



## REQUEST FOR PROPOSALS

AI FOR VANCOUVER POLICE DEPARTMENT FORENSIC VIDEO UNIT

RFP No. PS20191072

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PART A - INFORMATION AND INSTRUCTIONS

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**SUMMARY**

The Vancouver Police Department Forensic Video Unit ("FVU") seeks an on-premise AI platform to provide effective and efficient video intelligence. FVU needs to replace the current manual system which entails staff spending hours reviewing video footage for evidence during investigations. The scope of work includes product licensing, implementation services, and ongoing support services. The selected solution must meet functional, technical, data and security, and FOIPPA requirements.

**PART A – INFORMATION AND INSTRUCTIONS**

**1.0 THE RFP**

- 1.1 Except where expressly stated otherwise in Appendix 1 of Part C of the Request for Proposals ("RFP"): (i) no part of the RFP consists of an offer by the City to enter into any contractual relationship; and (ii) no part of the RFP is legally binding on the City.
- 1.2 The City is interested in selecting an entity, which is not, by the terms hereof, barred from submitting a Proposal, and which does submit a Proposal (each such entity, a "Proponent") with the capability and experience to efficiently and cost-effectively meet the objectives and requirements described in the RFP. The City currently expects to select such a Proponent and then enter into negotiations with that Proponent, which will conclude in the execution of a contract between the Proponent and the City (such a contract, an "Agreement"). However, the City may: (i) decline to select any Proponent; (ii) decline to enter into any Agreement; (iii) select multiple Proponents for negotiation; or (iv) enter into one or more agreements respecting the subject matter of the RFP with one or more Proponents or other entities at any time. The City may also terminate the RFP at any time.
- 1.3 The City currently intends that Proposals will be evaluated by the City in relation to their overall value, which will be assessed in the City's sole and absolute discretion. In assessing value, the City expects to consider the factors described in Section 8.0 below, among others.
- 1.4 No bid security is required from Proponents in connection with the submission of Proposals because no Proposal will be deemed to be an irrevocable or otherwise binding legal offer by a Proponent to the City. The legal obligations of a Proponent that will arise upon the submission of its Proposal will be limited to the terms and conditions stated under the heading "Legal Terms & Conditions" in Appendix 1 to the Part C - Form of Proposal.
- 1.5 The execution of an Agreement may be contingent on funding being approved, and the relevant Proposal being approved, by the Vancouver City Council.
- 1.6 The RFP consists of four parts, plus appendices:
- (a) PART A - INFORMATION AND INSTRUCTIONS: This part is intended to serve as a guide to the RFP process for Proponents.
  - (b) PART B - SCOPE OF WORK: This part describes the subject matter of the RFP, in respect of which the City invites Proposals.
  - (c) PART C - FORM OF PROPOSAL: This is the form in which the Proposal should be submitted.

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- (d) **PART D - FORM OF AGREEMENT:** This part contains a model Agreement (the “Form of Agreement”). Any Agreement resulting from the RFP is expected to be substantially in the form of the Form of Agreement.

**2.0 KEY DATES**

- 2.1 Potential Proponents should note the following key dates:

Event	Time and Date
Deadline for Enquiries	3:00pm on November 5, 2019
Closing Time	3:00pm on November 12, 2019

- 2.2 All references to time in the RFP are references to the time in the City of Vancouver, as indicated in the electronic timestamp the Proposal receives upon delivery to the email address specified herein, which is in turn synchronized to Network Time Protocol (NTP) provided by the National Research Council of Canada adjusted to local Pacific Time Zone.

**3.0 CONTACT PERSON**

- 3.1 All enquiries regarding the RFP must be addressed to the Contact Person:

Diana Chan  
[diana.chan@vancouver.ca](mailto:diana.chan@vancouver.ca)

- 3.2 All enquiries must be made in writing and are to be directed only to the above contact person. In-person or telephone enquiries are not permitted. Any communication from potential Proponents to City staff other than the contact person regarding the content of this RFP may lead to disqualification of the Proponent from this RFP process, at the City’s sole discretion.

- 3.3 **IF A POTENTIAL PROPONENT BELIEVES THAT THE CITY MAY BE UNABLE TO SELECT IT DUE TO A CONFLICT OF INTEREST, BUT IS UNCERTAIN ABOUT THIS, THE POTENTIAL PROPONENT IS URGED TO CONTACT THE ABOVE-MENTIONED INDIVIDUAL AS SOON AS POSSIBLE WITH THE RELEVANT INFORMATION SO THAT THE CITY MAY ADVISE THE POTENTIAL PROPONENT REGARDING THE MATTER.**

**4.0 SUBMISSION OF PROPOSALS**

- 4.1 Proposals must be received by the City on or before the time and date specified in the bottom row of the table in Section 2.1 above (the “Closing Time”).

- 4.2 Proposals must be submitted by email in accordance with the following:

- Subject of the file to be: PS20191072 - AI for Vancouver Police Department Forensic Video - **Vendor name.**
- Document format for submissions:
  - RFP Part C in PDF format - 1 combined PDF file,
  - Appendix 3 (pricing tab) in Excel format, and;

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- Any other attachments if necessary
  - Zip the files to reduce the size or email separately if needed.
  - Send your submissions to [Bids@vancouver.ca](mailto:Bids@vancouver.ca); do not deliver a physical copy to the City of Vancouver. **Do not email your submission to the Contact Person.**
  - If you did not receive an automated email within few minutes, check your junk folder first, and then contact [Purchasing@vancouver.ca](mailto:Purchasing@vancouver.ca).
  - Submitting the files via Drop box, FTP, or similar programs, is not acceptable.
- 4.3 To be considered by the City, a Proposal must be submitted in the form set out in Part C (the “Form of Proposal”), completed and duly executed by the relevant Proponent.
- 4.4 Amendments to a Proposal may be submitted via the same methods, at any time prior to the Closing Time.
- 4.5 Proposals are revocable and may be withdrawn at any time before or after the Closing Time.
- 4.6 All costs associated with the preparation and submission of a Proposal, including any costs incurred by a Proponent after the Closing Time, will be borne solely by the Proponent.
- 4.7 Unnecessarily elaborate Proposals are discouraged. Proposals should be limited to the items specified in Part C of the RFP.
- 4.8 The City is willing to consider any Proposal from two or more Proponents that wish to form a consortium for the purpose of responding to the RFP, provided that they disclose the names of all members of the consortium and all members complete and sign the first page of the Form of Proposal. Nonetheless, the City has a strong preference for Proposals submitted by a single Proponent, including a Proponent that would act as a general contractor and use subcontractors as required.
- 4.9 Proposals that are received after the Closing Time or that otherwise do not comply in full with the terms hereof may or may not be considered by the City and may or may not be returned to the Proponent, in the City's sole discretion.
- 5.0 **CHANGES TO THE RFP AND FURTHER INFORMATION**
- 5.1 The City may amend the RFP or make additions to it at any time.
- 5.2 It is the sole responsibility of Proponents to check the City's website at: <http://vancouver.ca/doing-business/open-bids.aspx> regularly for amendments, addenda, and questions and answers in relation to the RFP.
- 5.3 Proponents must not rely on any information purported to be given on behalf of the City that contradicts the RFP, as amended or supplemented in accordance with the foregoing Section 5.2.
- 6.0 **PROPOSED TERM OF ENGAGEMENT**
- 6.1 The term of any Agreement is expected to be a three (3)-year period, with six (6) possible one-year extensions, for a maximum total term of nine (9) years.

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**7.0 PRICING**

- 7.1 All prices quoted in any Proposal are to be exclusive of applicable sales taxes calculated upon such prices, but inclusive of all other costs.
- 7.2 Prices must be quoted in Canadian currency and fixed prices must be quoted for the full term of the Proponent's proposed agreement.
- 7.3 Prices are to be quoted CIP, destination (Incoterms, 2010). For the avoidance of doubt, freight, insurance, unloading at the destination designated by the City, import duties, brokerage, royalties, handling, overhead, profit and all other similar costs are to be included in quoted prices.

**8.0 EVALUATION OF PROPOSALS**

- 8.1 The City may open or decline to open Proposals in such manner and at such times and places as are determined by the City.
- 8.2 The City currently intends that all Proposals submitted to it in accordance with the RFP will be evaluated by City representatives, using quantitative and qualitative tools and assessments, as appropriate, to determine which Proposal or Proposals offer the overall best value to the City. In so doing, the City expects to examine:

Evaluation Criteria	Evaluation Weighting
Technical	70%
Financial	25%
Sustainability (Environmental and/or Social)	5%
Total	100%

- 8.3 Only Proposals meeting all of the following requirements will be considered for evaluation:

- (a) The proposed solution is an on-premise stand-alone solution. Cloud-only solutions will not be considered for evaluation.
- (b) The proposed solution accepts previously-recorded video files from more than 20 commonly found CCTV video file formats. Live video solutions will not be considered for evaluation. Refer to ID 4.02 in **the separate attachment, PS20191072 - Requirements**, for the list of more than 20 commonly found CCTV video file formats.
- (c) The proposed solution allows for ingested video evidence to be organized into directories (cases) and separated into sub-directories (exhibits).
- (d) The proposed solution has a robust post-analysis reporting feature, which includes any filtered search results obtained during analysis.

- 8.4 The City will retain complete control over the RFP process at all times until the execution and delivery of an Agreement or Agreements, if any. The City is not legally obligated to review, consider or evaluate Proposals, or any particular Proposal, and need not necessarily review, consider or evaluate Proposals, or any particular Proposal in accordance with the procedures

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set out in the RFP. The City may continue, interrupt, cease or modify its review, evaluation and negotiation process in respect of any or all Proposals at any time without further explanation or notification to any Proponents.

- 8.5 The City may, at any time prior to signing an Agreement, discuss or negotiate changes to the scope of the RFP with any one or more of the Proponents without having any duty or obligation to advise the other Proponents or to allow the other Proponents to vary their Proposals as a result of such discussions or negotiations.
- 8.6 The City may elect to short-list Proponents and evaluate Proposals in stages. Short-listed Proponents may be asked to provide additional information or details for clarification, including by attending interviews, making presentations, supplying samples, performing demonstrations, furnishing technical data or proposing amendments to the Form of Agreement. The City will be at liberty to negotiate in parallel with one or more short-listed Proponents, or in sequence, or in any combination, and may at any time terminate any or all negotiations.
- 8.7 The City may also require that any proposed subcontractors undergo evaluation by the City.
- 8.8 For the avoidance of doubt, notwithstanding any other provision in the RFP, the City has in its sole discretion, the unfettered right to: (a) accept any Proposal; (b) reject any Proposal; (c) reject all Proposals; (d) accept a Proposal which is not the lowest-price proposal; (e) accept a Proposal that deviates from the requirements or the conditions specified in the RFP; (f) reject a Proposal even if it is the only Proposal received by the City; (g) accept all or any part of a Proposal; (h) split the scope of work between one or more Proponents; and (i) enter into one or more agreements respecting the subject matter of the RFP with any entity or entities at any time. Without limiting the foregoing, the City may reject any Proposal by a Proponent that has a conflict of interest, has engaged in collusion with another Proponent or has otherwise attempted to influence the outcome of the RFP other than through the submission of its Proposal.

**9.0 CITY POLICIES**

- 9.1 The City's Procurement Policy, Ethical Purchasing Policy and related Supplier Code of Conduct found at <http://vancouver.ca/doing-business/selling-to-and-buying-from-the-city.aspx> align the City's approach to procurement with its corporate social, environmental and economic sustainability values and goals. They evidence the City's commitment to maximize benefits to the environment and the community through product and service selection, and to ensure safe and healthy workplaces, where human and civil rights are respected. Each Proponent is expected to adhere to the supplier performance standards set forth in the Supplier Code of Conduct. The Ethical Purchasing Policy shall be referred to in the evaluation of Proposals, to the extent applicable.
- 9.2 The City's Alcohol, Controlled Drugs and Medications Policy applies to all contractors doing work on behalf of the City. The policy is intended to set expectations regarding the use of alcohol, medication and controlled drugs that may render an employee unfit for work, impair performance or cause risk of harm to health and safety. The successful Proponent will be required to ensure compliance with the policy by its employees when doing work for the City.

**10.0 LIVING WAGE EMPLOYER**

- 10.1 Effective May 1, 2017, the City of Vancouver became a "Living Wage Employer". As such, the City requires all firms that are contracted by the City to provide services on City-owned and

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leased properties to pay employees who perform those services on City property a Living Wage as calculated by the Living Wage for Families Campaign.

Please see the Living Wage for Families Campaign website for the current Living Wage for Vancouver:

[http://www.livingwageforfamilies.ca/living\\_wages\\_in\\_bc\\_and\\_canada](http://www.livingwageforfamilies.ca/living_wages_in_bc_and_canada)

The Living Wage includes the value of any non-mandatory benefits such as paid sick leave, employer-paid Medical Services Plan premiums and extended health benefits.

