
[NTD: This model agreement is proposed by the City of Vancouver for the purposes of negotiating an agreement for the implementation of the public bicycle system contemplated in the RFP. The terms contained in this model agreement are subject to change by the City depending on the circumstances of the negotiation.]

SUPPLY AGREEMENT

BETWEEN:

<  SUPPLIER NAME >

AND:

CITY OF VANCOUVER

FOR THE SUPPLY, IMPLEMENTATION AND OPERATION OF A
PUBLIC BICYCLE SYSTEM IN THE CITY OF VANCOUVER

DATED <  >

SUPPLY AGREEMENT

FOR THE SUPPLY, IMPLEMENTATION AND OPERATION OF A PUBLIC BICYCLE SYSTEM IN THE CITY OF VANCOUVER

THIS AGREEMENT is made as of < >

BETWEEN:

< **SUPPLIER NAME** >, a < corporation > organized under the laws of < > and having an office at < >

(hereinafter referred to as the “Supplier”)

AND:

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

(hereinafter referred to as the “City”)

WHEREAS the Supplier is in the business of supplying, implementing and operating public bicycle systems;

AND WHEREAS the City wishes to procure a public bicycle system from the Supplier on the terms and conditions set out in this Agreement,

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

TABLE OF CONTENTS

	Page		Page
ARTICLE 1 INTERPRETATION	4	7.2 Changes in Personnel	25
1.1 Definitions	4	7.3 Key Project Personnel.....	25
1.2 Headings	10	ARTICLE 8 REPORTING.....	26
1.3 Extended Meanings.....	10	8.1 Reports.....	26
1.4 Schedules.....	11	8.2 Assistance regarding Reporting Requirements	26
ARTICLE 2 EFFECTIVENESS	13	ARTICLE 9 PAYMENT; AUDITS	26
2.1 Effective Date	13	9.1 Payment to the Supplier	26
2.2 Term.....	13	9.2 Purchase Orders; Content of Invoices .	27
ARTICLE 3 SUPPLY; GENERAL TERMS.....	13	9.3 Procedure for Invoices	28
3.1 Supply	13	9.4 Currency of Payment	28
3.2 Application to Prior Acts.....	14	9.5 Contested Claims for Payment	28
3.3 Sufficiency and Competence of Personnel.....	14	9.6 Audits	28
3.4 Design Review	14	9.7 Set Off.....	29
3.5 Standards and Requirements	14	ARTICLE 10 CERTAIN ADDITIONAL OBLIGATIONS OF THE CITY	29
3.6 Consents	15	10.1 Scheduled Items	29
3.7 Warranties	15	10.2 Other Information	29
3.8 Relationship Between the Parties	16	10.3 Decisions in Writing.....	29
3.9 Variations Requested by the City	16	10.4 Access to Sites	30
3.10 Tests; Defects and Acceptance.....	17	ARTICLE 11 LIABILITY AND INSURANCE.....	30
3.11 Title and Risk	18	11.1 Covenants of Indemnification by the Supplier.....	30
ARTICLE 4 PREFERRED SUPPLIERS	18	11.2 Contamination of Sites	31
4.1 Procurement of Supplies.....	18	11.3 Conduct of Claims	31
4.2 Information Concerning Alternative Suppliers.....	19	11.4 Insurance	33
4.3 Use of Alternative Suppliers	19	ARTICLE 12 FORCE MAJEURE; TERMINATION 33	
ARTICLE 5 CONTRACT MANAGERS.....	19	12.1 Force Majeure.....	33
5.1 City PBS Managers	19	12.2 City Suspension and Termination Rights.....	34
5.2 Supplier’s Managers.....	20	12.3 Consequences of Termination.....	35
5.3 Designation of New Managers.....	20	12.4 Other Surviving Rights and Liabilities of Parties	37
ARTICLE 6 SUPPLIERS’ WARRANTIES AND COVENANTS 20		ARTICLE 13 ASSIGNMENT AND SUBCONTRACTING	37
6.1 General Representations and Warranties	20	13.1 Assignment.....	37
6.2 General Health and Safety-Related Acknowledgements and Covenants.....	21	13.2 Subcontracting and Ancillary Agreements	37
6.3 Covenants Regarding Violations of Health and Safety Requirements.....	22	ARTICLE 14 INTELLECTUAL PROPERTY	38
6.4 Covenants Regarding the Environment	22	14.1 Intellectual Property	38
6.5 Further Covenants Regarding the Sites	23	ARTICLE 15 PRIVACY; CONFIDENTIALITY....	38
6.6 Covenants Against Encumbrances	23	15.1 FOIPPA and PIPA	38
6.7 Absence of Conflicts of Interest.....	24		
ARTICLE 7 PERSONNEL	24		
7.1 Separate Personnel	24		

	Page		Page
15.2	38	SCHEDULE A - SYSTEM DESIGN AND EQUIPMENT SPECIFICATIONS	46
15.3	38	SCHEDULE B - HELMET SOLUTION.....	47
15.4	39	SCHEDULE C - INFORMATION SYSTEM	47
15.5	39	SCHEDULE D - WEBSITE AND MOBILE ACCESS...	47
15.6	39	SCHEDULE E - IMPLEMENTATION PLAN.....	50
15.7	39	SCHEDULE F - STATION SITING.....	50
		SCHEDULE G - OPERATIONS	50
ARTICLE 16	39	SCHEDULE H - REPORTING AND CONTRACT MANAGEMENT	53
16.1	39	SCHEDULE I - CUSTOMER SERVICE.....	55
16.2	40	SCHEDULE J - SERVICE PERFORMANCE LEVELS	57
ARTICLE 17	40	SCHEDULE K - COMMUNICATIONS	57
17.1	40	SCHEDULE L - MARKETING	57
17.2	40	SCHEDULE M - FINANCIAL	57
ARTICLE 18	41	SCHEDULE N - SYSTEM EXPANSION.....	58
18.1	41	SCHEDULE O - TRANSITIONING-OUT	58
18.2	41	SCHEDULE P - SUPPLIER COMPENSATION.....	58
18.3	41	SCHEDULE Q - SUPPLIER CODE OF CONDUCT ...	58
18.4	41	SCHEDULE R - CITY SITES LICENSE	58
18.5	41	SCHEDULE S - INSURANCE.....	59
18.6	41	SCHEDULE T - TOTAL PRICE	63
18.7	43	SCHEDULE U - KEY PROJECT PERSONNEL	63
18.8	43	SCHEDULE V - CITY POLICIES.....	63
18.9	43	SCHEDULE W - PREFERRED SUPPLIER	63
18.10	44	SCHEDULE X - PERMITTED SUBCONTRACTORS ...	63
18.11	45	SCHEDULE Y - ITEMS TO BE PROVIDED BY CITY	64
18.12	45	SCHEDULE Z - INTELLECTUAL PROPERTY	64
		SCHEDULE AA - RFP	66
		SCHEDULE BB - SUPPLIER’S PROPOSAL	66

**ARTICLE 1
INTERPRETATION**

1.1 Definitions

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

[NTD: For the purpose of this draft, capitalized terms that are defined in the RFP will have the meaning given in the RFP]

- (a) **“Agreement”** means this agreement, including the schedules hereto, and all amendments made hereto or thereto by written agreement between the Supplier and the City;
- (b) **“Business Day”** means a day on which banks are open for business in Vancouver, British Columbia, except a Saturday, Sunday or statutory holiday;
- (c) **“Certificate of Completion”** means a certificate issued by the City, which shall confirm the Supplier’s completion of the Supply under and in accordance with this Agreement and shall include, or meet the requirements for, a certificate of completion pursuant to the *Builders Lien Act* (British Columbia) if the City determines that is required;
- (d) **“Change in Control”** means an occurrence whereby a person (or persons acting in concert) acquires control of the relevant entity;
- (e) **“City Policies”** means any or all (as the context requires) of those procedures, standards and/or standard specifications, requirements, policies and the like listed in Schedule V or notified to the Supplier from time to time, as the same may be updated, modified, expanded, revised, supplemented and/or replaced from time to time by the City (as notified to the Supplier);
- (f) **“City PBS Manager”** means a manager who at the relevant time carries such designation from the City under, or in accordance with, ARTICLE 5;
- (g) **“Competent Authority”** means:
 - (i) any multinational, federal, provincial, state, regional, municipal (including the City of Vancouver), local or other government or governmental body and any ministry, department, division, bureau, agent, agency, commission, board or authority of any government or governmental body, domestic or foreign;
 - (ii) any domestic, foreign or international judicial, quasi-judicial or administrative court, tribunal, commission, board, panel, arbitrator or arbitral body acting under the authority of any of the foregoing; or
 - (iii) any quasi-governmental or private body exercising any statutory, regulatory, expropriation or taxing authority under the authority of any of the foregoing;

- (h) **“Confidential Information”** means all or any confidential information (however recorded or preserved) disclosed before, on or after the date of this Agreement by either Party or any of its Representatives to the other Party or its Representatives, and clearly marked by the disclosing Party as “confidential”, in connection with this Agreement, concerning:
- (i) this Agreement; or
 - (ii) the affairs, operations, processes, know-how, suppliers, plans or intentions of the disclosing Party or of any member of the disclosing Party’s Group, including, without limitation, any information which is not generally known to the public or which has been specifically identified as confidential or proprietary by the disclosing Party,
- but does not include:
- (iii) any information that is or becomes generally available to the public or to industry professionals (other than as a result of its disclosure by the receiving Party or its Representatives in breach of this Agreement);
 - (iv) any information that was available to the receiving Party on a non-confidential basis prior to disclosure by the disclosing Party;
 - (v) any information that was, is or becomes available to the receiving Party on a non-confidential basis from a person who, to the receiving Party’s knowledge, is not bound by a confidentiality agreement or other duty of confidentiality with or to the disclosing Party or a member of the disclosing Party’s Group or otherwise prohibited from disclosing the information to the receiving Party;
 - (vi) any information that was known to the receiving Party before the information was disclosed to it by the disclosing Party or its Representatives and was not subject to a confidentiality agreement or other duty of confidentiality (including any obligation under this Agreement) with or to the disclosing Party or a member of the disclosing Party’s Group;
 - (vii) any information that the Parties agree in writing is not confidential or may be disclosed; and
 - (viii) any information unrelated to this Agreement that is developed by or for the receiving Party independently of and without reference to the information disclosed by the disclosing Party;
- (i) **“Consent”** means an approval, clearance, registration, franchise, right, privilege, certification, quota, consent, permit, licence, qualification, filing, exemption, certificate or permission and any such other matter or authorization whatsoever, including any condition thereof, that is lawfully and necessarily required under any Law or from any Competent Authority in connection with the Supply;

- (j) **“Total Price”** means the agreed total price set out in Schedule T (Total Price) for the Supply;
- (k) **“Defect”** means any part of the Supply (or omission therefrom) which is defective, deficient or incomplete or does not otherwise comply with the requirements of this Agreement;
- (l) **“Documentation”** means calculations, computer programs and other software, drawings, designs, plans, manuals, records, reports, documents, papers, photos, typographical arrangements, models, contract documents, deliverables, agreements, tender/enquiry documents, and all other materials in whatever form, including but not limited to tangible copies and electronic forms, supplied either by or on behalf of the Supplier or generated collaboratively by the Parties in the course of the provision of the Supply under this Agreement;
- (m) **“Effective Date”** has the meaning ascribed to such term in Section 2.1;
- (n) **“Encumbrance”** means any mortgage, charge, pledge, hypothecation, security interest, assignment, lien or claim of lien (statutory or otherwise), easement, deemed or statutory trust, restrictive covenant, adverse claim, exception, reservation, right of occupation, any matter capable of registration against title, right of pre-emption, privilege or other encumbrance or third party right of any nature or any other arrangement or condition that, in substance, secures payment or performance of an obligation;
- (o) **“Environmental Law”** means any Law which imposes any obligations relating to:
 - (i) the protection, management, conservation or restoration of the natural environment;
 - (ii) reporting, licensing, permitting, investigating, remediating and cleaning up in connection with any presence or Release, or the threat of the same, of Hazardous Substances; and
 - (iii) the manufacture, processing, distribution, use, treatment, storage, disposal, transport, handling and the like of Hazardous Substances, including those pertaining to occupational health and safety.
- (p) **“FOIPPA”** means the *Freedom of Information and Protection of Privacy Act* (British Columbia) as it may be amended, replaced or superseded;
- (q) **“Force Majeure”** means, exhaustively, any:
 - (i) war, hostilities (whether war is declared or not), invasion, act of foreign enemies;
 - (ii) rebellion, terrorism (or threat of terrorism), revolution, insurrection, military or usurped power or civil war;

- (iii) riot, civil commotion or disorder, strike or lockout by persons other than the Supplier's personnel and other employees, Subcontractors or any other person for whom the Supplier is responsible;
- (iv) natural catastrophe such as an earthquake, forest fire, landslide or flood; or
- (v) change in Law or action by a Competent Authority, which makes it illegal or impossible for either Party to perform its obligations under this Agreement, and

for greater certainty, does not include a lack of financial capability;

