of the dispute, the Vendor will without prejudice to any of the City's or Vendor's rights and remedies under this Contract, perform "under protest" the requested changes to a maximum of **[INSERT - 25% of number of personnel hours currently allocated by Vendor in the Implementation Schedule]** in the aggregate for all such requests and the City will then pay "under protest" the Vendor at the rate of seventy-five dollars (\$75) per hour for each such hour.

## ARTICLE 11


### PERFORMANCE SECURITY

#### 11.1 No Letters of Credit or Personal Guarantees

The Vendor and the City now acknowledge that the security for the performance of the Vendor of its obligations under this Contract will be handled by way of the Holdbacks.

#### 11.2 Additional Performance Security Requirements

Despite **Section 11.1 [No Letters of Credit or Personal Guarantees]**, the Vendor now agrees to comply with the following restrictions provided always that upon the issuance of the Certificate of Post Go Live (Final) Acceptance, the following restrictions will cease to bind the Vendor and will be deemed to be released:

- (a) the Vendor now warrants that  (in this Article, the "**Shareholders**") are the only legal or beneficial shareholders of the Vendor and the Shareholders own and control all of the outstanding shares of all classes of the Vendor;
- (b) the Vendor will not, without the prior written consent of the City, such consent not to be unreasonably or arbitrarily withheld, delayed or conditioned, cause or permit any transfer or other disposition of any kind of the ownership (legal or beneficial) of the shares of the Vendor, except in the case of the death or long-term disability of the Shareholders; and

(c) the Vendor will not merge, amalgamate or undertake any other material corporate change without the prior written consent of the City, such consent not to be unreasonably or arbitrarily withheld, delayed or conditioned.

## **ARTICLE 12**

### **INSURANCE**

#### **12.1 General Insurance Requirements**

Without limiting any of its obligations or liabilities under this Contract, the Vendor and its sub-contractors will obtain and continuously carry during the Term at their own expense and cost, the following insurance coverage with minimum limits of not less than those shown in the respective items set out in this **Article 12 [Insurance]**.

#### **12.2 Insurance Policies**

All insurance policies will be in a form and in amounts satisfactory from time-to-time and with insurers acceptable to the City's Director of Risk and Emergency Management and will provide the City's Director of Risk and Emergency Management with sixty (60) days prior written notice of material change, lapse or cancellation, and such notice must identify the Contract title, number, policyholder, and scope of work.

#### **12.3 Additional Insurance**

The Vendor will provide at its own cost any additional insurance which it is required by law to provide or which it considers necessary.

#### **12.4 Other Obligations**

Neither the providing of insurance by the Vendor in accordance with the requirements hereof, nor the insolvency, bankruptcy or the failure of any insurance company to pay any claim accruing will be held to relieve the Vendor from any other provision under the Contract Documents with respect to liability of the Vendor or otherwise.

#### **12.5 Primary Insurance**

The insurance coverage will be primary insurance as respects the City. Any insurance or self-insurance maintained by or on behalf of the City, its Affiliated Organizations, or any of their respective officers, officials, employees, or agents will be excess of this insurance and shall not contribute with it.

#### **12.6 Vendor to Provide Proof**

The City acknowledges that Vendor has provided the City with evidence of all required insurance to be taken out in the form of the Certificate of Insurance supported by certified copies of all insurance policies related to this Contract. Such Certificate of

Insurance identifies the Contract title, number, policyholder and scope of work and does not contain any disclaimer whatsoever. At all times during the Term, the Vendor must comply with all of its insurance obligations described in this **Article 12 [Insurance]**. Proof of insurance, in the form of a Certificate of Insurance or certified copies of all insurance policies, will be made available to the City's Director of Risk and Emergency Management at any time during the Term upon request. Approval of any policy of insurance by the City will in no way relieve the Vendor of its other obligations under this Contract.

### **12.7 Sub-Contractors**

The Vendor will provide in its agreements with its sub-contractors clauses in the same form and to the same effect as those in this **Article 12 [Insurance]**. Upon request, the Vendor will deposit with the City's Director of Risk and Emergency Management detailed certificates of insurance for the policies it has obtained from its sub-contractors and a copy of the insurance clauses from those sub-contracts.

### **12.8 Coverage Only From Authorized Insurers**

The Vendor will only obtain such insurance from a company duly registered and authorized to conduct insurance business in the Province of British Columbia.

### **12.9 Minimum Requirements**

The Vendor's minimum insurance obligations are as follows:

- (a) Commercial General Liability insurance in sufficient amounts and description to protect the Vendor, its sub-contractors, the City, its Affiliated Organizations, 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 Contract, provided that the limit of commercial general liability insurance shall be not less than five million dollars (\$5,000,000) per occurrence inclusive for personal injury, death, bodily injury or property damage and in the aggregate with respect to products and complete operations, and further provided that the deductible per occurrence shall not exceed five thousand dollars (\$5,000) per occurrence, and
- (b) the policy of insurance shall
  - (i) be on an occurrence form,
  - (ii) add the City, its Affiliated Organizations, and their respective officials, officers, employees and agents as additional insureds,
  - (iii) contain a cross-liability or severability of interests clause, and
  - (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.

Further, the Vendor will ensure that vehicles owned or operated by the Vendor or its sub-contractors in connection with the Contract maintain Third Party Legal Liability Insurance in an amount not less than two million dollars (\$2,000,000) per occurrence.

#### **12.10 City May Remedy Vendor's Insurance Defaults**

If the Vendor fails to provide, maintain or pay for the insurance required by this **Article 12 [Insurance]**, then the City will have the right, but not the obligation, to (upon prior written notice to the Vendor) provide, maintain and pay for such insurance, in which case the costs of same will, at the City's option, be payable by the Vendor on demand, or the City may deduct such costs from money which is then or later becomes due and payable to the Vendor under this Contract or otherwise.

### **ARTICLE 13**

#### **REPRESENTATIONS, WARRANTIES AND COVENANTS**

##### **13.1 System and Documentation Warranties**

The Vendor represents and warrants to the City that

- (a) the Vendor is the sole owner of all Intellectual Property rights in and to the Software and Documentation, which has been or will be developed solely by full-time employees of the Vendor or independent contractors who have transferred in writing (or will transfer in writing, in respect of future modifications) their ownership rights in the Software to the Vendor, and the Vendor has the right to enter into this Contract and to perform all of its obligations including, without limitation, delivery of the System and granting of the Licence,
- (b) the Vendor has used commercially reasonable efforts to ensure that the Software delivered to the City under this Contract does not contain any viruses which would materially adversely affect the City's ability to use the System,
- (c) the System does not contain any disabling or other device that would allow the Vendor or any third party to in any way reduce or interrupt the use and operation of the System by the City,
- (d) all System components (including the Software, Third Party Software and Third Party Database Software, Documentation, and other materials to be delivered hereunder) will be delivered with the Intellectual Property Rights necessary to permit the City to freely own, use and operate same in accordance with the terms and conditions of this Contract,

- (e) at the time of commencement of each Acceptance Test, the System component being tested will be the most recent Release of such System component,
- (f) unless and until validly terminated pursuant to **Section 23.2 [Major City Default]**, the Licence is and will remain at all times in perpetuity free and clear of all liens, charges and encumbrances, subject always to the City's payment obligations as outlined in **Schedule C1 [Payment Schedule]**,
- (g) Subject to **Schedule I [Acceptance Tests]**, each Module of the Software and component of the System will operate in accordance with the Functional Requirements for that Module or component when operated on the City Technical Environment, upon issuance or deemed issuance of the Certificate of Acceptance for that Module or component,
- (h) the System and City Technical Environment will, upon issuance or deemed issuance of the Certificate of Go Live (System) Acceptance, be compatible with each other and will operate together, and
- (i) the System will, upon issuance or deemed issuance of the Certificate of Go Live (System) Acceptance and when operated on the City Technical Environment, support the level of activity and volumes set out in **Schedule H [Performance Standard Warranties]** and will otherwise meet the representations and warranties set out in **Schedule H [Performance Standard Warranties]**.

### **13.2 Vendor-Provided Hardware Warranties**

The Vendor represents and warrants to the City that the Vendor-Provided Hardware meets the requirements set out in **Schedule A [Requirements]** and that the Vendor has conducted such reasonable tests with respect to such Vendor-Provided Hardware to ensure that such Vendor-Provided Hardware meets the warranties provided by the manufacturers of same.

The City acknowledges and agrees that the Vendor does not provide warranty service for any third party Vendor-Provided Hardware; however, the Vendor will assign through to the City the full benefit of all warranties provided to the Vendor by any third party Vendor-Provided Hardware in accordance with **Schedule H [Performance Standard Warranties]**. Furthermore, the Vendor will undertake all necessary communication with the Vendor-Provided Hardware manufacturer, coordinate the resolution of Vendor-Provided Hardware warranty issues with the manufacturer, or will make at its expense and as part of the Total Purchase Price, all commercially reasonable attempts to modify the third party Vendor-Provided Hardware components of the System to accommodate or minimize any non-compliance caused by the interaction of the third party hardware components of the System with the remainder of the System.

### **13.3 City Technical Environment and Third Party Software Warranties**

To the extent that the System contains any Third Party Software or Third Party Database Software, the Vendor represents, warrants and covenants that

- (a) the Vendor will assign through to the City the full benefit of all warranties provided to the Vendor by any third party providing components of the System, together with contact information and reasonable assistance to enable the City to have direct contact with those third parties whose agreements with the Vendor permit such direct contact by the Vendor's customers,
- (b) if the City Technical Environment supplied by the City requires any extension or upgrade of capability within one (1) year and sixty (60) days after the issuance of the Certificate of Go Live (System) Acceptance solely to meet the progression of System features and capabilities being delivered by the Vendor as a part of its normal System Release process and the City has no option but to upgrade or extend the City Technical Environment or, practically, must acquire the City Technical Environment upgrade or extension if the System is to continue operating in accordance with the Functional Requirements, then the Vendor will supply such City Technical Environment upgrade or extension without additional charge to the City, and all such City Technical Environment upgrades or extensions (and applicable software licences to use them) will become the property of the City,
- (c) until one (1) year and sixty (60) days after the issuance of the Certificate of Go Live (System) Acceptance, all upgrades to the City Technical Environment required to bring the System into compliance with the Functional Requirements will be provided by the Vendor at no cost to the City,
- (d) the Vendor will provide the City with upgrade requirements for the City Technical Environment (if any) for each new Release of the Software or Hardware, and it will be the responsibility of the City to reasonably promptly upgrade the City Technical Environment to meet the upgrade requirements,
- (e) during the period from one (1) year and sixty (60) days after the issuance of the Certificate of the Go Live (System) Acceptance until five (5) years and sixty (60) days after the issuance of the Certificate of Go Live (System) Acceptance, if the City Technical Environment is not compatible with the System and the City Technical Environment has been upgraded to meet the Vendor's then current specifications, then the Vendor will provide any further upgrade necessary to make the City Technical Environment compatible with the System at no cost to the City, and
- (f) the above commitments exclude City Technical Environment upgrades required solely by
  - (i) hardware, software, modules or components added to the System other than those contemplated by this Contract, and

- (ii) changes to the System made by the Vendor (other than pursuant to the Maintenance Agreement) at the request of the City or modifications to the System made by or on behalf of the City.

### **13.4 Vendor's Corporate Authority and Other Warranties**

The Vendor represents and warrants to the City that, as of the Effective Date, the Vendor

- (a) has full right, power and authority to enter into this Contract and to perform its obligations under it,
- (b) is not under any obligation, contractual or otherwise, to request or obtain the consent to any person to the transaction or grants contemplated or made herein,
- (c) is a corporation, duly organized, legally 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,
- (d) has necessary corporate power to own its properties and assets and to carry on its business as it is now being conducted and to enter into this Contract,
- (e) is not a party to or bound by any indenture, agreement (written or oral), instrument, license, permit or understanding or other obligation or restriction under the terms of which the execution, delivery nor performance of this Contract does or will constitute or result in a violation or breach or default, and
- (f) the statements and descriptions regarding the Vendor's and its sub-contractors' reputation and experience in the Proposal are true and accurate and that such persons have the requisite skills, experience and expertise to complete the Project in accordance with the terms of this Contract.

### **13.5 Exclusion of Other Warranties**

THE VENDOR'S WARRANTIES AND REPRESENTATIONS ABOVE AND BELOW ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES AND REPRESENTATIONS OF ANY TYPE WHETHER EXPRESSED OR IMPLIED, INCLUDING WARRANTIES AND CONDITIONS OF DURABILITY, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

### **13.6 City's Warranties**

The City represents and warrants to the Vendor that, as of the Effective Date, the City

- (a) has the full right, power, and authority to enter into this Contract and to perform its obligations under it,

(b) does not require the consent of any third party to enter into or perform this Contract, and

(c) will not be in breach of any other contract or legal obligation by entering into or performing this Contract.

### **13.7 Reliance**

The City represents and the Vendor recognizes and agrees that, in entering into this Contract, the City has relied extensively on the information provided by the Vendor in the Proposal and on the representations and warranties set out herein.

## **ARTICLE 14**

### **MAINTENANCE**

#### **14.1 Sign Maintenance Agreement with Contract**

Concurrently with the execution of this Contract, the City and the Vendor will enter into the Maintenance Agreement.

#### **14.2 Need to Maintain City Technical Environment**

The City will, during the term of the Project, keep its standard maintenance and support agreements with respect to the City Technical Environment in good standing. Except as otherwise expressly set out herein, the City is solely responsible for the acquisition, maintenance, support and proper operation of the City Technical Environment.