The Living Wage for Families has created a Living Wage Calculator to assist with the calculation of an employee's hourly rate with benefits. The Living Wage Calculator can be found at the following website:

<http://www.livingwageforfamilies.ca/employers/living-wage-calculator/>

Proponents should refer to the Form of Agreement attached as Part D to this RFP for the specific requirements related to the Living Wage, which include:

- (a) paying the Living Wage to all employees who perform services pursuant to the Agreement on City property during the term of the Agreement; and
- (b) ensuring that all subcontractors pay the Living Wage to their employees who perform services on City property during the term of the Agreement.

Failure to comply with the Living Wage requirement will entitle the City to terminate the Agreement.

#### 11.0 CERTAIN APPLICABLE LEGISLATION

11.1 Proponents should note that the City of Vancouver is subject to the *Freedom of Information and Protection of Privacy Act* (British Columbia), which imposes significant obligations on the City's consultants or contractors to protect all personal information acquired from the City in the course of providing any service to the City.

11.2 Proponents should note that the *Income Tax Act* (Canada) requires that certain payments to non-residents be subject to tax withholding. Proponents are responsible for informing themselves regarding the requirements of the *Income Tax Act* (Canada), including the requirements to qualify for any available exemptions from withholding.

#### 12.0 LEGAL TERMS AND CONDITIONS

12.1 The legal obligations of a Proponent that will arise upon the submission of its Proposal are stated in this Appendix 1 to the Form of Proposal. Except where expressly stated in these Legal Terms and Conditions: (i) no part of the RFP consists of an offer by the City to enter into any contractual relationship; and (ii) no part of the RFP is legally binding on the City.

**POTENTIAL PROPONENTS MUST REVIEW THESE LEGAL TERMS AND CONDITIONS CAREFULLY BEFORE SUBMITTING A PROPOSAL.**



PART B - SCOPE OF WORK

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**PART B – SCOPE OF WORK**

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

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

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

**Background:**

Forensic Video Unit (FVU) is an investigative support unit of Vancouver Police Department (“VPD”), and is responsible for processing video evidence related to criminal offences that occur within the City.

As digital video recording technology has developed, the proliferation of video recording devices in the City has led to an increase in the amount and quality of video seized by police members investigating criminal offences. Investigators are seizing pre-recorded video data from private residences and commercial establishments in order to locate or preserve evidence. The extracted video data is seized in its native format, resulting in video evidence of various video formats. One or more investigators review the video to identify persons, vehicles, or incidents of note.

Currently, the video review process is time-consuming, draining resources and significantly reducing the speed of the investigation. To facilitate an investigation, it is critical to review as much video as possible, as quickly as possible. Furthermore, by facilitating investigations, the required timelines for full court disclosure of all evidentiary case materials to Crown Counsel can be met with greater success.

1.0 **SCOPE OF WORK**

- A. Software License(s) for the proposed solution. The solution should:
  - a. Accept a large variety of different video formats without the need for an analyst to convert them to a specific format prior to upload;
  - b. Review large amounts of video data files quickly, and effectively detect, filter, and search for people/object/vehicles;
  - c. Produce a clear and detailed report which details the AI processing steps taken by the investigators, as well as any written evidence investigators want to add;
  - d. Meet the requirements as detailed in **the separate attachment, "PS20191072 - Requirements"**.
- B. Implementation Services, including:
  - a. Software installation services and system configurations on VPD-provided hardware
  - b. Any required installation customization work
  - c. Software training and/or provision of User Guide(s)
  - d. Implementation Support
- C. Ongoing Software Maintenance and Support Services
  - a. Technical support via phone, email, and in-person
  - b. Software updates and improvements
  - c. Additional video format conversion or inclusion

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PART C - FORM OF PROPOSAL

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**PART C – FORM OF PROPOSAL**

RFP No. PS20191072, AI for Vancouver Police Department Forensic Video (the “RFP”)

Proponent’s Full Legal Name: \_\_\_\_\_

“Proponent”

Address: \_\_\_\_\_

\_\_\_\_\_

Jurisdiction of Legal Organization: \_\_\_\_\_

Key Contact Person: \_\_\_\_\_

Telephone: \_\_\_\_\_

E-mail: \_\_\_\_\_

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

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

IN WITNESS WHEREOF the Proponent has executed this Proposal Form:

\_\_\_\_\_

Signature of Authorized Signatory for the Proponent

\_\_\_\_\_

Date

\_\_\_\_\_

Name and Title

\_\_\_\_\_

Signature of Authorized Signatory for the Proponent

\_\_\_\_\_

Date

\_\_\_\_\_

Name and Title

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PART C - FORM OF PROPOSAL

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**APPENDICES**

The Form of Proposal includes the following attached Appendices:

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

APPENDIX 1

**LEGAL TERMS AND CONDITIONS OF RFP**

**1 APPLICATION OF THESE LEGAL TERMS AND CONDITIONS**

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

**2 DEFINITIONS**

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

- (a) "City" means the City of Vancouver, a municipal corporation continued pursuant to the Vancouver Charter.
- (b) "Contract" means a legal agreement, if any, entered into between the City and the Proponent following and as a result of the Proponent's selection by the City in the City's RFP process.
- (c) "Losses" means, in respect of any matter, all direct or indirect, as well as consequential: claims, demands, proceedings, losses, damages, liabilities, deficiencies, costs and expenses (including without limitation all legal and other professional fees and disbursements, interest, penalties and amounts paid in settlement whether from a third person or otherwise).
- (d) "Proponent" means the legal entity which has signed the Proposal Form, and "proponent" means any proponent responding to the RFP, excluding or including the Proponent, as the context requires.
- (e) "Proposal" means the package of documents consisting of the Proposal Form (including this Appendix 1), the Proponent's proposal submitted under cover of the Proposal Form, and all schedules, appendices and accompanying documents, and "proposal" means any proposal submitted by any proponent, excluding or including the Proponent, as the context requires.
- (f) "Proposal Form" means that certain Part C of the RFP, completed and executed by the Proponent, to which this Appendix 1 is appended.
- (g) "RFP" means the document issued by the City as Request for Proposals No. PS20191072, as amended from time to time and including all addenda.

**3 NO LEGAL OBLIGATION ASSUMED BY THE CITY**

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

PART C - FORM OF PROPOSAL

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**4 NO DUTY OF CARE OR FAIRNESS TO THE PROPONENT**

The City is a public body required by law to act in the public interest. In no event, however, does the City owe *to the Proponent or to any of the Proponent's proposed subcontractors* (as opposed to the public) any contract or tort law duty of care, fairness, impartiality or procedural fairness in the RFP process, or any contract or tort law duty to preserve the integrity of the RFP process. The Proponent hereby waives and releases the City from any and all such duties and expressly assumes the risk of all Losses arising from participating in the RFP process on this basis.

**5 EVALUATION OF PROPOSALS**

**5.1 Compliance / Non-Compliance**

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

**5.2 Reservation of Complete Control over Process**

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

**5.3 Discussions/Negotiations**

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

**5.4 Acceptance or Rejection of Proposals**

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

## **6 PROTECTION OF CITY AGAINST LAWSUITS**

### **6.1 Release by the Proponent**

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

- (a) any alleged (or judicially determined) breach by the City or its officials, agents or employees of the RFP (it being agreed that, to the best of the parties' knowledge, the City has no obligation or duty under the RFP which it could breach (other than wholly unanticipated obligations or duties merely alleged or actually imposed judicially));
- (b) any unintentional tort of the City or its officials or employees occurring in the course of conducting the RFP process;
- (c) the Proponent preparing and submitting the Proposal;
- (d) the City accepting or rejecting the Proposal or any other submission; or
- (e) the manner in which the City: reviews, considers, evaluates or negotiates any proposal; addresses or fails to address any proposal or proposals; resolves to enter into a Contract or not enter into a Contract or any similar agreement; or the identity of the proponent(s) or other persons, if any, with whom the City enters any agreement respecting the subject matter of the RFP.

### **6.2 Indemnity by the Proponent**

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

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

### **6.3 Limitation of City Liability**

In the event that, with respect to anything relating to the RFP or this proposal process (except only and to the extent that the City breaches Section 8.2 of this Appendix 1), the City or its officials, agents or employees are found to have breached (including fundamentally breached) any duty or obligation of any kind to the Proponent or its subcontractors or agents whether at law or in equity or in contract or

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in tort, or are found liable to the Proponent or its subcontractors or agents on any basis or legal principle of any kind, the City's liability is limited to a maximum of \$100, despite any other term or agreement to the contrary.

**7 DISPUTE RESOLUTION**

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

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

**8 PROTECTION AND OWNERSHIP OF INFORMATION**

**8.1 RFP and Proposal Documents City's Property**

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

**8.2 Proponent's Submission Confidential**

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

**8.3 All City Information Confidential**

- (a) The Proponent will not divulge or disclose to any third parties any non-public documents or information concerning the affairs of the City which have been or are in the future provided or communicated to the Proponent at any time (whether before, during or after the RFP process). Furthermore, the Proponent agrees that it has not and must not use or exploit any such non-public documents or information in any manner, including in submitting its Proposal.
- (b) The Proponent now irrevocably waives all rights it may have by statute, at law or in equity, to obtain any records produced or kept by the City in evaluating its Proposal (and any other submissions) and now agrees that under no circumstances will it make any application to the



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City or any court for disclosure of any records pertaining to the receipt, evaluation or selection of its Proposal (or any other submissions) including, without limitation, records relating only to the Proponent.

**9 NO CONFLICT OF INTEREST / NO COLLUSION / NO LOBBYING**

**9.1 Declaration as to no Conflict of Interest in RFP Process**

- (a) The Proponent confirms and warrants that there is no officer, director, shareholder, partner, employee or contractor of the Proponent or of any of its proposed subcontractors, or any other person related to the Proponent's or any proposed subcontractor's organization (a "person having an interest") or any spouse, business associate, friend or relative of a person having an interest who is: (i) an official or employee of the City; or (ii) related to or has any business or family relationship with an elected official or employee of the City, in each case, such that there could be any conflict of interest or any appearance of conflict of interest in the evaluation or consideration of the Proposal by the City, and, in each case, except as set out, in all material detail, in a separate section titled "Conflicts; Collusion; Lobbying" in the Proposal in accordance with the form set out in Part C - APPENDIX 10.
- (b) The Proponent confirms and warrants that there is no person having an interest (as defined above) who is a former official, former employee or former contractor of the City and who has non-public information relevant to the RFP obtained during his or her employment or engagement by the City, except as set out, in all material detail, in a separate section titled "Conflicts; Collusion; Lobbying" in the Proposal in accordance with the form set out in Part C - APPENDIX 10.

**9.2 Declaration as to No Conflict of Interest Respecting Proposed Supply**

The Proponent confirms and warrants that neither the Proponent nor any of its proposed subcontractors is currently engaged in supplying (or is proposing to supply) goods or services to a third party such that entering into an agreement with the City in relation to the subject matter of the RFP would create a conflict of interest or the appearance of a conflict of interest between the Proponent's duties to the City and the Proponent's or its subcontractors' duties to such third party, except as set out, in all material detail, in a separate section titled "Conflicts; Collusion; Lobbying" in the Proposal in accordance with the form set out in Part C - APPENDIX 10.

**9.3 Declaration as to No Collusion**

The Proponent confirms and warrants that:

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

in each case, except as set out, in all material detail, in a separate section titled "Conflicts, Collusion, Lobbying" in the Proposal in accordance with the form set out in Part C - APPENDIX 10.

**9.4 Declaration as to No Lobbying**

The Proponent confirms and warrants that:

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

in each case, except as set out, in all material detail, in a separate section titled "Conflicts, Collusion, Lobbying" in the Proposal in accordance with the form set out in Part C - APPENDIX 10.

**10 GENERAL**

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

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APPENDIX 2  
**QUESTIONNAIRE**

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

**Executive Summary**

In the space below, provide a brief executive summary of your Proposal. Please do not include any pricing details.

**Proponent Overview**

In the space below, provide a description of the Proponent's company, number of employees, purpose and history of successes. If the head office of the Proponent is located within the City of Vancouver or if the Proponent is to perform any work at a site located within the City of Vancouver, this section should also indicate whether the Proponent has a valid City of Vancouver business license (or, if available, a Metro West Inter-municipal Business License).

**Part B - Scope of Work**

In the space below, describe how your Proposal is responsive to Part B - Scope of Work.

**PS20191072 - Requirements**

Complete and submit the separate attachment, "PS20191072 - Requirements" in Excel format (not in PDF format).

**Key Personnel**

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In the space below, identify and provide professional biographical information for the key personnel that would perform the Proponent's work, outlining their intended roles in performing the Scope of Work. If appropriate, also attach to this Form of Proposal as an additional Appendix CVs and a complete organization chart, identifying all roles and areas of responsibility.

**Work Plan**

In the space below (or attached to this Form of Proposal as an additional Appendix clearly titled "Work Plan"), detail the sequential process by which the Proponent proposes to undertake the work, including a timeline as necessary. The Proponent's work plan should make reference to the Scope of Work as appropriate.

**Innovation**

Notwithstanding any other provision hereof, the City welcomes Proposals respecting innovative or novel approaches to the City's objectives and requirements and may consider value-creating Proposals that derogate from the Scope of Work. In the space below, note any proposed innovative approaches to meeting the City's requirements.