- (r) **"GAAP"** means generally accepted accounting principles as approved by the Canadian Institute of Chartered Accountants, and includes, where applicable, the generally accepted auditing standards as approved by the same body, all as may be amended or replaced by that body from time to time;
- (s) **"Good Industry Practice"** means, in relation to the Supply or the performance of any other obligation under this Agreement, the practices, and the application of the skill, care, diligence, prudence and foresight, which would reasonably and ordinarily be expected from a skilled and experienced international contractor carrying out or procuring equivalent goods and services of similar type, scope and value, in the same or similar location and in similar circumstances to those pertaining to the Supplier under this Agreement;
- (t) **"Group"** means:
 - (i) in respect of the Supplier, the group constituted from time to time by:
 - (A) the Supplier;
 - (B) all persons that directly or indirectly control or are controlled by the Supplier; and
 - (C) all persons that are directly or indirectly controlled by any person that directly or indirectly controls the Supplier; and
 - (ii) in respect of the City, the group constituted from time to time by:
 - (A) the City; and
 - (B) all bodies corporate directly or indirectly controlled by the City.
- (u) **"Hazardous Substance"** means any substance or material that is prohibited, controlled or regulated by any Competent Authority pursuant to any Environmental Law including pollutants, contaminants, dangerous goods or substances, toxic or hazardous substances or materials, wastes (including solid non-hazardous wastes and subject wastes), petroleum and its derivatives and by-products and other hydrocarbons, all as defined in or pursuant to any Environmental Law;

- (v) **“Intellectual Property Rights”** means any and all current and future proprietary rights provided under patent law, copyright law, design patent or industrial design law, or any other applicable statutory provision or common law principle, including trade secret law, that may provide a right in ideas, formulae, algorithms, concepts, inventions, know-how, computer software, database or design, or the expression or use thereof, whether registered or unregistered, together with any right to apply for or register any of the foregoing;
- (w) **“Key Project Personnel”** means the persons named in Schedule U (Key Project Personnel) and any replacement(s) approved by the City in accordance with ARTICLE 7;
- (x) **“Laws”** means all laws, statutes, codes, ordinances, decrees, rules, regulations, by-laws, judicial or arbitral or administrative or ministerial or departmental or regulatory judgments, orders, decisions, rulings, determinations or awards of any Competent Authority whether or not having the force of law and any legal requirements or bases of liability under the common law or civil law, including all such Laws relating to Taxes, the environment, human health or safety, pollution and other environmental degradation, and hazardous materials , which affect or are otherwise applicable to the Supply, the Supplier, the Site or any other lands affected by the Supply;
- (y) **“OHS Requirements”** means all Laws applicable to the Supply and related to occupational health or safety, and all of the City Policies that relate to occupational health or safety, and includes without limitation the WCA;
- (z) **“Parties”** means the City and the Supplier and **“Party”** means one of them or either of them, as the context requires;
- (aa) **“Permitted Purpose”** has the meaning ascribed thereto in Section 15.3;
- (bb) **“Preferred Supplier”** means a person named in Schedule W;
- (cc) **“Proposal”** means the Supplier’s proposal dated , submitted by the Supplier to the City in response to the RFP;
- (dd) **“PBS”** the Public Bicycle System;
- (ee) **“PIPA”** means the Personal Information Protection Act (British Columbia) as it may be amended, replaced or superseded;
- (ff) **“Public Bicycle System”** means the public bicycle system comprised of all goods, Documents, services and attributes described in the body of this Agreement and the schedules attached to this Agreement to be implemented in the City of Vancouver in accordance with the terms of this Agreement;
- (gg) **“Release”** means any release or discharge of any Hazardous Substance including any discharge, spray, injection, inoculation, abandonment, deposit, spillage, leakage, seepage, pouring, emission, emptying, throwing, dumping, placing, exhausting, escape, leach, migration, dispersal, dispensing or disposal;

- (hh) **“Representative”** means a Group member of a Party, or an official, officer, employee, agent, subcontractor or other representative of a Party or any member of its Group, or any other person for whom the Party is responsible;
- (ii) **“RFP”** means the City’s Request for Proposal number PS20150910 for the supply, implementation and operation of a PBS;
- (jj) **“Safety Incident”** means:
 - (i) a failure by the Supplier or any Subcontractor to comply with any OHS Requirements; or
 - (ii) any hazard, incident or accident involving the PBS.
- (kk) **“Sales Tax”** has the meaning ascribed to such term in Section 16.1;
- (ll) **“Site”** means each of the worksites and other places at which any part of the Supply shall be performed;
- (mm) **“Subcontractor”** means any person named in Schedule X (Permitted Subcontractors) to this Agreement as a permitted subcontractor, or any other person engaged by the Supplier with the prior written consent of the City (not to be unreasonably withheld), to perform any part of the Supply;
- (nn) **“Supplier’s Manager”** means a manager who at the relevant time carries such designation from the Supplier under, or in accordance with, ARTICLE 5;
- (oo) **“Supply”** means the PBS to be financed, designed, supplied, implemented, owned, operated and maintained by the Supplier in accordance with this Agreement;
- (pp) **“Taxes”** means all taxes, duties, imposts, levies, assessments, tariffs and other charges imposed, assessed or collected by a Competent Authority, including:
 - (i) any gross income, net income, gross receipts, business, royalty, capital, capital gains, goods and services, harmonized sales, value added, severance, stamp, franchise, occupation, premium, capital stock, sales and use, real property, land transfer, personal property, ad valorem, transfer, licence, import, customs, profits, windfall profits, environmental, carbon, emissions, pollution, payroll, employment, employer health, pension plan, anti-dumping, countervailing, or excise tax, duty, import, levy, assessment, tariff or other charge;
 - (ii) all withholdings on amounts paid to or by the relevant person;
 - (iii) all statutory remittances, employment insurance premiums and social security or pension plan contributions or premiums and Canada pension plan contributions;
 - (iv) any fine, penalty, interest or addition to tax;

- (v) any tax imposed, assessed, or collected or payable pursuant to any tax-sharing agreement or any other contract relating to the sharing or payment of any such tax, levy, assessment, tariff, duty, deficiency or fee; and
- (vi) any liability for any of the foregoing as a transferee, successor, guarantor, or by contract or by operation of law;
- (qq) “**Time(s) for Completion**” means the time(s) stated in Schedule E by which the Supply or any particular Supply or part thereof must be completed, as such time(s) may be adjusted (including in relation to a particular instance of Supply), strictly in accordance with this Agreement;
- (rr) “**Vancouver Charter**” means the *Vancouver Charter* (British Columbia) as such may be amended, replaced or superseded;
- (ss) “**Variation**” has the meaning ascribed to such term in Section 3.9(a); and
- (tt) “**WCA**” means the *Workers Compensation Act* (British Columbia) and the regulations thereunder as such may be amended, replaced or superseded.

1.2 Headings

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

1.3 Extended Meanings

In this Agreement:

- (a) words importing the singular include the plural and vice versa, words importing a gender include all genders and words importing persons include individuals, partnerships, associations, trusts, unincorporated organizations and corporations, except where the context requires otherwise;
- (b) any provision calling for “agreement” requires the relevant agreement to be recorded in writing and signed by both Parties;
- (c) the words “include”, “includes”, “including” and “included” shall be construed without implying limitation by the words which follow those words and without prejudice to the generality of the provisions to which such words relate, unless inconsistent with the context, and the rule of interpretation known as *ejusdem generis* shall not apply;
- (d) each reference to a specific statute, regulation, law or any subordinate instrument or statutory or regulatory provision shall be construed as including any legal or regulatory provision which subsequently amends or replaces the

same, and shall include any and all subordinate instruments, orders, rules, regulations and bylaws made thereunder or guidelines issued in respect thereof;

- (e) each reference to a writing means a writing that is hand-written, type-written, printed or electronically made, and which results in a permanent un-editable record; and
- (f) “control” when used to describe a relationship between one person and any other person, has the following meanings:
 - (i) a person controls a body corporate if securities of the body corporate to which are attached more than 50% of the votes that may be cast to elect directors of the body corporate are beneficially owned by the person and the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the body corporate;
 - (ii) a person controls an unincorporated entity, other than a limited partnership, if more than 50% of the ownership interests, however designated, into which the entity is divided are beneficially owned by that person and the person is able to direct the business and affairs of the entity;
 - (iii) the general partner of a limited partnership controls the limited partnership; and
 - (iv) a person who controls an entity is deemed to control any entity that is controlled, or deemed to be controlled, by the entity.

1.4 Schedules

The following are the schedules hereto, each of which is deemed to be an integral part of this Agreement:

Schedule A	System Design and Equipment Specifications
Schedule B	Helmet Solution
Schedule C	Information System
Schedule D	Website and Mobile Access
Schedule E	Implementation Plan
Schedule F	Station Siting
Schedule G	Operations
Schedule H	Reporting and Agreement Oversight

Schedule I	Customer Service
Schedule J	Service Performance Levels
Schedule K	Communications
Schedule L	Marketing
Schedule M	Financial
Schedule N	System Expansion
Schedule O	Transitioning-Out
Schedule P	Supplier Compensation
Schedule Q	Supplier Code of Conduct
Schedule R	City Sites License
Schedule S	Insurance
Schedule T	Total Price
Schedule U	Key Project Personnel
Schedule V	City Policies
Schedule W	Preferred Supplier
Schedule X	Permitted Subcontractors
Schedule Y	Items to be Provided by City
Schedule Z	Intellectual Property
Schedule AA	RFP
Schedule BB	Supplier’s Proposal

If there is a conflict between the terms and conditions in the body of this Agreement and the terms of any of the schedules, the terms in the body of this Agreement will govern. If there is a conflict between the terms of one schedule and the terms of another schedule, the schedule that precedes the other (in accordance with the above order of priority) will govern.

**ARTICLE 2
EFFECTIVENESS**

2.1 Effective Date

This Agreement shall come into full force and effect on the date hereof (the “Effective Date”).

2.2 Term

- (a) Unless earlier terminated pursuant to ARTICLE 12 and subject to the below Section 2.2(b), this Agreement shall terminate on the fifth (5th) anniversary of the Effective Date or on such later date as the Parties may agree in writing.
- (b) Subject to termination pursuant to ARTICLE 12, but notwithstanding Section 2.2(a), the term of this Agreement may be extended, after the initial five (5) year term, at the option of the City by written notice to the Supplier not less than ninety (90) days before the expiry of the then current five (5) year term, for an additional three (3) terms of five (5) years each for a maximum total Agreement term of twenty (20) years.
- (c) Notwithstanding the foregoing, if the City and the Supplier continue to deal with each other in respect of the subject matter of this Agreement following the expiry of this Agreement, without any additional or other written agreement in respect thereof, this Agreement shall be deemed to have been renewed on a month-to-month basis on the same terms and conditions as before the expiry of the Agreement and it may be terminated without cause by either party on thirty (30) days’ prior written notice to the other.

**ARTICLE 3
SUPPLY; GENERAL TERMS**

3.1 Supply and Role of Supplier

- (a) During the term of this Agreement, the Supplier shall provide the Supply to the City, in accordance with all terms and conditions of this Agreement.
- (b) The intent of this Agreement is for the Supplier to supply, implement and operate a turn-key PBS for the City for the duration of this Agreement. More specifically, the Supplier shall finance, design, supply, implement, own, operate and maintain the PBS in accordance with all terms and conditions of this Agreement.
- (c) Except as otherwise expressly set out in this Agreement, (i) as owner and operator of the PBS, the Supplier shall pay and bear all costs and expenses, and shall bear all financial, legal and other risks associated with the PBS, and (ii) the City shall not pay or bear any of the costs or expenses, or any of the financial, legal or other risks of the PBS.
- (d) The Supplier shall maintain at all times sufficient business capacity and inventories of the supplies necessary for the provision of the Supply, to meet the requirements of this Agreement.

- (e) In connection with the Supply, the Supplier shall provide to the City, without additional compensation, all services, conveniences, materials or features proposed in the Proposal that are not otherwise expressly provided for herein, as well as all other ancillary materials or services that are not expressly mentioned in this Agreement or in the Proposal, but are reasonably inferable from the descriptions of the Supply herein or from the descriptions of proposed services, conveniences, materials or features in the Proposal.

3.2 Application to Prior Acts

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

3.3 Sufficiency and Competence of Personnel

- (a) The Supplier shall have and maintain at all times and in accordance with all applicable Laws, sufficient numbers of fit, skilled, qualified and experienced personnel to carry out the provision of the Supply within the times and in the manner required by the City.
- (b) The Supplier warrants that it has (and its Subcontractors, if any, have) the experience, competence, certifications, qualifications and capacity necessary for the Supply.

3.4 Design Review

- (a) Where so specified in this Agreement or as otherwise instructed by the City, the Supplier shall submit design-related Documentation for review by the City, and shall not proceed with work on the basis of such design Documentation until the City's approval of such Documentation has been received in writing.
- (b) None of:
 - (i) the submission of Documentation to the City by the Supplier;
 - (ii) its examination by or on behalf of the City; or
 - (iii) the making of any comment thereon (including any approval thereof) shall in any way relieve the Supplier of any of its obligations under this Agreement or of its duty to ensure the accuracy and correctness of such Documentation, and its suitability to the matter to which it relates.