## **ARTICLE 15**

### **ACCEPTANCE TESTS**

#### **15.1 Acceptance Tests Process**

The Vendor will deliver the System and perform the Services so that the System passes all Acceptance Tests to be conducted and successfully completed before the Certificate of Post Go Live (Final) Acceptance is signed. The Acceptance Tests and the detailed requirements and methodology for each of the Acceptance Tests are set out in **Schedule I [Acceptance Tests]**.

#### **15.2 Acceptance Tests Failure—Defined**

If any part of the System delivered by the Vendor fails to pass successfully any one of the applicable Acceptance Tests as detailed in **Schedule I [Acceptance Tests]**, within the time allotted (including any extension of time granted by the City or permitted by the terms of this Contract), or if the Vendor fails to install the Vendor-Provided Hardware,

Modules and the Software complete and ready for Acceptance by each applicable Delivery Date, including the Go Live Date and Post Go Live Date (or agreed upon extension thereof), and if the process for remedial action described in **Schedule I [Acceptance Tests]** has not resulted in a complete remedy then, except as otherwise set out in this Contract, the Vendor will be deemed to be in default and **Article 22 [Vendor Defaults]** will apply.

### **15.3 Delays**

If any part of the System does not pass any element of any applicable Acceptance Test and as a result, the Delivery Dates, including the Go Live Date and Post Go Live Date outlined in the Implementation Schedule are delayed, the City's obligation to issue any Certificate of Acceptance (and the Vendor's entitlement to any deemed issuance of same) will be delayed by an equal number of days.

### **15.4 Standard of Review**

The City Project Manager will determine on behalf of the City whether or not an Acceptance Test has been passed. The criteria that the City Project Manager must apply and that the System and Services must meet to successfully pass the Acceptance Tests is specified in **Schedule I [Acceptance Tests]**.

### **15.5 Correction of Defects/Deficiencies**

All deviations from the Functional Requirements identified by the City Project Manager arising from the Acceptance Tests, will be corrected by the Vendor at its cost and the Vendor will use diligent, commercially reasonable efforts to prevent the delay of the issuance of the applicable Certificate of Acceptance as more particularly set out in **Schedule I [Acceptance Tests]**.

### **15.6 Go Live and Post Go Live Acceptance Requirements**

The City's General Manager of Corporate Services will sign the Certificate of Go Live (System) Acceptance and Certificate of Post Go Live (Final) Acceptance when, but only when, all of the acceptance requirements set out in **Schedule I [Acceptance Tests]** for such Certificates of Acceptance have been met.

## **ARTICLE 16**

### **LICENSE AND PROPRIETARY MATERIAL**

#### **16.1 Software Licence**

All Software provided by the Vendor to the City pursuant to this Contract will be governed by the terms of the Licence.

## 16.2 Grant of Licence

(a) **Licence**—Subject to the terms and conditions of this Contract, the Vendor now grants and the City accepts a perpetual (except as set out in this Contract), fully paid-up, non-exclusive, non-transferable (except to the extent permitted by this Contract) enterprise license (the “**Licence**”), free and clear of all liens, charges and encumbrances, to use and permit the use of the Software, Source Code and Documentation subject to the terms of this Contract.

(b) **Modules**—The following Modules of the Software are included in the Licence:

(i) 

(c) **Releases**—All Releases of the Software issued during the term of the Maintenance Agreement are included in the Licence.

(d) **Source Code**—The Source Code for the Software and all Releases of the Software issued during the term of the Maintenance Agreement are included in the Licence.

## 16.3 Enterprise Licence

The Licence is an “enterprise” licence and, accordingly, the following terms and conditions apply:

(a) **Permitted Transfers and Expansions of Licence**—Provided always that

(i) the City gives notice, pays the additional licence fee (if applicable) and otherwise complies with this Licence, and

(ii) the Software has the necessary operability to accommodate the same,

there is no limit on the number of users which the City may utilize under the Licence, provided that this shall not be construed as an extension of the performance standard warranty set out in **Section 13.1(i)**.

(b) **Balancing City’s Use with Vendor’s Competitive Interest**

(i) **General Restriction Against Uses Competitive with Vendor**—Except where and then only to the extent expressly permitted by this Contract, the City may not

(A) use the Software for a service bureau application, or

(B) sublicense, share, rent, or permit access to, the Software, Documentation or Source Code.

(ii) **Affiliated Organization Exemption from General Restriction—**  
The City's Affiliated Organizations are authorized to use the Software and Documentation provided that

(A) the Affiliated Organization's use is not an unauthorized exportation of any Vendor's Proprietary Material under applicable laws and regulations, and

(B) in no circumstances may the Affiliated Organization have access to the Source Code.

(iii) **Business Third Party Exemption from General Restriction—**  
The City's Business Third Party Users are authorized to access the Software and Documentation provided that:

(A) in no circumstances may the Business Third Party have access to the Source Code,

(B) in no circumstances may the Business Third Party use the Software to operate or manage the business of such Business Third Party, and

(C) the Business Third Party access is not an unauthorized exportation of any Vendor's Proprietary Material under applicable laws and regulations.

(c) **City Obligations Respecting Affiliated Organizations/Business Third Party—**With respect to each Affiliated Organization and Business Third Party that accesses the Software and Documentation, the City is liable to the Vendor for the acts and omission of each such Affiliated Organization or Business Third Party as if they were the City's acts or omissions, provided always that the City's liability therefor is limited to only those Losses which are direct (as opposed to indirect or consequential) and subject always to a cumulative maximum limit equal to the aggregate amount of payments which the City is obligated to make to the Vendor under this Contract.

(d) **Administrative/Organization Changes**

(i) If the City

(A) enters into a merger, amalgamation, consolidation or like combination with another municipal organization(s) to create either an expanded city or a new entity,

(B) enters into a regional program with the Greater Vancouver Regional District, Greater Vancouver Water District, Greater Vancouver Hospital District, Greater Vancouver Sewerage and Drainage District, Greater Vancouver Transportation Authority



(TransLink), or any other entity that represents or involves other local regional or municipal organizations, or

(C) is authorized or required by any provincial or federal government legislation to provide services to any public entity (to the extent that an Affiliated Organization exemption from the general restriction set out above does not apply),

then the rights under this Contract as between the Vendor and the City are fully transferable and expandable, at the City's sole option, subject to the following requirements.

(ii) If all relevant entities already own licences to the Software and are under maintenance contracts with the Vendor, no additional licence or maintenance fees will be payable.

(iii) If any entity does not already own a licence to the Software and is not a party to a maintenance agreement with the Vendor, then an additional licence and maintenance fee will be payable within ninety (90) days of the event referred to above, unless the parties cannot agree in which event the matter will be referred to arbitration pursuant to **Article 27 [Arbitration]** and the arbitrator will determine a fair licence and maintenance fee which fee will not exceed the fair market value of a licence and maintenance agreement similar to the Licence and the Maintenance Agreement if granted to a local government having of similar size as the entity without an existing licence and maintenance agreement.

Prior to effecting any transfer under this Subsection, the City must obtain a legally enforceable covenant from the assignee binding it to the terms of this Contract in a form approved by the Vendor acting reasonably and expeditiously.

(e) **Municipal Service Bureau Exemption**—From time to time the City may decide to provide operational services to other municipal organizations. This Contract does not in any way prevent the City from using the Software to service these requirements, nor does it allow for any additional payment to the Vendor for such use of the Software, provided always that the recipient of such services first acquires a licence from the Vendor and enters into a maintenance agreement with the Vendor.

(f) **Public Access Exemption**—As part of the Licence, the City may make available to members of the public access to information and the transaction of the City's business with those members of the public through the Software for which the City may charge a fee. No additional licence fee will be payable to the Vendor in respect of the public's access, use and benefit of the Software.

#### **16.4 Software Copies—Restrictions/Procedures on Use**

- (a) **Copies for Non-Productive Use**—The City is licensed to install a reasonable number of copies of the Software for non-productive use onto the City Technical Environment.
- (b) **Copies for Archive or Back-up Purposes**—The City may make one copy of the Software for archive purposes and such number of back-up copies of the Software as is consistent with the City's normal periodic back-up procedures. The City must maintain a log of the number and location of all originals and copies of the Software at all times.
- (c) **Protection of Vendor's Proprietary Rights on each Copy**—The City must include the Vendor and its licensors' copyright, trademark, service mark and other proprietary notices on any complete or partial copies of the Software, Documentation, Source Code or other Vendor's Proprietary Material in the same form or location as the notice appears on the original work.

#### **16.5 Documentation Copies—Restriction/Procedures on Use**

The City retains the right to produce such copies of the Documentation (in whatever media) as are reasonably required for the City's permitted uses of the System, provided always that any such reproduction, whether in whole or in part, must contain any Vendor proprietary notices contained in the original. The City may back-up the electronic copies of the Documentation and may place electronic copies on the City LAN or Intranet for use of City staff in the performance of their duties.

#### **16.6 Modifications and Extensions**

- (a) **Right to Modify and Extend**—The City may make modifications and extensions to the System. The City must follow the Vendor's then current prescribed standard procedures prior to making such modifications. The City agrees to insert in all copies of the Software, as modified, all copyright, trade secret or other proprietary notices as the Vendor may from time to time direct acting reasonably. The City acknowledges that, to the extent that such modifications or extensions do adversely affect the System, the Vendor will be released from its obligations under this Contract and the Maintenance Agreement, but only to such an extent and no further.
- (b) **City Ownership**—If the City independently develops any modifications or extensions without the Vendor's material participation, the City will have all right, title and interest in and to such extensions or modifications subject always the Vendor's rights in the original Software.
- (c) **City/Vendor Ownership**—If the Vendor develops any modifications or extensions jointly with the City, the modifications or extensions and all rights to same including without limitation moral rights will be the exclusive property of the Vendor, and the City will not assign, by operation of law or otherwise grant either

expressly or impliedly any right, title or interest or license to the modifications or extensions to any third party. The City will, however, be entitled to use such modifications and extensions developed with the City under this Contract and such modifications and extensions will be deemed to be included as part of the Software and deemed to have been licensed to the City under the Licence (and therefore included in the Total Purchase Price).

#### **16.7 Future Versions of Third Party Software**

If the City, at any time, decides to utilize any Vendor-approved third party software which the City has acquired directly from any third party in order to support and interoperate with the Vendor-Provided Hardware or the Modules of the Software then Licensed to the City, and such third party software is then interoperable with those Modules of the Software then Licensed to the City, then the Vendor will provide such version of the Software as is then commercially available in the market place as the City requires, all without payment of any additional licence fees to the Vendor, provided always that the City's use of such replacement version of the Software will be subject to the same terms and conditions as the Licence.

#### **16.8 City Owns Other Deliverables**

Unless otherwise specified in writing, upon payment in accordance with this Contract, the Vendor now assigns to the City any and all rights, title and interest, including, without limitation, inventions, whether patentable or not, copyrights, trade secrets and other proprietary rights to any Custom Development, or other deliverables to be delivered by the Vendor to the City pursuant to the Services, Maintenance Services or otherwise with respect to this Contract. The Vendor will give the City reasonable assistance, at the City's expense, to perfect the assignment of the rights, title and interest in and to such materials to the City.

Notwithstanding the foregoing, the City acknowledges that such materials may include data, modules, components, designs, utilities, subsets, objects, program listings, processes, tools, methodologies, models, diagrams, scripts, templates, analysis frameworks, leading practices and specifications (in this Section, "**Technical Elements**") owned or developed by the Vendor prior to, or independently from, this Contract. The Company retains all rights to the Technical Elements excluding any modifications or improvements made to the Technical Elements during or as a result of this Contract. Accordingly, if any such material contains any Technical Elements, the Company now grants to the City a perpetual, fully paid-up limited license to use such Technical Elements for the same purposes and to the same extent only as the City and its Affiliated Organizations may use the Software.

#### **16.9 Protection of Vendor's Proprietary Rights**

(a) **Vendor's Proprietary Material**—The City is granted only the right to use Vendor's Proprietary Material pursuant to this Contract and does not acquire any ownership rights or title in or to the Vendor's Proprietary Material or that of its

respective licensors. The Vendor retains for itself, and the City acknowledges that the Vendor so retains, all ownership rights in and to the Vendor's Proprietary Material.

(b) **City to Assist in Protection of the Vendor's Proprietary Material**—In order to protect the rights of the Vendor and its licensors in the Vendor's Proprietary Material, the City agrees as follows:

- (i) the obligations of this Section will survive the termination of this Contract;
- (ii) the City agrees to take reasonable steps and the same protective precautions to protect the Vendor's Proprietary Material from disclosure to third parties as it does with City's Proprietary Material and to take all reasonable precautions consistent with generally accepted standards in the data processing industry to safeguard the confidentiality of such information.
- (iii) the City agrees to take appropriate action by instruction, contract and otherwise with its employees and contractors to inform them of the trade secret, proprietary, and confidential nature of the Vendor's Proprietary Material and the updates and enhancements disclosed to the City under this Contract, and to obtain their compliance with the terms of same and the City will be liable to the Vendor for any breach by any such employees or contractors of their obligations of confidentiality in respect of Vendor's Proprietary Material and the updates and enhancements disclosed to the City under this Contract;
- (iv) the City will not without the Vendor's prior written consent, disclose, provide or make available any Vendor's Proprietary Material in any form, to any person, except to its bona fide employees, officers, directors or third parties including Affiliated Organizations and Business Third Parties whose access is necessary to enable the City to carry out the intent of this Contract;
- (v) the City will, prior to disclosing any Vendor's Proprietary Material to any third party, obtain from that third party a written acknowledgment that the third party will be bound by this Contract with respect to the Vendor's Proprietary Material;
- (vi) the City will not remove, alter, or obliterate any copyright, trademark or service mark or other proprietary notices from any Vendor's Proprietary Material; and
- (vii) the City acknowledges and agrees that it may receive Vendor's Proprietary Material from the Vendor or its licensors through training, maintenance and third party consulting or other means and as a result of the provision of Services pursuant to this Contract.