**Alternative Solutions**

If, in addition to proposing services which meet the Scope of Work, the Proponent wishes to offer an alternative or alternatives, the alternative solution(s) should be described in the space provided below. Any pricing impact of the alternative solution(s) should also be provided.

**Supplier Diversity**

Please note that these Supplier Diversity questions are optional and will not form part of the evaluation of this RFP. Proponent answers to Supplier Diversity questions are for information

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gathering purposes only and will be kept confidential in accordance with the Legal Terms and Conditions of this RFP.

In the space below, indicate the Proponent's company profile with regards to social value and economic inclusion supporting equity, diversity, inclusion and reconciliation, including social/environmental certifications, workforce diversity and/or if owned/controlled by an equity-seeking demographic (including but not limited to non-profit, cooperative, Women, Indigenous Peoples, Ethno-cultural People (minorities, newcomers, immigrants), persons with disabilities or LGBTQ+ people).

<b>Majority owned/controlled/ by:</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> Women</li> <li><input type="checkbox"/> Indigenous Peoples</li> <li><input type="checkbox"/> Non-Profit/Charity (Social Enterprise)</li> <li><input type="checkbox"/> Coop</li> <li><input type="checkbox"/> Community Contribution Corporation (3C/CCC)</li> <li><input type="checkbox"/> Ethno-cultural Persons</li> <li><input type="checkbox"/> People with Disabilities</li> <li><input type="checkbox"/> LGBTQ+</li> <li><input type="checkbox"/> Other: please indicate</li> </ul>	<b>Workforce Diversity:</b> <ul style="list-style-type: none"> <li>% Women</li> <li>% Indigenous Peoples</li> <li>% Ethno-cultural People</li> <li>% People with Disabilities</li> <li>% LGBTQ+</li> <li>% Other: please indicate</li> </ul>	<b>Social / Environmental Certifications</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> BCorp</li> <li><input type="checkbox"/> BuySocial</li> <li><input type="checkbox"/> Supplier Diversity Certification</li> <li><input type="checkbox"/> Fairtrade</li> <li><input type="checkbox"/> Green Business Certification (ie. LEED, ClimateSmart)</li> <li><input type="checkbox"/> Other: please indicate</li> </ul>
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APPENDIX 3

**COMMERCIAL PROPOSAL**

Complete the separate attachment, PS20191072 - Commercial Proposal, and submit in excel format (not pdf format).

Proponent to provide proposed pricing and payment terms, which should be in accordance with Part A, Section 7.0 of the RFP (as well as any other sections of the RFP imposing requirements as to pricing).

☐

By colouring in this box, the Proponent hereby confirms that the above Commercial Proposal is based on the payment of wages to employees of the Proponent and Subcontractors that comply with the City's Living Wage Policy as described in Section 10.0 of Part A and in the Form of Agreement attached hereto as Part D.

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## APPENDIX 4

***PROPONENT'S REFERENCES***

Complete this Appendix 4 - Proponents References in the form set out below with references that are relevant to the Scope of Work set out in this RFP.

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

Client Name # 2	
Type of organization (law enforcement, government, private)	
Address (City and Country)	
Contact Name	
Title of Contact	

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Telephone No.	
E-mail Address	
Length of Relationship	
Scope of Goods and/or Services provided to this Client	

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

Client Name # 4	
Type of organization (law enforcement, government, private)	
Address (City and Country)	
Contact Name	



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Title of Contact	
Telephone No.	
E-mail Address	
Length of Relationship	
Scope of Goods and/or Services provided to this Client	

Client Name # 5	
Type of organization (law enforcement, government, private)	
Address (City and Country)	
Contact Name	
Title of Contact	
Telephone No.	
E-mail Address	
Length of Relationship	
Scope of Goods and/or Services provided to this Client	

Client Name # 6	
Type of organization (law enforcement, government, private)	

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

***Appendix 5***  
**CERTIFICATE OF INSURANCE**

Appendix 5 is to be duly completed and signed by the Proponent's insurance agent or broker as evidence of its existing insurance, along with a letter from its insurance broker or agent indicating whether or not (and, if not, then to what extent) it will be able to comply with the insurance requirements set out in the Form of Agreement, should the Proponent be selected as a successful Proponent. (Any successful Proponent will also be required to provide proof of the satisfaction of all insurance requirements prior to or concurrently with the City entering into any Agreement.)

The successful proponent will be required to carry the following insurance coverage (note: under an Agreement, 'City' may be replaced with 'Vancouver Police Board' or other reference to Vancouver Police Department:

- Professional (Error and Omissions) Liability and Cyber Liability insurance policy, each with limits of not less than \$5,000,000 per claim (with a sub-limit of not less than \$1,000,000 per claim for intellectual property infringement) and an aggregate of not less than \$5,000,000, protecting the proponent against all claims for loss or damage arising out of any error or omission of the proponent or the proponent's personnel in the performance of the scope of work; and
- Commercial General Liability insurance policy with limits of not less than \$2,000,000 per occurrence, aggregate of not less than \$2,000,000, and a deductible of not more than \$5,000, protecting the proponent and the proponent's personnel against all claims for personal injury, including death and bodily injury, and property damage or loss, arising out of the operations of the proponent or the actions of the proponent or the proponent's personnel. The policy will contain a cross liability clause in favour of the City and will name the City and its officials, officers, employees, servants, and agent as Additional Insureds with respect to liability of the Named Insured.

## AI FOR VANCOUVER POLICE DEPARTMENT FORENSIC VIDEO UNIT

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**Appendix 6**  
**DECLARATION OF SUPPLIER CODE OF CONDUCT COMPLIANCE**

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

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

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

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

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

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

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

Signature: \_\_\_\_\_

Name and Title: \_\_\_\_\_

**Appendix 7**  
**PERSONAL INFORMATION CONSENT FORM(S)**

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

**PERSONAL INFORMATION CONSENT FORM**

Reference #PS20191072

Title: AI for Vancouver Police Department Forensic Video

With the provision of my signature at the foot of this statement I, \_\_\_\_\_  
\_\_\_\_\_ (Print Name)

consent to the indirect collection from \_\_\_\_\_  
\_\_\_\_\_ (Print Name of Proponent) of  
my personal information in the form of a work history, resume or summary of qualifications.

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## AI FOR VANCOUVER POLICE DEPARTMENT FORENSIC VIDEO UNIT

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### ***Appendix 8*** **SUBCONTRACTORS**

Complete this Appendix 8 - Subcontractors in the form set out below by listing all of the subcontractors that the Proponent proposes to use in carrying out its work under an Agreement, or state that the Proponent does not propose to use any subcontractors.

If selected to enter into an Agreement with the City, the Proponent may be limited to using subcontractors listed in its Proposal. If the City objects to a subcontractor listed in a Proposal, the City may permit a Proponent to propose a substitute Subcontractor acceptable to the City.

Subcontracted Scope		
Subcontractor		
Contact (name, title, email, telephone no.)		
Approximate Percent of the Work to be Subcontracted		
Social Value Business - shall mean a business that has a recognized environmental or social certification and/or is majority owned/controlled by an equity-seeking demographic (including but not limited to non-profit, cooperative, Women, Indigenous Peoples, Ethno-cultural People (minorities, newcomers, immigrants), persons with disabilities or LGBTQ+ people).	In the space below, detail the Proponent's proposed use of Social Value Businesses as sub-contractors/consultants (if any) and provide brief company profiles of those Social Value Businesses and descriptions of how they qualify as Social Value Businesses.	
The Subcontractor's Relevant Experience (identify at least three similar projects within the last five years, including the client)	1. Project Name:	
	Client:	
	Nature of Work:	

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	Value:	
	Client Contact:	
	2. Project Name:	
	Client:	
	Nature of Work:	
	Value:	
	Client Contact:	
	3. Project Name:	
	Client:	
	Nature of Work:	
	Value:	
	Client Contact:	

**Appendix 9**  
**PROPOSED AMENDMENTS TO FORM OF AGREEMENT**

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

Section / General Condition	Proposed Amendment	Rationale and Benefit
	<i>none</i>	



***Appendix 10***  
***CONFLICTS; COLLUSION; LOBBYING***

Complete this APPENDIX 10 - Conflicts; Collusion; Lobbying in the form set out below by setting out any exceptions to the declarations in Section 9 of the Legal Terms and Conditions attached as Appendix 1 to this Part C - Form of Proposal or indicate that there are no exceptions, as applicable.

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

***Appendix 11***  
***PROOF OF WORKSAFEBC REGISTRATION***

Attached as APPENDIX 11 to this Form of Proposal proof of valid WorkSafeBC registration.

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**PART D**  
**FORM OF AGREEMENT**

**SUPPLY AND INSTALLATION OF  
AI FORENSIC VIDEO SOFTWARE AND RELATED  
PROFESSIONAL SERVICES**

**SUPPLY CONTRACT**

BETWEEN

**VANCOUVER POLICE BOARD**

AND

**[•]**

DATED: **[•]**

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Schedule C	Implementation - Statement of Work
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Schedule E	Sub-Contractors
Schedule F	Key Personnel
Schedule G	Training
Schedule H	Performance Standard Warranties
Schedule I	Acceptance Tests
Schedule J	Payment Schedule
Schedule K	Intentionally Deleted
Schedule L	Maintenance Agreement
Schedule M	Intentionally Deleted
Schedule N	Intentionally Deleted
Schedule O	Certificate of Insurance
Schedule P	Source Code Escrow Agreement
Schedule Q	Intentionally Deleted
Schedule R	RFP
Schedule S	Proposal
Schedule T	Intentionally Deleted
Schedule U	Change Order

THIS SUPPLY AGREEMENT (this "Contract") dated [●], 2019,

BETWEEN:

VANCOUVER POLICE BOARD

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(the "VPD")

AND:

[●]

(the "Vendor")

#### BACKGROUND:

- A. Pursuant to the VPD's Request for Proposal No. PS\_\_\_\_\_ (the "RFP"), the VPD invited from qualified Proponents proposals to provide an AI forensic video software system comprised of the software, services and documentation as set out in the RFP (the "System").
- B. In response to the RFP, the Vendor submitted a proposal (the "Proposal") offering to provide the System specified in the RFP to the VPD.
- C. Based on the VPD's evaluations of the Proposal, the VPD and Vendor entered into discussions with a view to entering a contract to supply the specified System to the VPD.
- D. The VPD and the Vendor have now agreed on the legal terms and conditions on which the Vendor will supply the System to the VPD as provided in this Contract.

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

### ARTICLE 1 DEFINITIONS AND INTERPRETATION

#### 1.1 General Definitions

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

- (a) "Acceptance Tests" means the tests or processes, as applicable, outlined in *Schedule I [Acceptance Tests]* by which the VPD will evaluate, as applicable, whether the System, and the Services and Software thereof, have been provided in compliance with the requirements of this Contract.
- (b) "Amendment" or "Change Order" means a change in any of the Contract Documents which has been agreed upon in writing and executed by the VPD and the Vendor including:
  - (i) any Certificate of Acceptance; and
  - (ii) a document substantially in the form attached as Schedule U [Change Order] but only if it has been completed and signed by the parties.

- (c) “**Business Day**” means any day that is not a Saturday, Sunday, statutory holiday in British Columbia, Easter Monday, or Boxing Day.
- (d) “**Certificate**” means a Certificate of Acceptance or Certificate of Final Acceptance.
- (e) “**Certificate of Acceptance**” means each certificate to be issued or deemed issued by the VPD Project Manager in accordance with the Contract Documents, indicating successful completion of each Acceptance Test to which such Certificate of Acceptance relates, including the Certificate of Final Acceptance.
- (f) “**Certificate of Final Acceptance**” means the Certificate to be issued or deemed issued by the VPD Project Manager in accordance with the Contract Documents when the Services have successfully passed the final Acceptance Test in accordance with *Schedule I [Acceptance Tests]*.
- (g) “**Certificate of Insurance**” means a certificate substantially in the form attached as *Schedule O [Certificate of Insurance]* and issued and duly signed by the Vendor’s insurer or insurance agent in accordance with *ARTICLE 12 [Insurance]*.
- (h) “**Change Order**” has the same meaning as “Amendment”.
- (i) “**Contemplated Change Notice/Change Order**” means a document substantially in the form attached as *Schedule U [Change Order]*.
- (j) “**Contract**” means the contractual agreement consisting of the Contract Documents.
- (k) “**Contract Documents**” means this Form of Agreement, including all Schedules, all of which are now incorporated by this reference and made an integral part of this Contract, and all Amendments to this Contract.
- (l) “**Delivery Date**” means any date referred to in the Implementation Schedule or *Schedule C [Implementation - Statement of Work]* as a “Delivery Date”, “Start Date”, or “Finish Date”.
- (m) “**Documentation**” means the Manuals (as that term is defined in *Schedule B [Pricing]*), and including Software product manuals, installation guides and detailed product specifications and documentation required to be delivered with the Software or Source Code (subject always to the Source Code Escrow Agreement) and any Release of any Software or Source Code all as more particularly described in *Schedule B [Pricing]* and in *Schedule G [Training]*.
- (n) “**Effective Date**” means the date set out on the title page and first page of this Contract.
- (o) “**Event of Default**”, with respect to the Vendor, has the meaning ascribed in *Section 22.1 [Event of Default—Defined]*.
- (p) “**Finish Date**” means any date referred to in the Table set out in the Implementation Schedule as a “Finish Date”.
- (q) “**Form of Agreement**” or “**FOA**” means the main body of this Contract excluding all of its Schedules.
- (r) “**Functional Requirements**” means the functionality that the Software must have when operated in conjunction with the Hardware and Software Platform in order to comply with this Contract, subject to Section 2.1 [Priority of Documents] as outlined in Schedule S [Proposal] pursuant to Schedule R [RFP], and then further modified and clarified by the following provisions of this Contract:

- (i) *Schedule A [Functional Requirements];*
- (ii) *Section 3.1 [Vendor's Security Obligations]; and*
- (iii) *Section 13.1 [Software and Documentation Warranties].*
- (s) "Go Live" means to commence the actual productive use of the Software in a Production Environment (as opposed to use of the Software in a Non-Production Environment such as a training, testing or development environment).
- (t) "Go Live Date" means the date referred to as such in the Implementation Schedule as the "Go Live Date".
- (u) "Hardware and Software Platform" means the VPD's existing desktop, network, server and current development environment as generally described in *Schedule D [Hardware and Software Platform]*.
- (v) "Holdback" means the holdback amount as set out in *Schedule J [Payment Schedule]* which amount is intended to secure the performance of the Vendor's obligations under this Contract.
- (w) "Implementation Schedule" means the chronological list of all major tasks/activities with description, scheduled dates of completion and responsibilities of each party as outlined in *Appendix C.1 to Schedule C [Implementation - Statement of Work]*.
- (x) "Installation Sites" means the Installation Sites for the Hardware and Software Platform.
- (y) "Intellectual Property Rights" means all of the following and all rights in, arising out of, or associated with:
  - (i) all inventions, methods, and processes (collectively, the "patentable subject matter") and all patents issued in respect of patentable subject matter and all associated utility models and patent applications as well as all reissues, divisions, re-examinations, renewals, extensions, provisionals, continuations and continuations-in-part and equivalent or similar rights anywhere in the world in inventions and discoveries including invention disclosures;
  - (ii) all trade secrets and other rights in know-how and other confidential or proprietary information;
  - (iii) all literary, artistic, and other copyright protected works, registrations and applications for registration of copyright protected works, and all other corresponding rights throughout the world;
  - (iv) all trade-marks (including word marks, design marks, logos, common law trade-marks and service marks) and trade names, and all registrations and applications for same and all associated goodwill throughout the world; and
  - (v) any similar, corresponding or equivalent rights to any of the above anywhere in the world.
- (z) "Interfaces" means any programming interface or adaptor between the Software and third party or VPD-owned or licensed software that facilitates the import and export of data or intercommunication between such software.
- (aa) "Laws and Regulations" means all present and future laws, statutes, by-laws, regulations, treaties, judgments and decrees and, whether or not having the force of

law, all official directives, rules, consents, approvals, authorizations, guidelines, orders and policies of any domestic government, including any federal, provincial, regional or municipal government, and any government agency, tribunal, commission or other authority exercising executive, legislative, judicial, regulatory or administrative functions.

- (bb) “**Licence**” means the licence from the Vendor to the VPD to use the Software, Source Code (subject always to the Source Code Escrow Agreement) and Documentation as set out in *Article 16 [Licence and Proprietary Material]*, and “Licensed” will have a corresponding meaning.
- (cc) “**Licence Fee**” means the consideration payable by the VPD to the Vendor for the Licence as set out in *Article 16 [Licence and Proprietary Material]* and *Schedule B [Pricing]*.
- (dd) “**Losses**” means, in respect of any matter, all direct and indirect losses, damages, liabilities, deficiencies, costs and expenses (including all legal and other professional fees and disbursements, interest, penalties and amounts paid in settlement, whether from a third person or otherwise).
- (ee) “**Maintenance Agreement**” means the separate agreement in the form of *Schedule L [Maintenance Agreement]* for the ongoing provision of Maintenance Services as more particularly described in *Article 14 [Maintenance/Source Code]*.
- (ff) “**Maintenance Cost**” means the amounts payable by the VPD to the Vendor in consideration for the Maintenance Services to be provided by the Vendor pursuant to the Maintenance Agreement.
- (gg) “**Maintenance Services**” means the services to be provided by the Vendor pursuant to the Maintenance Agreement, which services are separate and apart from the Services.
- (hh) “**Operating Hours of the VPD**” means the hours the VPD is normally staffed, namely 8:00 A.M. - 5:30 P.M. on Business Days.
- (ii) “**Project**” means the implementation of the Software in accordance with the Contract starting on the Effective Date and ending with the issuance of the Certificate of Final Acceptance as more particularly described in *Schedule C [Implementation - Statement of Work]*.
- (jj) “**Project Completion Date**” means the date on which the Certificate of Final Acceptance is issued.
- (kk) “**Project Office**” means the office located at ● Vancouver BC, to be used by the VPD and Vendor in conjunction with the Installation Sites for the Project, or such other site within City of Vancouver in the event that the VPD requires the Project Office to be moved to an alternate site.
- (ll) “**Project Services**” means all services to be provided by the Vendor in accordance with the Vendor’s obligations under this Contract (including, for certainty, “Fixed Price Services” and “Time & Materials Services” as defined in *Schedule B [Pricing]*, and including “Training Services” as defined in *Schedule G [Training]*), but expressly excluding Maintenance Services.
- (mm) “**Project Team Member**” means any individual employed by the Vendor or the VPD to assist the Vendor Project Manager or VPD Project Manager in carrying out the Project.

- (nn) **"Proposal"** means the Vendor's proposal dated as of ●, together with all accompanying schedules, and other attachments, as submitted by the Vendor to the VPD in response to the RFP, which proposal is attached as *Schedule R [Proposal]*.
- (oo) **"Proprietary Material"** means, in respect of the VPD, the VPD Proprietary Material and, in respect of the Vendor, the Vendor Proprietary Material.
- (pp) **"Release"** means any modification or extension of the Software (including updated or enhanced functionality) which the Vendor periodically provides to its customers who subscribe for Software maintenance services and are current with respect to their applicable Software maintenance fees.
- (qq) **"RFP"** means Request for Proposals, No. 11121 issued by the VPD on ●, and attached as *Schedule R [RFP]*.
- (rr) **"Schedules"** means those parts of this Contract listed in Section 1.5 [Schedules].
- (ss) **"Software"** means ●
- (tt) **"Source Code"** means the human readable commented form of the Software, including programs and flowcharts.
- (uu) **"Source Code Escrow Agreement"** means the separate agreement in the form of Schedule P [Source Code Escrow Agreement] as more particularly described in *Article 14 [Maintenance/Source Code]*.
- (vv) **"Start Date"** means any date referred to in the Table set out in the Implementation Schedule as a "Start Date".
- (ww) **"Third Party Software"** means computer software programs that are owned by third parties, and are not part of the Software and that the VPD must licence directly from the owner, including: ●
- (xx) **"Total Purchase Price"** means the total purchase price listed on *Schedule B [Pricing]*.
- (yy) **"Unavoidable Delay"** means a delay defined by *Section 28.14 [Unavoidable Delay]*.
- (zz) **"User Rights"** means the number of seats or other unit of measurement (or metric) for the pricing and payment by the VPD for the Licence.
- (aaa) **"Vendor Project Manager"** means the person appointed by the Vendor to act as the sole contact for the Vendor with the VPD throughout the Project.
- (bbb) **"Vendor Project Team"** means those members of the Project Team who are employees, sub-contractors, or other agents of the Vendor.
- (ccc) **"Vendor's Proprietary Material"** means all materials and information created, acquired (other than from the VPD or anyone on behalf of the VPD) or developed by the Vendor, including the Software, Source Code, Documentation, and Proposal unless expressly indicated otherwise.
- (ddd) **"VPD"** means the Vancouver Police Board.
- (eee) **"VPD-Caused Delay"** means a delay described in *Section 23.1(d) [Default of VPD's Obligations]*.
- (fff) **"VPD Project Manager"** means the person appointed by the VPD to act as the sole contact for the VPD with the Vendor throughout the Project.

- (ggg) “**VPD Project Team**” means those members of the Project Team who are employees, sub-contractors, or other agents of the VPD.
- (hhh) “**VPD Records**” means the records described in *Section 16.2(a) [Vendor to Protect All VPD Records]*.
- (iii) “**VPD’s Proprietary Material**” means all materials and information created, acquired (other than from the Vendor or anyone on behalf of the Vendor) or developed by the VPD including, all materials and information provided to the Vendor in or with the RFP, in preparation for Contract discussions, during Contract discussions, or during the Project, unless expressly indicated otherwise.
- (jjj) “**WorkSafeBC**” means the Workers Compensation Board of British Columbia.
- (kkk) “**WorkSafe Rules**” means the *Workers Compensation Act* (British Columbia), including all Regulations enacted pursuant to such Act, all as such Act or Regulations are amended or re-enacted from time-to-time.

## 1.2 Additional Definitions in Schedules

Where certain words or phrases are used predominantly within a given Schedule to this Contract, those words and phrases have been defined within that Schedule. However, despite the location of such definition, such words and phrases are intended to have their defined meaning where used anywhere in the Contract and not merely within such Schedule.

## 1.3 Interpretation

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

- (a) **Parts of Contract** — a reference to an “**Article**” is to an Article of this Contract, and the word “**Section**”, “**Paragraph**”, followed by a number or some combination of numbers and letters refers to the section, paragraph, subparagraph, clause or subclause of this Contract so designated;
- (b) **Headings and Titles** — headings and titles used in this Contract are for reference purposes only and shall not be deemed a part of this Contract;
- (c) “**Including**” and “**Or**”—the word “**including**”, when following a general statement or term (whether or not non-limiting language such as “without limitation” or “but not limited to” or “without limitation and by way of example only” or other words of similar import are used with reference thereto), is not to be construed as limiting the general statement or term to any specific item or matter set forth or to similar items or matters, but rather as permitting the general statement or term to refer also to all other items or matters that could reasonably fall within its broadest possible scope, and the word “or” does not imply an exclusive relationship between the items being connected;
- (d) **Successors** — a reference to an entity includes any successor to that entity;
- (e) **Gender, Number, etc.** — a word importing the masculine gender includes the feminine and neuter, a word in the singular includes the plural, a word importing a corporate entity includes an individual, and vice versa and “**person**” will mean an individual, partnership, corporation (including a business trust), joint stock company, trust unincorporated association, joint venture, or other entity or a government or any agency, department or instrumentality thereof and vice versa; and
- (f) **Technical Terminology** — words, phrases and acronyms not otherwise defined herein that have a meaning commonly understood and accepted by persons familiar with the



business of information technology will be interpreted and understood to have that meaning herein.

#### 1.4 Schedules

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

Schedule A	Functional Requirements
Schedule B	Pricing
Schedule C	Implementation - Statement of Work
Schedule D	Hardware and Software Platform
Schedule E	Sub-Contractors
Schedule F	Key Personnel
Schedule G	Training
Schedule H	Performance Standard Warranties
Schedule I	Acceptance Tests
Schedule J	Payment Schedule
Schedule K	Intentionally Deleted
Schedule L	Maintenance Agreement
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Schedule N	Intentionally Deleted
Schedule O	Certificate of Insurance
Schedule P	Source Code Escrow Agreement
Schedule Q	Intentionally Deleted
Schedule R	RFP
Schedule S	Proposal
Schedule T	Intentionally Deleted
Schedule U	Change Order

### ARTICLE 2 CONTRACT DOCUMENTS AND PRIORITY OF DOCUMENTS

#### 2.1 Priority of Documents

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

- (a) any and all Amendments from the most recent to the earliest;
- (b) this Form of Agreement, excluding all Schedules; and
- (c) [NTD: Additional items will be inserted later]

### ARTICLE 3 GENERAL REQUIREMENTS

#### 3.1 Vendor's Security Obligations

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

### 3.2 Vendor's General Obligations

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

### 3.3 First Class Standard

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

### 3.4 Vendor has Control/Responsibility

The Vendor will have complete control over its performance of the Services and will direct and supervise and do the work to ensure conformance with the Contract Documents. The Vendor will be solely responsible for all methods, techniques, sequences and procedures in connection with the furnishing of the Software and Services and for coordinating all parts of the performance of this Contract, excluding those parts that are expressly stated in this Contract to be the responsibility of the VPD.

### 3.5 Discrepancies

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

### 3.6 Vendor to Report Status

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

### 3.7 Term of the Contract

The term of this Contract will be for the period beginning on the Effective Date and ending on the surrender or cancellation of the perpetual Licence, unless replaced or re-instated in accordance with the terms of this Contract.

## ARTICLE 4 INSTALLATION SITE PREPARATION AND PLATFORM

### 4.1 VPD to Prepare Installation Sites

The VPD will, at its sole expense and prior to the first Delivery Date, provide all necessary electrical and other installations and fittings at the Installation Sites which will be required for proper functioning of the Hardware and Software Platform and proper performance of the Services.