3.5 Standards and Requirements

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

- (a) all applicable Laws and Consents;

- (b) the terms of this Agreement;
- (c) the City Policies; and
- (d) where no higher standard is expressly required of the Supplier under this Agreement, Good Industry Practice,

and the Supplier shall comply with the standards and requirements in Sections 3.5(a) to 3.5(d) in the order of priority in which such standards or requirements are listed (with Section 3.5(a) being of highest priority).

3.6 Consents

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

3.7 Warranties

- (a) The Supplier warrants that the Supply shall be performed in accordance with this Agreement and to the best practice standards of diligence, skill, care and efficiency expected of a competent contractor performing work of a similar nature to the Supply.
- (b) The Supply shall, when completed, constitute a fully operable, turn-key system, ready for immediate use by the City and fit for the use for which it is intended and the Supplier warrants that the Supply shall, upon completion, be without defects or imperfections and shall function correctly and adequately and without any need of repair or improvement for at least twelve (12) months following the completion of the Supply or such defects, imperfections or failures to function correctly and adequately shall be remedied by, or such repairs or improvements shall be undertaken by, the Supplier, without cost or liability to the City and the Supplier shall indemnify and hold the City harmless in relation thereto.
- (c) All goods or materials provided under the Agreement as part of the Supply shall be new and fully warranted for a period of at least twelve (12) months from the time of delivery to the City, against defects in design, manufacturing, materials, workmanship and performance, and the Supplier affirms and covenants that such warranty is, and shall be, provided by the Supplier if and to the extent it is not fully and effectively provided to the City by third-party manufacturers or suppliers of the goods or materials.
- (d) All goods, works and materials provided under the Agreement as part of the Supply shall be non-defective and fit for their intended purposes and shall function safely in all respects.
- (e) All costs associated with warranty replacements or repairs shall be the responsibility of the Supplier, including repair, adjustment, and shipping costs, and replacements of goods or materials.

- (f) If requested by the City, the Supplier shall handle and manage any claim on a manufacturer warranty for any defect in goods or materials provided as part of the Supply.
- (g) The Supplier shall deliver to the City all such documentation as the City may require to evidence any warranty required by this Section 3.7 or to evidence the Supplier's compliance with this Section 3.7, and the Supplier shall assign all warranties, and do all other things necessary, to ensure that the City receives the full benefit of each warranty or other covenant set forth in this Section 3.7.

3.8 Relationship Between the Parties

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

3.9 Variations Requested by the City

- (a) Any instruction given by the City which constitutes or gives rise to a variation from the scope or timing of the Supply shall constitute a "Variation" and shall be governed by and subject to this Section 3.9.
- (b) During the term of this Agreement, the City may at any time effect a Variation by notice in writing to the Supplier, and the Supplier shall not be entitled to refuse to implement any Variation unless the carrying out of such Variation would contravene any Law (in which case the Supplier shall promptly give notice to the City).
- (c) If the Supplier is of the opinion that a Variation justifies an increase to the Total Price or a change to any of the Time(s) for Completion, the Supplier must, as a condition to being entitled to any such increase to the Total Price or change to the Time(s) for Completion, no later than 10 Business Days after the City gives notice of the Variation, submit a claim to the City which sets out the Supplier's assessment of the impact the Variation should have on the Total Price due for such Supply and on the Time(s) for Completion for such Supply, and thereafter:
 - (i) the City shall consider that claim as soon as possible and may request the Supplier to supply such further evidence as is reasonably required to confirm the details of such claim (and, as soon as practicable after such

further evidence is available to it, the Supplier shall provide it to the City); and

- (ii) within 10 Business Days after the receipt of all the information requested by the City, the Supplier and the City shall meet in order to agree on any variations to the Total Price for such Supply or the Time(s) for Completion for such Supply, and corresponding changes to Schedule G (Project Budget), as necessary, which such agreement must be evidenced in writing.
- (d) If no agreement is reached under 3.9(c)(ii) within 20 Business Days of the Parties' first meeting (or such other period as the Parties may agree), the Parties may then refer the matter for arbitration in accordance with ARTICLE 17.
- (e) Notwithstanding the foregoing, the City shall be entitled to replace, revise, expand or modify the City Policies at any time upon notice to the Supplier, and no such change shall be considered to be a Variation.

3.10 Tests; Defects and Acceptance

- (a) When, in the Supplier's judgement, any part of the Supply is complete in accordance herewith, the Supplier shall give written notice to that effect to the City. Thereafter, the City may, or may direct the Supplier to, perform such practical tests of the Supply as the City reasonably deems necessary, and the Supplier shall assist the City in performing such tests, or directly perform such tests, as the case may be, if and to the extent so requested by the City.
- (b) If the testing described in the foregoing Section 3.10(a) reveals, in the judgement of the City, any Defects in the Supply, the City shall notify the Supplier accordingly.
- (c) The Supplier shall remedy at its own cost and risk Defects in the Supply that the Supplier discovers or that are notified by the City, as soon as reasonably practicable following discovery or notification of such Defects, as the case may be.
- (d) If the Supplier fails to remedy any Defect in the Supply within a reasonable time, a date may be fixed by the City on or by which the Defect is to be remedied. The Supplier shall be given reasonable notice of this date.
- (e) If the Supplier fails, without reasonable excuse, to remedy any Defect in the Supply by this notified date, the City may (at its option) elect to carry out the work itself or by others and shall be entitled to recover from the Supplier all direct, proper and reasonable costs of so doing (as a debt due on demand). The City's exercise of its election under this Section 3.10(e) shall in no event absolve the Supplier of its responsibility for remediation of other Defects or otherwise constitute a waiver by the City of its rights and remedies in relation to other Defects, nor shall it preclude or restrict the further exercise of such rights or remedies.

- (f) When the City is reasonably satisfied that the Supply has been completed and is without Defects, the City shall promptly issue to the Supplier a Certificate of Completion.
- (g) Without prejudice to any right or remedy of the City under this Agreement, performance of the Supplier's obligations in respect of the Supply shall not be considered to have been completed until the corresponding Certificate of Completion is issued in accordance with Section 3.10(f).

3.11 Title and Risk

- (a) Unless and until the City requires, pursuant to Section 12.3, the Supplier to transfer title to the Supply, the Supplier shall retain title and risk to the Supply.
- (b) The Supplier warrants that title in and to the Supply shall be free and clear of Encumbrances for the duration of the term of this Agreement.
- (c) Title in and to the Supply shall pass to the City only upon the City's request in accordance Section 12.3 of this Agreement.
- (d) If the City requires the Supplier to transfer title in and to the Supply to the City, the Supplier shall deliver to the City any documentation, including a bill of sale, which the City may reasonably require to evidence the transfer of title in and to the Supply to the City, free and clear of all Encumbrances.
- (e) The Supplier must not enter any contract that constitutes an Encumbrance on the Supply or reserves ownership of goods or materials supplied by the Supplier hereunder in favour of any third party and, at the request of the City, the Supplier must provide evidence that no such contract has been entered into.
- (f) Notwithstanding the foregoing provisions of this Section 3.11, the Supplier is responsible for the care of, and bears all of the risk of loss or damage to, the Supply for the duration of the term of this Agreement.

ARTICLE 4 PREFERRED SUPPLIERS

4.1 Procurement of Supplies

If so required as part of the Supply, the Supplier shall procure, in the name of and on behalf of the City:

- (a) those materials and/or services specified in Schedule W (Preferred Suppliers) as being required to be procured from such Preferred Supplier; and
- (b) where no particular materials and/or services are specified in Schedule W (Preferred Suppliers) as being required to be procured from a particular Preferred Supplier, materials or services that are in any event required for purposes of the Supply in accordance with Good Industry Practice.

Such procurement shall be in accordance with the City Policies (if and insofar as applicable) set out in Schedule V and otherwise the provisions of this Agreement.

4.2 Information Concerning Alternative Suppliers

Exercising Good Industry Practice, the Supplier shall use all reasonable endeavours to submit to the City details of alternatives to each Preferred Supplier where:

- (a) it would be more economical to purchase the relevant materials or services from an alternative supplier; or
- (b) a better quality of materials or services may be obtained from an alternative supplier; or
- (c) it would be more beneficial to the City to procure such materials or services from an alternative supplier.

4.3 Use of Alternative Suppliers

If the Supplier needs to procure any materials or services for which a Preferred Supplier is specified in Schedule W (Preferred Suppliers) and the Supplier wishes to procure such materials or services from an alternative supplier, the Supplier shall provide written notification to the City within a reasonable time so as not to delay the Time(s) for Completion. Such notice shall be in the form acceptable to the City and shall contain, as a minimum, the following information:

- (a) the relevant materials or services to be procured;
- (b) the name of the Preferred Supplier;
- (c) the name of the alternative supplier;
- (d) corporate, financial, technical, insurance and commercial information concerning the alternative supplier that is reasonably adequate to permit the City to evaluate the alternative supplier; and
- (e) the Supplier's reason(s) for recommending that such materials or services be procured from the alternative source (supported by evidence).

The City shall provide its acceptance or rejection of such recommendation within a reasonable period so as not to delay the Time(s) for Completion. The City's decision shall be at its absolute discretion and shall be final and binding on the Parties.

ARTICLE 5 CONTRACT MANAGERS

5.1 City PBS Managers

- (a) The City hereby designates each of and as a "City PBS Manager." Each City PBS Manager, including any additional City PBS Managers designated by the City in accordance herewith, has, for so long as he or she remains a City

PBS Manager, full authority to act on behalf of the City in relation to all matters arising under this Agreement.

- (b) Any instruction from the City to the Supplier pursuant to this Agreement shall be issued through the City PBS Manager and shall be effective if in writing or confirmed in writing within seven days of oral instruction. Failure to comply with this Section 5.1 shall render any purported City's instruction invalid, unless it is later ratified by the City. However, this restriction does not apply to any instruction issued in an emergency situation or which relates to a threat or potential threat to the life, health or safety of any individual.
- (c) Notwithstanding the foregoing, each City PBS Manager may, in writing, delegate his or her authority hereunder to others.

5.2 Supplier's Managers

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

5.3 Designation of New Managers

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

ARTICLE 6 SUPPLIERS' WARRANTIES AND COVENANTS

6.1 General Representations and Warranties

The Supplier represents and warrants that:

[NTD: Certain additional representations and warranties may be required. Depending on the size, history and financial wherewithal of the Supplier, the City may require certain performance or other security to secure the Supplier's compliance with this Agreement]

- (a) the Supplier has the full right, power, and authority to enter into this Agreement and to perform the Supply;

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

6.2 General Health and Safety-Related Acknowledgements and Covenants

The Supplier shall:

- (a) in the provision of the Supply, comply at all times with the OHS Requirements and take all reasonably necessary steps to ensure similar compliance from its Representatives and its Subcontractors, if any;
- (b) if the Supply involves any type of manual labour, prior to their attendance at any Site, deliver to each of its Representatives and each of its Subcontractors, if any, and to their employees, if applicable, copies of the OHS Requirements relevant to the Site;
- (c) at all times take all reasonable precautions to maintain the health and safety of workers;
- (d) be at all times registered and in good standing with the relevant workers' compensation insurance Competent Authorities, and provide to the City copies of any notices, correspondence or directions issued by any government or Competent Authority relating to workplace-related employment, human rights,

labour, immigration policy, health, safety or environmental matters within 24 hours of the Supplier's receipt of such notice, correspondence or direction;

- (e) appoint a qualified health and safety coordinator to ensure coordination of health and safety activities in the provision of the Supply;
- (f) report (with full details) any accident, injury, illness or other incident relating to workplace health and safety or the environment to the City as soon as reasonably practicable, investigate the accident, injury, illness or other incident reasonably thoroughly (and in any event in accordance with any applicable OHS Requirements) and promptly report to the City the results of each such investigation;
- (g) maintain such records and make such reports concerning health, safety and welfare of persons, and damage to property, or the natural, physical or biological environment, as the City may reasonably require; and
- (h) be and act as a "prime contractor", as defined in the WCA, for all Sites, and the Supplier assumes and is wholly responsible for the health and safety of all persons at such locations on the basis described in the WCA.

