REQUEST FOR PROPOSALS

CONTENT MANAGEMENT SYSTEM REPLACEMENT

RFP No. PS20210836

Issue Date: May 4, 2022

Issued by: City of Vancouver (the "City")

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SUMMARY

The City of Vancouver (the "City") is seeking Proposals from experienced and qualified proponents to implement a new Content Management System (CMS) to support the City's family of websites (www.vancouver.ca). The CMS is to be in the cloud, or on premise with a pathway towards cloud migration. The City is also seeking content migration services, post-go live support, and training for City of Vancouver staff. It is expected that the successful Proponent will bring a strategic approach to implementation while incorporating current best practices in relation to user experience and adhering to accessibility standards.

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.

(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 May 25th, 2022
Closing Time	3:00pm on June 2nd, 2022

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:

Wen Shi
wen.shi@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   Proponents should submit their Proposals 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   Each Proponent should submit its Proposal by email in accordance with the following:

- Subject of the file to be: PS# - Title – Vendor name.

- Document format for submissions:

    1) Completed RFP Part C in PDF format – 1 **combined** PDF file in the following sequence including, but not limited to,

        ▪ a cover page that clearly indicates the name of the Proponent and the general nature of the Proposal,
        ▪ a brief executive summary of your proposal (no more than one page long),

> > ▪ a detailed table of contents,
> > ▪ a section titled "Technical Proposal," which should address the requirements in the Scope of Work together with the completed documentation and questionnaire contained in Part C – Form of Proposal (from Appendix 1 to Appendix 11),
> > ▪ any other attachments/appendices if necessary,

> > 2) Completed Part B – Annex 1 – **Detailed Requirements Round 1** in Excel format; and

> > 3) Completed Part C – Appendix 3 – **Commercial Proposal** in Excel format. It should contain full details of the Proponent's proposed pricing and payment terms, which must be in accordance with Part A of the RFP and reflect requirements as provided in the RFP and Annex 1 – Detailed Requirements.

- Zip the files to reduce the size or email separately if needed.

- Send your submissions to Bids@vancouver.ca; do not deliver a physical copy to the City of Vancouver.

- Submitting the files via Drop box, FTP, or similar programs, is not acceptable.

- Due to cybersecurity concerns, the City of Vancouver will quarantine any inbound email with attachments not in PDF or Microsoft Office formats which will result in non-delivery to Supply Chain Management and will be deemed not submitted. Non-compliant file formats will be detected and quarantined even if they are compressed, zipped, renamed, and include password protected zipped files.

- The maximum number of attachments allowed in an email message is 250 attachments.

- The maximum size limit for an email message, including all attachments, is 20MB per message

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 submitted 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 the engagement is expected to be a three-year period, with two (2) possible three-year extensions, for a maximum total term of nine (9) years.

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 and PST.

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.

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	65%
Financial	30%
Sustainability (Environmental and/or Social)	5%
Total	**100%**

8.3   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 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.

8.4   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.

8.5   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.

8.6   The City may also require that any proposed subcontractors undergo evaluation by the City.

8.7   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 and can be found at https://policy.vancouver.ca/ADMIN011.pdf .   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 leased properties to pay employees who perform those services on City property a Living Wage as calculated by the Living Wage for Families Campaign.

    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.

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

https://www.livingwageforfamilies.ca/living_wage_rates

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

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.

1.0   BACKGROUND

The City of Vancouver (the "City") has implemented a public website named Vancouver.ca, with associated sub-sites, which have become indispensable for residents, businesses and visitors for obtaining information about municipal services. The websites provide timely and current information on Vancouver City Council, citizen involvement in local government, how to pay taxes, bills and tickets, applying for building permits and business licenses, finding waste collection schedules and recreation programs, reporting issues to the City, as well as many more online services and links to related websites.

2.0   INTRODUCTION

The City of Vancouver is seeking Proposals from experienced and qualified proponents to:

- Implement a new Content Management System (CMS), in the cloud, or on premise with a pathway towards cloud migration.

- Provide content migration services, post-go live support, and training for City of Vancouver staff.

The City expects that the successful Proponent will bring a strategic approach to implementation while incorporating current best practices in relation to user experience and adhering to accessibility standards. The following are the project's vision, goals, and objectives:

1)   Vision

- Help vancouver.ca become a "one-stop shop" for digital services, serving citizens well.
- Support these services through a scalable, secure, connected, streamlined architecture.
- Follow user-centered principles that support clarity, accessibility, consistency and simplicity.

2)   Goals

The City requires a Content Management System to support multiple websites that is user-friendly, and intuitive to maintain and use. The City would like to ensure that the platform being selected will meet not only our current capability requirements, but will also enable us to expand our websites with future capabilities. The websites must function as a communication and engagement hub for all stakeholders, and provide easy

and intuitive access to information and services for City of Vancouver's staff and residents, businesses and partners.

3) Objectives

- User Experience

  User experience design principles and practices must be followed to create a site that is simple to use and understand through meaningful content, flexible architecture, intuitive navigation and streamlined menus.

- Accessibility

  The City is committed to providing accessible web content and websites. Our websites on the new CMS must be in compliance with Web Content Accessibility Guidelines 2.0 (WCAG) Level AA.

- Online Services

  The websites will add, and improve upon existing, online services and self-service transactions.

- Compatibility

  The websites must be responsive, compatible, accessible and usable with current versions of commonly used browsers including but not limited to Google Chrome, Safari, Firefox, MicrosoftEdge and Internet Explorer, and across most widely used operating environments and devices.

- Functionality

  The websites must include the following:
  - Easy to use content management system
  - Embedding of non-text content elements such as videos, maps, dashboards, etc.
  - Optimization for performance with minimal page load times

3.0 USER STORIES

The following are core high-level user stories for the vendor-proposed solution.

#	User Story	Category
1	As an admin, I want to control global access and permissions to each CMS component, at the user and group level, so that authorized users only have the access they need to perform their job.	Administration
2	As an admin, I want the ability to manage and control notifications, web parts, widgets, content types, templates, themes, locks, metadata, taxonomy, scheduled publishing, versioning, information architecture and navigation, multisite management, and workflows, so	Administration

#	User Story	Category
	that our multisite environment can be effectively and efficiently produced and managed.	
3	As an admin, I want to track and report on site use, demographics and user behaviour so that I can better tailor websites to their audience.	Analytics & Delivery
4	As an admin, I want to implement sites to be localized, responsive, multilingual and integrate with social media, so that our websites can meet their audience where they are.	Analytics & Delivery
5	As a content author, I want to create, copy and duplicate content, including, pages, rich media, events, news, forms, templates, metadata, tags, and workflows, so that I can efficiently prepare clear and accessible content for our websites.	Content Authoring
6	As an admin and content author, I want to add, store, modify, delete, preview, optimize and search assets, individually and in bulk, to efficiently manage, access and publish web assets for our websites.	Digital Asset Management
7	As an admin and content author, I want to personalize pages and page elements for specific visitors, based on their being logged in to a user account, and by criteria either provided by the visitor, or visitor metadata based on behaviour or usage, so that I can personalize content for each audience group.	Personalization
8	As an admin and content author, I want usability features in place such as autosave, WYSIWYG editors, preview, comprehensive CMS search, customized navigation and dashboards, repetitive task automation, drag and drop, and if-then workflow decision trees, to work efficiently and accurately.	Usability
9	As a content author, I want the capability to schedule, preview, workflow, approve and publish content, to 1 or more websites or external locations, that is accessible and compatible with all major devices, browsers and apps so that I can control how and when content is published.	Publishing
10	As a system admin, I want to stage code, configurations and customizations from development, to UAT to production to be confident I will know the behaviour of production once deployed.	Arch, Dev, interop
11	As an admin, I want the websites to auto scale to meet demand volume so that the visitors perceive a high performance website at all times.	Scaling & Performance

4.0   SUMMARY REQUIREMENTS

The successful Proponent shall:

1)   Acquire, setup, and configure a Content Management System to the City's requirements

2) Migrate and deploy the City of Vancouver's public facing websites

   o https://vancouver.ca/
   o https://cd1-bylaws.vancouver.ca/
   o http://guidelines.vancouver.ca/
   o https://trafficcams.vancouver.ca/
   o https://vanemerg.ca/

3) Provide software licensing, maintenance and support for a Content Management System including any necessary third-party components to meet the requirements

4) Act as a managed services provider for all third-party software, including managing invoicing and payment to third party licensors

5) Include support and maintenance services for the Deliverables throughout the lifecycle of the contract.

6) Train staff (digital strategists/federated publishers/developers/administrators) on use of the tool.

7) Provide professional services required to configure and migrate the City of Vancouver's public facing websites onto the latest version of the chosen CMS.

   o Vancouver.ca is currently managed by OpenText RedDot 16
   o The sub-sites are managed by either Adobe Dreamweaver, Adobe Contribute or Umbraco CMS

The project will include the following stages:

1) Initiation and Planning
2) Content Migration and Implementation
3) Security and Accessibility Assessments
4) Testing
5) Deployment
6) Training and Knowledge Transfer
7) Closeout & Documentation

5.0 SCOPE OF WORK

5.1 Content Management System (CMS)

The details are listed in Annex 1 & 2 – Detailed Requirements.

1) Annex 1 – Detailed Requirements Round 1

   The City's Technology Services has compiled the following requirements that see to fulfill the best overall solution that meets its current and future business needs and the City's Technology standards.

   a) Functional Requirements

      (i) Administration

      (ii) Analytics & Delivery

(iii) Content Authoring

(iv) Digital Asset Management

(v) Personalization

(vi) Usability

(vii) Workflow, Preview, & Publishing

b)   Non-Functional Requirements

(viii)   Development, Architecture, and Interoperability

(ix) Scalability & Performance

(x) Project Management

c)   Technology Requirements

All Proponents must complete this **Annex 1 – Detailed Requirements Round 1** document and attach it to the Proposal. The qualified Proponent will be shortlisted to Stage 2 evaluation.

2)   Annex 2 – Detailed Requirements Round 2

Information Only.

The shortlisted Proponent(s) will be notified and required to complete this document after the first stage of evaluation. They may also be required to provide a software demo and trial period with full access to a sandbox environment. The Detailed Requirements Round 2 will need to be completed within a quick turnaround time.

5.2   Implementation Services & Deliverables

The successful Proponent is expected to provide the services for the following tasks.