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

- (a) The Vendor now confirms that the specifications for the Hardware and Software Platform required for the proper functioning of the Software during and after the Project are as set out in *Schedule D [Hardware and Software Platform]*.
- (b) If the VPD is required to make any modifications or return and replace the Hardware and Software Platform due to its lack of or deficiency in interoperability with the Software or Services, any and all direct, out-of-pocket costs of doing so will be borne by the Vendor, provided that the Vendor will have no such liability if such lack of or deficiency in interoperability is due to any cause that is not within the reasonable control of the Vendor, including the combination of the Software with other software or hardware not supplied by the Vendor, other than the Hardware and Software Platform.

#### **4.3 VPD Responsible for Hardware and Software Platform**

The VPD will continue to be solely responsible for maintaining and operating the Hardware and Software Platform during the Project.

#### **4.4 Remains Property of VPD**

Despite any other term of this Contract, the Hardware and Software Platform will remain at all times the property of the VPD and the Vendor will acquire no right or interest in same.

#### **4.5 Interfaces**

The VPD's and Vendor's respective roles and responsibilities for the Interfaces are as set out in *Schedule C [Implementation - Statement of Work]*.

#### **4.6 VPD Permitted to Replace/Modify Hardware and Software Platform**

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

### **ARTICLE 5 VENDOR RESPONSIBILITIES**

#### **5.1 General Responsibilities**

- (a) Commencing on the Start Dates, the Vendor will provide the Services in accordance with the Contract Documents and complete the Services on or before the Delivery Dates and Finish Dates applicable to those Services as set out in the Implementation Schedule.
- (b) The Vendor's obligations under the Contract Documents have been set out in the Contract Documents following extensive consultations between the parties, to describe the obligations of the Vendor and to the extent that the Vendor's obligations under the Contract Documents fail to expressly state anything that would "reasonably be implied or inferred" in order to comply with the Vendor's obligations under the Contract Documents, the Vendor now agrees that such thing will be deemed to be implied and included in the Total Purchase Price, provided always that the determination of whether or not such thing would "reasonably be implied or inferred" will be made by taking into account the fact that the Vendor is deemed to be the expert in determining the capabilities and limitations of its Software and Services and the VPD is deemed to

be the expert in determining the general business processes for which its requires the Services and the Software.

## 5.2 Material to be Delivered

The Vendor will deliver the following: [•].

## 5.3 Specific Responsibilities

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

- (a) appoint a Vendor Project Manager, who will have full authority for implementing this Contract and who will be the principal point of contact between the VPD and the Vendor, provided that, if the Vendor Project Manager becomes unable to fulfill this obligation, the Vendor will appoint a successor Vendor Project Manager;
- (b) provide and pre-test all configuration work, as part of the System;
- (c) provide the Documentation;
- (d) train groups of designated VPD personnel as set out in *Schedule G [Training]*;
- (e) provide regular progress reports as required by this Contract;
- (f) supply the Software and Services, complete and fully Vendor tested, as set out in this Contract;
- (g) deliver, install, pre-test and configure the Software and complete the Project Services so that the Software operates and interfaces with the Software and Hardware Platform, and other software as specified in this Contract, and in accordance with the Acceptance Tests, the Implementation Schedule, and in a manner designed to cause minimal disruption to the Operating Hours of the VPD;
- (h) do everything required by the Contract Documents by the time stipulated in the Contract Documents and to a first class standard;
- (i) in addition to the Functional Requirements, deliver anything else necessary for or incidental to the Functional Requirements, including supplying all labour, supervision, management, overhead, materials, supplies, and all other things necessary for or incidental to the Functional Requirements;
- (j) comply, and will ensure that all of its employees, contractors and agents comply, with all Laws and Regulations in carrying out this Contract;
- (k) restrict its employees, contractors and agents from unduly interfering with the VPD's business operations when they are working at any Installation Site or Project Office;
- (l) comply with, and ensure that its employees, contractors and agents comply with, the VPD's standard security procedures to maintain the security of the VPD's Proprietary Information;
- (m) notify the VPD of, as appropriate, and seek the VPD's prior written consent to, any material changes to the Vendor's methodology in the provision of Services;

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

## ARTICLE 6 VPD RESPONSIBILITIES

### 6.1 General Responsibilities

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

### 6.2 Specific Responsibilities

The VPD will throughout the term of the Project:

- (a) designate a VPD Project Manager, who will have full authority for implementing this Contract and who will be the principal point of contact between the Vendor and the VPD, provided that, if the VPD Project Manager becomes unable to fulfill this obligation, the VPD will appoint a successor VPD Project Manager;
- (b) provide all necessary network connections, power and telephone lines in accordance with the specifications as provided by the applicable manufacturers of the Software and Hardware Platform;
- (c) allocate the necessary personnel, including the personnel specified in the Implementation Schedule, funds, facilities and other resources required to carry out its obligations under this Contract in a timely, efficient and first class manner; and
- (d) comply, and will ensure that all of its employees and contractors comply, with all Laws and Regulations in carrying out this Contract.

## ARTICLE 7 TOTAL PURCHASE PRICE AND PAYMENT

### 7.1 Payment Only on Performance

Subject to the partial and interim payment obligations of the VPD as set out in *Schedule J [Payment Schedule]*, the VPD will have no obligation to pay any money to the Vendor in connection with this Contract unless and until the Vendor has fully and completely complied

with all of its obligations required by this Contract to be performed and all covenants on the part of the Vendor are in good standing up to the date that such payment is due.

## **7.2 Payment Schedule**

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

## **7.3 Payment of Licence Fee**

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

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

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

## **7.5 Interest on Late Payments**

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

## **7.6 Payment Procedure**

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

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

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

*Schedule B [Pricing]* lists all Software and Services together with their associated prices. All prices, whether lump sum, unit rate, or otherwise set out in *Schedule B [Pricing]* are fixed and may not be changed by either party except pursuant to *Article 10 [Change Requests]*.

## **7.8 Total Purchase Price Set out in Schedule B [Pricing]**

The Total Purchase Price is fixed and may not be changed by either party except by Change Order pursuant to *Article 10 [Change Requests]*.

## **7.9 Canadian Currency**

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

## 7.10 Taxes

- (a) ***VPD Liable for Taxes*** — The prices set out in this Contract are exclusive of all federal, provincial, municipal, or other Canadian government, excise, sales, use, occupational, or like taxes specific to the transactions under this Contract now in force or enacted in the future in respect to amounts payable by the VPD to the Vendor relating to the Software or Services, all of which the VPD will be liable to pay to the Vendor wherever the Vendor is required to collect and remit such amount to any governmental authority as a result of this Contract.
- (b) ***Vendor Liable For Corporate, Income, Capital, and Other General Taxes and Other Amounts*** — Nothing in this Section or this Contract will make, or be interpreted so as to make the VPD liable to pay:
  - (i) general (as opposed to those being specific to this Contract) Canadian or foreign taxes, duties, excise, customs, penalties or interest amounts imposed on the Vendor or its Affiliates on account of the Vendor's or its Affiliate's import of goods, services or labour, income, capital, transfers or transactions;
  - (ii) the wages (inclusive of all benefits, withholding taxes, CPP contributions and WorkSafe BC assessments) or fees of any employees, consultants, contractors, agents or other persons employed by it to provide Services; or
  - (iii) all out-of-pocket expenses and disbursements incurred by the Vendor on behalf of the VPD in the performance of its obligations under this Contract, including travel and living expenses, charges for courier services and long distance telephone services, together with the Vendor's then current administration fee on such expenses.

## ARTICLE 8 SERVICE LEVEL/PERFORMANCE GUARANTEES

### 8.1 Service Levels

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

[NTD: The vendor will be required to specify the service levels in Schedule H and enter into a Maintenance Agreement in respect of the support and maintenance services to be provided to the VPD]

### 8.2 Service Level Reports

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

### 8.3 Failures to Meet Service Levels

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

## ARTICLE 9 LIENS

### 9.1 No Liens Permitted

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

### 9.2 Vendor to Provide Proof

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

## ARTICLE 10 CHANGE REQUESTS

### 10.1 Need to Notify Vendor

- (a) The VPD Project Manager will, by giving written notice to the Vendor Project Manager with reasonable particulars as to the nature of the request, be entitled to request changes to the Vendor's obligations under this Contract.
- (b) Upon receipt of such notice, the Vendor will, as soon as reasonably practicable after receipt of such notice, prepare a draft Contemplated Change Notice/Change Order so as to inform the VPD Project Manager in writing of any adjustments to the Total Purchase Price, either increasing or decreasing the Total Purchase Price, and of any adjustments either sooner or later of the Delivery Dates, or of any other changes as that term is used in *Schedule U [Change Order]*, that would be necessitated by such change in the Vendor's obligations under this Contract, or so as to confirm to the VPD Project Manager in writing that no such adjustments are necessary. All such adjustments must be determined by the Vendor using the pricing rates, terms and methodology set out in *Schedule B [Pricing]* and *Schedule C [Implementation - Statement of Work]*.
- (c) If adjustments to the Total Purchase Price or Delivery Dates are necessary and the VPD confirms in writing (by signing and accepting the terms of the Contemplated Change Notice/Change Order) that such adjustments are acceptable to it, then the change in the Vendor's obligations under this Contract and the change to the Total Purchase Price and Delivery Dates will then take legal effect as a Change Order. If the VPD does not confirm in writing that such adjustments are acceptable to it within five Business Days of the date that the Vendor informs the VPD that such adjustments are necessary, then the VPD's change request will be deemed cancelled.

### 10.2 Intentionally Deleted

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

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



*Notify Vendor*]. If the VPD does not agree, then *Section 10.4 [Disputes over Change Requests]* will apply.

#### 10.4 Disputes over Change Requests

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

### ARTICLE 11 INTENTIONALLY DELETED

### ARTICLE 12 INSURANCE

[NTD: This section in particular is subject to further review and consideration by the VPD once more information is known.]

#### 12.1 General Insurance Requirements

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

#### 12.2 Insurance Policies

All insurance policies will be in a form and in amounts satisfactory from time-to-time and with insurers acceptable to the VPD and will provide the VPD with 60 days prior written notice of material change, lapse or cancellation, and such notice must identify the Contract title, number, policyholder, and scope of work.

#### 12.3 Additional Insurance

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

#### 12.4 Other Obligations

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

## 12.5 Primary Insurance

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

## 12.6 Vendor to Provide Proof

The VPD acknowledges that Vendor has provided the VPD with evidence of all required insurance to be taken out in the form of the Certificate of Insurance supported by certified copies of all insurance policies related to this Contract. Such Certificate of Insurance identifies the Contract title, number, policyholder and scope of work and does not contain any disclaimer whatsoever. At all times during the Term, the Vendor must comply with all of its insurance obligations described in this *Article 12 [Insurance]*. Proof of insurance, in the form of additional Certificate(s) of Insurance or certified copies of all insurance policies, will be made available to the VPD at any time during the Term upon request. Approval or acceptance of any Certificate of Insurance or policy of insurance by the VPD will in no way relieve the Vendor of its other obligations under this Contract.

## 12.7 Sub-Contractors

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

## 12.8 Coverage Only From Authorized Insurers

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

## 12.9 Minimum Requirements

The Vendor's minimum insurance obligations are as follows:

- (a) **Commercial General Liability Insurance** - Commercial general liability insurance in sufficient amounts and description to protect the Vendor, its sub-contractors, the VPD and its officers, officials, employees, and agents against claims for damages, personal injury including death, bodily injury and property damage which may arise under this Contract, provided that the limit of commercial general liability insurance shall be not less than \$2,000,000 per occurrence inclusive for personal injury, death, bodily injury or property damage and in the aggregate with respect to products and complete operations, and further provided that the deductible per occurrence shall not exceed \$5,000 per occurrence and:
  - (i) the policy of insurance shall:
    - (A) be on an occurrence form;
    - (B) add the VPD and its officials, officers, employees and agents as additional insureds,
  - (ii) contain a cross-liability or severability of interests clause; and
  - (iii) extend to cover non-owned automobile, contingent employer's liability, blanket contractual liability, contractor's protective liability, broad form property damage, broad form completed operations and operations of attached machinery.

- (b) ***Auto Liability Insurance*** - The Vendor will ensure that vehicles owned or operated by the Vendor or its sub-contractors in connection with the Contract maintain Third Party Legal Liability Insurance in an amount not less than \$5,000,000 per occurrence.
- (c) ***Professional (Errors and Omissions) Liability Insurance*** - The Vendor must maintain a professional (errors and omissions) liability insurance policy which shall remain in full force for the Term of the Project and for a further period of two years following the Project Completion Date. This policy of insurance must:
  - (i) protect the Vendor and its sub-contractors, and their respective officers, directors, employees and agents performing the Services against all liability resulting from an error, omission or negligent act in the provision of the Services;
  - (ii) have a limit of not less than \$5,000,000 per claim, and \$5,000,000 annual aggregate; and
  - (iii) have a deductible of not more than \$50,000.
- (d) ***Cyber Security Liability Insurance*** - The Vendor must maintain a cyber security liability insurance policy which shall remain in full force for the Term of the Project and for a further period of two years following the Project Completion Date. This policy of insurance must:
  - (i) have a limit of not less than \$5,000,000 per claim, and \$5,000,000 annual aggregate.
- (e) ***Property Insurance*** - The Vendor must maintain an all-risks insurance policy covering the Vendor's property of every description. The policy must include a waiver by the insurer of any and all rights to subrogate against the VPD and those for whom it is in law responsible.