(c) **Vendor's Proprietary Material Confidential**—The City recognizes and agrees that all Vendor's Proprietary Material and enhancements or updates of same which are provided to the City by the Vendor

(i) are considered by the Vendor to be trade secrets of the Vendor,

(ii) are furnished by the Vendor to the City in confidence,

(iii) contain proprietary and confidential information, and

(iv) the Vendor's placement of a copyright notice will not be construed to mean that such portion has been published and will not derogate from any claim that such portion is a trade secret or contains proprietary and confidential information of the Vendor.

#### **16.10 Protection of City's Proprietary Material**

(a) **Vendor to Protect All City Records**—The City retains for itself, and the Vendor acknowledges that the City so retains, ownership and rights of ownership to all City's Proprietary Material including the following segregate category of City's Proprietary Material, which segregate category is comprised of all records entered into the Software Database or created by the System (the "**City Records**"). The Vendor will not, without the City's express prior written consent, disclose, copy or use, or permit the disclosure, reproduction or use of, any City Records, except only to the extent necessary for the Vendor to carry out contracted work for the City, and the Vendor will not transfer, disclose or provide access to any City Records to any other party except

(i) only to the extent necessary for the performance of this Contract,

(ii) only to those individuals who have a "need to know" the City Records in order to carry out this Contract, and

(iii) only to individuals located at the time of access within Canada.

(b) **Removal on Request**—The Vendor agrees upon request in writing from the City to immediately and permanently remove all City Records, electronic or otherwise, from any files, servers, drives or other storage facilities or devices in the Vendor's possession or control, except to the extent that where such removal would negatively affect the Vendor's ability to perform its other obligations under this Contract, the Vendor will nonetheless comply but will to such extent be released from its other obligations under this Contract.

(c) **Vendor to Assist in Protection of the City's Proprietary Material**—In order to protect the rights of the City and its licensors in the City's Proprietary Material, the Vendor agrees as follows:

- (i) the obligations of this Section will survive the termination of this Contract;
  - (ii) the Vendor agrees to take all reasonable steps and the same protective precautions to protect the City's Proprietary Material from disclosure to third parties as it does with Vendor's Proprietary Material and to take all reasonable precautions consistent with generally accepted standards in the data processing industry to safeguard the confidentiality of such information;
  - (iii) the Vendor agrees to take appropriate action by instruction, contract and otherwise with its employees and contractors to inform them of the trade secret, proprietary, and confidential nature of the City's Proprietary Material disclosed to the Vendor under this Contract, and to obtain their compliance with the terms of same and the Vendor will be liable to the City for any breach by any such employees or contractors of their obligations of confidentiality in respect of City's Proprietary Material disclosed to the Vendor under this Contract;
  - (iv) the Vendor will not without the City's prior written consent, disclose, provide or make available any City's Proprietary Material in any form, to any person, except to its bona fide employees, officers, directors or third parties whose access is necessary to enable the Vendor to carry out the intent of this Contract;
  - (v) the Vendor will prior to disclosing any City's Proprietary Material to any third party, obtain from that third party a written acknowledgment and agreement that the third party will be bound by this Contract with respect to the City's Proprietary Material;
  - (vi) the Vendor will not remove, alter, or obliterate any copyright, trademark or service mark or other proprietary notices from any City's Proprietary Material; and
  - (vii) the Vendor acknowledges and agrees that it may receive City's Proprietary Material from the City or its licensors through training, maintenance and third party consulting or other means and as a result of the provision of Services pursuant to this Contract.
- (d) **City's Proprietary Material Confidential**—The Vendor recognizes and agrees that all City's Proprietary Material provided to the Vendor by the City
- (i) are considered by the City to be trade secrets of the City,
  - (ii) are furnished by the City to the Vendor in confidence,
  - (iii) contain proprietary and confidential information, and

(iv) the City's placement of a copyright notice will not be construed to mean that such portion has been published and will not derogate from any claim that such portion is a trade secret or contains proprietary and confidential information of the City.

#### **16.11 Exceptions to Non-Disclosure**

For the purpose of this Contract, Proprietary Material of either party will not include information that, as demonstrable by the disclose through written evidence,

- (a) at the time of disclosure was in the public domain,
- (b) after disclosure, is published or otherwise becomes part of the public domain through no fault of the disclose, and
- (c) was known to the disclosee prior to the time of disclosure and was not acquired, directly or indirectly from the discloser or anyone on its behalf.

Neither party will be in breach of its obligations herein with respect to the Proprietary Material of the other party if it is ordered to disclose such Proprietary Material by a Court or by a regulatory, governmental or other similar authority of competent jurisdiction. Such disclosure shall not, in and of itself, change the confidential nature of the Proprietary Material so disclosed and the disclosing party will immediately provide the other party with notice that it has been required to disclose the Proprietary Material as soon as possible and will provide reasonable assistance to the other party in any attempt by that other party to block, restrict or limit the extent of such mandatory disclosure.

#### **16.12 Where City Discontinues Use of Software**

Within thirty (30) days from the date of the City's discontinuance of the use of any portion of the Software licensed under this Licence, the City will furnish the Vendor with written notice certifying that, through its best efforts and to the best of its knowledge, all machine-readable code, user documentation or other related materials and all Source Code provided to the City with such Software, including any copies, whether in whole or in part, have been returned or destroyed as follows:

- (a) all documents relating to such discontinued portion of the Software will be returned to the Vendor, and
- (b) the originals and all copies of any machine-readable materials containing all or any portion of the discontinued Software will be destroyed or purged so as to totally remove from such machine-readable materials all codes relating to the discontinued portion of the Software.

Where the City's back-up and archiving procedures make complete compliance with this provision impractical, the City will be released from its obligations under this provision to such extent provided always that the City will remain liable to

protect the un-removed portion(s) from disclosure as set out elsewhere in this Licence.

## **ARTICLE 17**

### **WORKERS' COMPENSATION BOARD**

#### **17.1 Maintain Coverage—General**

The Vendor will carry and pay for full Workers' Compensation Board (in this Article, “**WCB**”) coverage for itself and all of its personnel engaged in or on the Services, failing which the City has the unfettered right to set off the amount of any unpaid premiums and assessments for such WCB coverage against any amounts owing by the City to the Vendor, provided that the City has given prior written notice to the Vendor that the City intends to exercise such right of set off and the Vendor has not remedied the failure within five (5) Business Days following the receipt of such notice. The City will have the right to withhold payment under this Contract until the WCB premiums, assessments or penalties in respect of the Services have been paid in full.

#### **17.2 Provide Evidence of Coverage—General**

At any time and from time to time, on the request of the City, the Vendor will provide the City with the Vendor's WCB registration number and a letter from the WCB confirming that the Vendor is registered in good standing with the WCB and that all assessments have been paid to date prior to the City having any obligation to pay any invoice under this Contract. The Vendor will indemnify the City and hold harmless the City from all manner of Losses arising out of or in any way related to unpaid WCB assessments owing from any person or corporation engaged directly or indirectly by the Vendor in the performance of the Services or arising out of or in any way related to their failure to observe safety rules, regulations and practices of the WCB, including penalties levied by the WCB.

#### **17.3 Special WCB Requirements Where Services Are Provided on City Sites**

With respect to all Services provided by the Vendor on the Installation Sites, in the Project Office or on any other City sites, the Vendor is now appointed and now accepts appointment as the “prime contractor” as defined by the WCH OHS Regulation for the purposes of this Contract, but only with respect the Vendor’s and the Vendor’s sub-contractor’s employees and only with respect to WCB OHS Regulations that apply to their conduct independently of the City’s compliance with WCB OHS Regulations that apply to the condition or contents of Installation Sites, Project Office or other City sites.



## ARTICLE 18

### OCCUPATIONAL HEALTH AND SAFETY

#### 18.1 Must Conform

Each party and its sub-contractors must conform to all occupational health and safety Laws and Regulations.

#### 18.2 OHS Indemnity

Without limiting the general scope of the other indemnities granted within this Contract, each party (the “**Indemnifier**”) will indemnify and save harmless the other (the “**Indemnitee**”) harmless from and against any Losses suffered or incurred by the Indemnitee by reason of failure of the Indemnifier, its agents or employees, or any sub-contractors of the Indemnifier, its agents or employees to comply or ensure compliance with the occupational health and safety Laws and Regulations mentioned above.

#### 18.3 Limitation of Liability

Despite **Section 18.2 [OHS Indemnity]**, neither party will be liable for any Losses other than the direct out-of-pocket Losses and under no circumstance will either party be liable under this **Article 18 [Occupational Health and Safety]** for any Losses on account of lost profits, lost revenue, or any other form of economic loss.

## ARTICLE 19

### SUB-CONTRACTORS

#### 19.1 Consent Required for Sub-Contractors

The Vendor now confirms that it has no intent to utilize any sub-contractors in connection with the performance of this Contract other than as set out in **Schedule E [Sub-Contractors]**. Except as set out in **Schedule E [Sub-Contractors]**, the Vendor will not engage any sub-contractor in connection with the performance of its obligations under this Contract without the prior written consent of the City, such consent not to be unreasonably or arbitrarily withheld, delayed or conditioned.

#### 19.2 Vendor Responsible for Sub-Contractors

The Vendor will be fully responsible to the City for acts and omissions of its sub-contractors and all other persons directly or indirectly retained or employed by the Vendor in the performance of this Contract in the same manner and to the same extent as the Vendor. The Vendor will be solely responsible for paying the fees and expenses of all sub-contractors engaged by them in connection with the Services and the City will have no liability in connection with same.

### **19.3 No Contract Formed Between City and Sub-Contractors**

Nothing contained in this Article or in any other provision in any of the Contract Documents will create any contractual relations between any sub-contractor of the Vendor and the City, save that the City will receive the benefit of all warranties set out in this Contract regardless of whether the Software or Services were supplied by the Vendor, its sub-contractors, employees, or any other agent of the Vendor.

## **ARTICLE 20**

### **PROJECT TEAM MANAGEMENT**

#### **20.1 Team Composition**

Subject to **Section 20.2 [Team Substitutions]**,

- (a) the Vendor will furnish all Project Team Members required to perform the Services, and all such personnel will be competent and qualified to perform the Services,
- (b) if specific personnel have been identified in **Schedule F [Key Personnel]**, the Vendor will utilize only those Project Team Members therein identified,
- (c) the parties now confirm and agree that the key personnel listed in **Schedule F [Key Personnel]** have been accepted by the City,
- (d) the City will utilize only those Project Team Members which satisfy the roles and responsibilities described in the Contract Documents, and
- (e) the City and Vendor will mutually review Project Team size and composition on a periodic basis to verify whether or not the Project Team Members are being deployed in accordance with this Contract and to implement the necessary adjustments or corrective action, if required.

#### **20.2 Team Substitutions**

Except for substitutions required by circumstances not within its reasonable control,

- (a) the Vendor may not make substitutions of its Project Team Members without the prior written consent of the City Project Manager, whose consent will not be unreasonably or arbitrarily withheld, delayed or conditioned, and
- (b) the City may make substitutions of Project Team Members, but if such substitutions are made without prior notice to and consultation with and consent of the Vendor Project Manager, then the Vendor will be released from its obligations under this Contract to the extent that such substitution adversely affects or delays the Vendor's ability to perform the Services.

For the purposes of this Section, “substitutions required by circumstances not within its reasonable control” mean substitutions required by virtue of illness, death, injury, pregnancy, medical leave, or termination of employment or contract but expressly exclude situations where the Vendor’s Project Team Member is called upon to perform services for another client of the Vendor or its affiliates and situations where the City’s Project Team Member is assigned to work on another project of the City.

### **20.3 Substitution Requests**

The Vendor and the City may, with stated reasons and acting reasonably, request that the other replace a Project Team Member. Each of the City and Vendor will, subject to scheduling and staffing considerations, make commercially reasonable efforts to replace the individual with someone of substantially similar competency and experience.

### **20.4 Cost of Substitutions**

Regardless of whether or not the City consents to a substitution, or requests a substitution, the Vendor will ensure that there is no delay or increase in the Total Purchase Price on account of a replacement of the Vendor’s Project Team Members and will ensure that the replacement Project Team Member has been sufficiently briefed by the Vendor and is able to carry out the replaced Project Team Member’s tasks with at least the same calibre and efficiency as such replaced Project Team Member. The City and Vendor agree that the maximum transition period sufficient to adequately brief the replacement Project Team Member shall be no more than two (2) Business Days.

### **20.5 Conduct Standards**

On the written request of the City Project Manager, the Vendor will immediately cease the use of any individual for the performance of the Services which the City Project Manager has reason to believe is unsuitable for the performance of the Services including but not limited to,

- (a) the loss of or failure by that individual to obtain any Security Clearance (as defined below),
- (b) intoxication,
- (c) use of foul, profane, vulgar or obscene language or gestures,
- (d) solicitation of gratuities or tips from any person for services performed under the Contract Documents,
- (e) wilful, negligent or reckless action in disregard of safety or sanitary requirements or regulations, or
- (f) any action which may constitute a public nuisance or disorderly conduct.