Stage and Tasks' Descriptions	Deliverables
Stage 1 – Planning and finalizing project plan	
Project Management: The Contractor Project Manager, under the direction of the City of Vancouver's Project Manager, shall include at a minimum throughout the life of the project (initiation to close-out):	
a) Lead and be responsible for all project activities for the delivery of the project	Project kick off PowerPoint presentation and meeting
b) Provide project kickoff, develop and manage the project plan and schedule in consultation with City of Vancouver	Weekly project meetings and meeting minutes
c) Manage the project, including but not limited to tracking, auditing and reporting on action items, project status, maintaining the project plan, scheduling meetings and document meeting minutes, design sessions and training	Checkpoint and walkthrough meetings to collect feedback and approval on project artifacts and deliverables
d) Identify, document and actively manage project risks, project issues, project action items, project decision relating to the project and communicate them City of Vancouver's stakeholders (including City of Vancouver Project Manager) as a part of weekly status checkpoints according to the project management plan.	Project plan and schedule Project RAID log (Risk, Actions, Issues, Decisions)
e) Provide weekly project communications including weekly project status reporting to City of Vancouver's core project team, including Deliverables achieved and in progress, risks, issues and concerns	Project status reports
f) Provide and manage project change control	Project change control plan
g) Work in collaboration with City of Vancouver's Project Manager to setup frequent checkpoints and walkthroughs for feedback on analysis artifacts, plans, and delivered solution components from City of Vancouver's business users. Manage scope and budget	N/A
h) Prepare and provide information for City of Vancouver specific processes such as review through the Cyber Risk Exposure Tool process	N/A
i) Report as needed (at minimum quarterly and jointly with The City of Vancouver staff) to The City of Vancouver's project sponsors and The City of Vancouver's Technology Leadership Team, including executive reporting, percentage of completion, budget spent, resources utilization, risks, issues requiring escalation, etc.	Project status reports
j) Provide a framework and methodology to ensure Deliverables defined and described in the Agreement are signed off prior to invoicing	Project update presentations (at minimum 4 presentations)
k) Develop joint detailed tracking mechanisms for Deliverables with clear alignment between each invoice and the Deliverables it represents	Deliverables tracking document

Stage and Tasks' Descriptions		Deliverables
l)	Work with The City of Vancouver's assigned Project Manager to reconcile the Proponent plan to The City of Vancouver project plans and to confirm critical dependencies.	N/A
Stage 2 – Content Migration and Implementation		
Implement the project build activities:		
a)	Create a development, testing, staging and production environment	Fully configured and functioning Development, Testing, Staging and Production Environments incorporating all aspects of City of Vancouver's Solution
b)	Build components, content templates and other artifacts that will be needed to deploy the solution	Content templates
c)	All installations and configurations to be implemented in all the environments	N/A
d)	Contractor to create a Release Management procedure for migrating between development, testing, staging and production environments.	Release Management procedure document for migrating between Development, Testing, Staging, Production environments
e)	The solution must integrate with Google Analytics, Google Tag Manager, and/or other web analytics platform of similar quality	N/A
f)	For authentication for internal staff as well as for City of Vancouver residents or business/contractor the solution must integrate with Microsoft Azure AD (Internal) and Azure AD B2C (External) via federated authentication standard (OpenID Connect or SAML).	N/A
g)	An accessible website - Deliver a website that is compliant with WCAG 2.0 Level AA requirements	3rd party compliance verification
i)	Content Migration: The Contractor will perform the content migration using the existing published content on the current websites.	N/A
j)	Forms creation: The Contractor will work with City staff to create key sample forms from which to migrate existing forms onto the CMS.	N/A
l)	Configure a user-friendly Content Management System (CMS) for web authors to update information and support CMS governance	N/A
n)	Fully responsive and supports viewing across all platforms, devices, display resolutions, browsers and browser settings, with attention paid to mobile optimization. The new website should be built with a Mobile-first lens.	N/A
p)	System Alert Capability Global alerts across the whole site during emergency, outage and weather events customized by web authors/admins. Ability to display custom alerts on unique pages.	N/A

	Stage and Tasks' Descriptions	Deliverables
q)	Website complies with all applicable laws: Federal and Provincial Laws including Canada's Anti-Spam Legislation (CASL) and Copyright Act, and BC's Freedom of Information and Protection of Privacy Act	N/A
r)	Workflow setup: Setup sample content publishing workflows for us to review and build from to develop our content publishing workflows	N/A
s)	Permissions setup: Setup sample of permissions for us to review and develop our permissions and SSO integration	N/A
Stage 3 – Security and Accessibility Assessments		
a)	Conduct security assessments to address all security requirements in Business and technical requirements and remediation	Security Assessment Report
b)	Validate the website is compliant to WCAG 2.0 level AA standards. Report on compliance status for AAA level standards.	Accessibility Compliance Report
Stage 4 – Testing		
Unit and Integration Testing and User Acceptance Testing (UAT)		
a)	Contractor will perform unit and integration testing of all configured environments (includes desktop and mobile version) and provide user acceptance testing (UAT) ready solution for City of Vancouver to test.	Unit and Integration Test Strategy
b)	Contractor is responsible for providing integration test plans, test scripts and test results in collaboration with City of Vancouver. City of Vancouver will own resolution of integration issues being caused by systems outside of the CMS.	Unit and Integration Test Plans, Scripts
c)	Contractor is responsible for resolution of integration issues caused by the CMS. Proponent will provide their own computer equipment, mobile devices and defect tracking tool.	Unit and Integration Test Results
d)	Contractor will manage defect tracking, resolution and remediation and re-test.	Unit and Integration Test Defect Tracking
e)	Contractor will support City of Vancouver during all of the user acceptance testing (including additional roundswhere deemed necessary) and provide resolution of UAT defects. City of Vancouver will own resolution of UAT issues being caused by systems outside of the CMS.	User Acceptance Test Plan
f)	Contractor is responsible for providing UAT test plans, and test scripts in collaboration with City of Vancouver.	User Acceptance Test Scripts
g)	City of Vancouver is responsible for conducting UAT, tracking and reporting UAT defects, and providing its own testing equipment.	N/A
h)	City of Vancouver is responsible for full end-to-end User Acceptance Testing to ensure the application and interfaces are performing as expected.	N/A
i)	Contractor will support City of Vancouver during user acceptance testing, and provide resolution of UAT configuration defects resulting from the CMS	N/A
j)	Contractor to correct and address identified issues and defects	N/A

	Stage and Tasks' Descriptions	Deliverables
k)	City of Vancouver to sign off on UAT Acceptance Checklist prior to moving vancouver.ca from Test environment to Production environment.	N/A
l)	Repeat additional rounds of User Acceptance Testing as needed	N/A
Stage 5 – Deployment		
a)	Contractor obtains approval from City of Vancouver for Go- live event and all deliverables have been reviewed and signed off by City of Vancouver	N/A
b)	Create and maintain Implementation Plan / Guide	Implementation Plan / Guide
c)	Create and maintain Go-live checklist	Go-live checklist
d)	Finalization of production environment	N/A
e)	Transition to Operations Plan	Operations Plan
f)	Post-go live support scripts (used by City of Vancouver first level support team)	Post go-live support script
Stage 6 – Training and Knowledge Transfer		
a)	Create a knowledge transfer and training plan in consultation with City of Vancouver	Training Plan Knowledge Transfer sessions (2 at minimum)
b)	Develop a training package including manuals and training session layouts in consultation with City of Vancouver. Training materials may include participant manuals, facilitator guides, slides, videos, handouts for exercise and training assessments	Training manual, Operations, Administration and Authoring procedures
c)	Contractor will document all configurations and/or custom development related to the solution. Document will include configuration details and any other customizations.	Configurations Documentation
d)	Contractor will finalize all training material based on City of Vancouver's feedback	N/A
e)	Contractor assumes a 5-day turnaround for all training material reviews unless otherwise agreed to by the Proponent and the City of Vancouver Project Manager	N/A
f)	All documentation deliverables including training materials created by the Contractor shall become the property of the City of Vancouver.	N/A
g)	Training deliverables will be prepared and delivered in English only	N/A
h)	Contractor will provide a review walkthrough of the training material to City of Vancouver; in the walkthrough Contractor will confirm accuracy, and obtain feedback from City of Vancouver.	N/A

	Stage and Tasks' Descriptions		Deliverables
i)	Contractor will deliver the training and develop a training plan and materials to the following roles: • Web Authors – Staff who will be required to author and maintain the content • Developers – Staff who will be required to develop/enhance/components features, forms development, templates, style/themes, sites creation, third party migration. This include custom languages and technology if needed. • Administrators – Staff who will be required to maintain the solution from a technical point of view • System administrators – staff who will be configuring servers, environments, load balancing, and managing dev/uat/prod infrastructure, (if applicable)		N/A
Stage 7 – Closeout & Documentation			
The processes and Deliverables to be completed by theContractor during this project stage shall include at a minimum:			
a)	Request a Notice of Final Acceptance from City of Vancouver at thesuccessful conclusion of the project		N/A
b)	Notify City of Vancouver of value-added services and/or products such as upgrades or additional software enhancements, user group workshops and related conferences		N/A
c)	Provide a transition to operations plan for operating and supporting the Solution		Transition to Operations plan
d)	Conduct a lesson learned workshop and document findings in a report		Lessons learned document
e)	Project close out presentation (at minimum 2, for Core projectimplementation team, and TLT)		Project close out document, and Project close out presentation (at minimum 2, for Core project implementation team and TLT)
f)	Growth planning documents including implementation and integration plans covering potential future deployments in theimplementation of City of Vancouver's websites		Growth planning document
g)	Define Post Go Live support plan		Post Go-Live support plan

5.3   Professional Services

Post implementation, the City may need on-going professional services on an as if and when needed basis.

• Other Professional Services to be provided
• Professional Services rates post implementation (only include rates in the commercial proposal)

6.0   INVENTORIES

The following tables indicate approximate current inventory levels for each site.

Description	Estimated Quantity				
	Vancouver.ca	**CD1-Bylaws.vancouver.ca**	**Guidelines.vancouver.ca**	**Trafficcams.vancouver.ca** **(*driven by inclement weather Jan/Feb 2020)**	**Vanemerg.ca** **(*driven by emergency exercise)**
Page views	2019: 17.4 mil 2020: 16.5 mil	2019: 13,400 2020: 13,500	2019: 700 2020: 3,700	2019: 586,000 2020: 1.1 mil*	2019: 4,700* 2020: 690
Pages	4,000	44	5	339	7
Images/Files	51,000	1,500	540	1,830	10
Total storage used	42 GB	1 GB	1 GB	0.2 GB	0.3 GB
Page Templates	12	2	1	2	3
Publishing workflows	3				
Widget Template	60				
Navigator/Menus	3				
Categories/Taxonomy	30				
Webforms	40				

7.0   PROJECT TIMELINE

Noting the Project Scope as above, the successful Proponent will be responsible for following proper management methodology throughout these phases in order to maintain scope, adherence to the schedule and deliver the Project on time and on budget.