6.3 Covenants Regarding Violations of Health and Safety Requirements

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

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

6.4 Covenants Regarding the Environment

- (a) The Supplier shall:
 - (i) at all times, be conscious of the importance of the protection of the natural, physical and biological environment at and in the vicinity of the Sites;
 - (ii) conduct, and cause its Representatives to conduct, their respective activities that relate to the Supply in a manner that shall have the least

possible adverse effect on the natural environment and in compliance with all Environmental Laws and Consents, all at the Supplier's expense;

- (iii) perform the Supply with the least degree of environmental degradation during and as a result of such performance; and
 - (iv) without restricting the generality or application of any other provisions of this Agreement, comply, and cause its Representatives to comply, with all applicable Laws and Consents and with all plans and instructions contained in this Agreement or issued in writing by the City concerning the existence, Release, removal, handling, transport, storage, disposal and treatment of any Hazardous Substances or other materials that are or may be hazardous to the life or health of any person or that endanger the environment or that are regulated by applicable Law.
- (b) During the term of this Agreement, the Supplier shall not bring or store or permit to be used at any Site, any Hazardous Substances unless such Hazardous Substances are (i) reasonably required to carry out the Supply, and (ii) brought or stored or permitted to be used at any Site in compliance with all Laws (including Environmental Laws). The Supplier shall not Release nor permit the Release of any Hazardous Substances into the environment. The Supplier is solely responsible for all Hazardous Substances introduced to the Sites or the environment by the Supplier or its Representatives or Subcontractors, and the Supplier shall promptly and fully remediate, to the City's satisfaction, any release of Hazardous Substances on or from any Site, or in the vicinity of any Site.

6.5 Further Covenants Regarding the Sites

The Supplier shall:

- (a) perform the Supply at all Sites in compliance with all applicable Laws and requirements of the City;
- (b) at its sole cost, keep any portion of any Site used in connection with the Supply in a safe and tidy condition and to maintain and operate the Supplier's equipment in a good, workmanlike and safe manner; and
- (c) not to do anything at any Site which is or may become a nuisance, danger or disturbance to the City or to any other occupants or users of the Site or adjacent areas or to any works or structures or installations thereon.

6.6 Covenants Against Encumbrances

- (a) The Supplier shall keep each Site and the Supply, and each part thereof, free of all Encumbrances filed pursuant to any Law or otherwise in respect of any such work or materials. In any event, if any Encumbrance has been filed in relation to the Site or any improvement thereon, or in relation to any goods included in the Supply, the Supplier shall cause any such Encumbrance to be discharged within 30 days (or sooner if requested by the City acting reasonably) after the Encumbrance has come to the notice of the Supplier.

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

6.7 Absence of Conflicts of Interest

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

ARTICLE 7 PERSONNEL

7.1 Separate Personnel

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

its Representatives or Subcontractors shall, employ or make an offer of employment to any such employee of the other during the term of this Agreement or the period of 365 days after the termination of this Agreement without the express prior approval in writing of the employee's current employer.

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

7.2 Changes in Personnel

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

7.3 Key Project Personnel

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

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

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

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

ARTICLE 8 REPORTING

8.1 Reports

The Supplier shall comply with the reporting requirements set out in Schedule H.

8.2 Assistance regarding Reporting Requirements

The Supplier shall, and shall cause its Representatives to, provide the City with reasonable assistance and information which is necessary to enable the City to comply with any Law.

ARTICLE 9 PAYMENT; AUDITS

9.1 Payment to the Supplier

- (a) Subject to ARTICLE 12 and Section 9.3, the Supplier will be compensated for the Supply in accordance with Schedule P (Supplier Compensation), following the receipt by the City of invoices prepared and delivered in accordance with Section 9.2(b) and Section 9.3.

[NTD: How the Supplier will be compensated, as well as the mechanics (e.g. whether there is a need for the Supplier to submit invoices, City to submit purchase orders, etc) to be further discussed.]

- (b) Notwithstanding any other provision hereof, prior to any compensation under this Agreement, the City shall determine whether the *Builders Lien Act* (British Columbia) applies to this Agreement and, if so:
 - (i) Payments to the Supplier under this Agreement shall be subject to ten percent withholding, in the form of a lien holdback, to be held by the City in accordance with the provisions of the statute; and

- (ii) the lien holdback shall be released by the City 56 days after the issuance of a certificate of completion in conformity with the *Builders Lien Act* (British Columbia) in relation to the Supply if no liens then exist.
- (c) If any lien claim based on the provisions of the *Builders Lien Act* (British Columbia) relating directly or indirectly to this Agreement exists at any time, the Supplier agrees to immediately take all steps and do all things necessary or required to remove, cancel and dismiss such lien and until such lien is removed, cancelled or dismissed (as appropriate, to the satisfaction of the City), or all further payments under this Agreement may be withheld by the City or, at the discretion of the City, amounts payable to the Supplier may be used by the City to obtain the removal, cancellation or dismissal of any such lien.
- (d) Unless otherwise expressly stated in the schedules hereto, the Supplier shall pay any and all costs, including freight, marine and transit insurance, Taxes, and transportation and delivery charges on all equipment or things of whatsoever nature provided by the Supplier as required by it for the purposes of the Supply and any other incidental costs and all such costs shall be deemed to be included in the Total Price.
- (e) The Supplier shall be deemed to have satisfied itself as to the correctness and sufficiency of the agreed Total Price and to have obtained all information and to have taken into account all circumstances, risks and other contingencies that may affect the cost of performing the Supply (including any circumstances, risks or contingencies that a contractor exercising Good Industry Practice would typically expect to encounter) and any other obligation under this Agreement. The Supplier shall not be entitled to any additional compensation beyond the Total Price (including without limitation for escalation in the prices of goods, materials and labour) except as otherwise expressly stated in this Agreement.
- (f) Notwithstanding any other provisions of this Agreement, the Supplier shall not be entitled to payment for any Supply that has not been performed in compliance with the provisions of this Agreement.

9.2 Purchase Orders; Content of Invoices

- (a) The City shall from time to time issue purchase orders to the Supplier in relation to the Supply. These shall not have the effect of amending or waiving the application of any provision of this Agreement.
- (b) Each of the Supplier's invoices shall set out, as a minimum (and in such form or format as required by the City):
 - (i) the City purchase order number(s) relating to the particular Supply to which the invoice relates;
 - (ii) an itemized list of the amounts owing;
 - (iii) the invoice date and the time period to which the invoice relates;

- (iv) a description of the portion of the Supply to which the invoice relates;
 - (i) the total amounts payable under the invoice and details of any applicable taxes;
 - (ii) all supporting documentation relating to disbursements; and
 - (iii) such other information as the City may require from time to time.
- (c) Any terms or conditions proposed by the Supplier to govern the Supply that are contained in any invoice (or in any shipping document, packing list or similar document) are void and of no effect, notwithstanding any statement in such document concerning the means by which the City may accept or be deemed to accept such terms or conditions.

9.3 Procedure for Invoices

- (a) The Supplier shall address each of its invoices to the City, Attention: Accounts Payable, and email it to APInvoice@vancouver.ca, or to such other address as is specified in an applicable purchase order. The City shall thereafter pay the invoice within 30 days, provided the other requirements of this Agreement have been satisfied and subject to the other provisions hereof.
- (b) The City shall not be liable for any interest on any invoice amount in respect of any period for any reason.
- (c) The City expects to make payments by electronic funds transfer and the Supplier shall provide banking information to the City to enable it to do so.

9.4 Currency of Payment

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

9.5 Contested Claims for Payment

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

9.6 Audits

- (a) The Supplier shall maintain up-to-date records and accounts which clearly document the provision of the Supply and shall make the same available to the City upon request. The City may request copies of all such records and accounts which shall be provided to the City by the Supplier (subject to reimbursement of the Supplier's reasonable copying costs and any other direct costs and expenses, if any) at any time prior to the expiry of 365 days after completion of all of the Supply or earlier termination of this Agreement. For avoidance of doubt, any records and accounts provided by the Supplier in accordance with this Section 9.6(a) shall be deemed to be Confidential Information;

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

9.7 Set Off

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

ARTICLE 10 CERTAIN ADDITIONAL OBLIGATIONS OF THE CITY

10.1 Scheduled Items

The City shall make available, on agreed terms and conditions, to the Supplier for the purpose of the Supply, such personnel, equipment, facilities, services (including services of third parties) and information as agreed by the City and described in Schedule Y (Items to be Provided by City).

10.2 Other Information

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

10.3 Decisions in Writing

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

10.4 Access to Sites

Except to the extent prohibited by applicable Law or any Consent, the City shall grant to the Supplier non-exclusive, timely and in accordance with any agreed schedule, access (as the City is reasonably able to provide) to all necessary areas of the Site or Sites on and from the Effective Date and such other non-exclusive access as is necessary or appropriate to perform the Supply and the Supplier's other obligations in accordance with this Agreement.

ARTICLE 11 LIABILITY AND INSURANCE

11.1 Covenants of Indemnification by the Supplier

- (a) As owner and operator of the PBS, the Supplier shall bear all financial, legal and other risks associated with the PBS and shall indemnify and keep indemnified and hold the City and its officials, officers, employees and agents harmless against all losses, liabilities, claims, demands, costs and expenses (including legal fees), fines, penalties and charges (including those imposed by applicable Laws or otherwise imposed), arising out of or in connection with, or consisting of:
- (i) any:
 - (A) damage to a Site or any part thereof, or any property whether located at a Site or otherwise, which occurs during the provision of the Supply;
 - (B) any claim by a Subcontractor under the *Builders Lien Act* (British Columbia) or otherwise;
 - (C) damage to the natural environment, including any remediation cost recovery claims;
 - (D) loss or damage arising from a claim by any PBS user or other third party concerning or arising out of the Supply;
 - (E) loss or damage arising from a claim by any employee or Subcontractor of the Supplier for any reason;
 - (F) occupational illness, injury or death of any person which occurs during, or as a result of, the provision of the Supply;
 - (G) failure by the Supplier to fully comply with the provisions of this Agreement;
 - (H) breach by the Supplier or any Subcontractor of any Law in the course of, or as a result of, providing the Supply;
 - (I) actual or alleged infringement of any Intellectual Property Rights caused by the provision of the Supply or the use of any process, work, material, matter, thing or method used or supplied by the Supplier or any Subcontractor in the provision of the Supply; or

(J) breach of any representation, warranty or covenant of the Supplier contained herein,

in each case to the extent that it is due to any act, omission or default, or any breach of Law or this Agreement, of the Supplier, a Subcontractor or any Representative of the Supplier or any employee, agent or contractor of any of them; or

(ii) any defect in a good, work or material provided as part of the Supply or any failure of any such good, work or material to function safely or to satisfy any applicable safety standard.

(b) Nothing in this Section 11.1 nor otherwise in this Agreement shall limit or exclude any liability (whether in contract, tort, for breach of statutory duty or any other legal basis) of the Supplier to any person, including without limitation any liability for:

(i) the Supplier's default hereunder or fraud, fraudulent misrepresentation or reckless misconduct in the provision of the Supply; or

(ii) any loss or damage flowing from the termination of this Agreement.

(c) The Supplier appoints the City as the trustee of the City's officials, officers, employees and agents in relation to the covenants of indemnification of the Supplier contained in this Section 11.1 and the City accepts such appointment.

11.2 Contamination of Sites

Without limiting any other provision hereof or any other remedy available to the City hereunder, the Supplier agrees and covenants that if, at any time during the term or following the expiry of this Agreement, a Site or any other lands affected by the Supply are found to be contaminated or polluted (as determined pursuant to Environmental Laws) as a result of or in connection with the Supply, the Supplier shall forthwith at its sole cost:

(a) undertake all necessary audits, investigations, tests and surveys to determine the nature and extent of the contamination or pollution;

(b) notify the City of the nature and extent of the contamination or pollution and any proposed or required work necessary to control, abate, dissipate or remove (as appropriate) the pollution or contamination as required by Environmental Laws; and

(c) undertake the work referred to in the foregoing paragraph (b).

11.3 Conduct of Claims

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

- (a) subject to Sections 11.3(b), 11.3(c) and 11.3(d), where it appears that a person is or may be entitled to indemnification from the Supplier in respect of all (but not part only) of the liability arising out of a claim, such person entitled to indemnification may at its sole election and subject to:
- (i) approval by any relevant insurers (without prejudice to Section 11.3(f); and
 - (ii) the Supplier providing the party entitled to indemnification with a secured indemnity to its reasonable satisfaction against all costs and expenses (including legal expenses) that it may incur by reason of such action,
- permit or require the Supplier to dispute the claim on behalf of the person entitled to indemnification at the Supplier's own expense and take conduct of any defence, dispute, compromise, or appeal of the claim and of any incidental negotiations; provided that the person entitled to indemnification shall give the Supplier (provided at the Supplier's cost) all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim;
- (b) with respect to any claim conducted by the Supplier pursuant to Section 11.3(a):
- (i) the Supplier shall keep the person entitled to indemnification fully informed and consult with it about material elements of the conduct of the claim;
 - (ii) the Supplier shall not bring the name of the person entitled to indemnification (or any Group Member thereof) into disrepute; and
 - (iii) the Supplier shall not pay or settle such claims without the prior consent of the person entitled to indemnification, such consent not to be unreasonably withheld or delayed;
- (c) a person entitled to indemnification shall be free to pay or settle any claim on such terms as it thinks fit (and without prejudice to its rights and remedies under this Agreement) if:
- (i) the Supplier is not entitled to, or is not permitted or instructed, take conduct of the claim in accordance with Section 11.3(a); or
 - (ii) the Supplier fails to comply in any material respect with the provisions of Sections 11.3(a) or 11.3(b);
- (d) the person entitled to indemnification pursuant to ARTICLE 11 shall be free at any time to give notice to the Supplier that it is retaining or taking over (as the case may be) the conduct of any defence, dispute, compromise or appeal of any claim (or of any incidental negotiations) to which Section 11.3(a) applies. On receipt of such notice the Supplier shall promptly take all steps necessary to transfer the conduct of such claim to the person entitled to indemnification, and shall provide to the person entitled to indemnification all reasonable co-

operation, access and assistance for the purposes of considering and resisting such claim;

- (e) if the Supplier pays to the person entitled to indemnification an amount in respect of an indemnity and the person entitled to indemnification subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the claim under the indemnity, the person entitled to indemnification shall forthwith repay to the Supplier whichever is the lesser of:
 - (i) an amount equal to the sum recovered (or the value of the saving or benefit obtained) less any out-of-pocket costs and expenses (including legal expenses) properly incurred by the person entitled to indemnification in recovering the same; and
 - (ii) the amount paid to the person entitled to indemnification by the Supplier in respect of the claim under the relevant indemnity,

provided that there shall be no obligation on the part of the person entitled to indemnification to pursue such recovery and that the Supplier is repaid only to the extent that the amount of such recovery aggregated with any sum recovered from the Supplier exceeds any loss sustained by the person entitled to indemnification;

- (f) the Supplier shall inform the person entitled to indemnification of the requirements of any insurer who may have an obligation to provide an indemnity in respect of any liability arising under this Agreement and in relation to such the person entitled to indemnification shall issue instructions accordingly; and
- (g) any person entitled to an indemnity from the Supplier must take all reasonable measures to mitigate any loss, damage or liability that it may suffer in respect of any such matter.