The Vendor will promptly comply with each such request and will satisfy the City that the individual has been removed from further involvement with the performance of the Services. For the purposes of this Section, “**Security Clearance**” means the security clearance criteria applied by the City from time to time to City and third party personnel who, as part of their duties, require access to security restricted areas, facilities or information.

## **20.6 Independent or Dependent Contractors**

- (a) Subject to **Article 19 [Sub-Contractors]**, the Vendor confirms that it does not intend to utilize any independent or dependent contractors to perform the Services, except for individual Project Team Members who may be retained by Vendor on an independent or dependent contractor basis rather than a contract of employment basis.
- (b) If an independent or dependent contractor is used by the Vendor under this Contract, the Vendor will legally bind such contractor to comply with this Contract.
- (c) Nothing in any of the Contract Documents will create any contractual relationship between a contractor of Vendor and the City.

## **20.7 City Resources**

The City acknowledges that the Vendor's performance of the Services may be adversely affected if the City fails to provide the types and numbers of Project Team Members described or contemplated by the Contract Documents, including the Implementation Schedule.

## **20.8 Vendor Project Manager**

The Vendor Project Manager shall be available during Operating Hours of the City as the principal contact between the parties. The Vendor Project Manager shall be designated not later than the Effective Date. If the Project Manager becomes unable to fulfill this obligation, the Vendor shall immediately appoint another of equal authority.

# **ARTICLE 21**

## **INDEMNITY AND LIABILITY**

### **21.1 Indemnity For Personal/Property Loss**

Each party (the “**Indemnifier**”) will indemnify and save the other party and its respective officers, employees and agents (collectively, the “**Indemnitee**”) harmless from and against all Losses on account of any damage to property or injury (including death) to any person (including damage or injury to the Indemnitee) which may be caused or be alleged to have been caused as a direct or indirect result of any default, willful

misconduct or negligent act or omission of the Indemnifier or the Indemnifier's officers, employees or agents, in the performance of the Indemnifier's obligations pursuant to this Contract.

## **21.2 Releases**

(a) The Vendor now accepts the Project Office, Installation Sites, and all other City sites on an "as is" basis and so now assumes all risk of damage or injury to the Vendor's officers, employees, and agents, from whatever cause.

(b) Subject to **Section 21.1 [Indemnity for Personal/Property Loss]**, the Vendor now releases the City from all liability for any Losses arising from personal injury, physical sickness, disease (including without limitation and by way of example only, personal discomfort, illness and damage to reputation), or loss or destruction of or physical damage to personal property arising from

(i) **General Accidents**—any acts or omissions of the City or its contractors or employees, or

(ii) **Accidents on the Site**—any occurrence on or about City premises, including by way of example only, and without limiting the general scope of this Section,

(A) lack of repair, collapse of any building or improvement on City premises,

(B) the leakage or explosion of water, gas, sewer, steam, electricity, electromagnetic or any other form of radiation, energy, waves or signals,

(C) the presence or escape of asbestos or any other hazardous, noxious, or restricted substance, or

(D) theft, damage or misappropriation of personal property.

## **21.3 Liability Limited**

Each party's liability in respect of all Losses of the type described in **Section 21.1 [Indemnity for Personal/Property Loss]** is limited to the amount of insurance which such party's insurer pays out, less any deductible payable by the insured, as a result of such Losses, or would have paid out had such party complied with **Article 12 [Insurance]**.

## **21.4 Vendor's Limitation on Liability for System/Services Defaults**

Despite any other term of this Contract (except in respect of **Article 18 [Occupational Health and Safety]**, **Section 22.3 [Major Vendor Defaults]** and **Article 24 [Intellectual Property Protection]**), the total cumulative aggregate liability of the

Vendor and its suppliers and their respective subsidiaries, affiliates and parent corporations and each of their respective directors, officers, employees, contractors and agents (collectively the “**Vendor Indemnifiers**”) in respect to all Losses arising with respect to the System (excluding Intellectual Property Rights and infringements), the Services and otherwise arising out of this Contract will not exceed the greater of

- (a) the amount of insurance proceeds less the applicable deductible paid out by the Vendor Indemnifiers’ insurers with respect to such Losses, and
- (b) \$◆,

regardless of the cause of action, including contract (including fundamental breach), tort (including negligence), strict liability or otherwise.

### **21.5 City’s Limitation on Liability for Payment Defaults**

Despite any other term of this Contract (except in respect of an Intentional City Fundamental Breach), the total cumulative aggregate liability of the City and its suppliers and their respective subsidiaries, affiliates and parent corporations and each of their respective directors, officers, employees, contractors and agents (collectively the “**City Indemnifiers**”) in respect to all Losses arising with respect to the purchase by the City of the System (excluding Intellectual Property Rights and infringements) and Services arising out of this Contract will not exceed the greater of

- (a) the amount of insurance proceeds less the applicable deductible paid out by the City Indemnifiers’ insurers with respect to such Losses, and
- (b) ◆ dollars (\$◆),

regardless of the cause of action, including contract (including fundamental breach), tort (including negligence), strict liability or otherwise.

### **21.6 Parties Not Liable for Indirect Losses**

Despite any other term of this Contract (except in respect of an Intentional City Fundamental Breach, **Article 18 [Occupational Health and Safety]**, **Section 22.3 [Major Vendor Defaults]** and **Article 24 [Intellectual Property Protection]**), neither the City nor the Vendor, nor any of their respective affiliates, subsidiaries, parent corporations, any of their parent corporation’s affiliates or subsidiaries, including their officials, officers, directors, employees, contractors or agents, will be liable to or through the other for any Losses which are in the nature of indirect, incidental, special, consequential or punitive damages (including, but not limited to, lost profits, lost revenue or failure to realize expected savings) sustained or incurred in connection with the City’s failure or delay in the payment nor for the Vendor’s failure to deliver the System or perform the Services or otherwise arising out of this Contract, regardless of the action, including contract (including fundamental breach), tort (including negligence), strict liability or otherwise, and whether or not such damages are foreseeable and whether or not the other party is advised of the possibility of such Losses arising.

### **21.7 Data Corruption or Loss**

To the extent that the Vendor is responsible for any loss or corruption of any data of the City, the Vendor will promptly restore or recreate such data (within the timeframes required by the Implementation Schedule) and, if it is in default of such obligation, the Vendor will be responsible for the City's reasonable, direct, out-of-pocket costs (to the limit described in **Section 21.4 [Vendor's Limitation on Liability for Software/Services Defaults]**) to restore or recreate such Data, but in no event will the Vendor be responsible for any indirect, incidental, consequential, special or punitive damages suffered or incurred by the City as a result of such lost or corrupted data.

### **21.8 Interest Liability Outside of Liability Limits**

The limitations on liability set out in this Article do not apply to each Party's liability to pay interest on any overdue amount that is payable under this Contract.

## **ARTICLE 22**

### **VENDOR DEFAULTS**

#### **22.1 Event of Default—Defined**

Each of the following breaches by the Vendor will constitute an "Event of Default" entitling the City to exercise the remedies set out in **Section 22.2 [Default Remedies on Vendor's Default]** below:

- (a) at any time, the Vendor is in default of an obligation to pay the City money and the City has notified the Vendor in writing that the Vendor is in default and the Vendor has not paid the money in full with interest within five (5) Business Days of such notice;
- (b) at any time, the Vendor is in default of its obligations under this Contract (other than a failure to pay money) and the City has notified the Vendor in writing that it is in default of such obligations under this Contract and
  - (i) the default is of a nature that with reasonable diligence could have been remedied within seven (7) Business Days of such notice,
  - (ii) the default is of a nature that with reasonable diligence requires more than seven (7) Business Days to remedy but the Vendor has not promptly and continuously made reasonable efforts to remedy the default, following receipt of the notice;
- (c) Despite **Section 22.1(b)**, the System or Services fail to conform to the Vendor's obligations under this Contract and the correction process and timeframe referred to in **Schedule I [Acceptance Tests]** has been completed

and such failure has materially impacted or will materially impact the Implementation Schedule.

## **22.2 Default Remedies on Vendor's Default**

Despite **Article 27 [Arbitration]**, if there is an Event of Default as defined in **Section 22.1 [Event of Default—Defined]**, the City has the option and right, but no obligation, to exercise any or all or any combination of the following remedies without in any way limiting or prejudicing any of the City's other options or remedies at law or in equity or under any other term of this Contract (for example those with respect to the Holdback as set out in **Schedule C1 [Payment Schedule]**);

(a) the City may sue for the recovery of all Losses while requiring the Vendor to continue with performance of this Contract, but may not retain any greater portion of the Holdback than is expressly permitted pursuant to **Schedule C1 [Payment Schedule]**,

(b) the City may, to the extent that any System or Services have been delivered and installed, retain all or any part of such System and Services, and reject the balance, and pay to the Vendor the balance of the Holdback, if any, payable to the Vendor pursuant to **Schedule C1 [Payment Schedule]**, provided that the City will, with respect to any Software component of the System it rejects, comply with the Software removal and destruction obligations set out in **Article 16 [License and Proprietary Material]**,

(c) the City may elect to reject all such System **[components]** or Services, in which case the City will be entitled to retain all of the Holdback then held by the City and the Vendor will be liable for all of the City's Losses that may be incurred by reason of the Vendor's default and the City will comply with the Software removal and destruction obligations set out in **Article 16 [License and Proprietary Material]**, and the City will have no obligation or liability following such termination and cancellation except with regard to confidentiality obligations which will survive such rejection of the System **[components]**, and

(d) exercise any of its other rights at law or in equity in lieu of or in any combination with the above remedies.

## **22.3 Major Vendor Default**

Despite any other term of this Contract, where the Vendor

(a) breaches **Section 16.10 [Protection of City's Proprietary Material]**,

(b) wrongfully uses a disabling device within the System in such a manner as to interrupt the City's use of the System,

(c) fails to preserve the City's legal rights to use the System,



(d) fails to comply with or fulfill its limited obligations under **Article 24 [Intellectual Property Protection]**, or

(e) wrongfully terminates or attempts to terminate the Licence,

the Vendor's liability will not be limited as set out in **Article 21 [Indemnity and Liability]** and the Vendor will be liable for all Losses.

#### **22.4 Default Remedies Limited**

For further certainty, the City's remedies for Events of Default as outlined in this Article are subject to the Vendor's limitations on liability as set out in **Article 21 [Indemnity and Liability]**, except for any breach to which **Section 22.3 [Major Vendor Defaults]** applies.

### **ARTICLE 23**

#### **CITY DEFAULTS/DELAYS**

##### **23.1 Default of City's Obligations**

If the City defaults in the observance or performance of any of its obligations under this Contract and provided always that the default is not an Intentional Fundamental Breach, then, despite any other term of this Contract, the following rules apply:

(a) the Vendor will have no remedy in connection with such default unless the Vendor first gives the Director of Legal Services of the City written notice specifying the nature of the default, that the notice is given pursuant to this Article, and stating with precision what is required to be done to cure such default;

(b) the City will have the following periods of time to cure such default without liability:

(i) five (5) Business Days in the case of a default to pay money;

(ii) seven (7) Business Days in the case of a default that with reasonable diligence may be remedied within seven (7) Business Days; and

(iii) a reasonable period of time in the case of any default that with reasonable diligence would require more than seven (7) Business Days to remedy, provided that the City commences and proceeds continuously and diligently to remedy same;

in each case after receipt of such notice by the City's Director of Legal Services;

(c) with respect to defaults other than a failure to pay money, if the City fails to cure such default within the required period, and the Vendor diligently attempts to mitigate the delays if any caused by such default, and, even with such mitigation, the default is such as to cause the Vendor to fail to meet the Implementation Schedule, then the following will apply:

(i) the Vendor will be allowed an extension of time equal to the period of time that the City was in default, plus any additional period required to accommodate the Vendor for the reasonable impact of the delay on the Vendor (the “**City-Caused Delay**”);

(ii) the City will pay in addition to the Total Purchase Price an amount equal to interest at the ninety (90) Day LIBOR (London Inter-Bank Offered Rate) plus 3% per annum simple interest calculated monthly, prorated for any periods less than a full month, for the City-Caused Delay, calculated on such amounts which would otherwise have become due and payable at an earlier point in time under this Contract (but for further certainty excluding any and all delays in the receipt or timing of the Maintenance Fees);

(iii) any delay resulting from any Unavoidable Delay will not be considered a delay due to City default and no interest shall be charged to or be payable by the City for such delays; and

(iv) the City will have no further liability; and

(d) with respect to any default in the payment of money other than as set out above, then the Vendor will not have any rights or remedies except that

(i) if the amount is more than thirty (30) days in arrears, then the Vendor will have the right to issue a written notice to the City’s Director of Legal Services that unless payment in full with interest is made within five (5) Business Days of such notice the Vendor will be entitled to submit the matter to arbitration pursuant to **Article 27 [Arbitration]** seeking that it be released from any further obligation to provide the Services, provided that the Vendor will not have the right to cancel the Licence or the Maintenance Agreement (except for any breach by the City of its obligations under the Maintenance Agreement which entitle the Vendor to terminate the Maintenance Agreement) and the Vendor will have no further rights except to submit the matter to arbitration pursuant to **Article 27 [Arbitration]** for the recovery of the arrears with interest plus all reasonable legal costs and disbursements on an indemnity basis, and

(ii) the City will have no further liability and the Vendor will have no further remedies, except as may be ordered by the arbitrator.