The City anticipates to start implementation in November 2022. Please note, the City's priority in the fall of 2022 may limit the ability to start the implementation any sooner than November.

The Proponent's proposal shall indicate whether they can meet this general timeline above, and populate the following table based on the estimation of the work. If the timeline above is not achievable, the proponent must clearly state this in their RFP submission and provide an alternate schedule for consideration.

	Deliverable Title	Anticipated Timeline
1	Contract Execution	T (TBD)
2	Initial kick off meeting	T+ 2 weeks after the Contract Execution
3	Planning and finalizing project plan	T+ (? weeks)
4	Content Migration and Implementation	T+ (? weeks)
5	Security and Accessibility Assessments	T+ (? weeks)
6	Testing	T+ (? weeks)
7	Deployment	T+ (? weeks)
8	Training and Knowledge Transfer	T+ (? weeks)
9	Closeout & Documentation	T+ (? weeks)
10	Post-implementation 90 day reliability/warranty period	TBD

Annex 1 - Detailed Requirements for Round 1

Excel file with 13 tabs to be downloaded separately and completed accordingly.

Annex 2 - Detailed Requirements for Round 2

Information only

Only the shortlisted Proponents will be notified and requested to complete this form later.

PART C – FORM OF PROPOSAL

RFP No. PS20210836, CONTENT MANAGEMENT SYSTEM REPLACEMENT (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

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 10   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. PS20210836, as amended from time to time and including all addenda.

3   NO LEGAL OBLIGATION ASSUMED BY THE CITY

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

4   NO DUTY OF CARE OR FAIRNESS TO THE PROPONENT

The City is a public body required by law to act in the public interest. In no event, however, does the City owe *to the Proponent or to any of the Proponent's proposed subcontractors* (as opposed to the public) any contract or tort law duty of care, fairness, impartiality or procedural fairness in the RFP process, or any contract or tort law duty to preserve the integrity of the RFP process. The Proponent

hereby waives and releases the City from any and all such duties and expressly assumes the risk of all Losses arising from participating in the RFP process on this basis.

5   EVALUATION OF PROPOSALS

5.1   Compliance / Non-Compliance

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

5.2   Reservation of Complete Control over Process

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

5.3   Discussions/Negotiations

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

5.4   Acceptance or Rejection of Proposals

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

6   PROTECTION OF CITY AGAINST LAWSUITS

6.1   Release by the Proponent

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

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

(b)   any unintentional tort of the City or its officials or employees occurring in the course of conducting the RFP process;

(c)   the Proponent preparing and submitting the Proposal;

(d)   the City accepting or rejecting the Proposal or any other submission; or

(e)   the manner in which the City: reviews, considers, evaluates or negotiates any proposal; addresses or fails to address any proposal or proposals; resolves to enter into a Contract or not enter into a Contract or any similar agreement; or the identity of the proponent(s) or other persons, if any, with whom the City enters any agreement respecting the subject matter of the RFP.

6.2   Indemnity by the Proponent

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

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

(b)   any unintentional tort of the City or its officials or employees occurring in the course of conducting the RFP process, or

(c)   liability on any other basis related to the RFP or the proposal process.

6.3   Limitation of City Liability

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

7   DISPUTE RESOLUTION

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

(a)   The arbitrator will be selected by the City's Director of Legal Services;

(b)   Section 6 of this Appendix 1 will: (i) bind the City, the Proponent and the arbitrator; and (ii) survive any and all awards made by the arbitrator; and

(c)   The Proponent will bear all costs of the arbitration.

8   PROTECTION AND OWNERSHIP OF INFORMATION

8.1   RFP and Proposal Documents City's Property

(a)   All RFP-related documents provided to the Proponent by the City remain the property of the City and must be returned to the City, or destroyed, upon request by the City.

(b)   The documentation containing the Proposal, once submitted to the City, becomes the property of the City, and the City is under no obligation to return the Proposal to the Proponent.

8.2   Proponent's Submission Confidential

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

8.3   All City Information Confidential

(a)   The Proponent will not divulge or disclose to any third parties any non-public documents or information concerning the affairs of the City which have been or are in the future provided or communicated to the Proponent at any time (whether before, during or after the RFP process). Furthermore, the Proponent agrees that it has not and must not use or exploit any such non-public documents or information in any manner, including in submitting its Proposal.

(b)   The Proponent now irrevocably waives all rights it may have by statute, at law or in equity, to obtain any records produced or kept by the City in evaluating its Proposal (and any other submissions) and now agrees that under no circumstances will it make any application to the City or any court for disclosure of any records pertaining to the receipt, evaluation or selection of its Proposal (or any other submissions) including, without limitation, records relating only to the Proponent.

9   NO CONFLICT OF INTEREST / NO COLLUSION / NO LOBBYING

9.1   Declaration as to no Conflict of Interest in RFP Process

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

APPENDIX 2
QUESTIONNAIRE

Complete this Appendix 2 - Questionnaire in the form set out below. Attach information with clear section titles to this Form of Proposal if space below does not suffice. **DO NOT INCLUDE ANY PRICING IN THE 'FORM OF PROPOSAL'.**

1.0   EXECUTIVE SUMMARY

Reference	Requirement
1.1	Provide a brief executive summary of your Proposal. Summarize your proposal and comment on how it meets the City's requirements.
Response	

2.0   COMPANY PROFILE AND KEY PERSONNEL

Reference	Requirement
2.1	Provide a description of your company, purpose and history of relevant successes including number of years in business, size of the company, history of successes, experience with similar projects, and what is most responsible for the Proponent's success to date.
Response	
2.2	Identify and provide professional biographical information for the key personnel (including sub-contractor, if any) that would perform the Proponent's work, outlining their intended roles in performing the Scope of Work. Also attach to this Form of Proposal as an additional Appendix CVs and a project team organization chart, identifying all roles and areas of responsibility.
Response	

3.0   DETAIL REQUIREMENTS

Carefully read the instructions on the first tab of the separate Excel attachment, **PS20210836 – Part B Annex 1 - Detailed Requirements** <u>Round 1</u>. Complete (in Excel format, not PDF) and include in your Proposal submission.

DO NOT COMPLETE <u>**ROUND 2**</u> FILE WHICH IS ONLY REQUIRED FROM THE SHORTLIESTED PROPONENT(S).

4.0   IMPLEMENTATION AND TRAINING PLAN

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

5.0   PROJECT TIMELINE

5.1	Describe your company's approach or work plan for how to meet City's requirements as describe in Part B – Section 7.0 Project Timeline, and populate the schedule table with your estimated target dates.
Response	

6.0   VALUE ADDED SERVICES AND INNOVATION

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

7.0   SUSTAINABLE AND ETHICAL PROCUREMENT

SOCIAL SUSTAINABILITY

SUPPLIER DIVERSITY

Please note for the Supplier Diversity, Vendors' are required to answer to the following question, which will be kept confidential in accordance with the Legal Terms and Conditions of this RFP.

In the space below, indicate the vendor's company profile with regards to social value and economic inclusion including recognized certifications 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 LGBTQ2+ people).	
Majority owned/controlled/ by:	Social / Diverse Certifications
☐ Women	☐ BCorp
☐ Indigenous Peoples	☐ Supplier Diversity Certification
☐ Non-Profit/Charity (Social Enterprise)	Enviro / Other Certifications
☐ Coop	☐ BuySocial
☐ Community Contribution Corporation (3C/CCC)	☐ Living Wage
☐ Ethno-cultural Persons	☐ Fairtrade
☐ People with Disabilities	☐ Green Business Certification (ie. LEED, ClimateSmart)
☐ LGBTQ2+	☐ Other: please indicate
☐ Other: please indicate	
☐ None of the above	☐ None of the above

INDIGENOUS PARTICIPATION

Do you have any business relationships, partnerships or joint-ventures with First Nations and/or Indigenous peoples or organizations? Y/N

a.   If yes, please describe in detail:

Do you have a Supplier Diversity program to include/consider equity-seeking businesses as your vendors/suppliers/sub-contractors? Y/N

a.   Please provide information on how you invest in economic development of small/social/diverse businesses as your suppliers or sub-contractors

What % or $ of work from this contract will be directed to sub-contractors that identify as social/diverse based on certification and/or ownership/control by equity seeking demographic?)

Category of Social Value Businesses (Majority owned/controlled/certified by)	# of Businesses	$/% of contract	Name of the Businesses being Sub-contracted
Indigenous Peoples			
Women			
Ethno-cultural			
People with Disabilities			
LGBTQ2+			
Non-Profit/Charity (Social Enterprise)			
3C/CCC; Coop; BCorp			
Other			

EMPLOYMENT EQUITY & WORKFORCE DIVERSITY

EMPLOYMENT EQUITY

1. In addition to being an equal opportunity employer, please describe any policies/programs or how you advance employee equity, diversity and inclusion for under-represented populations (such as Women, Indigenous People, People with Disabilities)

2. Do you regularly conduct an employee equity "survey" or similar information/data collection on workforce diversity? Y/N

    a. Please describe how you track/monitor your workforce diversity including frequency

3. Do you source/hire from Workforce Development and/or Skill Training programs, including pre-employment support, apprenticeships or ongoing employment support, for people who are under-represented and/or face barriers to traditional employment (such as Indigenous persons, Women, youth, Minorities, People with Disabilities including mental health)? Y/N

    a. Please describe and/or use the table below

Category of Partnership Organizations	Name of the Partnership Organization(s)	# of staff (optional if makes sense)
Indigenous Peoples		
Women		
Ethno-Cultural Peoples		
People with Disabilities		
LGBTQ2+		
Youth/Seniors		
Other		

4. Do you support training for career advancement and/or skills development?

   a. If yes, please describe

5. Do you compensate at or above a Living Wage (currently $20.91/hr) Y/N

Do you provide non-mandatory benefits (i.e. extended health) to your employees? Y/N, if yes, please describe

WORKFORCE DIVERSITY

Vendors' are required to answer to the following question, which is for information gathering purposes only, and will be kept confidential in accordance with the Legal Terms and Conditions.