11.4 Insurance

In addition to those mandatory insurance policies that the Supplier is required to carry by any applicable Law, the Supplier shall carry and maintain in force, at all times during the term of this Agreement, the insurance set out in Schedule S (Insurance). The Supplier shall also comply with all other obligations set out in Schedule S (Insurance).

ARTICLE 12 FORCE MAJEURE; TERMINATION

12.1 Force Majeure

- (a) Neither Party shall be deemed to be in breach of this Agreement or otherwise liable to the other Party in any manner whatsoever for any failure or delay in performing its obligations under this Agreement reasonably due to Force Majeure.

- (b) If either Party's performance of its obligations under this Agreement is affected by an event of Force Majeure, then:
 - (i) it shall give written notice to the other Party, specifying the nature and extent of the event of Force Majeure, within ten days after becoming aware of the event of Force Majeure;
 - (ii) performance of such obligation(s) shall be deemed suspended but only for a period equal to the delay reasonably caused by such event;
 - (iii) it shall not be entitled to payment in respect of extra costs and expenses incurred by virtue of the event of Force Majeure;
 - (iv) the Time(s) for Completion shall be extended to take into account such delay; and
 - (v) within five days of the cessation of any Force Majeure event, the Party affected thereby shall submit a written notice to the other Party, specifying the actual duration of the delay of its obligations caused by the event of Force Majeure and the consequences resulting from such delay, and submit a specific plan to minimize and mitigate those consequences.
- (c) The affected Party shall use all reasonable diligence in accordance with Good Industry Practice to mitigate the cause and the result of an event of Force Majeure and to remedy the situation and resume its obligations under this Agreement, including complying with any instructions from the City, as to how to do so.
- (d) Notwithstanding the obligations of a Party affected by an event of Force Majeure pursuant to Sections 12.1(b) and 12.1(c), if the event of Force Majeure renders it impossible or impractical for the Supplier to provide the Supply in accordance with this Agreement for a period of at least 30 days, the City may terminate this Agreement upon notice delivered to the Supplier at any time following the expiration of such 30 day period or such longer period as may be determined by the City.

12.2 City Suspension and Termination Rights

[NTD: The requirement to remove or relocate a station, on a temporary or permanent basis, to be further discussed. This may be necessary to accommodate emergencies, special events or other circumstances within the City.]

The City shall have the following rights:

- (a) The City may order the suspension of all or part of the Supply at any time and for such period as it determines, by notice with immediate effect to the Supplier, in the event of a Safety Incident; and upon receipt of any such notice of suspension, the Supplier shall immediately cease performing the Supply, minimise expenditure and comply with any reasonable instructions of the City relating to such Safety Incident, including any investigations.

- (b) If the City reasonably considers that the Supplier is not meeting any of its material obligations under this Agreement, the City may inform the Supplier by notice stating the grounds for the notice. If evidence of remediation satisfactory to the City, is not received as soon as practicable or in any case within 30 days or such longer period as agreed by the Parties, the City may by a further notice to the Supplier of at least another 30 days terminate this Agreement.
- (c) If the Supplier is in default of any Subcontractor or other agreement that is ancillary to this Agreement, and if in the City's opinion, such other agreement is material to the performance of the Supply under this Agreement, the City may by written notice to the Supplier of at least 30 days terminate this Agreement.
- (d) The City may terminate this Agreement with immediate effect upon written notice to the Supplier if:
 - (i) the Supplier becomes bankrupt or insolvent, goes into liquidation, has a receiver or administrator appointed over it or any of its assets of undertaking, enters into any arrangement for the benefit of its creditors, becomes the subject of any moratorium or carries on business under a receiver, trustee, manager or arrangement for the benefit of its creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events; or
 - (ii) a Change in Control of the Supplier occurs without the City's prior written consent in accordance with Section 13.1.

12.3 Consequences of Termination

This Agreement will terminate pursuant to Section 2.2, Section 12.1(d) or Section 12.2. If this Agreement terminates pursuant to one of the aforementioned sections, the following consequences shall apply:

- (a) Prior to the termination of this Agreement, the Supplier shall, as soon as reasonably practicable:
 - (i) deliver to the City all work and Documentation produced by or on behalf of the Supplier during the course of performing the Supply;
 - (ii) return (or destroy if otherwise directed by the City in writing) to the City all Confidential Information provided to it for the purposes of this Agreement;
 - (iii) return all of the City's Site access cards, equipment and other items provided under this Agreement, failing which, the City may enter the relevant premises and take possession thereof, and, until any such access cards, equipment and other items have been returned or repossessed, the Supplier shall be solely responsible for its or their safe-keeping;

- (iv) if so requested by the City, assign all rights and interests in, and title to, the Supply and this Agreement, free and clear of any and all Encumbrances, for nominal consideration to the City (or the City's designate) within the time period specified by the City (acting reasonably);
 - (v) if so requested by the City, assign any Subcontractor agreement or any other agreement ancillary to this Agreement, free and clear of any and all Encumbrances, for nominal consideration to the City (or the City's designate) and do all things and execute all documents necessary to give effect thereto; and
 - (vi) otherwise comply with all reasonable requirements of the City arising from the termination of this Agreement.
- (b) If the City requests that the Supply be assigned to the City or the City's designate, the Supplier shall, unless waived by the City:
- (i) continue to operate and maintain the PBS in accordance with the requirements of this Agreement until the effective date of such assignment or some other date determined by the City; and
 - (ii) do all things necessary to effect an efficient and orderly assignment of the Supply, this Agreement and any Subcontractor or other agreements, to the City or the City's designate in order to minimize any interruption to the operation of the PBS.
- (c) If this Agreement terminates and the City does not request that the rights and interests in, and title to, the Supply be assigned to the City or the City's designate, the Supplier shall, at its risk and expense, as soon as reasonably practicable:
- (i) remove all PBS equipment from the Sites and restore all Sites back to the condition they were in before the installation of any PBS equipment;
 - (ii) upon the City Engineer's request, deliver to the City Engineer all books, records, documents and materials relating to this Agreement;
 - (iii) deliver to the City Engineer such other reports and other documents and information as may be required pursuant to Schedule H (Reporting);
 - (iv) do such other things as the City may request, acting reasonably.
- (d) The Supplier shall be entitled to recover from the PBS its reasonable properly incurred demobilization costs, up to a maximum of \$● [NTD: To be discussed], in aggregate, save and except where this Agreement is terminated pursuant to Sections 12.2(b), 12.2(c) or 12.2(d), in which case all such costs shall be for the Supplier's own account.
- (e) On termination of this Agreement for any reason, the Supplier shall be entitled to payment for any completed portion of the Supply rendered in full

compliance herewith prior to the time of termination, in accordance with Schedule P (Supplier Compensation).

12.4 Other Surviving Rights and Liabilities of Parties

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

ARTICLE 13 ASSIGNMENT AND SUBCONTRACTING

13.1 Assignment

Neither Party shall assign, transfer, mortgage, charge or deal in any other manner with this Agreement or any Subcontractor or other agreement ancillary to this Agreement, or any rights and obligations hereunder or thereunder, or purport to take any such action without the prior written consent of the other. A Change in Control of the Supplier shall be deemed an assignment or transfer for the purposes of this Section.

Notwithstanding the foregoing, if the City requires the Supplier to assign the Supply, this Agreement or any Subcontractor or other agreement ancillary to this Agreement, to the City or a City designate in accordance with Section 12.3(a), there is no need for the Supplier's consent and the Supplier shall, as quickly as reasonably practicable, do all things and take all steps as may be necessary or desirable to give full effect to the City's requirement. The City may require certain security to be granted by the Supplier to ensure that if the City requires an assignment of any of the foregoing, the foregoing are free and clear of any Encumbrances and the assignment proceeds smoothly.

13.2 Subcontracting and Ancillary Agreements

- (a) The Supplier shall not subcontract the whole or substantially all of the Supply.
- (b) Without prejudice to the foregoing Section 13.2(a), save in the case of Subcontractors whose role in the provision of the Supply is expressly provided for in Schedule X (Permitted Subcontractors), the Supplier may not subcontract any part of the Supply without the City's prior written consent.
- (c) The Supplier shall include in each Subcontractor agreement or any other agreement ancillary to this Agreement, provisions allowing such agreements to be assigned by the Supplier, at the City's request, to the City (or the City's designate) without the need for payment to, or consent by, the Subcontractor or any other party.
- (d) The Supplier shall not without the prior written consent of the City (which shall not be unreasonably withheld or delayed) enter into, modify or terminate any agreement with a Subcontractor or any agreement that is ancillary to this Agreement. If the Supplier is in default, or is reasonably likely to be in default, under any of the foregoing agreements, the Supplier shall immediately give written notice to the City of the nature of the default, what (if any) the

remedy period is, how the Supplier intends to remedy the default, and whether the other party to the Agreement has threatened to terminate such agreement or take any other action as a result of such default.

- (e) If the Supplier is unable to enter into a contract with a Subcontractor whose role in the provision of the Supply is expressly provided for in the schedules hereto, it shall as soon as reasonably practicable inform the City of the reason for such inability and procure the services of a replacement subcontractor that is acceptable to the City, acting reasonably.
- (f) The Supplier shall be responsible for the acts, defaults or neglect or any omission of each Subcontractor, its employees and agents in all respects as if they were the acts and defaults or neglect or omission of the Supplier its employees or agents themselves.

ARTICLE 14 INTELLECTUAL PROPERTY

14.1 Intellectual Property

The Supplier and the City shall comply with the terms and conditions of Schedule Z (Intellectual Property).

ARTICLE 15 PRIVACY; CONFIDENTIALITY

15.1 FOIPPA and PIPA

The Supplier acknowledges that the City is subject to FOIPPA, which imposes significant obligations on the City's contractors to protect all personal information acquired in the course of providing any service to the City. The Supplier hereby agrees to comply with all of its obligations under FOIPPA. The Supplier also agrees to comply with all of its obligations under PIPA, which imposes obligations on non-public bodies to protect personal information acquired in the course of its business.

15.2 No Promotion

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

15.3 Confidentiality Obligations

Each Party shall keep the Confidential Information of the other Party confidential and each Party shall not (a) use such Confidential Information except for the purpose of exercising or performing its rights and obligations under this Agreement or where, in the case of the City, otherwise necessary to pursue the public business of the City (a "Permitted Purpose"),

or (b) disclose the Confidential Information in whole or in part to any third party, except as expressly permitted by this ARTICLE 15.

15.4 Disclosure to Representatives

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

15.5 Disclosures Required by Law

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

15.6 Other Disclosures by the City

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

15.7 Interpretation; Enforcement and Survival

The Parties acknowledge that a breach of any of the obligations or provisions contained in this ARTICLE 15 could cause the other Party to suffer loss which may not be adequately compensated for by damages and that the other Party may, in addition to any other remedy or relief, enforce the performance of this Agreement by injunction or specific performance upon application to a court of competent jurisdiction without proof of actual or special damage and notwithstanding that in any particular case damages may be readily quantifiable, and such breaching Party must not plead sufficiency of damages as a defence in the proceeding for such injunctive relief.

ARTICLE 16 TAXES

16.1 Taxes for Own Accounts

Unless otherwise expressly stated in this Agreement, any Taxes becoming due and payable by either Party pursuant to any applicable Laws as a result of the entering into, the performance of obligations under or the taking of payment pursuant to this Agreement, shall be for the account of that Party, and for greater certainty the Total Price includes all such Taxes, except for applicable Taxes arising under all sales, excise and value added tax

legislation (including, without limitation, the *Excise Tax Act* (Canada) and similar Canadian provincial legislation) (collectively, “Sales Tax”) as a result of the sale of the Supply within Canada hereunder, unless it is clearly stated that they are intended to be Sales Tax-inclusive.