## 23.2 Major City Default

(a) **Intentional City Fundamental Breach (Non-Payment)**—Despite any other term of this Contract, where the City is in default of an obligation to pay money under this Contract (but excluding obligations to pay money under the Maintenance Agreement) and has not issued any written notice to the Vendor disputing its obligation to pay the amount invoiced by the Vendor and due and payable under the terms of this Contract (each an “**Intentional City Fundamental Breach**”), then the Vendor may give written notice of its intent to exercise its rights under this **Section 23.2(a)** and, if the City fails to pay the amount owing or to issue a written notice reasonably disputing the obligation to pay the invoiced amount within five (5) Business Days of such notice, and the Vendor is subsequently found to be owed the amount referred to in such invoice, the City will be liable to pay interest to the Vendor at the rate of 20% per annum on the amount outstanding from the date due until it is paid in full and the Vendor will have the right, in its sole discretion and without affecting the obligation of the City to pay the amount that the City has failed to pay, to suspend the Services (or Maintenance Services, as applicable) until such time as such amount is paid with applicable interest.

(b) **Intentional Fundamental Breach (Other)**—Despite any other term of this Contract, where the City breaches **Section 16.9 [Protection of Vendor’s Proprietary Rights]** and such default is the result of an error or omission which is neither intentional nor grossly negligent, the City’s liability for the Vendor’s Losses will be limited as set out in **Article 21 [Indemnity and Liability]**; however, where such a default is the result of an intentional or grossly negligent error or omission (each an “**Intentional City Fundamental Breach**”), the City’s liability will not be limited as set out in **Article 21 [Indemnity and Liability]** and the City will be liable for all Losses.

For the purposes of this **Section 23.2(b)**, “intentional or grossly negligent” means that the error or omission was consciously directed or permitted by an official, officer, director, or senior manager (including City Project Manager) of the City who knew or ought to have known that the error or omission was or could reasonably be expected to have caused such default.

(c) **Intentional Fundamental Breach (Termination of Licence)**—Despite any other term of this Contract, where the City has committed an Intentional Fundamental Breach and it is not an isolated one-time default but is in the nature of a continuing Intentional Fundamental Breach, then the Vendor may apply to a court of competent jurisdiction for injunctive relief and may seek an order for the termination of the Licence as a supplemental or alternative remedy and where, after making such an application, the court makes the order sought by the Vendor and the City elects not to appeal or, the City or Vendor seeks to appeal and, after exhausting both parties’ rights of appeal, the City is ordered to cease its use of the Software under the Licence, then the Licence will be terminated.

### **23.3 Default Remedies Limited**

For further certainty, the Vendor's default remedies as outlined in this **Article 23 [City Defaults/Delays]** are subject to the City's limitations on liability as set out in **Article 21 [Indemnity and Liability]**, except for any Intentional City Fundamental Breaches.

### **23.4 Excessive City-Caused Delays/Abandonment**

Despite any other term of this **Article 23 [City Defaults/Delays]**, if

- (a) any City-Caused Delay or number of City-Caused Delays (separate and apart from any Unavoidable Delay) have the cumulative effect of delaying the Vendor's performance of the Implementation Schedule by more than ninety (90) Business Days in total, then the Vendor has the right to issue a written notice (in this Article, "**Excessive Delay Notice**") pursuant to this Section, or
- (b) the City has decided to abandon the Project and has issued a notice (in this Article, a "**Notice of Abandonment**") to the Vendor and the Notice of Abandonment has been issued prior to but not after thirty (30) calendar days before the expiry of a Project Suspension Period (defined below)

then the following provisions will apply:

- (c) upon receipt by the City of the Excessive Delay Notice or receipt by the Vendor of the Notice of Abandonment, the Project will be stopped immediately and the Vendor will not be liable to continue the performance of the Services and the City will not be liable in any way for any of the Vendor's Losses in connection with the effects of the City-Caused Delay or the Notice of Abandonment except but only as expressly set out in this **Section 23.4 [Excessive City-Caused Delays/Abandonment]**, provided that
  - (i) the City's right to the Holdback will be cancelled and the City will immediately become obligated to elect within five (5) Business Days of receipt of such notice by the applicable party to either immediately pay all Licence Fees or return the System and in any event, the City will be liable to pay for all Implementation Services and Customization Services performed by the Vendor up to the date of receipt of such notice, plus the sum of ten thousand dollars (\$10,000), which sum represents a genuine pre-estimate of the liquidated damages that will be suffered by the Vendor in such event and which sum is not a penalty,
  - (ii) where the City fails to make its election in writing within the five (5) Business Day period, the City will be deemed to have elected to immediately pay all the Licence Fees and failure to pay for same will be governed by this **Article 23 [City Defaults/Delays]**, and
  - (iii) if the City has, within the five (5) Business Day period, elected in writing to return the System, the Vendor may, at its sole discretion and

upon provision of written notice to the City, immediately terminate the Licence.

### **23.5 City Right to Suspend**

Where the City is of the view that it needs to suspend the Project, it may do so on giving thirty (30) days' prior written notice (in this Article, "**Suspension Notice**") of its intent to do so, provided always that such suspension may only occur once and may only be for a single period of up to six (6) months (the "**Project Suspension Period**"). A Suspension Notice may be given at any time prior to but not after the issuance of an Excessive Delay Notice or Notice of Abandonment. If the City issues a Suspension Notice, the parties will mutually agree, acting reasonably, on the adjustments to the Implementation Schedule and the Implementation Services fees necessitated by such suspension.

Upon issuing a Suspension Notice, the City will be liable to pay for all Implementation Services and Customization Services performed by the Vendor prior to receiving the Suspension Notice all other amounts will remain payable on the same terms and conditions as before except deferred for the Project Suspension Period and except that the City will be liable to pay interest on such deferred amounts at the rate set out in paragraph (c)(iii) of **Section 23.1 [Default of City's Obligations]**.

### **23.6 Entire Liability of City**

Except as expressly set out herein, this Article states the entire liability of the City and the sole remedies of the Vendor for any and all defaults under this Contract.

## **ARTICLE 24**

### **INTELLECTUAL PROPERTY PROTECTION**

#### **24.1 Vendor to Assume Defence of Suits Against City**

The Vendor will

- (a) assume the defence of any suit brought against the City or any Affiliated Organization or Business Third Party to the extent it is based upon infringement of any Intellectual Property Rights arising from use or sale of the System or any part thereof under this Contract or any current Release or modification of the Vendor-Provided Hardware or the Software supplied by the Vendor under the terms of this Contract,
- (b) pay all expenses associated with such defence,
- (c) indemnify and save harmless the City against any and all Losses incurred by the City as a result of such suits, and

(d) subject to **Section 24.2 [Claim of Intellectual Property Infringement]**, immediately acquire the rights for the City to use the System or part thereof or immediately provide the City with non-infringing System components which will meet the terms of this Contract if the City is prevented from using the System or any part thereof as a result of any suit or action taken against the City,

provided that:

(e) the Vendor is given the sole and exclusive control of the defence suit and sole and exclusive control of negotiations relative to the settlement of it,

(f) the System or such part thereof is used by the City in the form, state or condition as delivered by the Vendor, or if it is not so used, such deviation is not the cause of the suit, and

(g) the City provides the Vendor with written notice of the claim within twenty (20) Business Days after the City's Director of Legal Services receives formal notice of the claim and cooperates with the Vendor in the defence of the suit and does not compromise or settle the suit without the prior written consent of the Vendor, such consent not to be unreasonably or arbitrarily withheld or delayed, and such infringement is not due solely to the combination of the Software with any third party software or hardware and such infringement is not caused by a modification to the Software created by the City or any third party on behalf of the City or such infringement does not result from any modification created by the Vendor at the request of the City pursuant to a Change Request that is not subsequently a Release.

## **24.2 Claim of Intellectual Property Infringement**

If the System or any part thereof which has not incurred any unauthorized modifications or combinations by the City is or becomes, or in the Vendor's opinion is likely to become, the subject of a claim of Intellectual Property infringement, then the City will permit the Vendor to, and the Vendor will promptly, at the Vendor's option and expense, either

(a) procure for the City the right to continue using the System or such part thereof, or

(b) replace or modify the System or such part thereof with non-infringing System or parts thereof that will meet the terms of this Contract.

## **24.3 Temporary Provision of Software**

In the performance of the Services, either party may provide software to the other on a temporary basis. Both parties agree to the following with respect to the handling of the other's software (except for the Software, Third Party Software and Third Party Database Software)

- (a) not to modify the software, except as permitted under the terms of this Contract,
- (b) to copy the software only as required for use on a processor under the control of either party or for archival purposes,
- (c) to use the software only as required for the applicable Service,
- (d) to confine the use of the software to the employees or agents of either party who require it for the Service,
- (e) to maintain, and disallow the removal of, any proprietary or copyright notices, and
- (f) to return the software to the other party upon the termination of the applicable Service and warrant in writing that all copies have been returned and that no further use will be made of them.

#### **24.4 Limitation of Liability Does Not Apply**

For greater certainty, the Vendor's limitations on liability as set out in **Article 21 [Indemnity and Liability]** do not apply to this Article.

### **ARTICLE 25**

#### **RECORDS**

##### **25.1 Full Audit Rights and Access**

All financial accounts, records, invoices, receipts and vouchers of the City and Vendor will at all times be open to audit and inspection by the authorized representative of the other party when and to the extent reasonably necessary to satisfy itself as to the other party's compliance with this Contract and the City and Vendor will supply the authorized representative of the other party with all such information as they may from time to time require in connection with such audit and inspection. The Vendor will not, within a period of five (5) years from termination or completion of this Contract, without the written consent of the City, dispose of any such accounts, records, invoices, receipts or vouchers but shall preserve and keep them available for audit and inspection at any time. The City will maintain, preserve and archive its records in the manner required under the *Vancouver Charter*.

## ARTICLE 26

### COMPLIANCE WITH LAWS

#### 26.1 Vendor to Comply

In carrying out its obligations, the Vendor will familiarize itself and comply with all applicable laws, bylaws, regulations, ordinances, codes, specifications and requirements of all regulatory authorities, and will obtain all necessary licenses, permits and registrations as may be required by law.

#### 26.2 Vendor Will Pay and Discharge

The Vendor will pay and discharge all wages, fees, salaries, charges, costs and expenses due and accruing due to any of its employees, agents, suppliers and sub-vendors and will make and remit to the proper authorities all deductions required by law.

## ARTICLE 27

### ARBITRATION

#### 27.1 Arbitration

Subject always to the City's and Vendor's rights and remedies expressly set out herein, any dispute under this Contract that is not resolved amicably by the parties following the expenditure of reasonable efforts to do so, will be referred to a single arbitrator under the provisions of the *Commercial Arbitration Act* (British Columbia) and the decision of that single arbitrator will be final and binding upon the parties. Except as may otherwise be agreed in writing between the parties,

- (a) the arbitration will be conducted in accordance with the procedural rules of the British Columbia International Commercial Arbitration Centre (in this Article, the "**BCICAC**"),
- (b) the appointing authority will be the BCICAC,
- (c) the arbitration will be conducted in the English language in Vancouver, British Columbia, and
- (d) the costs of arbitration (other than the costs incurred by the parties for their respective legal representation in the proceedings) will be borne equally by the parties except where otherwise stipulated in this Contract.

#### 27.2 Alternative if no BCICAC

If the BCICAC is not in operation at the relevant time, the appointing authority and rules governing procedure will be those of such similar entity as may be its successor. If no



such entity exists, the appointing authority will be the Supreme Court of British Columbia and the rules governing procedure will be those last published by the BCICAC.

## ARTICLE 28

### GENERAL PROVISIONS

#### 28.1 Permits and Licenses

The Vendor will obtain and pay for all permits and licenses required either by the federal government, provincial government, the City or any other authority to enable the Vendor to do all things necessary to perform its obligations under this Contract according to the provisions of the Contract Documents.

#### 28.2 Non-Solicitation

If, during the term of the Project and for a period of twelve (12) months afterwards, either the Vendor or the City (or their respective affiliates) contracts (whether by contract of employment, consulting service or other means) with an individual who was formerly an employee of the other party and who had performed activities or provided services in connection with this Contract, the hiring party will (unless the other party has waived in writing the provisions of this section) pay to the former employer six months salary (inclusive of all fringe benefits) at the employee's former rate of pay, on the date that the hiring party first contracts for services from that individual.

#### 28.3 Vendor not Agent or Employee

Unless specifically agreed to in writing by the City, the Vendor will not be the employee or agent of the City and accordingly, will not purport to enter into any contract or subcontract on behalf of the City, or otherwise act on its behalf, and the Vendor acknowledges that the City will not be required on its behalf to make remittances, filings or payments required by statute of employers, and that the Vendor will not be entitled to the fringe benefits provided by the City to its employees.

#### 28.4 No Assignment by Vendor Without Consent

Except as expressly permitted pursuant to **Article 19 [Sub-Contractors]**, the Vendor will not assign this Contract or subcontract to any person any right, duty or obligation under it without the prior written consent of the City which consent may be arbitrarily withheld, delayed or conditioned (except where and to the extent that the City is required not to withhold, delay or condition such consent pursuant to **Article 19 [Sub-Contractors]**) and any attempt to so assign or subcontract without such consent will be null and void and of no effect. Except as permitted pursuant to **Article 16 [License and Proprietary Materials]**, the City will not assign this Contract or the Licence and will not subcontract to any person any right, duty or obligation under it without the prior written consent of the Vendor which consent may not be unreasonably or arbitrarily withheld,

delayed or conditioned. The Vendor will be deemed to be acting unreasonably if it withholds, delays or conditions its consent where the assignment is required by any Laws or Regulations including the *Vancouver Charter* or *Local Government Act*.