As best known, in the space below, indicate the vendor's company profile with regards to economic inclusion supporting employment equity, diversity, inclusion and reconciliation by an equity-seeking demographic (including but not limited to Women, Indigenous Peoples, Ethno-cultural People (minorities, newcomers, immigrants), persons with disabilities or LGBTQ2+ people). *Confidential & for information only*	

Overall Workforce Diversity:
  % Women
  % Indigenous Peoples
  % Ethno-cultural People
  % People with Disabilities
  % LGBTQ2+
  % Other: please indicate
	Leadership/Management/Executive Workforce Diversity:
	  % Women
	  % Indigenous Peoples
	  % Ethno-cultural People
	  % People with Disabilities
	  % LGBTQ2+
	  % Other: please indicate

If you choose not to respond please indicate why:
  ☐ Do not track this information
  ☐ Do not want to share this information	

ENVIRONMENTAL SUSTAINABILITY

ENVIRONMENTAL OPERATIONS

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

1. *For the following, please indicate those you track and/or report*

	Track	*Report*
GHG Emissions	☐	☐
Energy usage	☐	☐
Water usage	☐	☐
Any hazardous/toxic air or water emissions	☐	☐
Generation/recycling/reduction of solid waste	☐	☐
Generation/recycling/reduction of hazardous	☐	☐
Other	☐	☐

    a. *If reporting, please indicate to whom or where*

        ☐ *Government(s)/Agencies*

        ☐ *Industry Association(s) ie.* "industry-wide environmental product declaration"

        ☐ *CDP*

        ☐ *Global certification system ie. World Business Council for Sustainable Development*

        ☐ *Other(s) ie. Concrete Sustainability Council*

    b. Do you request/require your supply chain to track and report any of the above? Y/N, explain

2. *Has your company achieved (or is it committed to) any of the following activities? Check all that apply and provide details/targets/goals*

    ☐ Increase renewable energy sources and/or reduce the company's overall energy usage

    ☐ Reduced carbon use, GHG emissions or use of ozone depleting substances

☐ Implemented initiatives to reduce waste at the source or divert the waste from landfills/incineration

☐ Recycled water or other water recovery systems to reduce the use of potable water

☐ Responsibly dispose of all hazardous waste generated from production.

☐ 2030 Sustainable Development Goals of the United Nations

☐ Other: include an explanation of any on-going efforts or plans that the vendors has, or has taken to address climate change and their environmental impact

Please provide details

Do you engage with your supply chain on any above noted issues? Y/N, explain

APPENDIX 3
COMMERCIAL PROPOSAL

Complete this Appendix 3 - Commercial Proposal (to be downloaded separately), in the excel format, not PDF. **All the pricing information should ONLY be included in this document.**

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).

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. Include in Description of the Project factors that demonstrate relevance e.g. reference is Canadian, reference is government, similarity of scope and schedule to this scope of work.

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

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

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

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.

CITY OF VANCOUVER

APPENDIX 5 - CERTIFICATE OF EXISTING INSURANCE
TO BE COMPLETED AND APPENDED TO THE PROPOSAL/TENDER

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

1. **THIS CERTIFICATE IS ISSUED TO:** <u>City of Vancouver, 453 W 12th Avenue, Vancouver, BC, V5Y 1V4</u>
and certifies that the insurance policy (policies) as listed herein has/have been issued to the Named Insured and is/are in full force and effect.

2. **NAMED INSURED** *(must be the same name as the proponent/bidder and is either an individual or a legally incorporated company)*

BUSINESS TRADE NAME or DOING BUSINESS AS

BUSINESS ADDRESS

DESCRIPTION OF OPERATION

3. **PROPERTY INSURANCE (All Risks Coverage including Earthquake and Flood)**
INSURER _____ **Insured Values (Replacement Cost) -**
TYPE OF COVERAGE _____ Building and Tenants' Improvements $ _____
POLICY NUMBER _____ Contents and Equipment $ _____
POLICY PERIOD From _____ to _____ Deductible Per Loss $ _____

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

5. **AUTOMOBILE LIABILITY INSURANCE** for operation of owned and/or leased vehicles
INSURER _____ **Limits of Liability -**
POLICY NUMBER _____ Combined Single Limit $ _____
POLICY PERIOD From _____ to _____ *If vehicles are insured by ICBC, complete and provide Form APV-47.*

6. ☐ **UMBRELLA OR** ☐ **EXCESS LIABILITY INSURANCE** **Limits of Liability (Bodily Injury and Property Damage Inclusive) -**
INSURER _____ Per Occurrence $ _____
POLICY NUMBER _____ Aggregate $ _____
POLICY PERIOD From _____ to _____ Self-Insured Retention $ _____

7. **PROFESSIONAL LIABILITY INSURANCE** **Limits of Liability**
INSURER _____ Per Occurrence/Claim $ _____
POLICY NUMBER _____ Aggregate $ _____
POLICY PERIOD From _____ to _____ Deductible Per Occurrence/Claim $ _____
If the policy is in a "CLAIMS MADE" form, please specify the applicable Retroactive Date: _____

8. **OTHER INSURANCE**
TYPE OF INSURANCE _____ **Limits of Liability**
INSURER _____ Per Occurrence $ _____
POLICY NUMBER _____ Aggregate $ _____
POLICY PERIOD From _____ to _____ Deductible Per Loss $ _____
TYPE OF INSURANCE _____ **Limits of Liability**
INSURER _____ Per Occurrence $ _____
POLICY NUMBER _____ Aggregate $ _____
POLICY PERIOD From _____ to _____ Deductible Per Loss $ _____

SIGNED BY THE INSURER OR ITS AUTHORIZED REPRESENTATIVE

_____ Dated _____

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

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) <https://policy.vancouver.ca/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 #PS20210836

Title: CONTENT MANAGEMENT SYSTEM REPLACEMENT

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

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:	
	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

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.

PART D
FORM OF AGREEMENT

<u>Proponents who submit proposals to the City are required to set out any proposed deviations to both of these sample agreements.</u>

1.   SAMPLE AGREEMENT 1 – Supply Agreement

2.   SAMPLE AGREEMENT 2 – Service Agreement for Cloud Software / Software as a Service

SUPPLY CONTRACT

BETWEEN

CITY OF VANCOUVER

AND

[●]

DATED: [●]

This is a general Form of Agreement for the supply of various services including software services and upfront software implementation or configuration services. Depending on the scope of supply proposed by a proponent, and ultimately agreed by the City, the City may, in its sole discretion based on the information at such time, proceed with this Supply Agreement, the Form of Cloud Software/Software as a Service Agreement, some combination of the two and/or another form of agreement deemed most suitable by the City at such time. The City reserves the right to make amendments to the foregoing.

Proponents who submit a proposal to the City are required to set out any proposed deviations to both of these forms of agreements.

TABLE OF CONTENTS

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
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 **[●]**, 2022,

BETWEEN:

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

AND:

> **[●]**
>
> (the "**Vendor**")

BACKGROUND:

A. Pursuant to the City's Request for Proposal No. PS20210836 (the "**RFP**"), the City invited proposals from qualified proponents to provide **content management system** composed of the software, services, and documentation described in the RFP (the "**System**").

B. In response to the RFP, the Vendor submitted the Proposal (defined below) offering to provide the System specified in the RFP to the City.

C. Based on the City's evaluations of the Proposal, the City and Vendor entered into discussions with a view to entering a contract to supply the specified System to the City.

D. The City and the Vendor have now agreed on the legal terms and conditions on which the Vendor will supply the System to the City as provided in this Contract.

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

<div align="center">

ARTICLE 1
DEFINITIONS AND INTERPRETATION

</div>

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 City 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 City 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 City 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 City 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)   **"City-Caused Delay"** means a delay described in *Section 23.1(d) [Default of City's Obligations]*.

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

(j)   **"City Project Team"** means those members of the Project Team who are employees, sub-contractors, or other agents of the City.

(k)   **"City Records"** has the meaning given in *Section 16.12(a) [Vendor to Protect All City Records]*.

(l)   **"City's Proprietary Material"** means all materials and information created, acquired (other than from the Vendor or anyone on behalf of the Vendor) or developed by the City including, 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.

(m)   **"Contemplated Change Notice/Change Order"** means a document substantially in the form attached as *Schedule U [Change Order]*.

(n)   **"Contract Documents"** means this Contract, including all Schedules, all of which are now incorporated by this reference and made an integral part of this Contract, and all Amendments to this Contract.

(o)   **"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".

(p)   **"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]*.

(q)   **"Effective Date"** means the date set out on the title page and first page of this Contract.

(r)   **"Event of Default"**, with respect to the Vendor, has the meaning ascribed in *Section 22.1 [Event of Default—Defined]*.

(s)   **"Finish Date"** means any date referred to in the table set out in the Implementation Schedule as a "Finish Date".

(t)   **"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]*.

(u)   **"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).

(v)   **"Go Live Date"** means the date referred to as such in the Implementation Schedule as the "Go Live Date".

(w)   **"Hardware and Software Platform"** means the City's existing desktop, network, server and current development environment as generally described in *Schedule D [Hardware and Software Platform]*.

(x)   **"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.

(y)   **"Implementation Schedule"** means the chronological list of all major tasks/activities with description, scheduled dates of completion and responsibilities of each party as outlined in *Schedule C [Implementation – Statement of Work]*.

(z)   **"Installation Sites"** means the Installation Sites for the Hardware and Software Platform.

(aa)   **"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.

(bb)   **"Interfaces"** means any programming interface or adaptor between the Software and third party or City-owned or licensed software that facilitates the import and export of data or intercommunication between such software.

(cc)   **"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.

(dd)   **"Licence"** means the licence from the Vendor to the City to use the Software, Source Code (subject always to the Source Code Escrow Agreement) and Documentation described in *Article 16 [Licence and Proprietary Material]*, and "Licensed" will have a corresponding meaning.

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

(ff)   **"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).

(gg)   **"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]*.

(hh)   **"Maintenance Cost"** means the amounts payable by the City to the Vendor in consideration for the Maintenance Services to be provided by the Vendor pursuant to the Maintenance Agreement.

(ii)   **"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.

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

(kk)   **"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]*.

(ll) **"Project Completion Date"** means the date on which the Certificate of Final Acceptance is issued.