#### 12.10 VPD May Remedy Vendor's Insurance Defaults

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

### ARTICLE 13 REPRESENTATIONS, WARRANTIES AND COVENANTS

#### 13.1 Software and Documentation Warranties

The Vendor represents and warrants to the VPD that:

- (a) the Vendor is the sole owner of all Intellectual Property Rights in and to the Software and Documentation which has been developed solely by employees of the Vendor or independent contractors who have transferred in writing (or will transfer in writing) in respect of future modifications) their ownership rights in the Software to the Vendor, and the Vendor has the right to enter into this Contract and to perform all of its obligations including delivery of the Software and granting of the Licence;
- (b) the Vendor has used commercially reasonable efforts to ensure that the Software delivered to the VPD under this Contract does not contain any viruses which would materially adversely affect the VPD's ability to use the Software;

- (c) the Software does not contain any disabling or other device that would allow the Vendor or any third party to in any way reduce or interrupt the use and operation of the Software by the VPD;
- (d) all software (including the Software, Third Party Software, Documentation, and other materials to be delivered hereunder) will be delivered with the Intellectual Property Rights necessary to permit the VPD to freely use and operate same in accordance with the terms and conditions of this Contract;
- (e) at the time of commencement of each Acceptance Test, the Software or Documentation being tested will be the agreed-upon Release of such Software or Documentation suitable for operation on the Hardware and Software Platform;
- (f) the Licence is and will remain at all times in perpetuity free, non -exclusive and clear of all liens, charges and encumbrances, subject always to the VPD's payment obligations as outlined in *Schedule J [Payment Schedule]*;
- (g) Subject to *Schedule I [Acceptance Tests]*, the Software will operate in accordance with the Functional Requirements when operated on the Hardware and Software Platform, upon issuance or deemed issuance of the Certificate of Acceptance;
- (h) the Software, Services, Documentation, and Hardware and Software Platform will, upon issuance or deemed issuance of the Certificate of Final Acceptance, be compatible with each other and will operate together; and
- (i) the Software and Documentation will, upon issuance or deemed issuance of the Certificate of Final Acceptance and when operated on the Software and Hardware Platform, support the level of activity and volumes set out in *Schedule H [Performance Standard Warranties]* and will otherwise meet the representations and warranties set out in *Schedule H [Performance Standard Warranties]*.

## 13.2 Intentionally Deleted

## 13.3 Software and Hardware Platform and Third Party Software Warranties

The Vendor represents, warrants and covenants that:

- (a) if the Hardware and Software Platform (including Third Party Software) supplied by the VPD requires any extension or upgrade of capability within one year after the issuance of the Certificate of Final Acceptance solely to meet the progression of Software features and capabilities being delivered by the Vendor as a part of its normal Software Release process and the VPD has no option but to upgrade or extend same or, practically, must acquire such upgrade or extension if the Software is to continue operating in accordance with the Functional Requirements, then the Vendor will supply such Hardware and Software Platform or Third Party Software upgrade or extension without additional charge to the VPD, and all such upgrades or extensions (and applicable software licences to use them) will become the property of the VPD;
- (b) until one year after the issuance of the Certificate of Final Acceptance, all upgrades to the Hardware and Software Platform or Third Party Software required to bring the Software into compliance with the Functional Requirements will be provided by the Vendor at no cost to the VPD;
- (c) the Vendor will provide the VPD with upgrade requirements for the Hardware and Software Platform and Third Party Software (if any) for each new Release of the Software, and it will be the responsibility of the VPD to reasonably promptly upgrade same to meet the upgrade requirements;

- (d) during the period from one year after the issuance of the Certificate of the Final Acceptance until five years after the issuance of the Certificate of Final Acceptance, if the Hardware and Software Platform or Third Party Software is not compatible with the Software and the Hardware and Software Platform or Third Party Software has been upgraded to meet the Vendor's then current specifications, then the Vendor will provide any further upgrade necessary to make them compatible with the Software at no cost to the VPD; and
- (e) the above commitments exclude Hardware and Software Platform and Third Party Software upgrades required solely by:
  - (i) software modules or components added to the Software other than those contemplated by this Contract; and
  - (ii) changes to the Software made by the Vendor (other than pursuant to the Maintenance Agreement) at the request of the VPD or modifications to the Software made by or on behalf of the VPD.

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

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

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

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

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

#### **13.6 VPD's Warranties**

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

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

- (b) does not require the consent of any third party to enter into or perform this Contract; and
- (c) will not be in breach of any other contract or legal obligation by entering into or performing this Contract.

### 13.7 Reliance

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

## ARTICLE 14 MAINTENANCE/SOURCE CODE

### 14.1 Sign Maintenance Agreement with Contract

Concurrently with the execution of this Contract, the VPD and the Vendor will enter into the Maintenance Agreement. [NTD: The VPD and the vendor need to discuss the terms of ongoing support and maintenance and the vendor will be required to specify the service levels in Schedule H and enter into the Maintenance Agreement.]

### 14.2 Sign Source Code Escrow Agreement

Concurrently with the execution of this Contract, the VPD and the Vendor will enter into the Source Code Escrow Agreement and the Vendor will cause the escrow agent named in that agreement to execute and deliver the Source Code Escrow Agreement to the VPD.

### 14.3 Need to Maintain Hardware and Software Platform

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

## ARTICLE 15 ACCEPTANCE TESTS

### 15.1 Acceptance Tests Process

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

### 15.2 Acceptance Tests Failure—Defined

If any part of the Software, Services or Documentation delivered by the Vendor fails to pass successfully any one of the applicable Acceptance Tests as detailed in *Schedule I [Acceptance Tests]*, within the time allotted (including any extension of time granted by the VPD or permitted by the terms of this Contract), or if the Vendor fails to install the Software complete and ready for Acceptance by each applicable Delivery Date, including each Go Live Date (or agreed upon extension thereof), and if the process for remedial action described in *Schedule I [Acceptance Tests]* has not resulted in a complete remedy then, except as otherwise set out in this Contract, the Vendor will be deemed to be in default and *Article 22 [Vendor Defaults]* will apply.

### 15.3 Delays

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

### 15.4 Standard of Review

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

### 15.5 Correction of Defects/Deficiencies

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

### 15.6 Go Live and Final Acceptance Requirements

The VPD Project Manager will sign each Certificate of Acceptance and the Certificate of Final Acceptance when, but only when, all of the work defined in *Schedule C [Implementation - Statement of Work]* and acceptance requirements set out in *Schedule I [Acceptance Tests]* for each such Certificate of Acceptance have been completed and met.

## ARTICLE 16 LICENCE AND PROPRIETARY MATERIAL

### 16.1 Software Licence

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

### 16.2 Grant of Licence

- (a) **Licence** — Subject to the terms and conditions of this Contract, the Vendor now grants and the VPD accepts a perpetual (except as set out in this Contract), fully paid-up, non-exclusive, non-transferable (except to the extent permitted by this Contract) enterprise licence (the "Licence"), free and clear of all liens, charges and encumbrances, to use and permit the use of the Software, Source Code (subject always to the Source Code Escrow Agreement) and Documentation subject to the terms of this Contract.
- (b) **Releases** — All Releases of the Software issued during the term of the Maintenance Agreement are included in the Licence.
- (c) **Source Code** — Subject to the Source Code Escrow Agreement, the Source Code for the Software and all Releases of the Software issued during the term of the Maintenance Agreement are included in the Licence.

### 16.3 Intentionally Deleted

### 16.4 Intentionally Deleted

### 16.5 Enterprise Licence

**[NTD: This section to be modified based on the licence terms proposed by the Vendor]**

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

- (a) *Permitted Transfers and Expansions of Licence* – Provided always that:
  - (i) the VPD gives notice, pays the additional licence fee (if applicable) and otherwise complies with this Licence; and
  - (ii) the Software has the necessary operability to accommodate the same,
- (b) there is no limit on the number of users which the VPD may utilize under the Licence, provided that this shall not be construed as an extension of the performance standard warranty set out in *Section 13.1(i)*.

### 16.6 Intentionally Deleted

### 16.7 Documentation Copies – Restriction/Procedures on Use

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

### 16.8 Intentionally Deleted

### 16.9 Future Versions of Third Party Software

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

### 16.10 VPD Owns Other Deliverables

Unless otherwise specified in writing, upon payment therefor in accordance with this Contract, the Vendor now assigns to the VPD any and all rights (including Intellectual Property Rights), title and interest, including, inventions, whether patentable or not, copyrights, trade secrets and other proprietary rights to the Services, Maintenance Services or otherwise with respect to this Contract. The Vendor will give the VPD reasonable assistance, at the VPD’s expense, to perfect the assignment of the rights, title and interest in and to such materials to the VPD.

Notwithstanding the foregoing, the VPD acknowledges that such materials may include data, modules, components, designs, utilities, subsets, objects, program listings, processes, tools,



methodologies, models, diagrams, scripts, templates, analysis frameworks, leading practices and specifications (in this Section, “**Technical Elements**”) owned or developed by the Vendor prior to, or independently from, this Contract. The Company retains all rights to the Technical Elements excluding any modifications or improvements made to the Technical Elements during or as a result of this Contract. Accordingly, if any such material contains any Technical Elements, the Company now grants to the VPD a perpetual, fully paid-up limited licence to use such Technical Elements for the same purposes and to the same extent only as the VPD may use the Software.

#### 16.11 Protection of Vendor’s Proprietary Rights

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

- (c) ***Vendor's Proprietary Material Confidential*** — The VPD recognizes and agrees that all Vendor's Proprietary Material and enhancements or updates of same which are provided to the VPD by the Vendor:
- (i) are considered by the Vendor to be trade secrets of the Vendor;
  - (ii) are furnished by the Vendor to the VPD in confidence;
  - (iii) contain proprietary and confidential information; and
  - (iv) the Vendor's placement of a copyright notice will not be construed to mean that such portion has been published and will not derogate from any claim that such portion is a trade secret or contains proprietary and confidential information of the Vendor.

#### 16.12 Protection of VPD's Proprietary Material

- (a) ***Vendor to Protect All VPD Records*** — The VPD retains for itself, and the Vendor acknowledges that the VPD so retains, ownership and rights of ownership to all VPD's Proprietary Material including the following segregate category of VPD's Proprietary Material, which segregate category is comprised of all records entered into the Software Database or created by the Software (the "**VPD Records**"). The Vendor will not, without the VPD's express prior written consent, disclose, copy or use, or permit the disclosure, reproduction or use of, any VPD Records, except only to the extent necessary for the Vendor to carry out contracted work for the VPD, and the Vendor will not transfer, disclose or provide access to any VPD Records to any other party except:
- (i) only to the extent necessary for the performance of this Contract;
  - (ii) only to those individuals who have a "need to know" the VPD Records in order to carry out this Contract; and
  - (iii) only to individuals located at the time of access within Canada.
- (b) ***Removal on Request*** — The Vendor agrees upon request in writing from the VPD to immediately and permanently remove all VPD Records, electronic or otherwise, from any files, servers, drives or other storage facilities or devices in the Vendor's possession or control, except to the extent that where such removal would negatively affect the Vendor's ability to perform its other obligations under this Contract, the Vendor will nonetheless comply
- (c) ***Vendor to Assist in Protection of the VPD's Proprietary Material*** — In order to protect the rights of the VPD and its licensors in the VPD's Proprietary Material, the Vendor agrees as follows:
- (i) the obligations of this Section will survive the termination of this Contract;
  - (ii) the Vendor agrees to take all reasonable steps and the same protective precautions to protect the VPD's Proprietary Material from disclosure to third parties as it does with Vendor's Proprietary Material and to take all reasonable precautions consistent with generally accepted standards in the data processing industry to safeguard the confidentiality of such information;
  - (iii) the Vendor agrees to take appropriate action by instruction, contract and otherwise with its employees and contractors to inform them of the trade secret, proprietary, and confidential nature of the VPD's Proprietary Material disclosed to the Vendor under this Contract, and to obtain their compliance with the terms of same and the Vendor will be liable to the VPD for any breach

by any such employees or contractors of their obligations of confidentiality in respect of VPD's Proprietary Material disclosed to the Vendor under this Contract;

- (iv) the Vendor will not without the VPD's prior written consent, disclose, provide or make available any VPD's Proprietary Material in any form, to any person, except to its bona fide employees, officers, directors or third parties whose access is necessary to enable the Vendor to carry out the intent of this Contract;
  - (v) the Vendor will prior to disclosing any VPD's Proprietary Material to any third party, obtain from that third party a written acknowledgment and agreement that the third party will be bound by this Contract with respect to the VPD's Proprietary Material;
  - (vi) the Vendor will not remove, alter, or obliterate any copyright, trademark or service mark or other proprietary notices from any VPD's Proprietary Material; and
  - (vii) the Vendor acknowledges and agrees that it may receive VPD's Proprietary Material from the VPD or its licensors through training, maintenance and third party consulting or other means and as a result of the provision of Services pursuant to this Contract.
- (d) ***VPD's Proprietary Material Confidential*** – The Vendor recognizes and agrees that all VPD's Proprietary Material provided to the Vendor by the VPD:
- (e) are considered by the VPD to be trade secrets of the VPD;
  - (f) are furnished by the VPD to the Vendor in confidence;
  - (g) contain proprietary and confidential information; and
  - (h) the VPD's placement of a copyright notice will not be construed to mean that such portion has been published and will not derogate from any claim that such portion is a trade secret or contains proprietary and confidential information of the VPD.