16.2 Withholding Taxes

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

ARTICLE 17 DISPUTE RESOLUTION

17.1 Optional Procedure

All claims, disputes or issues in dispute between the City and the Supplier in relation to this Agreement shall be decided by escalation to senior management, mediation or arbitration, if the Parties so agree in writing, or, failing any such agreement, by the courts of competent jurisdiction in the Province of British Columbia.

17.2 Arbitration

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

- (a) the arbitration shall be conducted pursuant to the *Commercial Arbitration Act* (British Columbia) and shall be governed by the rules of the British Columbia International Commercial Arbitration Centre, except that the arbitrator or arbitrators shall be agreed upon by the Parties, and failing agreement by the Parties, shall be appointed by a court of competent jurisdiction within the Province of British Columbia;

- (b) the parties shall share equally the costs of the arbitration but shall be responsible for their own separate costs and expenses in relation to the arbitration including legal fees and disbursements; and
- (c) the arbitration shall take place in Vancouver, British Columbia and shall be governed by the laws of British Columbia.

ARTICLE 18 MISCELLANEOUS

18.1 Time of the Essence

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

18.2 Costs

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

18.3 Benefit of this Agreement

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

18.4 Entire Agreement

This Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof and cancels and supersedes any prior understandings and agreements between the Parties hereto with respect thereto. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between the Parties in relation to the subject matter hereof other than as expressly set forth in this Agreement.

18.5 Amendments and Waiver

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

18.6 Notices

- (a) Any order, demand, notice or other similar communication to be given to a Party in connection with this Agreement must be given in writing and shall be

deemed to be validly given if given by personal delivery to a City PBS Manager or a Supplier’s Manager, as applicable, or delivered by registered mail, by courier or by electronic transmission (with delivery confirmation or receipt of a reply email effectively acknowledging delivery), addressed to a City PBS Manager or a Supplier’s Manager, as the case may be, or, in each case to such other individual as is designated in writing by the relevant recipient Party (including as designated in writing hereinbelow) at the relevant address or facsimile number listed below:

(i) if to the Supplier:

<Supplier Name>
<address>

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

(ii) if to the City:

City of Vancouver
<Department>
453 West 12th Avenue
Vancouver, BC V5Y 1V4

Attention: <>
Facsimile: <>

With a copy to:

City of Vancouver
Legal Services
453 West 12th Avenue
Vancouver, BC V5Y 1V4

Attention: Francie Connell, Director of Legal Services
Facsimile: (604) 873-7445

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

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

(i) if given by personal delivery, on the day of actual delivery thereof;

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

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

18.7 Governing Law and Jurisdiction

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

18.8 Further Assurances

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

18.9 Severance

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

18.10 Third Party Claims

The Supplier shall give prompt written notice to the City upon becoming aware of a threat or commencement of any actions or claims brought against the Supplier by a PBS user, a Subcontractor or any other third party in connection with this Agreement or the PBS.

18.11 No Prejudice of City's Regulatory Rights, Powers, etc.

Nothing expressed or implied in this Agreement will or will be deemed to derogate from or prejudice or affect the City's rights, powers, duties, or obligations in the exercise of its functions pursuant to the Vancouver Charter or any applicable Laws, and the City may exercise such rights, powers, duties, and obligations as fully and effectively as if the Supplier and the City had not executed and delivered this Agreement. For greater certainty, no term of this Agreement or consent or approval given by the City under this Agreement will be deemed to be an approval or consent by the City in its regulatory capacity under the Vancouver Charter or any other applicable Laws.

18.12 Counterparts

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

18.13 Independent Legal Advice

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

18.14 Electronic Execution

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

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

<📄 SUPPLIER NAME >

Signature

Print Name and Title

Signature

Print Name and Title

CITY OF VANCOUVER

Signature

Print Name and Title

Signature

Print Name and Title

[NTD: Set out below are proposed schedules to the agreement. The intent is to take the information provided by the lead Proponent in its Proposal Response Template, make any agreed changes, then transfer the information into these schedules. Some of the schedules below already contain some proposed provisions that will also need to be agreed upon.]

SCHEDULE A SYSTEM DESIGN AND EQUIPMENT SPECIFICATIONS

General

1. Supplier will finance, design, supply, implement, own, operate and maintain the Equipment in accordance with the terms of this Agreement and all applicable Laws.
2. The Equipment will meet or exceed the requirements imposed by any and all applicable Laws and will be of a standard of quality equal to or exceeding that of any Equipment samples shown to the City during the RFP evaluation process.
3. In connection with the installation, operation, and maintenance of the Equipment, Supplier will use reasonable efforts to minimize the extent to which the use of the streets or other property of the City is disrupted, and Supplier will use reasonable efforts not to obstruct the use of such streets or property of the City, including, but not limited to, pedestrian travel. Sidewalk clearance must be maintained at all times so as to ensure a free pedestrian passage in accordance any applicable Laws unless prior consent has been obtained from the City Engineer in his or her sole discretion.
4. The design of the Equipment used or installed pursuant to this Agreement will be in compliance with all applicable Laws. In the event that any changes to the Equipment are required by any changes in Laws from those in effect as at the Effective Date, Supplier will make such changes as are required to make the Equipment comply with such changes and will note such changes in its inventory records so that this information is included in the inventory reporting required under Schedule H (Reporting). Supplier will, at a minimum, replace Equipment and parts pursuant to the manufacturer's warranty or as necessary throughout the term of the Agreement.
5. Before using or installing any Equipment, Supplier will obtain all necessary Consents required for the Equipment, including those required by:
 - a. all applicable Laws;
 - b. Schedule R (City Sites License) for Equipment on City-owned Sites; and
 - c. the persons owning or occupying a Site which is not a City-owned Site.

[FURTHER INFORMATION ON SCHEDULE A TO BE INSERTED]

**SCHEDULE B
HELMET SOLUTION**

[INFORMATION TO BE INSERTED]

**SCHEDULE C
INFORMATION SYSTEM**

Software

1. Supplier represents and warrants that it has valid and proper licenses to use all PBS software for the duration of the term of the Agreement for the purpose of operating the PBS. Supplier further represents and warrants that, if the City requires Supplier to transfer title to the PBS, in accordance with the Agreement, to the City or a City designate, all licenses for the use of the PBS software, will be transferrable to the City or the City designate without the need for payment to, or consent or other approval from, the software licensor or any other party.
2. Supplier confirms that the PBS software licences, to the knowledge of Supplier after reasonable inquiry, do not infringe, dilute, misappropriate, or improperly disclose any intellectual property or proprietary rights of any third party, or otherwise violate any Law.

[FURTHER INFORMATION ON SCHEDULE C TO BE INSERTED]

**SCHEDULE D
WEBSITE AND MOBILE ACCESS**

General

1. The City will be the registrant of the PBS website and all other IP addresses and domain names that will be registered in respect of the PBS. Supplier will pay all necessary fees and do all other things necessary to maintain the PBS website and all other URLs, IP addresses and domain names in good standing and to maintain the City as the registrant of the foregoing.
2. Notwithstanding that the City is the registrant of the PBS website, Supplier will, at its expense and in accordance with this Agreement, create, develop and maintain the content of the PBS website, as well as operate and maintain the PBS website. Supplier will incorporate any features or changes requested by the City, acting reasonably.
3. The PBS website will include, at a minimum, all of the following elements:

- a. user eligibility requirements;
- b. member/user information and rate schedules;
- c. payment and membership processing information;
- d. method for members to update required information;
- e. member agreement and acceptance of terms;
- f. map of network of Stations and real-time availability of Bicycles and Helmets at each Station;
- g. crowd-sourcing Map to allow website visitors to articulate Station and other preferences;
- h. Frequently Asked Questions;
- i. safety requirements and information (including malfunctions and crashes);
- j. news and operational updates;
- k. special events notices;
- l. links to other bicycle programs and events;
- m. call center contact information;
- n. information that informs the public that bicycle rental shops in the vicinity of a Station may be less expensive if someone wishes to rent a bicycle for more than 2 hours;
- o. upon the request of the City, acting reasonably, recognition of the City and any other third parties that have contributed to or supported the PBS;
- p. any sponsor recognition or other elements agreed by Supplier and the City to be included; and
- q. a dashboard viewable by the general public (that will contain the following information:
 - i. Monthly PBS Information:
 - 1. number of users by membership/pass type
 - 2. number of new members (per month)
 - 3. number of trips per time interval
 - a. 0-30 min
 - b. 31-60 min
 - c. 61-90 min
 - d. 90 min - 24 hrs

- e. 24 hrs +
 4. percentage of trips per time interval
 5. number of trips by membership/pass type
 6. system kilometers traveled
 - ii. Fleet Performance:
 1. system wide bicycles in service
 2. number of bicycles maintained
 3. number of bicycles damaged
 - iii. Customer Service:
 1. number of system wide empty/ full instances
 2. stations full or empty by time interval
 3. instances of additional time granted
 4. number of bicycles moved as part of rebalancing
 5. number of customer service calls
 - iv. Monthly PBS utilization data:
 1. ●
 - r. link to an internet search engine to allow Users to search for local bicycle rental shops;
4. Supplier will keep all information on the PBS website updated at least daily.

Real-Time User Information

1. Supplier will provide:
 - a. a bicycle share application for smartphone users to identify the location of Stations on a map in real-time, display status of Station (availability of Bicycles, Docks and Helmets), availability of a specific Station and the ability to perform searches; and
 - b. an open data platform on the PBS website (real-time information on status of Stations including availability of Bicycles, Docks and Helmets, and availability of a specific Station) to support third party smartphone application development.

[FURTHER INFORMATION ON SCHEDULE D TO BE INSERTED]

**SCHEDULE E
IMPLEMENTATION PLAN**

[INFORMATION TO BE INSERTED]

**SCHEDULE F
STATION SITING**

[INFORMATION TO BE INSERTED]

**SCHEDULE G
OPERATIONS**

General

1. Supplier will be responsible for complying with all applicable Laws and will be liable for all usual and legally required street use fees and other fees associated with the permitting, licensing, installation and use of the Equipment as well as applicable Taxes and fees.
2. Supplier will be responsible for obtaining and maintaining current any applicable licences or permits, as required for the operations contemplated in this Agreement including, but not limited to, any occupational licences required by Law for the performance of the Supply.
3. Supplier will make staff available, whenever and to the extent reasonably required by the City, to represent Supplier and to assist the City during any informal or formal public review processes, including presentations to community organizations or any public hearings regarding the PBS.
4. In connection with the installation, operation, maintenance, and removal or re-location of any and all Equipment, Supplier will not damage or injure any other property or persons including without limitation and by way of example only, designated City landmarks, structures or pavement, including distinctive pavement.
5. Supplier will, in accordance with all applicable Laws to ensure safety and to prevent accidents at the Sites where work is carried out, including, if necessary, the placing and maintenance of proper guards, fences, barricades, security personnel and bollards at the curb and suitable and sufficient lighting.
6. Supplier will provide, install and maintain, appropriate traffic markings and devices as may be reasonably requested by the City Engineer for on-street locations.

System Information

7. Supplier will, whenever there is an update or change to the Station Sites, provide the City with an updated list and map of Station Sites and whenever Supplier enters into or amends a Subcontractor agreement provide the City with a copy of such agreement or amendment.

PBS Rates and User Terms

8. It is Supplier's responsibility to set the fees charged for use of the PBS provided Supplier complies with the following:
 - a. any changes to the fees will only take effect after Supplier has consulted the City in advance;
 - b. fees will be set to maximize usage of the PBS while maximizing PBS revenue;
 - c. fees will be set to discourage competition with local bicycle rental companies;
9. Supplier will at all times post on all Stations and on Supplier's website a complete and up-to-date fee description that sets forth each and every current membership and usage fee offered by Supplier, the methods of purchasing memberships and paying fees, available discounts on such fees, the applicability and terms of such discounts and, to the extent applicable, how to apply for or qualify for such discounts, all fees associated with damaged, lost, stolen or otherwise unreturned Bicycles and Helmets, and all other applicable legal terms and conditions. Supplier will furnish written copies of such material to the public upon request.
10. All required Taxes with respect to membership and usage fees will be collected and remitted by Supplier to appropriate Competent Authorities, as required by applicable Laws.
11. The City and Supplier may mutually agree to make modifications to the PBS, on terms and conditions agreed by both Parties, to allow PBS users to use the TransLink Compass Card or any other regional public transportation fare card.
12. Supplier and the City will agree on appropriate complimentary memberships for key PBS stakeholders.
13. Supplier will operate the PBS 24 hours per day, 7 days per week during the term of this Agreement, except as otherwise set forth in this Agreement.