(mm) **"Project Office"** means the office located at [●] Vancouver BC, to be used by the City and Vendor in conjunction with the Installation Sites for the Project, or such other site within City of Vancouver in the event that the City requires the Project Office to be moved to an alternate site.

(nn) **"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.

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

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

(qq) **"Proprietary Material"** means, in respect of the City, the City Proprietary Material and, in respect of the Vendor, the Vendor Proprietary Material.

(rr) **"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.

(ss) **"RFP"** has the meaning given in Recital A of this Agreement and is attached as *Schedule R [RFP]*.

(tt) **"Schedules"** means those parts of this Contract listed in Section 1.4 [Schedules].

(uu) **"Software"** means [●]

(vv) **"Source Code"** means the human readable commented form of the Software, including programs and flowcharts.

(ww) **"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]*.

(xx) **"Start Date"** means any date referred to in the table set out in the Implementation Schedule as a "Start Date".

(yy) **"System"** has the meaning given in Recital A of this Contract.

(zz) **"Third Party Software"** means computer software programs that are owned by third parties, and are not part of the Software and that the City must licence directly from the owner, including: [●]

(aaa)   **"Total Purchase Price"** means the total purchase price listed on *Schedule B [Pricing]*.

(bbb)   **"Unavoidable Delay"** means a delay as described in *Section 28.14 [Unavoidable Delay]*.

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

(ddd)   **"Vendor Project Team"** means those members of the Project Team who are employees, sub-contractors, or other agents of the Vendor.

(eee)   **"Vendor's Proprietary Material"** means all materials and information created, acquired (other than from the City or anyone on behalf of the City) or developed by the Vendor, including the Software, Source Code, Documentation, and Proposal unless expressly indicated otherwise.

(fff)   **"WorkSafeBC"** means the Workers Compensation Board of British Columbia.

(ggg)   **"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 any where 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 Contract, excluding all Schedules; and

(c)   **[Additional items will be inserted later]**

ARTICLE 3
GENERAL REQUIREMENTS

3.1 Vendor's General Obligations

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

3.2 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.

3.3 Vendor has Control and 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 City.

3.4 Discrepancies

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

3.5 Vendor to Report Status

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

3.6 Term of the Contract

The term of this Contract will be for the period beginning on the Effective Date and ending on [●].

ARTICLE 4
INSTALLATION SITE PREPARATION AND PLATFORM

4.1   City to Prepare Installation Sites

The City will, at its sole expense and prior to the first Delivery Date, provide all necessary electrical and other installations and fittings 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 City 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   City Responsible for Hardware and Software Platform

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

4.4   Remains Property of City

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

4.5   Interfaces

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

4.6   City Permitted to Replace/Modify Hardware and Software Platform

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

(b)   provide and pre-test all configuration work, as part of the System;

(c)   provide the Documentation;

(d)   train groups of designated City 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 City;

(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 City'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 City's standard security procedures to maintain the security of the City's Proprietary Information;

(m)   notify the City of, as appropriate, and seek the City's prior written consent to, any material changes to the Vendor's methodology in the provision of Services;

(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 City, in the City's possession, under the City's control or for which the City 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
CITY RESPONSIBILITIES

6.1   General Responsibilities

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

6.2   Specific Responsibilities

The City will throughout the term of the Project:

(a)   designate a City Project Manager, who will have full authority for implementing this Contract and who will be the principal point of contact between the Vendor and the City, provided that, if the City Project Manager becomes unable to fulfill this obligation, the City will appoint a successor City Project Manager;

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

7.2   Payment Schedule

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

7.3   Payment of Licence Fee

The City will pay the Vendor, in consideration for the Licence, the amounts set out in *Schedule 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 [City 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 City to pay any money under this Contract. For the purposes of this Contract, a proper invoice must comply with the following requirements:

(a)   the invoice must correctly reference the City's Purchase Order number; and

(b)   must be signed by an officer of the Vendor and contain a statement certifying that the Vendor has achieved a specified milestone or specified percentage of completion of same in accordance with the terms of Schedule *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)   *City 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 City to the Vendor relating to the Software or Services, all of which the City will be liable to pay to the Vendor wherever the Vendor is required to collect and remit such amount to any governmental authority as a result of this Contract.

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

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

   (ii)   the wages (inclusive of all benefits, withholding taxes, CPP contributions and 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 City in the performance of its obligations under this Contract, including travel and living expenses, charges for courier services and long distance telephone services, together with the Vendor's then current administration fee on such expenses.

ARTICLE 8
SERVICE LEVEL/PERFORMANCE GUARANTEES

8.1   Service Levels

The parties acknowledge that service level targets have been established with respect to the Services, Maintenance Services, and Software and will be used to assess the performance of the Vendor in delivering the Requirements at an optimal service level for the City. The minimum

service levels as well as the optimal service level targets are set forth in *Schedule H [Performance Standard Warranties]*.

[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 City]

8.2 Service Level Reports

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

8.3 Failures to Meet Service Levels

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

ARTICLE 9
LIENS

9.1 No Liens Permitted

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

9.2 Vendor to Provide Proof

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

ARTICLE 10
CHANGE REQUESTS

10.1 Need to Notify Vendor

(a) The City 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 City 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 City 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 City 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 City does not confirm in writing that such adjustments are acceptable to it within five Business Days of the date that the Vendor informs the City that such adjustments are necessary, then the City's change request will be deemed cancelled.

10.2   Intentionally Deleted

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

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

10.4   Disputes over Change Requests

If the City does not agree with the Vendor under *Section 10.1 [Need to Notify Vendor]*, then 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

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

12.1   Required Insurance/Amounts. Prior to commencing the Services, Vendor will obtain:

(a) professional liability insurance with policy limits of not less than $2,000,000 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 $2,000,000, protecting the Vendor

against all claims for loss or damage arising out of any error or omission of the Vendor or the Vendor's Personnel in the performance of the Services. If this coverage is provided on a claims-made basis, the coverage shall be maintained for a period of two years post completion of all Services;

(b)   technology error & omissions and cyber liability insurance with policy limits of not less than $5,000,000 per claim and an aggregate of not less than $5,000,000 protecting the Vendor and Vendor's personnel against claims such as, data security and privacy liability, PCI-DSS breach, network interruption, event management, cyber extortion and media content. If this coverage is provided on a claims-made basis, the coverage shall be maintained for a period of two years post completion of all Services; and

(c)   commercial general liability insurance policy with limits of not less than $5,000,000 per occurrence, aggregate of not less than $5,000,000, protecting the Vendor and the Vendor's Personnel against all claims for bodily injury including death, personal injury, advertising liability, completed operations, product liability, and property damage or loss, arising out of the operations of the Vendor or the actions of the Vendor or the Vendor's Personnel. The policy will:

   (i)   name the City and the City's officials, employees and agents as additional insureds;

   (ii)   include a cross-liability or severability of interest clause or endorsement in favour of the City;

   (iii)   include blanket contractual liability coverage; and

   (iv)   Include non-owned auto liability coverage.

12.2   **Required Policy Terms.** All required insurance policies will remain in full force and effect at all times until completion of the Services and all extensions and renewals of the Services or earlier cancellation of this Agreement (except professional liability and technology error & omissions and cyber liability policies which will remain in full force and effect at all times during the foregoing period plus two years), and will:

(a)   be obtained from and issued by insurers authorized to carry on business within British Columbia, on terms satisfactory to the City, acting reasonably;

(b)   be primary insurance in respect to liability arising out of the operation of the Vendor, and any insurance or self-insurance maintained by the City will be in excess of this insurance and will not contribute to such policies; and

(c)   contain a provision that such insurance coverage will not be cancelled or endorsed to reduce the limits of liability without the Vendor giving the City at least 30 days' written notice by registered mail. Should the policy be endorsed to restrict coverage midterm, written notice of such restriction will be sent by registered mail to the City no later than the effective date change; the exception is cancellation for non-payment of premium in which case the applicable statutory conditions will apply.

12.3   **Insurance Certificate.** Prior to signing this Agreement, the Vendor shall have provided, or shall provide, the City's Project Manager with evidence of all required insurance to be taken out in the form of one or more certificate(s) of insurance in form. The certificate(s) of Insurance will identify the Agreement title, Agreement number, policy holder, description of work, insurer name, insurer policy number, insurer policy period and insurer limits. Proof of insurance, in the form of such certificate(s) of insurance (or copies of the policy(ies) themselves, if requested),

will be made available to the City's Project Manager at any time during the performance of the Services immediately upon request.

12.4   Sub-contractor Insurance. The Vendor shall ensure that any sub-contractor(s) also maintain the same insurance as the Vendor, having regard to the obligations under this Agreement that they are contracted to fulfill.

12.5   Insurance Requirements Additional To Any Other Requirements. Vendor will, and will cause its sub-contractor(s), to provide at its own cost, any additional insurance which is required by law or other lines of insurance coverages, endorsements, or increased limits of insurance as reasonably deemed necessary by the City or as a reasonable and prudent vendor of similar goods and services would require to protect their operations or performance of services similar to the Services outlined.

12.6   **Insurance Requirements Independent of Additional Obligations.** Neither the providing of insurance by Vendor in accordance with this Agreement, nor the insolvency, bankruptcy or the failure of any insurance company to pay any claim accruing, will be held to relieve Vendor from any other provisions of this Agreement with respect to liability of Vendor or otherwise.

ARTICLE 13
REPRESENTATIONS, WARRANTIES AND COVENANTS

13.1   Software and Documentation Warranties

The Vendor represents and warrants to the City that:

(a)   the Vendor is the sole owner of all Intellectual Property Rights in and to the Software and Documentation which has been 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 City under this Contract does not contain any viruses which would materially adversely affect the City'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 City;

(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 City 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 City'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 City 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 City 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 City, and all such upgrades or extensions (and applicable software licences to use them) will become the property of the City;

(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 City;

(c)   the Vendor will provide the City 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 City 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 City; 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 City or modifications to the Software made by or on behalf of the City.

13.4   Vendor's Corporate Authority and Other Warranties

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

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

(b)   is not under any obligation, contractual or otherwise, to request or obtain the consent to any person to the transaction or grants contemplated or made herein;

(c)   is a corporation, duly organized, legally existing and in good standing under the laws of its jurisdiction of incorporation or continuance and is lawfully registered and licensed to do business in the Province of British Columbia;

(d)   has necessary corporate power to own its properties and assets and to carry on its business as it is now being conducted and to enter into this Contract;

(e)   is not a party to or bound by any indenture, agreement (written or oral), instrument, 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   City's Warranties

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

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

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

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

13.7   Reliance

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

ARTICLE 14
MAINTENANCE/SOURCE CODE

14.1   Sign Maintenance Agreement with Contract

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

14.3   Need to Maintain Hardware and Software Platform

The City 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 City 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 City 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 City's obligation to issue any Certificate of Acceptance (and the Vendor's entitlement to any deemed issuance of same) will be delayed by an equal number of days.