#### 16.13 Exceptions to Non-Disclosure

For the purposes of this Contract, Proprietary Material of either party (in this Section, the "Owner") will not include information that, as proven by the party disclosing same (in this Section, the "Discloser") through written evidence,

- (a) at the time of disclosure by the Discloser was already in the public domain;
- (b) after disclosure by the Discloser, is published or otherwise becomes part of the public domain through no act or omission of the Discloser; and
- (c) was known to the Discloser prior to its receipt from the Owner and was not acquired, directly or indirectly from the Owner or anyone on its behalf.

Neither party will be in breach of its obligations herein with respect to the Proprietary Material of the other party if it is ordered to disclose such Proprietary Material by a Court or by a regulatory, governmental or other similar authority of competent jurisdiction. Such disclosure shall not, in and of itself, change the confidential nature of the Proprietary Material so ordered to be disclosed and the party being ordered to disclose will immediately provide the Owner with notice that it has been required to disclose the Proprietary Material and in any event as

soon as possible and will provide reasonable assistance to the Owner in any attempt by the Owner to block, restrict or limit the extent of such mandatory disclosure.

## **ARTICLE 17 WORKERS' COMPENSATION BOARD**

### **17.1 Maintain Coverage – General**

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

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

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

### **17.3 Special WorkSafeBC Requirements Where Services Are Provided on VPD Sites**

With respect to all Services provided by the Vendor on the Installation Sites, in the Project Office or on any other VPD sites, the Vendor is now appointed and now accepts appointment as the "prime contractor" as defined by the WorkSafeBC Rules for the purposes of this Contract, but only with respect the Vendor's and the Vendor's sub-contractor's employees and only with respect to WorkSafe Rules that apply to their conduct independently of the VPD's compliance with WorkSafe Rules that apply to the condition or contents of Installation Sites, Project Office or other VPD sites.

## **ARTICLE 18 OCCUPATIONAL HEALTH AND SAFETY**

### **18.1 Must Conform**

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

### **18.2 OHS Indemnity**

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

### 18.3 Limitation of Liability

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

## ARTICLE 19 SUB-CONTRACTORS

### 19.1 Consent Required for Sub-Contractors

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

### 19.2 Vendor Responsible for Sub-Contractors

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

### 19.3 No Contract Formed Between VPD and Sub-Contractors

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

## ARTICLE 20 PROJECT TEAM MANAGEMENT

### 20.1 Team Composition

Subject to *Section 20.2 [Team Substitutions]*:

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

being deployed in accordance with this Contract and to implement the necessary adjustments or corrective action, if required.

## **20.2 Team Substitutions**

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

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

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

## **20.3 Substitution Requests**

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

## **20.4 Cost of Substitutions**

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

## **20.5 Conduct Standards**

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

- (a) the loss of or failure by that individual to obtain any Security Clearance (as defined below);
- (b) intoxication;
- (c) use of foul, profane, vulgar or obscene language or gestures;
- (d) solicitation of gratuities or tips from any person for services performed under the Contract Documents;

- (e) wilful, negligent or reckless action in disregard of safety or sanitary requirements or regulations; or
- (f) any action which may constitute a public nuisance or disorderly conduct.

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

## 20.6 Independent or Dependent Contractors

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

## 20.7 VPD Resources

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

## 20.8 Vendor Project Manager

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

# ARTICLE 21 INDEMNITY AND LIABILITY

## 21.1 Indemnity for Personal/Property Loss

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

## 21.2 Releases

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

- (b) Subject to Section 21.1 [Indemnity for Personal/Property Loss], the Vendor now releases the VPD from all liability for any Losses arising from personal injury or loss or destruction of or physical damage to personal property arising from:
  - (i) General Accidents — any acts or omissions of the VPD or its contractors or employees; or
  - (ii) Accidents on the Site — any occurrence on or about VPD premises, including by way of example only, and without limiting the general scope of this Section:
    - (A) lack of repair, collapse of any building or improvement on VPD premises;
    - (B) the leakage or explosion of water, gas, sewer, steam, electricity, electromagnetic or any other form of radiation, energy, waves or signals;
    - (C) the presence or escape of asbestos or any other hazardous, noxious, or restricted substance; or
    - (D) theft, damage or misappropriation of personal property.

### 21.3 Liability Limited

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

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

Despite any other term of this Contract (except in respect of *Article 17 [Workers Compensation Board]*, *Article 18 [Occupational Health and Safety]*, *Section 21.1 [Indemnity for Personal/Property Loss]*, *Section 22.3 [Major Vendor Defaults]* and *Article 24 [Intellectual Property Protection]*), the total cumulative aggregate liability of the Vendor and its suppliers and their respective subsidiaries, affiliates and parent corporations and each of their respective directors, officers, employees, contractors and agents (collectively the "**Vendor Indemnifiers**") in respect to all Losses arising with respect to the Software (excluding Intellectual Property Rights and infringements), the Services and otherwise arising out of this Contract will not exceed the greater of

- (a) the amount of insurance proceeds less the applicable deductible paid out by the Vendor Indemnifiers' insurers with respect to such Losses; and
- (b) the Total Purchase Price,

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

### 21.5 VPD's Limitation on Liability for Payment Defaults

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



- (a) the amount of insurance proceeds less the applicable deductible paid out by the VPD Indemnifiers' insurers with respect to such Losses; and
- (b) the Total Purchase Price,

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

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

Despite any other term of this Contract (except in respect of *Article 17 [Workers Compensation Board]*, *Article 18 [Occupational Health and Safety]*, *Section 21.1 [Indemnity for Personal/Property Loss]*, *Section 22.3 [Major Vendor Defaults]*, *Article 24 [Intellectual Property Protection]* and a breach by the Vendor of *Section 28.16 [Publicity and Marketing]*), neither the VPD nor the Vendor, nor any of their respective affiliates, subsidiaries, parent corporations, any of their parent corporation's affiliates or subsidiaries, including their officials, officers, directors, employees, contractors or agents, will be liable to or through the other for any Losses which are in the nature of indirect, incidental, special, consequential or punitive damages (including, but not limited to, lost profits, lost revenue or failure to realize expected savings) sustained or incurred in connection with the VPD's failure or delay in the payment nor for the Vendor's failure to deliver the Software or perform the Services or otherwise arising out of this Contract, regardless of the action, including contract (including fundamental breach), tort (including negligence), strict liability or otherwise, and whether or not such damages are foreseeable and whether or not the other party is advised of the possibility of such Losses arising.

## **21.7 Data Corruption or Loss**

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

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

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

# **ARTICLE 22 VENDOR DEFAULTS**

## **22.1 Event of Default—Defined**

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

- (a) at any time, the Vendor is in default of an obligation to pay the VPD money and the VPD has notified the Vendor in writing that the Vendor is in default and the Vendor has not paid the money in full with interest within five Business Days of such notice;
- (b) at any time, the Vendor is in default of its obligations under this Contract (other than a failure to pay money) and the VPD has notified the Vendor in writing that it is in default of such obligations under this Contract and:

- (i) the default is of a nature that with reasonable diligence could have been remedied within seven (7) Business Days of such notice; or
- (ii) the default is of a nature that with reasonable diligence requires more than seven (7) Business Days to remedy but the Vendor has not promptly and continuously made reasonable efforts to remedy the default, following receipt of the notice;
- (c) Despite Section 22.1(a), the Software or Services fail to conform to the Vendor's obligations under this Contract and the correction process and timeframe referred to in Schedule I [Acceptance Tests] has been completed and such failure has materially impacted or will materially impact the Implementation Schedule.

## 22.2 Default Remedies on Vendor's Default

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

- (a) the VPD may sue for the recovery of all Losses while requiring the Vendor to continue with performance of this Contract, but may not retain any greater portion of the Holdback than is expressly permitted pursuant to *Schedule C1 [Payment Schedule]*;
- (b) the VPD may, to the extent that any Software or Services have been delivered and installed, retain all or any part of such Software and Services, and reject the balance, and pay to the Vendor the balance of the Holdback, if any, payable to the Vendor pursuant to *Schedule J [Payment Schedule]*;
- (c) the VPD may elect to reject all such Software or Services, in which case the VPD will be entitled to retain all of the Holdback then held by the VPD and the Vendor will be liable for all of the VPD's Losses that may be incurred by reason of the Vendor's default, and the VPD will have no obligation or liability following such termination and cancellation except with regard to confidentiality obligations which will survive such rejection of the Software; and
- (d) exercise any of its other rights at law or in equity in lieu of or in any combination with the above remedies.

## 22.3 Major Vendor Default

Despite any other term of this Contract, where the Vendor:

- (a) breaches *Section 16.2 [Protection of VPD's Proprietary Material]*;
- (b) wrongfully uses a disabling device within the Software in such a manner as to interrupt the VPD's use of the Software;
- (c) fails to preserve the VPD's legal rights to use the Software;
- (d) fails to comply with or fulfill its limited obligations under *Article 24 [Intellectual Property Protection]*; or
- (e) wrongfully terminates or attempts to terminate the Licence,

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

## 22.4 Default Remedies Limited

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

## ARTICLE 23 VPD DEFAULTS/DELAYS

### 23.1 Default of VPD's Obligations

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

- (a) the Vendor will have no remedy in connection with such default unless the Vendor first gives the Director of Legal Services of the VPD written notice specifying the nature of the default, that the notice is given pursuant to this Article, and stating with precision what is required to be done to cure such default;
- (b) the VPD will have the following periods of time to cure such default without liability:
  - (i) ten (10) Business Days in the case of a default to pay money;
  - (ii) seven (7) Business Days in the case of a default that with reasonable diligence may be remedied within seven Business Days; and
  - (iii) a reasonable period of time in the case of any default that with reasonable diligence would require more than seven (7) Business Days to remedy, provided that the VPD commences and proceeds continuously and diligently to remedy same;
- (c) in each case after receipt of such notice by the VPD;
- (d) with respect to defaults other than a failure to pay money, if the VPD fails to cure such default within the required period, and the Vendor diligently attempts to mitigate the delays if any caused by such default, and, even with such mitigation, the default is such as to cause the Vendor to fail to meet the Implementation Schedule, then the following will apply:
  - (i) the Vendor will be allowed an extension of time equal to the period of time that the VPD was in default, plus any additional period required to accommodate the Vendor for the reasonable impact of the delay on the Vendor (the "VPD-Caused Delay");
  - (ii) the VPD will pay in addition to the Total Purchase Price an amount equal to interest at the 90-day LIBOR (London Inter-Bank Offered Rate) plus three percent per annum simple interest calculated monthly, prorated for any periods less than a full month, for the VPD-Caused Delay, calculated on such amounts which would otherwise have become due and payable at an earlier point in time under this Contract (but for further certainty excluding any and all delays in the receipt or timing of the Maintenance Costs);

- (iii) any delay resulting from any Unavoidable Delay will not be considered a delay due to VPD default and no interest shall be charged to or be payable by the VPD for such delays; and
  - (iv) the VPD will have no further liability; and
- (e) with respect to any default in the payment of money other than as set out above, then the Vendor will not have any rights or remedies except that:
  - (i) if the amount is more than 30 days in arrears, then the Vendor will have the right to issue a written notice to the VPD that unless payment in full with interest is made within ten (10) Business Days of such notice the Vendor will be entitled to submit the matter to arbitration pursuant to *Article 27 [Arbitration]* seeking that it be released from any further obligation to provide the Services, provided that the Vendor will not have the right to cancel the Licence or the Maintenance Agreement (except for any breach by the VPD of its obligations under the Maintenance Agreement which entitle the Vendor to terminate the Maintenance Agreement) and the Vendor will have no further rights except to submit the matter to arbitration pursuant to *Article 27 [Arbitration]* for the recovery of the arrears with interest plus all reasonable legal costs and disbursements on an indemnity basis; and
  - (ii) the VPD will have no further liability and the Vendor will have no further remedies, except as may be ordered by the arbitrator.

## 23.2 Intentionally Deleted

## 23.3 Default Remedies Limited

For further certainty, the Vendor's default remedies as outlined in this *Article 23 [VPD Defaults/Delays]* are subject to the VPD's limitations on liability as set out in *Article 23 [Indemnity and Liability]*.