Integration with Other PBS Systems

14. The City and Supplier acknowledge that during the term other municipalities or jurisdictions in the Greater Vancouver Area may hire Supplier to implement similar public bicycle share systems and that, in some circumstances, there are benefits to be gained for such other public bicycle share systems to be integrated with the PBS. If Supplier is approached by one or more such municipalities or jurisdictions, Supplier will notify the City as soon as possible so that the City may, at its option, participate

in any discussions about the possibility of integrating the PBS with another public bicycle share system. However the City is under no circumstances obligated to participate in such discussions or to integrate the PBS with any other public bicycle share system. If the City is approached by one or more such municipalities or jurisdictions, Supplier will, at the City's request (acting reasonably) participate in such discussions. If the City or another municipality or jurisdiction requests that Supplier implement and integrate another public bicycle share system into the PBS, Supplier will in good faith consider such request.

Bicycle Rental and Retail Shops

15. The City and Supplier acknowledge that the PBS serves to achieve certain City public policy goals and is not intended to compete with bicycle rental and retail shops in the vicinity of the PBS Area. The City and Supplier further acknowledge that it is possible for the PBS to achieve the City's goals, be financially sustainable and profitable and still promote the best interests of bicycle rental and retail shops in the vicinity of the PBS Area. In order to help achieve these objectives, Supplier will:
- a. build positive relationships with bicycle rental and retail shops in the vicinity of the PBS;
 - b. not install or re-locate a Station within 50 metres of a bicycle rental shop (recognizing, however, that it has no obligation (but may, at its option) to move an existing Station if a new bicycle rental shop opens for business within 50 metres of such Station after such Station was installed);
 - c. on every Sign as well as on the PBS website and any PBS mobile application, include clear and user-friendly information that informs the public that bicycle rental shops in the vicinity of a Station may be less expensive if someone wishes to rent a bicycle for more than 2 hours.
 - d. from time to time, the City will be entitled to, directly or through Supplier, with Supplier's and PBS users' prior consent, communicate with all or some PBS users by e-mail for the purposes of conducting research, surveys or other public policy purposes, provided such communications comply with applicable Laws including privacy laws.

Employment Outreach

16. Supplier will use reasonable efforts, at its own cost and expense, to conduct outreach for employment purposes to residents of the City for the opportunities to be created by the construction, installation, operation, management, administration, marketing and maintenance of the PBS. Such recruitment activities will include provisions for the posting of employment and training opportunities at appropriate local agencies responsible for encouraging employment of City residents.

[FURTHER INFORMATION ON SCHEDULE G TO BE INSERTED]

**SCHEDULE H
REPORTING AND AGREEMENT OVERSIGHT**

Reporting

1. Supplier shall submit such reports, financial statements and documents to the City as required by this Schedule H, in the format, and at the times, specified herein.
2. All data generated by the PBS, excluding technical or proprietary data such as technical specifications of the Equipment, that is recorded and maintained by Supplier, will be provided to the City in the format and at the times set out in this Schedule H or as otherwise reasonably requested by the City Engineer, provided that such information transfer is not otherwise prohibited by any applicable Laws.
3. Supplier will meet with the City at the agreed times and frequency as set out in this Schedule H or as may be reasonably requested by the City.
4. The City will have the right at all times to oversee and inspect periodically, to obtain information about and to discuss with Supplier, the installation, operation, and maintenance of the PBS. Supplier will establish and maintain managerial and operational records, standards, procedures and controls to enable Supplier to demonstrate, in reasonable detail, to the satisfaction of the City at all times throughout the Term, that Supplier is in compliance with this Agreement. Supplier will retain such records within Vancouver for not less than six (6) years following the expiration or termination of this Agreement.

Agreement Oversight

5. Supplier will establish and maintain an administrative office, with at least one staff present during regular office hours, in the City of Vancouver throughout the term of this Agreement.
6. In the event the City has a good faith reason to believe that Supplier's fiscal condition may be such that it may become unable to comply with its obligations under this Agreement (or any Subcontractor or ancillary agreement), Supplier will submit to the City, within 5 Business Days of the City's request, all financial statements as are required to be maintained by Supplier under this Agreement. All such financial statements will be accurate and complete in all material respects. In the event the City reviews such financial statements and determines in its reasonable discretion that Supplier's fiscal condition may be such that it may become unable to comply with its obligations under this Agreement or any other agreement, the City may require Supplier, to submit, and obtain the City's approval of, a plan setting forth the steps that Supplier, will take to continue to be able to comply with this Agreement and such other agreements. If Supplier submits a plan which the City in a written notice determines is unacceptable, the City's written notice of such determination shall specify the reasons and will constitute a notice of termination under Section 12.2(b) of the Agreement.
7. Upon the written request of the City, Supplier will promptly submit to the City any required information that is reasonably related to Supplier's obligations under this

Agreement or any other ancillary agreement or its business and operations relating to the PBS; provided always that any such information which is not permitted to be disclosed pursuant to any applicable Laws is not required to be disclosed. Such information or report will be accurate and complete in all material respects.

8. Throughout the term of this Agreement, Supplier will maintain complete and accurate books of account and records of the business, ownership, and operations of Supplier with respect to the PBS and in a manner that allows the City to determine whether Supplier is in compliance with the Agreement and the ancillary agreements. Should the City reasonably determine and give notice that the records are not being maintained in such a manner, Supplier will alter the manner in which the books and/or records are maintained, so that they come into compliance with this Section.
9. All financial books and records which are maintained in accordance with GAAP will be deemed to be acceptable under this Section. The City Engineer and the City's Director of Finance will have the right upon written demand with reasonable notice to Supplier under the circumstances, to inspect, examine or audit during regular business hours all documents, records or other information which pertain to Supplier, or are related to Supplier's obligations under this Agreement or any ancillary agreement. All such documents will be made available at Supplier's local office within the City of Vancouver. All such documents will be retained in the City of Vancouver by Supplier for a minimum of six (6) years following the expiration or termination of this Agreement.

[FURTHER INFORMATION TO BE INSERTED]

SCHEDULE I CUSTOMER SERVICE

General

1. Supplier will provide its customer with rental information such as the PBS membership and casual rider terms and conditions, including terms of consent for the use of personal information for research purposes. All PBS members and customers will be given the choice to participate in PBS research and studies led by Supplier, the City or some other third party, and if they choose to participate, they will consent to permit their user information to be shared along with their personal contact information only for the purposes of such research or studies.
2. Supplier will establish and maintain prompt and efficient procedures for handling complaints received directly from the public and for handling complaints forwarded to Supplier by the City (including via the City's information line - 311), which procedures will be consistent with all applicable Laws, the provisions of this Schedule and any communications/public relations protocol agreed between Supplier and the City. Such procedures will be set out in writing and will be available to the public upon request.
3. Supplier will conspicuously post a notice on each Station advising the general public that they may direct their complaints and comments to Supplier's call center and website.
4. Supplier will incorporate Wayfinding Elements on each Station as directed and approved by the City. At a minimum, in respect of every Sign installed at each Station, one side of such Sign will be used exclusively to display Wayfinding Elements. The following will apply to the Wayfinding Elements:
 - a. the initial content of Wayfinding Elements will be provided by the City to Supplier as a digital wayfinding Stylized Base Map in which Supplier will then incorporate any PBS information required by this Agreement or desired by Supplier;
 - b. Supplier will not alter or remove any existing information on the Stylized Base Maps provided by the City without prior written approval by the City;
 - c. any additional icons that Supplier wishes to layer on top of the Stylized Base Map should be consistent with icons used on other City wayfinding maps;
 - d. at a minimum, Supplier will incorporate information into the Wayfinding Elements relating to bicycle rental shops in the vicinity of a Station identified by the City as interested in participating that informs PBS users that bicycle share rentals over 2 hours may be less expensive using a local bicycle rental shop;
 - e. Supplier will, at its expense, produce and install finalized Wayfinding Elements content into every Sign;

- f. whenever the City provides Supplier an updated digital wayfinding Stylized Base Map, Supplier will update the Wayfinding Elements on every Sign using such updated information within 30 Days of its receipt, but is only obligated to do so up to a maximum of 2 times per Year.
5. Supplier will operate a staffed call center that will answer PBS User or general public calls, 24 hours per Day, seven Days per week. This call center will have staff who answer calls in English 24 hours per Day and Cantonese / Mandarin from Monday to Friday between 7a.m. to 7p.m., Vancouver time.
6. In addition to such call center service availability for the public, Supplier will have a contact person available to the City by phone, 24 hours per Day, seven Days per week.
7. Supplier will (i) record using appropriate software, and accompanied by appropriate notice of such recording to each caller, a random sampling of at least 10% of all complaint calls received by call centers; (ii) diligently and promptly investigate each complaint, and (iii) retain all complaint call recordings for no more than 90 days. Supplier will ensure that coaching and training will be provided to call center staff.
8. Supplier will maintain complete records of all complaints and those records will be made available to the City through a proper, clear and efficient mode of communication process or at the City's reasonable advance request, in written form. Such records will indicate: (i) the specific Equipment, including its identifying number and location at a specific point in time, or Services, for which the complaint was made; (ii) the type of complaint; (iii) the date and time of complaint; (iv) if the complaint is in written form (non-electronic) and the information is available, the name, address, and telephone number of the Person filing the complaint; (v) details of Supplier's action to address or resolve the complaint; and (vi) to the extent applicable, the date and time of resolution of the complaint. All such records and other information relating to a complaint will be retained by Supplier for a period of at least 7 years after the initial receipt of the complaint. Supplier will provide a clear, efficient and user-friendly solution to the City by which the City can search for complaints by location or time period, and will produce statistical reports, at the City's request, by type of complaint, location of complaint, Station or Bicycle and time period.

[FURTHER INFORMATION ON SCHEDULE I TO BE INSERTED]

**SCHEDULE J
SERVICE PERFORMANCE LEVELS**

[INFORMATION TO BE INSERTED]

**SCHEDULE K
COMMUNICATIONS**

1. If Supplier proposes to issue a statement to the media or public regarding the PBS or this Agreement or proposes to publish or otherwise publicly release any program materials or information through any media of communication, Supplier will consult and cooperate with the City's Director of Communications before issuing, publishing or releasing such information. Where opportunities exist to synchronize messaging and timing, Supplier and the City will work together to ensure mutually beneficial outcomes.
2. If Supplier publishes a work dealing with any aspect of performance under this Agreement, or of the results and accomplishments attained in such performance, then the City will have a royalty-free, non-exclusive and irrevocable licence to reproduce, publish, or otherwise use and to authorize others to use the publication, or, in the event that only a portion of the publication deals with an aspect of performance under this Agreement, such portion of the publication.

[FURTHER INFORMATION ON SCHEDULE K TO BE INSERTED]

**SCHEDULE L
MARKETING**

[INFORMATION TO BE INSERTED]

**SCHEDULE M
FINANCIAL**

[INFORMATION TO BE INSERTED]

**SCHEDULE N
SYSTEM EXPANSION**

[INFORMATION TO BE INSERTED]

**SCHEDULE O
TRANSITIONING-OUT**

[INFORMATION TO BE INSERTED]

**SCHEDULE P
SUPPLIER COMPENSATION**

[INFORMATION TO BE INSERTED]

**SCHEDULE Q
SUPPLIER CODE OF CONDUCT**

[INFORMATION TO BE INSERTED]

**SCHEDULE R
CITY SITES LICENSE**

[INFORMATION TO BE INSERTED]

**SCHEDULE S
INSURANCE**

1. **General:** Supplier will, prior to commencing any of its Supply obligations on any Site (the “**Insurance Deadline**”), have all insurance required hereunder in effect and Supplier will ensure continuous insurance coverage in the manner, form, and limits required hereunder throughout the term of the Agreement.
2. **Commercial General Liability Insurance:**
 - a. Supplier will maintain Commercial General Liability Insurance covering Supplier as a named insured in the amount of at a minimum of \$10,000,000 per occurrence and a minimum of \$10,000,000 annual aggregate. The use of an Excess or Umbrella policy will be allowable to meet the limit. Such insurance will protect the City and Supplier from claims for property damage and bodily injury, including death, that may arise from any of the operations under this Agreement. Such insurance will cover, inter alia, products liability. Coverage under this insurance will be on a broad form acceptable to the City’s Director of Risk Management, and will be “occurrence” based rather than “claims-made; and
 - b. Such Commercial General Liability Insurance and any Umbrella and Excess Insurance will name the City, together with its Representatives, as additional insureds.
3. **Professional Liability Insurance:**
 - a. Supplier will maintain and submit evidence of Professional Liability Insurance appropriate to the types of such services to be provided under this Agreement in the amount of at least \$1,000,000 per claim. The policy or policies will include an endorsement to cover the assumed liability by Supplier in providing professional services under this Agreement and arising out of the negligent acts, errors or omissions of Supplier or anyone employed by Supplier.
 - b. All Subcontractors of Supplier providing professional services under this Agreement for which Professional Liability Insurance is reasonably commercially available will also maintain such insurance in the amount of at least \$1,000,000 per claim, and Supplier will provide to the City, at the time of the request for Subcontractor approval, evidence of such Professional Liability Insurance on forms acceptable to the City.
 - c. Claims-made policies will be accepted for Professional Liability Insurance. All such policies will have an extended reporting period option or automatic coverage of not less than two (2) Years. If available as an option, Supplier will purchase extended reporting period coverage effective on the cancellation or termination of such insurance, unless a new policy is secured with a retroactive date, including at least the last policy Year.