#### **28.5 Compliance with Law**

Neither party will be required, nor will it request or cause the other party, to do or fail to do any act or thing in contravention of any applicable rule, code or standard of professional ethics or conduct or in contravention of any applicable law

#### **28.6 Non-Waiver of Rights**

Any failure by either party to enforce or require the strict keeping and performance of any of the terms and conditions contained in the Contract will not constitute a waiver of such terms and conditions and will not affect or impair such terms and conditions in any way or such party's right at any time to avail itself of such remedies as that party may have for any breach or breaches of such terms and conditions, unless that party enters into and signs an Amendment.

#### **28.7 Freedom of Information and Protection of Privacy Act (British Columbia)**

The City is subject to the *Freedom of Information and Protection of Privacy Act* (British Columbia). All documents submitted to the City become the property of the City, will be received and held in confidence by the City and the information will not be disclosed except to the extent necessary for carrying out the City's purposes or as required by law. Further to **Section 16.10(a)**, all City Records are City's Proprietary Material and protected from disclosure or locating or giving access to them from outside Canada and the Vendor now confirms and acknowledges its obligations to comply with all obligations imposed on it pursuant to the *Freedom of Information and Protection of Privacy Act* (British Columbia).

#### **28.8 Terms of Contract Confidential**

This Contract and its terms contain information, the disclosure of which could reasonably be expected to result in undue financial loss to the Vendor or gain to a third party. If the City receives any request for any record or document containing such information, the City will fully comply with all third party notice and other requirements imposed on the City pursuant to the *Freedom of Information and Protection of Privacy Act* (British Columbia) and will promptly notify the Vendor that the City has received such request.

#### **28.9 Notice**

All notices which are required to be given or made pursuant to the Contract will be given or made in writing and will be served personally (including by commercial courier) or sent by fax as follows:

(a) if to the City:

City of Vancouver  
515 West 10th Avenue, Vancouver, BC

Attention: Director of Financial Services  
Fax No.: (604) 871-6513

with copies to:

City of Vancouver  
515 West 10th Avenue, Vancouver, BC

Attention: Director of Legal Services  
Fax No.: (604) 873-7445;



and:

City of Vancouver  
City Hall - 3rd Floor, 453 West 12th Avenue, Vancouver, BC

Attention: City Clerk  
Fax No.: 604-873-7419

(b) if to the Vendor:



Attention:   
Fax No.: ;

or at such other addresses as each party may from time to time advise the other in writing. The date of receipt of any such notice will be deemed to be the date of delivery of such notice if served personally, or if sent by fax then the date and time of confirmation issued by the sender's fax machine as verified by the recipient's fax machine.

## **28.10 Changes in Laws and Regulations**

If any Laws and Regulations applicable to the City require the City to act at variance with the terms of this Contract and the City so acts, then the same will not constitute a breach of this Contract (and the City now confirms that it is not aware of any Laws or Regulations that require the City to act at variance with the terms of this Contract), and the City's requirement to act at variance with this Contract will be deemed to be and will be treated as an Unavoidable Delay.

### **28.11 Severability—Enforceability Preserved**

The invalidity of any portion of the Contract Documents will not affect the validity of the remainder of the Contract document and will be deemed to be severed provided that the spirit and intent of the Contract is not violated.

### **28.12 Survival**

Any term or provision of these Contract Documents that, by its nature, is intended to survive the expiration or termination of this Agreement, including, without limitation, obligations with respect to liability, indemnity, confidentiality, ownership and intellectual property, will survive the expiration or termination of this Agreement for any reason.

### **28.13 Contract Extension and Modification**

The Contract may only be modified or extended by formal Amendment of the Contract signed by the parties and made a permanent part of the Contract. Accordingly, and for further certainty, all Acceptance Test documents intended to constitute an Amendment must be signed by both parties in order to have that legal effect.

### **28.14 Unavoidable Delays**

(a) **Performance Deadlines Extended**—Except for the performance of obligations to pay money, time periods for the City's and the Vendor's performance under the Contract will be extended for periods of time during which their performance is delayed or prevented due to an Unavoidable Delay. Such extension will be deemed to include the ancillary reasonable impact which an Unavoidable Delay has on the delayed party such as for example where a key person is scheduled to perform Services or conduct/review an Acceptance Test result during the week that the Unavoidable Delay occurs but is thereafter not available again for fifteen (15) Business Days. However, under no circumstances will any "ancillary reasonable impact" delay extend beyond fifteen (15) Business Days and to the extent that it does then it will be conclusively deemed not to be an Unavoidable Delay.

(b) **Unavoidable Delays**—An "Unavoidable Delay" means any circumstances beyond the reasonable control of the party trying to perform, and includes without limitation and by way of example only,

- (i) strikes/lockouts, acts of God, terrorism, war or other strife or governmental action,
- (ii) any delay resulting from defects or malfunctions of the City's City Technical Environment,
- (iii) any breach by a third party service provider responsible for the City Technical Environment, and

(iv) the City acting at variance with the Contract pursuant to **Section 28.10 [Changes in Laws and Regulations]**,

but expressly excludes any and all delays caused by the Vendor's lack of financial resources or insolvency, or governmental action taken in the enforcement of law specifically against the Vendor, and as mentioned above any "reasonable impact delay" beyond fifteen (15) Business Days.

**28.15 Time is of the Essence**

Time is of the essence of this Contract and of the performance of each obligation of each party.

**28.16 Publicity and Marketing**

(a) **Definitions**—For purposes of this **Section 28.16 [Publicity and Marketing]**,

- (i) **"COC"** means the Canadian Olympic Committee
- (ii) **"IOC"** means the International Olympic Committee
- (iii) **"Unrelated Party"** means collectively all of VANOC, COC and IOC.
- (iv) **"VANOC"** means the Vancouver Organizing Committee for the 2010 Olympic And Paralympic Winter Games

(b) **No Commercial Use of Transaction or Relationship**—Without the prior written consent of the City and, in some cases, VANOC, which the City or VANOC may grant or withhold in their sole discretion, neither the Vendor nor the Vendor's affiliates, officers, directors, agents, representatives, shareholders, members, sub-consultants, suppliers or employees shall make any private public or commercial use of their relationship to the City or the Games, including, without limitation by contracting with or receiving money or anything of value from any person or commercial entity to facilitate such person or entity obtaining any type of commercial identification, advertising or visibility in connection with the Games.

(c) **No Promotion of Relationship**—The Vendor will not disclose or promote its relationship with the City or any of its Affiliated Organizations, including by means of any verbal declarations or announcements and by means of any sales, marketing or other literature, letters, client lists, press releases, brochures or other written materials without the express prior written consent of the City (except as may be necessary for the Vendor to perform the Vendor's obligations under the terms of this Contract). The Vendor undertakes not to use "City of Vancouver", "VANOC", "Vancouver 2010", the official emblem, logo or mascot of the City of Vancouver or 2010 Games or any other identification of the City, VANOC, the IOC or the COC, as reference or means of promotion or publicity,

without the express prior written consent of the City and, in some cases, VANOC. Furthermore, the Vendor undertakes not to disclose or promote its relationship with the City or VANOC in any communication or manner whatsoever as a basis to create an association, express or implied, between Vendor and the City, VANOC, IOC, the Olympics or the Olympic movement. The City shall be the single point of contact for Vendor and its affiliates, officers, directors, agents, representatives, shareholders, members, sub-consultants, suppliers or employees with respect to submitting any proposed verbal declarations or announcements and by means of any sales, marketing or other literature, letters, client lists, press releases, brochures or other written materials, and the City shall determine, within a reasonable time, whether such materials require review and consent by VANOC, IOC or COC.

(d) **No Right to Permit Commercial Use of Transaction to Third Parties**—The Vendor shall have no right to grant commercial identification rights of any kind or description with respect to the Games, this Contract, the City or VANOC to any supplier of goods or services or to any Sub-contractor, without the express prior written consent of the City and VANOC, which consent the City and VANOC may grant or withhold in their sole discretion.

(e) **No Endorsement**—This Contract does not constitute an endorsement by the City or VANOC of the Vendor's goods or services or of the Vendor's provision of services.

(f) **No Future Commercial Advantages**—The Vendor agrees and acknowledges that: (i) nothing in this Contract shall grant or shall be deemed to grant the Vendor any marketing, sponsorship or promotion right in connection with the City, VANOC, or the Games; (ii) nothing in this Contract shall provide the Vendor with any right or advantage in securing any future marketing or sponsorship opportunity, and the Services or Maintenance Services performed hereunder or under any related agreement shall not be deemed for any purpose an advance or other credit against any such future sponsorship rights fees payable to the City or VANOC; and (iii) unless otherwise specified, nothing in this Contract shall impose or be deemed to impose upon the City or VANOC any obligation to engage the Vendor to provide any future services required by the City or VANOC or any services whatsoever other than the Services or the Maintenance Services.

(g) **No Other Rights**—Nothing in this Contract or arising out of the transactions between the parties described in this Contract shall confer upon Vendor any right to acquire: (i) licences with respect to any service marks, trademarks, trade names, trade secrets or other intellectual property, now or which may hereafter be associated with, owned by or licensed by the City, VANOC, the IOC or the COC; (ii) any commercial identification; or (iv) any other rights in connection with the Games other than those specifically described in this Contract.

(h) **No License to Marks**

(i) **Olympic-Related Marks**—No license or right to use any of the Olympic symbols, emblems, marks or terminology, including without limitation: (a) the words “Olympic” or “Olympiad”; and (b) the symbol of the IOC consisting of five interlocking rings, is granted to the Vendor by this Contract. The Vendor acknowledges that use of Olympic-related symbols, emblems, marks and terminology may be made only with the prior written consent of VANOC and the IOC.

(ii) **City’s/VANOC's Marks and Intellectual Property**—No license or right to use any present or future logo, emblem, mark, slogan, trademarks, service marks, copyrighted works, or other intellectual property of the City or VANOC is granted to the Vendor by this Contract. The Vendor acknowledges that the City’s/VANOC's trademarks, service marks, copyrighted materials and other intellectual property (including any emblem, sport pictogram and mascot) are protected by trademark, copyright and other laws, and may be used only with the prior written permission of the City or VANOC as applicable.

(i) **Signage/Publicity**—No form of publicity, commercial installation or advertising signage will be permitted at the Installation Site at any time except as determined by the City. If any property owned, leased or otherwise supplied by the Vendor, including the Vendor’s equipment or materials, is stored or installed in a location visible to the public during the period when the Games are in progress, then at the request of the City Project Manager, the Vendor, at its cost, shall take such temporary measures as the City Project Manager may direct so that any name and any trademark or logo of the Vendor or any supplier or sub-contractor thereof is not visible during the period of the Games.

(j) **Ambush Marketing**—The Vendor will cooperate with the City and VANOC to oppose or prohibit any intentional or unintentional attempt by any third party providing services or materials and supplies to the Vendor to create a false or unauthorized commercial association with the Olympic movement or the Games, including without limitation:

(i) non-Games partner/sponsor company's use of creative means to generate a false association with the Games;

(ii) non-Games partner/sponsor company's infringement of the various laws that protect the use of Olympic imagery and indicia; and

(iii) non-Games partner/sponsor company's activities that intentionally or unintentionally interfere with the legitimate marketing activities of Olympic partners;

(collectively, in this **Section 28.16 [Publicity and Marketing]**, “**Ambush Marketing**”)

in an effort to protect the rights of those parties authorized by the City, VANOC, or the IOC to exclusively associate themselves and their products or services with the Games.

(k) **Indemnity**—Expressly subject to the limitations set out in **Article 21 [Indemnity and Liability]**, Vendor shall be liable for, and shall indemnify and hold harmless, the City, VANOC, and the IOC from and against all claims, demands, actions causes of action, suits and proceedings and all loss, damage, cost and expense, including legal fees and disbursements, made or brought against, or suffered or incurred by the City, VANOC, or the IOC, or any of them, and arising out of any breach by the Vendor of its obligations under this **Section 28.16 [Publicity and Marketing]**. The Vendor acknowledges that damages may be an inadequate remedy for any such breach, and further acknowledges that the City, VANOC, and the IOC will be entitled to injunctive relief to prevent any breach or continuing breach of such paragraphs.

(l) **Unrelated Parties**—The Vendor acknowledges that none of the Unrelated Parties shall incur any financial responsibility or liability in connection with this Contract or any subsequent contract entered into between the Vendor and the City relating to the subject matter hereof except if, and then only to the extent that, they are made a party hereto or thereto. Without limiting the foregoing, for purposes of any obligation owing to the Vendor in connection with this Contract, the City shall not be deemed to be a partner, joint venturer, or agent of any Unrelated Party. The Vendor covenants and agrees that, as its sole and exclusive remedy for any claims, demands, actions, suits or other proceedings under this **Section 28.16 [Publicity and Marketing]**, it shall have recourse only to the assets of the City and not to the assets of any Unrelated Party. Vendor, for itself and its successors, agents and permitted assigns, hereby agrees and covenants to refrain from bringing or causing to be brought, any claims, demands, actions, suits or other proceedings, whether at law or in equity, or whether before a court, arbitration panel, agency board or other body, against any Unrelated Party, individually or in any combination thereof, and hereby irrevocably releases and waives any and all rights, demands, damages, claims, actions, causes of action, duties or breaches of duty, known or unknown, existing, pending, accrued or unaccrued, which the Vendor has, claims to have, or may have against any Unrelated Party except if, and then only to the extent that, any such rights, demands, damages, claims, actions, causes of action, duties, or breaches of duty arise from any Unrelated Party being made a party hereto or to any subsequent contract entered into by the parties relating to the subject matter hereof.