## 23.4 VPD Right to Suspend

Where the VPD is of the view (acting reasonably) that it needs to suspend the Project, it may do so from time to time on giving 30 days' prior written notice (in this Article, "**Suspension Notice**") of its intent to do so, provided always that any suspension may only be for a period up to six months (the "**Project Suspension Period**"). If the VPD issues a Suspension Notice, the parties will mutually agree, acting reasonably, on the adjustments to the Implementation Schedule and the Project Services fees necessitated by such suspension.

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

## 23.5 Entire Liability of VPD

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

**ARTICLE 24**  
**INTELLECTUAL PROPERTY PROTECTION**

**24.1 Vendor to Assume Defence of Suits Against VPD**

The Vendor will:

- (a) assume the defence of any suit brought against the VPD to the extent it is based upon infringement of any Intellectual Property Rights arising from use or sale of the Software or any part thereof under this Contract or any current Release or modification of the Software supplied by the Vendor under the terms of this Contract;
- (b) pay all expenses associated with such defence;
- (c) indemnify and save harmless the VPD against any and all Losses incurred by the VPD as a result of such suits; and
- (d) subject to *Section 24.2 [Claim of Intellectual Property Infringement]*, immediately acquire the rights for the VPD to use the Software or part thereof or immediately provide the VPD with non-infringing Software components which will meet the terms of this Contract if the VPD is prevented from using the Software or any part thereof as a result of any suit or action taken against the VPD,

provided that:

- (e) the Vendor is given the sole and exclusive control of the defence suit and sole and exclusive control of negotiations relative to the settlement of it;
- (f) the Software or such part thereof is used by the VPD in the form, state or condition as delivered by the Vendor, or if it is not so used, such deviation is not the cause of the suit; and
- (g) the VPD provides the Vendor with written notice of the claim within 20 Business Days after the VPD receives formal notice of the claim and cooperates with the Vendor in the defence of the suit and does not compromise or settle the suit without the prior written consent of the Vendor, such consent not to be unreasonably or arbitrarily withheld or delayed, and such infringement is not due solely to the combination of the Software with any third party software or hardware and such infringement is not caused by a modification to the Software created by the VPD or any third party on behalf of the VPD or such infringement does not result from any modification created by the Vendor at the request of the VPD pursuant to a Change Request that is not subsequently a Release.

**24.2 Claim of Intellectual Property Infringement**

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

- (a) procure for the VPD the right to continue using the Software or such part thereof; or
- (b) replace or modify the Software or such part thereof with non-infringing Software or parts thereof that will meet the terms of this Contract.

#### **24.3 Intentionally Deleted**

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

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

### **ARTICLE 25 RECORDS**

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

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

### **ARTICLE 26 COMPLIANCE WITH LAWS**

#### **26.1 Vendor to Comply**

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

#### **26.2 Vendor Will Pay and Discharge**

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

### **ARTICLE 27 ARBITRATION**

#### **27.1 Arbitration**

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

- (a) the arbitration will be conducted in accordance with the procedural rules of the British Columbia International Commercial Arbitration Centre (in this Article, the "BCICAC");
- (b) the appointing authority will be the BCICAC;
- (c) the arbitration will be conducted in the English language in Vancouver, British Columbia; and

- (d) the costs of arbitration (other than the costs incurred by the parties for their respective legal representation in the proceedings) will be borne equally by the parties except where otherwise stipulated in this Contract.

#### **27.2 Alternative if no BCICAC**

If the BCICAC is not in operation at the relevant time, the appointing authority and rules governing procedure will be those of such similar entity as may be its successor. If no such entity exists, the appointing authority will be the Supreme Court of British Columbia and the rules governing procedure will be those last published by the BCICAC.

### **ARTICLE 28 GENERAL PROVISIONS**

#### **28.1 Permits and Licences**

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

#### **28.2 Intentionally Deleted**

#### **28.3 Vendor not Agent or Employee**

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

#### **28.4 No Assignment by Vendor Without Consent**

Except as expressly permitted pursuant to *Article 19 [Sub-Contractors]*, the Vendor will not assign this Contract or subcontract to any person any right, duty or obligation under it without the prior written consent of the VPD which consent may be arbitrarily withheld, delayed or conditioned (except where and to the extent that the VPD is required not to withhold, delay or condition such consent pursuant to *Article 19 [Sub-Contractors]*) and any attempt to so assign or subcontract without such consent will be null and void and of no effect. Except as permitted pursuant to *Article 16 [Licence and Proprietary Materials]*, the VPD will not assign this Contract or the Licence and will not subcontract to any person any right, duty or obligation under it without the prior written consent of the Vendor which consent may not be unreasonably or arbitrarily withheld, delayed or conditioned. The Vendor will be deemed to be acting unreasonably if it withholds, delays or conditions its consent where the assignment is required by any Laws or Regulations including the *Vancouver Charter or Local Government Act*.

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

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

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

Any failure by either party to enforce or require the strict keeping and performance of any of the terms and conditions contained in the Contract will not constitute a waiver of such terms and conditions and will not affect or impair such terms and conditions in any way or such

party's right at any time to avail itself of such remedies as that party may have for any breach or breaches of such terms and conditions, unless that party enters into and signs a Change Order or an Amendment.

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

The VPD is subject to the *Freedom of Information and Protection of Privacy Act* (British Columbia). All documents submitted to the VPD become the property of the VPD, will be received and held in confidence by the VPD and the information will not be disclosed except to the extent necessary for carrying out the VPD's purposes or as required by law. Further to Section 16.12 (a), all VPD Records are VPD's Proprietary Material and protected from disclosure or locating or giving access to them from outside Canada and the Vendor now confirms and acknowledges its obligations to comply with all obligations imposed on it pursuant to the *Freedom of Information and Protection of Privacy Act* (British Columbia).

## 28.8 Terms of Contract Confidential

Except with the prior written consent of the other, each of the VPD and the Vendor will keep this Contract and its terms confidential subject to applicable laws and court orders.

## 28.9 Notice

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

(a) if to the VPD:

Vancouver Police Department

\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_  
Fax No.: \_\_\_\_\_

*with copies to:*

City of Vancouver  
515 West 10<sup>th</sup> Avenue  
Vancouver, BC

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

(b) if to the Vendor:

[•]  
[•]

Attention: [•]  
Fax No. [•]

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



## 28.10 Changes in Laws and Regulations

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

## 28.11 Severability—Enforceability Preserved

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

## 28.12 Survival

Any term or provision of these Contract Documents that, by its nature, is intended to survive the expiration or termination of this Agreement, including, obligations with respect to liability, indemnity, confidentiality, ownership and intellectual property, will survive the expiration or termination of this Agreement for any reason.

## 28.13 Contract Extension and Modification

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

## 28.14 Unavoidable Delays

- (a) ***Performance Deadlines Extended*** — Except for the performance of obligations to pay money, time periods for the VPD's and the Vendor's performance under the Contract will be extended for periods of time during which their performance is delayed or prevented due to an Unavoidable Delay. Such extension will be deemed to include the ancillary reasonable impact which an Unavoidable Delay has on the delayed party such as for example where a key person is scheduled to perform Services or conduct/review an Acceptance Test result during the week that the Unavoidable Delay occurs but is thereafter not available again for 15 Business Days. However, under no circumstances will any "ancillary reasonable impact" delay extend beyond 15 Business Days and to the extent that it does then it will be conclusively deemed not to be an Unavoidable Delay.
- (b) ***Unavoidable Delays*** — An "Unavoidable Delay" means any circumstances beyond the reasonable control of the party trying to perform, and includes:
  - (i) strikes/lockouts, acts of God, terrorism, war or other strife or governmental action;
  - (ii) any delay resulting from defects or malfunctions of the VPD's Hardware and Software Platform;
  - (iii) any breach by a third party service provider responsible for the Hardware and Software Platform; and
  - (iv) the VPD acting at variance with the Contract pursuant to *Section 28.10 [Changes in Laws and Regulations]*;

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

#### 28.15 Time is of the Essence

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

#### 28.16 Publicity and Marketing

- (a) ***No Commercial Use of Transaction or Relationship*** – Without the prior written consent of the VPD, which the VPD may grant or withhold in its sole discretion, neither the Vendor nor the Vendor's affiliates, officers, directors, agents, representatives, shareholders, members, sub-consultants, suppliers or employees shall make any private, public or commercial use of their relationship to the VPD, including by contracting with or receiving money or anything of value from any person or commercial entity.
- (b) ***No Promotion of Relationship*** – The Vendor will not disclose or promote its relationship with the VPD, including by means of any verbal declarations or announcements and by means of any sales, marketing or other literature, letters, client lists, press releases, brochures or other written materials without the express prior written consent of the VPD (except as may be necessary for the Vendor to perform the Vendor's obligations under the terms of this Contract). The Vendor undertakes not to use "Vancouver Police Department" or the official emblem, logo or mascot of the Vancouver Police Department or any other identification of the VPD as reference or means of promotion or publicity, without the express prior written consent of the VPD. Furthermore, the Vendor undertakes not to disclose or promote its relationship with the VPD in any communication or manner whatsoever as a basis to create an association, express or implied, between Vendor and the VPD. The VPD shall be the single point of contact for Vendor and its affiliates, officers, directors, agents, representatives, shareholders, members, sub-consultants, suppliers or employees with respect to submitting any proposed verbal declarations or announcements and by means of any sales, marketing or other literature, letters, client lists, press releases, brochures or other written materials.
- (c) ***No Right to Permit Commercial Use of Transaction to Third Parties*** – The Vendor shall have no right to grant commercial identification rights of any kind or description with respect to this Contract or the VPD to any supplier of goods or services or to any Sub-contractor, without the express prior written consent of the VPD, which consent the VPD may grant or withhold in its sole discretion.
- (d) ***No Endorsement*** – This Contract does not constitute an endorsement by the VPD of the Vendor's goods or services or of the Vendor's provision of services.
- (e) ***No Future Commercial Advantages*** – The Vendor agrees and acknowledges that:
  - (i) nothing in this Contract shall grant or shall be deemed to grant the Vendor any marketing, sponsorship or promotion right in connection with the VPD;
  - (ii) nothing in this Contract shall provide the Vendor with any right or advantage in securing any future marketing or sponsorship opportunity, and the Services or Maintenance Services performed hereunder or under any related agreement shall not be deemed for any purpose an advance or other credit against any such future sponsorship rights fees payable to the VPD; and

- (iii) unless otherwise specified, nothing in this Contract shall impose or be deemed to impose upon the VPD any obligation to engage the Vendor to provide any future services required by the VPD or any services whatsoever other than the Services or the Maintenance Services.
- (f) **No Other Rights** – Nothing in this Contract or arising out of the transactions between the parties described in this Contract shall confer upon Vendor any right to acquire:
  - (i) licences with respect to any service marks, trademarks, trade names, trade secrets or other intellectual property, now or which may hereafter be associated with, owned by or licensed by the VPD;
  - (ii) any commercial identification; or
- (g) **No Licence to Marks** - No licence or right to use any present or future logo, emblem, mark, slogan, trademarks, service marks, copyrighted works, or other intellectual property of the VPD is granted to the Vendor by this Contract. The Vendor acknowledges that the VPD's trademarks, service marks, copyrighted materials and other intellectual property (including any emblem, sport pictogram and mascot) are protected by trademark, copyright and other laws, and may be used only with the prior written permission of the VPD.
- (h) **Indemnity** – Expressly subject to the limitations set out in *Article 21 [Indemnity and Liability]*, Vendor shall be liable for, and shall indemnify and hold harmless, the VPD from and against all claims, demands, actions causes of action, suits and proceedings and all loss, damage, cost and expense, including legal fees and disbursements, made or brought against, or suffered or incurred by the VPD and arising out of any breach by the Vendor of its obligations under this *Section 28.16 [Publicity and Marketing]*. The Vendor acknowledges that damages may be an inadequate remedy for any such breach, and further acknowledges that the VPD will be entitled to injunctive relief to prevent any breach or continuing breach of such paragraphs.

#### 28.17 British Columbia Laws Govern

This Contract will be governed by and construed in accordance with the laws of British Columbia, which will be deemed to be the proper law of this Contract. The courts of British Columbia will have jurisdiction to entertain and determine all disputes and claims, whether for specific performance, injunction, declaration or otherwise arising out of or in any way connected with the construction, breach, or alleged, threatened or anticipated breach of this Contract and will have jurisdiction to hear and determine all questions as to the validity, existence or enforceability of any clause. For the purposes of any legal actions or proceedings brought by the VPD in respect of this Contract, the parties now irrevocably submit and attorn to the exclusive jurisdiction of the courts of British Columbia and acknowledge their competence and the convenience and propriety of the venue and agrees to be bound by any judgment and not to seek, and now irrevocably waives, any review of its merits by the courts of any other jurisdiction.

#### 28.18 Further Assurances

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

#### 28.19 Successors and Assigns

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

## 28.20 Entire Contract

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

## 28.21 Counterparts

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

AS EVIDENCE OF THEIR AGREEMENT to be bound by the above terms and conditions, the parties have each executed this Agreement as of the day and year first above written.

### VANCOUVER POLICE BOARD

by its authorized signatories:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name and Title

**[•]**

by its authorized signatories:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name and Title

**[NTD: Schedules to be completed based on the requirements set out in the RFP and the Vendor's Proposal]**