15.4   Standard of Review

The City Project Manager will determine on behalf of the City whether or not an Acceptance Test has been passed. The criteria that the City Project Manager must apply and that the 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 City Project Manager arising from the Acceptance Tests, will be corrected by the Vendor at its cost and the Vendor will use diligent, commercially reasonable efforts to prevent the delay of the issuance of the applicable Certificate of Acceptance as more particularly set out in *Schedule I [Acceptance Tests]*.

15.6   Go Live and Final Acceptance Requirements

The City 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 City pursuant to this Contract will be governed by the terms of the Licence.

16.2   Grant of Licence

(a)   *Licence* — Subject to the terms and conditions of this Contract, the Vendor now grants and the City accepts a perpetual (except as set out in this Contract), fully paid-up, non-exclusive, non-transferable (except to the extent permitted by this Contract) enterprise 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**

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

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

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

16.6 **Intentionally Deleted**

16.7 **Documentation Copies — Restriction/Procedures on Use**

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

16.8 **Intentionally Deleted**

16.9 **Future Versions of Third Party Software**

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

16.10 **City Owns Other Deliverables**

Unless otherwise specified in writing, upon payment therefor in accordance with this Contract, the Vendor now assigns to the City 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 City reasonable assistance, at the City's expense, to perfect the assignment of the rights, title and interest in and to such materials to the City.

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

16.11   Protection of Vendor's Proprietary Rights

(a)   *Vendor's Proprietary Material* — The City is granted only the right to use Vendor's Proprietary Material pursuant to this Contract and does not acquire any ownership rights or title in or to the Vendor's Proprietary Material or that of its respective licensors. The Vendor retains for itself, and the City acknowledges that the Vendor so retains, all ownership rights in and to the Vendor's Proprietary Material.

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

(i)   the obligations of this Section will survive the termination of this Contract;

(ii)   the City agrees to take reasonable steps and the same protective precautions to protect the Vendor's Proprietary Material from disclosure to third parties as it does with City's Proprietary Material and to take all reasonable precautions consistent with generally accepted standards in the data processing industry to safeguard the confidentiality of such information;

(iii)   the City agrees to take appropriate action by instruction, contract and otherwise with its employees and contractors to inform them of the trade secret, proprietary, and confidential nature of the Vendor's Proprietary Material and the updates and enhancements disclosed to the City under this Contract, and to obtain their compliance with the terms of same and the City will be liable to the Vendor for any breach by any such employees or contractors of their obligations of confidentiality in respect of Vendor's Proprietary Material and the updates and enhancements disclosed to the City under this Contract;

(iv)   the City will not without the Vendor's prior written consent, disclose, provide or make available any Vendor's Proprietary Material in any form, to any person, except to its bona fide employees, officers, directors or third parties whose access is necessary to enable the City to carry out the intent of this Contract;

(v)   the City will, prior to disclosing any Vendor's Proprietary Material to any third party, obtain from that third party a written acknowledgment that the third party will be bound by this Contract with respect to the Vendor's Proprietary Material;

(vi)   the City will not remove, alter, or obliterate any copyright, trademark or service mark or other proprietary notices from any Vendor's Proprietary Material; and

(vii)   the City acknowledges and agrees that it may receive Vendor's Proprietary Material from the Vendor or its licensors through training, maintenance and third

party consulting or other means and as a result of the provision of Services pursuant to this Contract.

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

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

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

(iii) contain proprietary and confidential information; and

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

16.12 Protection of City's Proprietary Material

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

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

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

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

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

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

(i) the obligations of this Section will survive the termination of this Contract;

(ii) the Vendor agrees to take all reasonable steps and the same protective precautions to protect the City's Proprietary Material from disclosure to third parties as it does with Vendor's Proprietary Material and to take all reasonable precautions consistent with generally accepted standards in the data processing industry to safeguard the confidentiality of such information;

(iii)   the Vendor agrees to take appropriate action by instruction, contract and otherwise with its employees and contractors to inform them of the trade secret, proprietary, and confidential nature of the City's Proprietary Material disclosed to the Vendor under this Contract, and to obtain their compliance with the terms of same and the Vendor will be liable to the City for any breach by any such employees or contractors of their obligations of confidentiality in respect of City's Proprietary Material disclosed to the Vendor under this Contract;

(iv)   the Vendor will not without the City's prior written consent, disclose, provide or make available any City's Proprietary Material in any form, to any person, except to its bona fide employees, officers, directors or third parties whose access is necessary to enable the Vendor to carry out the intent of this Contract;

(v)   the Vendor will prior to disclosing any City's Proprietary Material to any third party, obtain from that third party a written acknowledgment and agreement that the third party will be bound by this Contract with respect to the City's Proprietary Material;

(vi)   the Vendor will not remove, alter, or obliterate any copyright, trademark or service mark or other proprietary notices from any City's Proprietary Material; and

(vii)   the Vendor acknowledges and agrees that it may receive City's Proprietary Material from the City or its licensors through training, maintenance and third party consulting or other means and as a result of the provision of Services pursuant to this Contract.

(d)   *City's Proprietary Material Confidential* — The Vendor recognizes and agrees that all City's Proprietary Material provided to the Vendor by the City:

(e)   are considered by the City to be trade secrets of the City;

(f)   are furnished by the City to the Vendor in confidence;

(g)   contain proprietary and confidential information; and

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

16.13 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 City 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 City to the Vendor, provided that the City has given prior written notice to the Vendor that the City intends to exercise such right of set off and the Vendor has not remedied the failure within five Business Days following the receipt of such notice. The City 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 City, the Vendor will provide the City 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 City having any obligation to pay any invoice under this Contract. The Vendor will indemnify the City and hold harmless the City from all manner of Losses arising out of or in any way related to unpaid 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 City Sites

With respect to all Services provided by the Vendor on the Installation Sites, in the Project Office or on any other City sites, the Vendor is now appointed and now accepts appointment as the "prime contractor" as defined by the 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 City's compliance with WorkSafe Rules that apply to the condition or contents of Installation Sites, Project Office or other City sites.

ARTICLE 18
OCCUPATIONAL HEALTH AND SAFETY

18.1 Must Conform

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

18.2   OHS Indemnity

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

18.3   Limitation of Liability

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

ARTICLE 19
SUB-CONTRACTORS

19.1   Consent Required for Sub-Contractors

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

19.2   Vendor Responsible for Sub-Contractors

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

19.3   No Contract Formed Between City and Sub-Contractors

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

ARTICLE 20
PROJECT TEAM MANAGEMENT

20.1   Team Composition

Subject to *Section 20.2 [Team Substitutions]*:

(a)   the Vendor will furnish all 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 City;

(d)   the City will utilize only those members of the City Project Team who satisfy the roles and responsibilities described in the Contract Documents; and

(e)   the City 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 City Project Manager, whose consent will not be unreasonably or arbitrarily withheld, delayed or conditioned; and

(b)   the City may make substitutions of members of the City Project Team, 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 member of the City Project Team is assigned to work on another project of the City.

20.3   Substitution Requests

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

20.4   Cost of Substitutions

Regardless of whether or not the City consents to a substitution, or requests a substitution, the Vendor will ensure that there is no delay or increase in the Total Purchase Price on account of a replacement of the Vendor Project Team Members and will ensure that the replacement Vendor Project Team ember 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 City 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 City Project Manager, the Vendor will immediately cease the use of any individual for the performance of the Services which the City Project Manager has reason to believe is unsuitable for the performance of the Services including but not limited to:

(a)   the loss of or failure by that individual to obtain any Security Clearance (as defined below);

(b)   intoxication;

(c)   use of foul, profane, vulgar or obscene language or gestures;

(d)   solicitation of gratuities or tips from any person for services performed under the Contract Documents;

(e)   wilful, negligent or reckless action in disregard of safety or sanitary requirements or regulations; or

(f)   any action which may constitute a public nuisance or disorderly conduct.

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

20.6   Independent or Dependent Contractors

(a)   Subject to *Article 19 [Sub-Contractors]*, the Vendor confirms that it does not intend to utilize any independent or dependent contractors to perform the Services, except for individual Project Team Members who may be retained by Vendor on an independent or dependent contractor basis rather than a contract of employment basis.

(b)   If an independent or dependent contractor is used by the Vendor under this Contract, the Vendor will legally bind such contractor to comply with this Contract.

(c)   Nothing in any of the Contract Documents will create any contractual relationship between a contractor of Vendor and the City.

20.7   City Resources

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

20.8   Vendor Project Manager

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

ARTICLE 21
INDEMNITY AND LIABILITY

21.1 Indemnity for Personal/Property Loss

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

21.2 Releases

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

(b) Subject to Section 21.1 [Indemnity for Personal/Property Loss], the Vendor now releases the City from all liability for any Losses arising from personal injury or loss or destruction of or physical damage to personal property arising from:

    (i) <u>General Accidents</u> — any acts or omissions of the City or its contractors or employees; or

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

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

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

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

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

21.3 Liability Limited

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

21.4 Vendor's Limitation on Liability for 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   City's Limitation on Liability for Payment Defaults

Despite any other term of this Contract, the total cumulative aggregate liability of the City and its suppliers and their respective subsidiaries, affiliates and parent corporations and each of their respective directors, officers, employees, contractors and agents (collectively the "**City Indemnifiers**") in respect to all Losses arising with respect to the purchase by the City of the 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 City 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 City nor the Vendor, nor any of their respective affiliates, subsidiaries, parent corporations, any of their parent corporation's affiliates or subsidiaries, including their officials, officers, directors, employees, contractors or agents, will be liable to or through the other for any Losses which are in the nature of indirect, incidental, special, consequential or punitive damages (including, but not limited to, lost profits, lost revenue or failure to realize expected savings) sustained or incurred in connection with the City's failure or delay in the payment nor for the Vendor's failure to deliver the 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 City, the Vendor will promptly restore or recreate such data (within the timeframes required by the Implementation Schedule) and, if it is in default of such obligation, the Vendor will be responsible for the City's reasonable, direct, out-of-pocket costs (to the limit described in *Section 21.4 [Vendor's Limitation on Liability for Software/Services Defaults]*) to restore or recreate such Data, but in no event will the Vendor be responsible for any indirect, incidental, consequential, special or punitive damages suffered or incurred by the City as a result of such lost or corrupted data.