## **28.17 British Columbia Laws Govern**

This Contract will be governed by and construed in accordance with the laws of British Columbia, which will be deemed to be the proper law of this Contract. The courts of British Columbia will have jurisdiction to entertain and determine all disputes and claims, whether for specific performance, injunction, declaration or otherwise arising out of or in



any way connected with the construction, breach, or alleged, threatened or anticipated breach of this Contract and will have jurisdiction to hear and determine all questions as to the validity, existence or enforceability of any clause. For the purposes of any legal actions or proceedings brought by the City in respect of this Contract, the parties now irrevocably submit and attorn to the exclusive jurisdiction of the courts of British Columbia and acknowledge their competence and the convenience and propriety of the venue and agrees to be bound by any judgment and not to seek, and now irrevocably waives, any review of its merits by the courts of any other jurisdiction.

**28.18 Further Assurances**

Each party will execute and deliver such further and other agreements, documents and instruments and do such further acts and things as are within its power and as may be necessary or desirable to fully implement and carry out the intent of th Contract.

**28.19 Successors and Assigns**

This Contract will enure to the benefit of and be binding upon each party and its respective successors and permitted assigns.

**28.20 Entire Contract**

The provisions contained and the documents referred to in the Contract Documents constitute the entire Contract between the parties and supersede all previous communications, representations and contracts whether verbal or written between the parties with respect to its subject matter.

**28.21 Counterparts**

This Contract and any other writing delivered pursuant hereto may be executed in any number of counterparts, including by facsimile or other electronic transmission, with the same effect as if both parties to this Contract or such other writing had signed the same document, and all counterparts will be construed together and constitute one and the same instrument.

**IN WITNESS TO THE ABOVE** the parties have executed and delivered this Contract as set out below, effective as of the Effective Date.

**CITY OF VANCOUVER**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_

**[VENDOR]**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_

**SCHEDULE A**  
**REQUIREMENTS**

[From Proposal/RFP]

## **SCHEDULE B**

### **PRICING**

[From Proposal/RFP]

**SCHEDULE C**  
**IMPLEMENTATION**

[From Proposal/RFP]

**SCHEDULE C1**  
**PAYMENT SCHEDULE**



## **SCHEDULE D**

### **CITY TECHNICAL ENVIRONMENT AND 311 CONTACT CENTRE OVERVIEW**

[From Proposal/RFP]

**SCHEDULE E**  
**SUB-CONTRACTORS**

[From Proposal/RFP]



**SCHEDULE E1**

**AFFILIATED ORGANIZATIONS**

[TO BE SUPPLIED BY CITY AT STAGE THREE]

**SCHEDULE F**  
**KEY PERSONNEL**

[From Proposal/RFP]


## **SCHEDULE G**

### **TRAINING**

[From Proposal/RFP]

**SCHEDULE G1  
DOCUMENTATION**

The following Documentation will be provided by the Vendor to the City:

<b>Document Title/Description</b>	<b>Date to be Provided</b>
	

## **SCHEDULE H**

### **PERFORMANCE STANDARD WARRANTIES**

[From Proposal/RFP]

**SCHEDULE I**  
**ACCEPTANCE TESTS**

[From RFP/Proposal]

## SCHEDULE J

[NOTE: THIS SCHEDULE J WILL REPLACE RFP/PROPOSAL SCHEDULE J IN  
**FINAL CONTRACT**]

### MAINTENANCE AGREEMENT

**THIS MAINTENANCE AGREEMENT** (this "**Maintenance Agreement**") dated ◆

**BETWEEN:**

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

(the "**City**")

**AND:**

◆, a ◆ having an office at ◆

(the "**Vendor**")

**BACKGROUND:**

(A) The City and the Vendor have entered into a VoIP Telephone System Hardware, Software and Services Contract (the "**Contract**") dated ◆.

(B) Pursuant to **Article 14 [Maintenance]** of the Contract, the Vendor has agreed with the City to enter into this Maintenance Agreement.

(C) Accordingly, concurrently with signing the Contract, the City and Vendor have signed this Maintenance Agreement and now agree to the terms and conditions of same.

IN CONSIDERATION OF THE MUTUAL PREMISES AND AGREEMENTS IN THIS CONTRACT, THE CITY AND THE VENDOR NOW LEGALLY AGREE AS FOLLOWS:

## **ARTICLE 1**

### **DEFINITIONS AND INTERPRETATION**

#### **1.1 Contract Terms Apply**

All capitalized terms used in this Maintenance Agreement will have the meanings given to them in the Contract.

#### **1.2 General Terms from Contract Apply**

Except to the extent of any express modification of the following or any inconsistency with the terms of this Maintenance Agreement, the following provisions of the Contract apply to the City and Vendor with respect to this Maintenance Agreement:

- (a) **Article 1 [Definitions and Interpretation];**
- (b) **Section 7.5 [Interest on Late Payments];**
- (c) **Section 7.8 [Canadian Currency];**
- (d) **Section 7.9 [Taxes];**
- (e) **Article 8 [Service Level/Performance Guarantees];**
- (f) **Article 9 [Liens];**
- (g) **Article 12 [Insurance];**
- (h) **Article 17 [Worker's Compensation Board];**
- (i) **Article 18 [Occupational Health and Safety];**
- (j) **Article 19 [Sub-Contracts];**
- (k) **Article 21 [Indemnity and Liability];**
- (l) **Article 24 [Intellectual Property Protection];**
- (m) **Article 25 [Records];**



- (n) **Article 26 [Compliance with Laws];**
- (o) **Article 27 [Arbitration];** and
- (p) **Article 28 [General],** expressly excluding **Section 28.14 [Unavoidable Delay].**

### 1.3 Special Terms Used in this Maintenance Agreement

Unless otherwise expressly defined or the context otherwise requires, the following terms will have the following meanings when used in this Maintenance Agreement:

- (a) **“Defects”** means any material defect or failure of the System or any part thereof or any Releases to comply with
  - (i) any Supplemental Requirements,
  - (ii) any Functional Requirements,
  - (iii) **Section 13.1 [System and Documentation Warranties]** of the Contract,
  - (iv) **Section 13.2 [Vendor-Provided Hardware Warranties]** of the Contract,
  - (v) **Section 13.3 [City Technical Environment and Third Party Software Warranties]** of the Contract, or
  - (vi) the Documentation for Releases;
- (b) **“Go Live Date”** means the date on which the City issues a Certificate of Go Live (System) Acceptance under the Contract or the date on which the City is deemed to have issued a Certificate of Go Live (System) Acceptance pursuant to **Schedule I [Acceptance Tests]** of the Contract;
- (c) **“Materially Affected or Halted”**, with respect to any Defect, means materially delays or interferes with the City’s day-to-day operations, a System-wide or Software-related shutdown or severe restrictions in the System that prevent any productive work;
- (d) **“Maintenance Costs”** means the amounts payable pursuant to **Section 9.1 [Maintenance Costs]** of this Maintenance Agreement and **Schedule B [Pricing]** of the Contract;
- (e) **“Maintenance Services”** includes the following:
  - (i) telephone assistance to answer technical questions relating to installation and use of the System,

(ii) provision of all Releases, at the time such Releases are made generally available by the Vendor to its customers who are currently receiving maintenance services for the Software or Vendor-Provided Hardware, and

(iii) analyzing and correcting or providing Resolutions or Workarounds for all Defects in accordance with the requirements of this Maintenance Agreement including, for example, the service level commitments set out in **Article 6 [Maintenance Service Response Level Commitments]**;

(f) **“Non-Typical Release”** means any Release which requires the City to purchase Third Party Software other than typical upgrades to the City Technical Environment. For certainty, any Release which requires the City to purchase Third Party Software, the initial licensing costs of which are \$10,000 or less, will not be considered a Non-Typical Release;

(g) **“Normal Periods”** means the periods other than the Critical Periods;

(h) **“Critical Periods”** mean the following timeframes (and **“Critical Period”** shall mean any one of them):

(i) the period from October 1 through November 15 in each civic election year (2008 and every three years after that);

(ii) the two week period before and after the due date for advance taxes in each calendar year and the three week period before and after the due date for annual real property taxes in each calendar year;

(iii) major public events within Vancouver, such as by way of example only and without limitation,

(A) the period from November 1, 2009 through to April 12, 2010 on account of the 2010 Olympic and Paralympic Winter Games;

(B) any period during which the City is hosting any other major sporting, cultural, or other large-scale event and such period is so designated in writing at least 30 calendar days in advance by the City to the Vendor,

provided always that the City will be entitled to designate no more than 4 periods of up to 30 calendar days each in any given calendar year as a **“Critical Periods”** (in addition to events of large-scale emergency as described in paragraph (iv) below);

(iv) any event of large-scale emergency, such as by way of example only, and without limitation, earthquake, flood, or riot, provided that upon

such occurrence, the City notifies the Vendor and the Critical Period will then be deemed to have started 2 hours after receipt of such notice to the Vendor, regardless of whether or not such notice is delivered on Business Day or other than a Business Day;

- (i) **"Releases"** means all Releases of firmwares, upgrades, extensions, Software, Source Code and Documentation as may be developed and issued from time to time by the Vendor, its licensors or the manufacturer of any Vendor-Provided Hardware to any of its customers who have implemented the applicable System component and, for certainty, Releases include all new functionality made available by the Vendor to its customers for the applicable System component or components whether or not such functionality is included as part of similar or comparable maintenance agreements with its other customers;
- (j) **"Release Weekend"** means the Saturday or Sunday, approximately six to eight weeks after the shipment of a Release, that the Vendor chooses, at its sole discretion, to make its staff available in Vendor's offices during normal business hours for phone support, to assist clients with the installation of the latest Release of the Software or Vendor-Provided Hardware into the production operating environment and is provided at no additional cost;
- (k) **"Resolution"** means the total correction of any given Defect such that original functionality is totally or substantially restored without the necessity to resort to a Workaround;
- (l) **"Supplemental Requirements"** means any changes to the Functional Requirements pursuant to an Amendment or any change in the *Vancouver Charter*, any other applicable provincial or federal legislation, or any subordinate legislation such as regulations or by-laws enacted pursuant to such legislation, provided always that Supplemental Requirements do not include any changes in the *Vancouver Charter* or its by-laws which are specifically requested or enacted by the City and are not mandated by a senior government or otherwise made applicable to the majority of local governments in British Columbia;
- (m) **"Support Hours"** means all Business Days between the hours of 8:30 a.m. and 5:00 p.m. Vancouver time and also includes any "On Call" hours pursuant to **Section 4.3 ["On Call" Services]**; and
- (n) **"Workaround"** means a functional (and not corrective) solution to a Defect such that the original, intended functionality is substantially restored with a minimum of additional effort being required of City personnel in utilizing such substantially restored functionality.

## ARTICLE 2

### MAINTENANCE SERVICES

#### 2.1 Vendor to Provide

The Vendor now agrees to furnish on the terms and conditions of this Maintenance Agreement the Maintenance Services with respect to the System and the City now agrees to purchase the Maintenance Services on the terms and conditions set out in this Maintenance Agreement.

## ARTICLE 3

### TERM

#### 3.1 Legal Effect

This Maintenance Agreement will become legally binding on the City and the Vendor on execution of the Contract by both parties.

#### 3.2 Term of Maintenance Services

The Vendor will commence the delivery of Maintenance Services on the Go Live Date and will continue the delivery of the Maintenance Services for six (6) years starting on the Go Live Date and, subject to **Section 3.3 [Automatic Renewals]**, expiring on the sixth (6th) anniversary of the Go Live Date.

#### 3.3 Automatic Renewals

Unless the City cancels this Maintenance Agreement pursuant to **Section 3.4 [Cancellation by the City Without Cause]**, or this Maintenance Agreement is sooner cancelled by the Vendor pursuant to **Section 3.5 [Cancellation by Vendor]**, this Maintenance Agreement will be deemed to be automatically renewed on a year-to-year basis following its expiry pursuant to this **Section 3.3 [Automatic Renewals]**.

#### 3.4 Cancellation by the City Without Cause

The City may cancel this Maintenance Agreement at any time, without cause, on ninety (90) days' prior written notice.

#### 3.5 Cancellation by Vendor

- (a) The Vendor may not cancel this Maintenance Agreement without cause except after the eighth (8th) anniversary of the date of issuance of the Certificate of Post Go Live (Final) Acceptance and then only on ninety (90) days' prior written notice.

(b) The Vendor may cancel this Maintenance Agreement at any time when the City is in default of its obligation to pay Maintenance Fees and such default continues for more than ten (10) Business Days after the City's receipt of written notice from the Vendor that such amount is more than ten (10) Business Days overdue and that the failure to pay within such further ten (10) Business Day period will result in the cancellation of this Maintenance Agreement pursuant to this **Section 3.5(b)**.

(c) The Vendor may cancel this Maintenance Agreement at any time on giving at least ten (10) Business Days prior written notice and after providing the City with at least five (5) Business Days to reverse the change whenever the City has materially modified the System without the Vendor's authorization or consent.

(d) The Vendor may cancel this Maintenance Agreement after the one hundred and eighty (180) day period described in **Section 5.5 [Where City Elects Not to Install Release]** in accordance with the terms and conditions of that Section.