4. **Workers' Compensation:** Full WorkSafeBC coverage as required pursuant to the *Workers Compensation Act* (British Columbia) must be maintained by Supplier for all of its workers carrying out the Supply.
5. **Employee Dishonesty Insurance:** Employee Dishonesty Insurance covering the loss of money, securities and other property, which Supplier and the City may sustain, to an amount of not less than \$200,000 aggregate any one loss, resulting directly from fraudulent or dishonest acts committed by an employee of Supplier, acting alone or in collusion with others.
6. **Motor Vehicle Liability Insurance:** Supplier will maintain Motor Vehicle Liability insurance in the amount of at least \$5,000,000 combined single limit for bodily injury and property damage and Excess or Umbrella Liability insurance to raise the aggregate coverage to a minimum of \$5,000,000 per accident for liability arising out of the ownership, maintenance or use of any owned, non-owned, or hired motor vehicles used in connection with the Supply.
7. **General Requirements:** All policies must be written with companies licenced to do business in British Columbia with a financial rating of VIII or better and a policyholder's rating of A- or better in the latest edition of Best Rating Guide on Property and Casualty Insurance Companies.
 - a. All insurance policies will be primary (and non-contributing) to any insurance or self-insurance maintained by the City.
 - b. Supplier will be solely responsible for the payment of all premiums for all required insurance policies and all deductibles or self-insured retentions to which such policies are subject, whether or not the City is an insured under the policy.
 - c. There will be no self-insurance program with regard to any insurance required under this Section, unless approved in writing by the City's Director of Risk Management. Any such self-insurance program will provide the City with all rights that would be provided by traditional insurance required under this Section, including, but not limited to, the defense obligations that insurers are required to undertake in liability policies.
 - d. The City's limits of coverage for all types of insurance required under this Section will be the greater of (i) the minimum limits set forth in this Section, or (ii) the limits provided to Supplier as a named insured under all primary, excess, and umbrella policies of that type of coverage.
8. **Proof of Insurance:**
 - a. For Workers' Compensation, Supplier will provide the City with its WorkSafeBC registration number prior to the Insurance Deadline.
 - b. For each policy required under this Agreement, except for Workers' Compensation coverage, Supplier will file a certificate of insurance with the City prior to the Insurance Deadline. All Certificates of Insurance will (a) be in a form acceptable to the City's Director of Risk Management and certify the

issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and (b) be accompanied by the endorsement in Supplier's general liability policy by which the City and its Representatives have been made additional insureds, (c) contain the insurer's agreement to send renewal Certificates of Insurance and all other notices to both the City and Supplier, (d) contain the insurer's agreement that the required insurance will not be cancelled or endorsed to reduce Limits of Liability without thirty (30) days prior notice in writing by Registered Mail to the City; should the required insurance be endorsed to restrict coverage midterm, prior notice of the restriction will be provided in writing by Registered Mail to the City no later than the effective date of such change, and (e) that the policy is primary coverage and any other insurance carried by the City is secondary so that any secondary policies will only be drawn on after exhausting the coverage under the primary coverage.

- c. Certificates of insurance confirming renewals of insurance will be submitted by Supplier or its insurance broker to the City's Director of Risk Management and the City Engineer prior to the expiration date of coverage of policies required under this Schedule. Such certificates of insurance will comply with the requirements of Section 8(b), as applicable.
- d. Supplier will provide the City with a copy of any policy required under this Section within 3 Days of a demand for such policy by the City's Director of Risk Management.
- e. Acceptance by the City of a certificate or a policy does not excuse Supplier from maintaining policies consistent with all provisions of this Schedule (and ensuring that Subcontractors maintain such policies) or from any liability arising from its failure to do so.
- f. In the event Supplier receives any notice from an insurance company or other person that any insurance policy required under this Schedule will expire or be cancelled or terminated for any reason, Supplier will immediately forward a copy of such notice to the City.

9. Miscellaneous:

- a. Whenever any notice of any loss, damage, occurrence, accident, claim or suit is required under a general liability policy maintained in accordance with this Schedule, Supplier will provide the insurer with timely notice of same on behalf of the City. Such notice will be given even where Supplier may not have coverage under such policy (for example, where one of Supplier's employees was injured). Such notice will expressly specify that "this notice is being given on behalf of the City of Vancouver as Additional Insured" and contain the following information: the number of the insurance policy; the name of the named insured; the date and location of the damage, occurrence, or accident; the identity of the persons or things injured, damaged, or lost; and, the title of the claim or suit, if applicable. Supplier will simultaneously send a copy of such notice to the City's Director of Risk Management and the City Engineer. If Supplier fails to comply with the requirements of this paragraph, then Supplier will indemnify the City for all losses, judgments, settlements and expenses,

including reasonable attorney's fees, arising from an insurer's disclaimer of coverage citing late notice by or on behalf of the City.

- b. Supplier's failure to maintain any of the insurance required by this Schedule will constitute a breach of a material obligation under this Agreement. Such breach will not be waived or otherwise excused by any action or inaction by the City at any time.
- c. Insurance coverage in the minimum amounts required in this Schedule will not relieve Supplier or its Subcontractors of any liability under this Agreement, nor will it preclude the City from exercising any rights or taking such other actions as are available to it under any other provisions of this Agreement or applicable Law.
- d. Supplier waives all rights against the City, including its officials and employees, for any damages or losses that are covered under any insurance required under this Schedule (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of Supplier or its Subcontractors in the performance of this Agreement.
- e. In the event Supplier requires any Subcontractor to procure insurance with regard to any operations under this Agreement and requires such Subcontractor to name Supplier as an additional insured under such insurance, Supplier will ensure that such entity also names the City, including the City's Representatives, as additional insureds.

**SCHEDULE T
TOTAL PRICE**

[INFORMATION TO BE INSERTED]

**SCHEDULE U
KEY PROJECT PERSONNEL**

[INFORMATION TO BE INSERTED]

**SCHEDULE V
CITY POLICIES**

[INFORMATION TO BE INSERTED]

**SCHEDULE W
PREFERRED SUPPLIER**

[INFORMATION TO BE INSERTED]

**SCHEDULE X
PERMITTED SUBCONTRACTORS**

[INFORMATION TO BE INSERTED]

**SCHEDULE Y
ITEMS TO BE PROVIDED BY CITY**

[INFORMATION TO BE INSERTED]

**SCHEDULE Z
INTELLECTUAL PROPERTY**

Licensing of IP for Branding and Merchandising Purposes

1. **City IP:** The City now grants to Supplier and its affiliates, successors, assigns, business partners, and sublicensees a non-exclusive licence to use, during the term of this Agreement, any and all of the City's official marks, trademarks, logos, service marks, and other intellectual property rights, (individually and/or collectively the "City IP") to, upon prior approval by the City, directly or indirectly create, develop, make, market, promote, distribute, and sell goods and services, to operate and promote the PBS as may be determined by Supplier and as may be requested by the City (acting reasonably) to be included in any of the foregoing marketing or promotional activities, provided, however, Supplier's use of any City IP will comply with reasonable quality control measures required by the City and all revenue generated by such activities will be deemed PBS revenue.
2. **Sponsor IP:** Supplier will obtain or assist the City and its affiliates, successors, assigns, business partners, and sublicensees to obtain non-exclusive licences to use, during the term of any Sponsorship Agreement (if any), the Sponsor trademarks, logos, servicemarks, and other intellectual property identified for use in connection with the Sponsorship Agreement, (individually and/or collectively the "Sponsor IP") to allow the City to, directly or indirectly create, develop, make, market, promote, distribute and sell goods and services, to operate and promote the PBS under any name or title approved by the City for use in connection with the PBS (the "PBS Name"); provided, however, the City's use of any Sponsor IP will comply with reasonable quality control measures required by a Sponsorship Agreement to which the City and sponsor have given its advance written approval.
3. **Supplier IP:** Supplier now grants to the City and its affiliates, successors, assigns, business partners, and sublicensees a non-exclusive, royalty-free licence to use any intellectual property developed and used by Supplier for the purposes of the PBS (individually and/or collectively the "Supplier IP") to allow the City to, directly or indirectly create, develop, make, market, promote, distribute and sell goods and services, to operate and promote the PBS as may be determined by the City. Supplier will indemnify, defend, and hold harmless the City against any costs and expenses incurred by the City as a result of any claim or suit instituted against the City with respect to its use of the Supplier IP. In connection with any such claim or suit, Supplier will take full and sole responsibility for and control of (a) protecting the

Supplier IP, (b) any and all resulting litigation, (c) any and all settlement, and (d) selection of counsel in connection with such claim or suit.

4. **City Owns PBS Name and PBS IP:** Any trademark, website or domain name, URL or other intellectual property (other than Supplier IP and Sponsor IP) associated with the PBS including the PBS Name (“**PBS IP**”) developed or created by Supplier or the City (or their respective subcontractors) will be owned exclusively by the City. **Supplier** and the City will use commercially reasonable efforts to notify each other each time either creates PBS IP so that the other is aware of the existence of such PBS IP. Any use of Supplier IP or Sponsor IP in a URL string will be licenced to the City for use as part of a fully qualified domain. The City will have exclusive approval rights over the use by Supplier of any PBS IP in connection with the PBS and any website, domain name or URL used in connection with the PBS will be capable of hosting a link from the City’s website, www.vancouver.ca.
5. **Use of PBS IP:** The City now grants to Supplier and its affiliates, successors, assigns, business partners and sublicensees a non-exclusive licence to use during the term of this Agreement, the PBS IP to, directly or indirectly create, develop, make, market, promote, distribute and sell goods and services, to operate and promote the PBS as may be determined by Supplier. Upon expiration or termination of this Agreement, Supplier’s limited licence to use the PBS IP and all goodwill associated therewith will be immediately terminated and all physical, electronic, and other tangible representations of same will be destroyed or returned to the City at no additional cost or expense to the City.

IP Ownership

6. **Supplier no Claim to City IP or PBS IP:** Supplier agrees that by virtue of this Agreement it does not and will not claim any right, title, or interest in the PBS Name, the City IP, PBS IP or any part thereof (except the right to use them in accordance with this Agreement), and that any and all uses thereof by Supplier will inure to the benefit, respectively, of the City or any Sponsor whose marks are incorporated into the PBS IP, to the extent that such uses incorporate City IP or Sponsor IP. Supplier acknowledges the City’s sole right, title, and interest in and to, and ownership of the City IP and PBS IP and the validity of the trademarks and service marks that are part of the City IP and PBS IP and the City’s rights therein. Supplier agrees that it will not raise or cause to be raised any challenges, questions, or objections to the validity, registrability or enforceability of the City IP or PBS IP and the City’s rights therein, and will not contest such right and title, nor do or permit to be done any act or omission which will in any way impair the rights of the City with respect to such City IP or PBS IP. The City acknowledges that the PBS Name may or may not include City IP and may consist of or incorporate Sponsor IP to the extent such PBS Name is approved in advance by the City in its sole discretion.
7. **Protection of City IP and PBS IP:** Supplier agrees to reasonably assist the City in protecting the City’s rights to the City IP and the PBS IP, including but not limited to reporting to the City any infringement or imitation of the City IP, PBS IP or the PBS Name of which Supplier becomes aware. The City will have the sole right to determine whether to institute litigation with respect to such infringements of City IP or PBS IP, as well as the sole right to select counsel. The City may commence or

prosecute any claims or suits for infringement of the City IP or PBS IP in its own name or the name of Supplier or join Supplier as a party thereto. If the City brings an action against any infringement of the City IP or PBS IP, Supplier will reasonably cooperate with the City.

- 8. **Defense of Claims on IP:** If claims are made against the City or Supplier with respect to the use of the City IP or the PBS IP in connection with any licenced products, then the Parties agree to consult with each other on a suitable course of action. In no event will Supplier, without the prior written consent of the City, have the right to acknowledge the validity of the claim of such party, to obtain or seek a licence from such party, or to take any other action which might impair the ability of the City to defend or otherwise contest the claim of such party. The City will have the right to participate at its own expense in the defense of any claims or suit instituted against Supplier with respect to the use by Supplier of the City IP or PBS IP.

- 9. **Use of IP:** Supplier agrees to make modifications requested by the City in Supplier's use of the City IP or PBS IP, if the City, in its sole discretion, determines such action to be necessary or desirable to resolve or settle a claim or suit or to eliminate the threat of a claim or suit by any party. The City agrees to make modifications requested by Supplier in the City's use of Supplier IP if Supplier, in its sole discretion, determines such action to be necessary or desirable to resolve or settle a claim or suit or to eliminate the threat of a claim or suit by any party.

[FURTHER INFORMATION ON SCHEDULE Z TO BE INSERTED]

**SCHEDULE AA
RFP**

[INFORMATION TO BE INSERTED]

**SCHEDULE BB
SUPPLIER'S PROPOSAL**

[INFORMATION TO BE INSERTED]