21.8 Interest Liability Outside of Liability Limits

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

ARTICLE 22
VENDOR DEFAULTS

22.1 Event of Default—Defined

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

(a)   at any time, the Vendor is in default of an obligation to pay the City money and the City has notified the Vendor in writing that the Vendor is in default and the Vendor has not paid the money in full with interest within five Business Days of such notice;

(b)   at any time, the Vendor is in default of its obligations under this Contract (other than a failure to pay money) and the City has notified the Vendor in writing that it is in default of such obligations under this Contract and:

  (i)   the default is of a nature that with reasonable diligence could have been remedied within seven (7) Business Days of such notice; 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 City has the option and right, but no obligation, to exercise any or all or any combination of the following remedies without in any way limiting or prejudicing any of the City's other options or remedies at law or in equity or under any other term of this Contract (for example those with respect to the Holdback as set out in *Schedule J [Payment Schedule]*):

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

(b)   the City may, to the extent that any 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 City may elect to reject all such Software or Services, in which case the City will be entitled to retain all of the Holdback then held by the City and the Vendor will be liable for all of the City's Losses that may be incurred by reason of the Vendor's default, and

the City will 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 City's Proprietary Material]*;

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

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

ARTICLE 23
CITY DEFAULTS/DELAYS

23.1   Default of City's Obligations

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

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

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

(i)   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 City commences and proceeds continuously and diligently to remedy same;

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

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

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

   (ii)   the City will pay in addition to the Total Purchase Price an amount equal to interest at the 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 City-Caused Delay, calculated on such amounts which would otherwise have become due and payable at an earlier point in time under this Contract (but for further certainty excluding any and all delays in the receipt or timing of the Maintenance Costs);

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

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

(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 City's Director of Legal Services 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 City of its obligations under the Maintenance Agreement which entitle the Vendor to terminate the Maintenance Agreement) and the Vendor will have no further rights except to submit the matter to arbitration pursuant to *Article 27 [Arbitration]* for the recovery of the arrears with interest plus all reasonable legal costs and disbursements on an indemnity basis; and

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

23.2   Intentionally Deleted

23.3   Default Remedies Limited

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

23.4   City Right to Suspend

Where the City 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 City 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 City 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 City will be liable to pay interest on such deferred amounts at the rate set out in paragraph (c)(iii) of *Section 23.1 [Default of City's Obligations]*.

23.5   Entire Liability of City

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

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ARTICLE 24
INTELLECTUAL PROPERTY PROTECTION

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24.1   Vendor to Assume Defence of Suits Against City

The Vendor will:

(a)   assume the defence of any suit brought against the City 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 City against any and all Losses incurred by the City as a result of such suits; and

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

provided that:

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

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

(g)   the City provides the Vendor with written notice of the claim within 20 Business Days after the City's Director of Legal Services receives formal notice of the claim and cooperates with the Vendor in the defence of the suit and does not compromise or settle the suit without the prior written consent of the Vendor, such consent not to be unreasonably or arbitrarily withheld or delayed, and such infringement is not due solely to the combination of the Software with any third party software or hardware and such infringement is not caused by a modification to the Software created by the City or any third party on behalf of the City or such infringement does not result from any modification created by the Vendor at the request of the City pursuant to a Change Order 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 City is or becomes, or in the Vendor's opinion is likely to become, the subject of a claim of Intellectual Property infringement, then the City will permit the Vendor to, and the Vendor will promptly, at the Vendor's option and expense, either:

(a)   procure for the City the right to continue using the 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 City when and to the extent reasonably necessary to satisfy the City as to the Vendor's compliance with this Contract and the Vendor will supply the authorized representative of the City 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 City, dispose of any such accounts, records, invoices, receipts or vouchers but shall preserve and keep them available for audit and inspection at any time. The City will maintain, preserve and archive its records in the manner required under the Vancouver Charter.

ARTICLE 26
COMPLIANCE WITH LAWS

26.1   Vendor to Comply

In carrying out its obligations, the Vendor will familiarize itself and comply with all applicable laws, bylaws, regulations, ordinances, codes, specifications and requirements of all regulatory authorities, and will obtain all necessary 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 City's and Vendor's rights and remedies expressly set out herein, any dispute under this Contract that is not resolved amicably by the parties following the expenditure of reasonable efforts to do so, will be referred to a single arbitrator under the provisions of the *Commercial Arbitration Act* (British Columbia) and the decision of that single arbitrator will be final and binding upon the parties. Except as may otherwise be agreed in writing between the parties:

(a)   the arbitration will be conducted in accordance with the procedural rules of the British Columbia International Commercial Arbitration Centre (in this Article, the **"BCICAC"**);

(b)   the appointing authority will be the BCICAC;

(c)   the arbitration will be conducted in the English language in Vancouver, British Columbia; and

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

27.2   Alternative if no BCICAC

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

ARTICLE 28
GENERAL PROVISIONS

28.1   Permits and Licences

The Vendor will obtain and pay for all permits and licences required either by the federal government, provincial government, the City or any other authority to enable the Vendor to do

all things necessary to perform its obligations under this Contract according to the provisions of the Contract Documents.

28.2   Intentionally Deleted

28.3   Vendor not Agent or Employee

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

28.4   No Assignment by Vendor Without Consent

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

28.5   Compliance with Law

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

28.6   Non-Waiver of Rights

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

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

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

28.8   Terms of Contract Confidential

Except with the prior written consent of the other, each of the City 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 City:

City of Vancouver
515 West 10th Avenue
Vancouver, BC

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

with copies to:

City of Vancouver
515 West 10th Avenue
Vancouver, BC

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

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

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

(b)   if to the Vendor:

[●]

Attention: [●]
Fax No.   [●]

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

28.10 Changes in Laws and Regulations

If any Laws and Regulations applicable to the City require the City to act at variance with the terms of this Contract and the City so acts, then the same will not constitute a breach of this Contract (and the City now confirms that it is not aware of any Laws or Regulations that require

the City to act at variance with the terms of this Contract), and the City's requirement to act at variance with this Contract will be deemed to be and will be treated as an Unavoidable Delay.

28.11 Severability—Enforceability Preserved

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

28.12 Survival

Any term or provision of these Contract Documents that, by its nature, is intended to survive the expiration or termination of this Agreement, including, 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 City's and the Vendor's performance under the Contract will be extended for periods of time during which their performance is delayed or prevented due to an Unavoidable Delay. Such extension will be deemed to include the ancillary reasonable impact which an Unavoidable Delay has on the delayed party such as for example where a key person is scheduled to perform Services or conduct/review an Acceptance Test result during the week that the Unavoidable Delay occurs but is thereafter not available again for 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 City's Hardware and Software Platform;

(iii) any breach by a third party service provider responsible for the Hardware and Software Platform; and

(iv) the City 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 City, which the City 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 City, 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 City, including by means of any verbal declarations or announcements and by means of any sales, marketing or other literature, letters, client lists, press releases, brochures or other written materials without the express prior written consent of the City (except as may be necessary for the Vendor to perform the Vendor's obligations under the terms of this Contract). The Vendor undertakes not to use "City of Vancouver" or the official emblem, logo or mascot of the City of Vancouver or any other identification of the City as reference or means of promotion or publicity, without the express prior written consent of the City. Furthermore, the Vendor undertakes not to disclose or promote its relationship with the City in any communication or manner whatsoever as a basis to create an association, express or implied, between Vendor and the City. The City shall be the single point of contact for Vendor and its affiliates, officers, directors, agents, representatives, shareholders, members, sub-consultants, suppliers or employees with respect to submitting any proposed verbal declarations or announcements and by means of any sales, marketing or other literature, letters, client lists, press releases, brochures or other written materials.

(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 City to any supplier of goods or services or to any Sub-contractor, without the express prior written consent of the City, which consent the City may grant or withhold in its sole discretion.

(d)   *No Endorsement* — This Contract does not constitute an endorsement by the City 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 City;

(ii)   nothing in this Contract shall provide the Vendor with any right or advantage in securing any future marketing or sponsorship opportunity, and the Services or Maintenance Services performed hereunder or under any related agreement shall not be deemed for any purpose an advance or other credit against any such future sponsorship rights fees payable to the City; and

(iii)   unless otherwise specified, nothing in this Contract shall impose or be deemed to impose upon the City any obligation to engage the Vendor to provide any future services required by the City 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 City;

(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 City is granted to the Vendor by this Contract. The Vendor acknowledges that the City's trademarks, service marks, copyrighted materials and other intellectual property (including any emblem, sport pictogram and mascot) are protected by trademark, copyright and other laws, and may be used only with the prior written permission of the City.

(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 City from and against all claims, demands, actions causes of action, suits and proceedings and all loss, damage, cost and expense, including legal fees and disbursements, made or brought against, or suffered or incurred by the City and arising out of any breach by the Vendor of its obligations under this *Section 28.16 [Publicity and Marketing]*. The Vendor acknowledges that damages may be an inadequate remedy for any such breach, and further acknowledges that the City 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 City in respect of this Contract, the parties now irrevocably submit and attorn to the exclusive jurisdiction of the courts of British Columbia and acknowledge their competence and the convenience and proprietary 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.

CITY OF VANCOUVER
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

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

CLOUD SOFTWARE /SOFTWARE AS A SERVICE
SERVICES AGREEMENT

THIS AGREEMENT (the "**Agreement**") made as of the • day of •, 2021.

BETWEEN:

> **[Insert full corporate name of vendor]**, a corporation validly existing and registered in the Province of • with a registered office address at **[Insert registered office address of vendor]**
> ("**Vendor**")

OF THE FIRST PART

AND:

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

OF THE SECOND PART

BACKGROUND:

A.   The City requires the software and services described herein, and desires to engage Vendor to deliver said software and services.

B.   Vendor has agreed to deliver the said software and services in accordance with the terms and conditions of this Agreement.

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

1.0   DEFINITIONS AND SCHEDULES

1.1   In this Agreement, including the Background section and all schedules, the following words and terms, unless the context otherwise requires, shall have the meaning set out below:

(a)   "**Applicable Laws**" means all laws applicable to the parties under this Agreement and includes, without limitation, FOIPPA, PIPA and PIPEDA.