(e) The Vendor may cancel this Maintenance Agreement at any time effective immediately on the giving of written notice to such effect when the City has committed an Intentional City Fundamental Breach or when the Contract or the Licence has been terminated for any reason (subject to the terms of the Contract).

(f) In no event will the City be entitled to any refund of Maintenance Fees due to the cancellation of this Maintenance Agreement by the Vendor pursuant to this **Section 3.5 [Cancellation by Vendor]**.

## ARTICLE 4

### DIAGNOSIS OF PROBLEMS

#### 4.1 Technical Personnel

The Vendor will maintain technical personnel stationed at its support facilities for purposes of providing customer service through Internet or toll-free telephone (from Vancouver) to receive problem reports and discuss questions about operations.

#### 4.2 Support Hours

The Vendor will ensure that such personnel are available during Support Hours.

#### 4.3 "On Call" Services

On giving the Vendor at least fifteen (15) Business Days prior notice, the Vendor will ensure that such personnel are available on an "on call" basis for one seven (7) hour

period, once during each of the Critical Periods, without additional charge to the City, provided that any additional on call services, if agreed to by the Vendor, will be charged at the Vendor's then standard rates for such services.

## **ARTICLE 5**

### **RELEASES—TERMS AND CONDITIONS**

#### **5.1 Excluded Releases**

If (but only to the extent that all or any part of) a Release is issued after the sixth (6<sup>th</sup>) anniversary of the Go Live Date, and

- (a) has been developed exclusively for one customer or a defined set of customers of the Vendor, or
- (b) contains new and separate functionality (as opposed to an enhancement, Defect correction, or Supplemental Requirements enhancement) and is offered to the marketplace only as a completely separate and stand alone Module from the Modules licensed under the Contract to the City,

such Release (or such applicable part of such Release) will not be included free of charge as part of this Maintenance Agreement.

#### **5.2 Included Releases**

The Vendor will, subject as set out below, offer to the City at no additional cost all Releases for all the System components then in use or licensed by the City. For certainty, the City will not be liable to pay for any new functionality included with any Release issued prior to the sixth (6<sup>th</sup>) anniversary of the Go Live Date.

#### **5.3 Releases Only During Term of Maintenance Agreement**

In case of cancellation or non-renewal of this Maintenance Agreement for any reason, the Vendor will no longer be obligated to provide further Releases or any other Maintenance Services.

#### **5.4 Notification Requirements**

The Vendor will notify the City in writing before any Release is installed by the City concerning the increased processing and storage overhead required by that Release. The City will then have the option of accepting or rejecting the Release. The Vendor will make commercially reasonable efforts to make those sections of each Release that are system intensive (that is, anything that causes an unusually heavy need for additional hardware, third party software, and/or labour on the part of the City, or an unusually heavy impact on available resources of the City Technical Environment existing City hardware, software and/or labour) optional to the City.

## **5.5 Where City Elects Not to Install Release**

If the City does not elect to install and use the Release other than a non-Typical Release, then the Vendor will continue to provide Maintenance Services as prescribed in this Maintenance Agreement for a period of 180 calendar days from the date of the Release Weekend. After such time, the Vendor may elect to continue Maintenance Services or may (provided it gives written notice to do so and provided such notice is given 180 days prior to the effective date of such termination and is not disputed within the 180 day notice period in writing by the City in accordance with this Section), elect to terminate this Maintenance Agreement and enter into an agreement to be negotiated at that time substantially in accordance with this Maintenance Agreement, which agreement will not be unreasonably withheld by either party. If any dispute arises with respect to this Section, the Vendor will continue to provide Maintenance Services, the City will continue to pay Maintenance Fees at the rate in effect immediately prior to cancellation or expiry, as applicable, and the dispute will be referred to arbitration in accordance with Article 27 **[Arbitration]** of the Contract.

## **5.6 Required Releases**

During the term of this Maintenance Agreement (and all renewals), the Vendor will provide all Releases required to comply with all Supplemental Requirements as and when such Releases are required by the legislation giving rise to such Supplemental Requirements.

# **ARTICLE 6**

## **MAINTENANCE SERVICE RESPONSE LEVEL COMMITMENTS**

### **6.1 Table Sets out Service Level Commitments**

The Vendor will provide Maintenance Services in accordance with the priority level and response time commitments set out in the table in **Section 6.3 [Table of Service Level/Response Time Commitments]**. The Vendor's response time commitments are subject to the City not being in default of its obligations under this Maintenance Agreement and the City providing to the Vendor at the time a problem is reported, sufficient detail to enable the Vendor to isolate and recreate the Defect.

### **6.2 Terms used in Table—Defined**

For the purposes of the table in **Section 6.3 [Table of Service Level/Response Time Commitments]**,

- (a) the reference to "within" is a reference to the time at which the City first notifies the Vendor of the problem or Defect, whether by telephone or e-mail,

(b) a reference to a time period “normally” committed to, shall mean that, in the regular course of events, that time period shall apply, but that the time period shall in no event exceed the time period “guaranteed”, and

(c) where a specified number of minutes or hours is given for a “Vendor’s First Response” or a “Time to a Workaround”, that reference is to such period of time that commences during the Support Hours and ends after such period of time; for example, if a problem or Defect is reported outside of Support Hours, the period of time shall commence immediately upon the start of the next set of Support Hours.

**6.3 Table of Service Level/Response Time Commitments**

<b>Priority</b>	<b>Definition</b>	<b>Vendor’s First Response</b>	<b>Time to Workaround</b>	<b>Time to Resolution</b>
1	Business Materially Affected or Halted during Critical Period	Within 15 minutes	Normally Within 1 hour, guaranteed Within 2 hours	Within 3 days
2	Business Materially Affected or Halted during Normal Period	Within 90 minutes	Normally Within 2 hours, guaranteed Within 4 hours	Within 3 days
3	Service has been not Materially Affected or Halted during any Critical Period	Within 90 minutes	Within 1 day	Within 3 days
4	Service has been not Materially Affected or Halted during any Normal Period	Within 90 minutes	Within 3 days	Within 6 days



#### 6.4 Notice of Default

(a) **Priority 1**—Where the Vendor is in breach of the obligations set out in **Section 6.3 [Table of Service Level/Response Time Commitments]** in respect to a Priority 1 problem or Defect, the City may give the Vendor a written notice of default which notice must set out the time within which the City requires the breach to be remedied. The notice must be given to the Vendor during Support Hours and must give the Vendor at least one (1) hour from receipt of the notice to remedy the breach. The Vendor will then have at least two (2) hours from receipt of such notice to remedy the breach after which, if the breach still has not been remedied, the Vendor will be deemed to be in default of this Maintenance Agreement and the City will then be entitled to exercise its default remedies as set out below.

(b) **Priority 2**—Where the Vendor is in breach of the obligations set out in **Section 6.3 [Table of Service Level/Response Time Commitments]** in respect to a Priority 2 problem or Defect, the City may give the Vendor a written notice of default which notice must set out the time within which the City requires the breach to be remedied. The notice must give the Vendor at least two (2) hours from receipt of the notice during Support Hours to remedy the breach. The Vendor will then have at least four (4) hours from receipt of such notice during Support Hours to remedy the breach after which, if the breach still has not been remedied, the Vendor will be deemed to be in default of this Maintenance agreement and the City will then be entitled to exercise its default remedies as set out below.

(c) **Priority 3 or 4**—Where the Vendor is in breach of the obligations set out in **Section 6.3 [Table of Service Level/Response Time Commitments]** above in respect to a Priority 3 or 4 problem or Defect, the City may give the Vendor a written notice of default which notice must set out the time within which the City requires the breach to be remedied. The notice must give the Vendor at least one (1) calendar day from receipt of the notice to remedy the breach. The Vendor will then have at least two (2) calendar days from receipt of such notice to remedy the breach after which, if the breach still has not been remedied, the Vendor will be deemed to be in default of this Maintenance agreement and the City will then be entitled to exercise its default remedies as set out below.

#### 6.5 Default Remedies

Where the Vendor is in default of this Maintenance Agreement, the City may retain such third party consultants or pay its staff such overtime rates as are then payable to City staff in order to attempt to remedy the default and all of the City's reasonable and direct out-of-pocket costs in respect to such efforts will be deductible from the Maintenance Costs payable under this Maintenance Agreement, provided always that in no event will the Vendor's liability exceed the limit on liability set out below.

## **6.6 Performance Warranties Additional to Maintenance Obligations**

For further certainty, all performance warranties and remedies for breach set out in **Schedule H [Performance Warranties]** of the Contract are in addition to and not in lieu of the obligations of the Vendor set out in this Maintenance Agreement.

## **ARTICLE 7**

### **CONDITIONS OF THE VENDOR'S OBLIGATIONS**

#### **7.1 Proper Use**

All Maintenance Services of any nature rendered by the Vendor under this Maintenance Agreement will be contingent on the City's proper use of the System in the application for which the System was intended.

#### **7.2 No Modifications**

To the extent that the City makes any modifications or extensions and these changes to the System affect the functionality of the System or interfere in any way with the Vendor's ability to provide Maintenance Services, then the Vendor will not be liable for same. The City may request that the Vendor correct such problems and if the Vendor agrees to do so, an Amendment will then be signed and the Vendor will then provide such services at its then standard hourly rates for such services in accordance with the terms of the Amendment.

## **ARTICLE 8**

### **OBLIGATIONS OF THE CITY**

#### **8.1 Provide Competent Staff**

The City will be responsible for maintaining sufficient staff to handle normal day-to-day operation and support for the System, including but not limited to such tasks as back-ups and report handling. It is acknowledged and understood that the Maintenance Services are not intended to replace or supplement the City's day-to-day operation and support for the System. The City is also solely liable for maintaining and operating the City Technical Environment.

#### **8.2 No Interference**

The City will not perform, nor attempt to perform, or cause to be performed, maintenance or repair to the System except

- (a) where expressly authorized, as further set out in Appendix J.1 to this Maintenance Agreement, or
- (b) with the prior written or oral approval of the Vendor, such approval not to be unreasonably withheld, or
- (c) where the City is doing so in the exercise of its rights under **Section 6.5 [Default Remedies]**.

### **8.3 Communications Support**

The City will maintain, at its sole cost: (i) a separate landline or cellular telephone within operational reach of the hardware on which the Software is running, and (ii) a connection to the PSTN to facilitate the provision of the Maintenance Services.


### **8.4 Equipment Upgrades**

Subject to the Contract, the City is responsible for the purchase and payment of any City Technical Environment upgrades which may be required to enable any and all Resolutions, Releases, or other upgrades to the System, including the Software and third party software, to operate within the Requirements and Supplemental Requirements.

## **ARTICLE 9**

### **MAINTENANCE COSTS**

#### **9.1 Maintenance Costs**

In consideration for the Maintenance Services, the City will pay the Maintenance Costs as outlined in **Schedule B [Pricing]** of the Contract. The Maintenance Costs are due and payable by the City in advance on January 1st of each calendar year, provided however that no Maintenance Costs are payable for the free maintenance period (the "**Free Maintenance Period**") which commences on the Go Live Date and expires on the  anniversary of the Go Live Date.

Where, for any reason, the Go Live Date occurs after the Go Live Date as defined in the Contract, with the result that the Free Maintenance Period is postponed, all Maintenance Costs payable under this Maintenance Agreement will be postponed accordingly, and payments will be pro-rated and all increases and caps on such increases will be postponed in direct proportion to the number of days that the Go Live Date is so postponed.

## **9.2 Maintenance Agreement Supersedes Schedule B**

For certainty, if there is any conflict between **Schedule B [Pricing]** of the Contract and this Article, the latter will govern.

## **9.3 Maintenance Costs All-Inclusive**

The Maintenance Costs set out in this Article are all-inclusive amounts and will constitute the total compensation payable to the Vendor for the Maintenance Services. There will be no additional Maintenance Costs for labour, materials, travel, food, accommodation, administrative expenses, overhead expenses, or any other amounts.

## **9.4 Maintenance Costs Capped**

Following the expiry of the sixth (6th) anniversary of the Go Live Date, the Maintenance Costs may be increased up to once per calendar year by the Vendor but in no event may they be increased prior to the sixth (6th) anniversary of the Go Live Date and in no event may they be increased by more than the greater of

- (a) two percent (2%) of the prior year's Maintenance Costs, or
- (b) the percentage change in the Canadian Consumer Price Index (All Items—Vancouver) between January 1 of the prior year and January 1 of the calendar year in which the notice is given.

## **9.5 Notice Requirements**

Any increase will not be effective unless written notice of the increase has been made by November 1 for the following year.

# **ARTICLE 10**

## **INDEMNITY/LIMITATION OF LIABILITY**

### **10.1 Contract Provisions Apply Except as Herein Amended**

The City and Vendor now agree that pursuant to **Section 1.2 [General Terms from Contract Apply]** above, the indemnity and limitation of liability provisions of the Contract will apply to this Maintenance Agreement.

**IN WITNESS TO THE ABOVE** the parties have executed and delivered this Maintenance Agreement as set out below, effective as of the Effective Date.

**CITY OF VANCOUVER**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_

**[VENDOR]**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_

**SCHEDULE K**

**RFP**

**[Attach RFP]**

**SCHEDULE L**

**PROPOSAL**

**[Attach Proposal.]**

**SCHEDULE M**

**CERTIFICATE OF INSURANCE**

**[Attach Certificate (in form of RFP Appendix 1 – Certificate of Existing Insurance – Amended to add text with strike-through back onto Certificate)]**