(b)   "**City**" means the City of Vancouver.

(c)   "**Contract Price**" means the fixed price set out in Schedule D to be paid by the City to the Vendor for the Services.

(d)   "**Data Compromise**" means any actual or reasonably suspected unauthorized access, disclosure or use of Transmitted Data that compromises the security, confidentiality, or integrity of the Transmitted Data, or the ability of City to access the Transmitted Data.

(e)   "**Documentation**" means user documentation provided electronically or in paper form by Vendor for use with the Software, as may be periodically updated and provided by Vendor.

(f)   "**FOIPPA**" means the *Freedom of Information and Protection of Privacy Act* (British Columbia), as such Act may be amended or superseded.

(g) **"personal information"** has the meaning given to it in FOIPPA, PIPA or PIPEDA, as applicable.

(h) **"PIPA"** means the *Personal Information Protection Act* (British Columbia), as such Act may be amended or superseded.

(i) **"PIPEDA"** means the *Personal Information Protection and Electronic Documents Act* (Canada) as it may be amended or superseded from time to time.

(j) **"Services"** means all of the obligations set out in this Agreement that are to be satisfied by Vendor including, without limitation, the granting of a licence for the City to access and use the Software, ensuring the Software performs in accordance with the requirements of this Agreement (including, without limitation, Schedule A) and providing all services and other requirements set out in Schedule E (RFP) and Schedule F (Vendor's Proposal). For certainty, Vendor will perform all Services for the fixed Contract Price.

(k) **"Software"** means the software, owned and hosted by Vendor, to be licensed by Vendor to the City in accordance with the terms of this Agreement.

(l) **"Transmitted Data"** means all data or information acquired, accessed or sent by the Vendor as a result of this Agreement, including all data or information acquired, accessed or sent by or through any software used by the Vendor to perform Services under this Agreement, which data may include, without limitation, personal information and City proprietary or confidential information.

1.2 The following schedules are incorporated into and form an integral part of this Agreement:

(a) Schedule A – Scope of Work

(b) Schedule B – Privacy Compliance and Data Security

(c) Schedule C - Certificates of Insurance

(d) Schedule D – Contract Price

(e) Schedule E – RFP issued [insert date]

(f) Schedule F - Vendor's Proposal dated •

In the event of any conflict or inconsistency between any of the terms of sections 1 to 21 of this Agreement and any terms of a schedule, the terms of sections 1 to 21 will govern and prevail. In the event of any conflict or inconsistency between any of the schedules, the schedules set out in the above order of priority will govern and prevail.

2.0 PERFORMANCE OF SERVICES, GRANT OF SOFTWARE LICENCE AND AUTHORIZED USES

2.1 Vendor will perform the Services and its other obligations in accordance with the terms of this Agreement and all Applicable Laws (including, without limitation, FOIPPA, PIPA, PIPEDA and all other applicable privacy and personal information laws). Vendor will at all times maintain a first class standard of care, skill and diligence in performing its obligations under this Agreement.

2.2 Vendor hereby grants to the City and to those City employees designated by the City, subject to all of the terms and conditions of this Agreement, a non-exclusive, non-transferable licence for access to the Software via the Internet and to use the Software solely for the City's internal business purposes in accordance with the terms set out in this Agreement.

2.3   The Vendor's obligations under this Agreement have been set out following consultation and negotiation between the parties. If the Vendor's obligations under this Agreement fail to expressly state anything that would reasonably be implied or inferred in order for the City to achieve the benefits intended to be obtained under this Agreement, the Vendor hereby agrees that such thing will be deemed to be implied and included in the Agreement and the Contract Price.

3.0   ACCESS TO THE SOFTWARE BY THE CITY

3.1   The Software is located and runs on servers and other equipment that are physically located in Canada. Such servers and other equipment are owned and controlled by Vendor or are owned by a third party who has agreed to host the Software pursuant to a contract between Vendor and such third party. If the Software is hosted on third party owned servers and equipment, Vendor has full control over such Software pursuant to the contract between Vendor and such third party. The City may access and use the Software in accordance with the terms of this Agreement, but has no right to receive a copy of the object code or source code to the Software.

3.2   As part of the Service, Vendor hereby agrees to give City authorized users access to, and the right to use, the Software for the purposes contemplated by this Agreement. City authorized users may use the Software by logging on to a webpage on the Vendor Software (in which case Vendor will ensure that such City authorized users will have full secure access to such webpage at all times during the term of this Agreement).

3.3   As part of the Service, Vendor will do everything necessary to make the Software comply with the requirements of this Agreement and be ready for normal use and operation by the City at the time stipulated in this Agreement or at a time reasonably requested by the City.

3.4   Vendor will regularly upgrade and update the Software. Vendor will provide the City with as much prior notice as possible when an upgrade or update is to be implemented and will meet the availability and service level commitments set out in this Agreement.

3.5   Vendor solely owns the intellectual property in the Software (except for third party components) and the Documentation.

4.0   CONDITIONS OF USE

4.1   The City's right to use the Software is conditional upon the following. The City may not:

(a)   except as permitted by this Agreement, transfer to any other person any of its rights to use the Software;

(b)   sell, rent or lease the Software;

(c)   make the Software available to anyone who is not a City authorized user (any City employee who may be authorized by the City from time to time to use the Software);

(d)   create any derivative works based upon the Software or Documentation;

(e)   copy any feature, design or graphic in, or reverse engineer, the Software; or

(f)   use the Software in a way that violates any criminal or civil law.

4.2   The City may load test the Software in order to test scalability provided the City give prior notice to Vendor so that Vendor may participate in and/or coordinate such load testing.

5.0 DATA SECURITY, PRIVACY AND PAYMENT CARD INDUSTRY REQUIREMENTS

5.1   Vendor must only use the Transmitted Data as necessary to carry out its obligations under this Agreement and for no other purpose. Any use or disclosure of the Transmitted Data by Vendor that is not expressly permitted by this Agreement will require the prior written consent of the City and must comply with all Applicable Laws.

5.2   As between the City and Vendor, the Transmitted Data is owned by the City, Vendor hereby agrees to hold the Transmitted Data in trust for the City, and Vendor makes no claim to any right of ownership in it. Vendor acknowledges and agrees that the City has voluntarily disclosed the Transmitted Data to Vendor on the condition that Vendor hold such Transmitted Data in strict confidence and only use it in accordance with the terms of this Agreement. Vendor further acknowledges and agrees that the Transmitted Data will remain, at all times, strictly under the control and in the power of the City including for the purposes of FOIPPA. Even though Vendor may have temporary custody of the Transmitted Data to enable it to perform its obligations under this Agreement, such temporary custody does not amount to control, power, possession or ownership of the Transmitted Data.

5.3   Vendor shall comply with all of the confidentiality, security and privacy requirements set out in this Agreement (including, without limitation, the requirements of this Section 5.0, the requirements set out in Schedule A (Scope of Work) and the requirements set out in Schedule B (Privacy Compliance and Data Security)) with respect to the Transmitted Data. To the extent Vendor possesses any Transmitted Data in any form, medium or device during the Term of this Agreement or after, the foregoing obligations shall survive and continue to be in legal effect.

5.4   Once the Transmitted Data is transferred through the Software to Vendor, the Transmitted Data will be stored on servers and other equipment that are physically located in Canada, owned and controlled by Vendor or are owned by a third party who has agreed to host the Software pursuant to a contract between Vendor and such third party with terms regarding privacy compliance and data security substantially similar to this section 5.0 and Schedule B (Privacy Compliance and Data Security). If the Software is hosted on third party owned servers and equipment, Vendor has full control over such Software and all Transmitted Data pursuant to the contract between Vendor and such third party. The Software must use SSL encryption or equivalent.

5.5   As of the date of this Agreement, the Software and Transmitted Data will only be stored on Vendor's primary, secondary and backup servers (collectively, the "**System Servers**"). Each System Server should be located in different locations that are sufficiently far from each other to ensure resiliency against natural disasters. Vendor's primary server is located at **[Insert address and country where primary server is located]**. Vendor's secondary server is located at **[Insert address and country where secondary server is located].** Vendor's backup server is located at **[Insert address and country where backup server is located].** If any System Server is hosted by a third party server/data host, such third party will be referred to as a "**Server Host**". Physical access to all System Servers is locked and restricted to only Vendor or Server Host employees. All data that flows in and out of Vendor's System Servers through the Vendor's or Server Host's routers and other equipment is encrypted and otherwise protected against access by, or disclosure to, Server Host or any other party. A regularly updated and backed-up copy of the Transmitted Data will be stored on Vendor's secondary and/or backup servers. If the location of any System Server is proposed to be changed during the Term of this Agreement, Vendor shall notify the City in writing, no less than 60 days before the location of a System Server is changed. Vendor will not store the Software or Transmitted Data on any other server or equipment without the prior written approval of the City. To the extent Vendor is able through its contract with a Server Host, Vendor will use commercially reasonable efforts to require the Server Host to ensure the safety, security, confidentiality and continued availability of all data stored on Vendor's primary server (including all Transmitted Data) located at the Server Host's facility. On a daily basis, a backup copy of all data stored on Vendor's primary server (including

all Transmitted Data) will be automatically transferred to the City in a format, and in accordance with a process, agreed to by the City.

5.6   Except with the prior written approval of the City, Vendor shall not store any Transmitted Data outside Canada or allow access to any Transmitted Data from outside Canada unless this is done in accordance with the terms of Schedule B (Privacy Compliance and Data Security).

5.7   Except with the prior written approval of or instructions from the City, Vendor shall not modify, add, delete, destroy, share, match, mine, combine, manipulate or otherwise tamper with the Transmitted Data in any way.

5.8   Vendor shall not withhold any of the Transmitted Data to enforce payment by the City or to enforce Vendor's rights in a dispute over this Agreement.

5.9   If Vendor is responsible for any loss or corruption of any Transmitted Data, Vendor will immediately restore or recreate such Transmitted Data.

5.10   Vendor must ensure that the System Servers and all Server Hosts meets the following physical and electronic security requirements:

(a)   single point of entry;

(b)   main access monitored with additional access for emergency purposes only;

(c)   surveillance cameras in physical data centre facility/room;

(d)   access validation with identity check;

(e)   access only to persons on Vendor approved access list;

(f)   log-in validation;

(g)   creation of accounts only as verified by Vendor;

(h)   access to servers via encrypted means; and

(i)   servers running behind secure firewall.

5.11   Vendor shall comply with the following in the event of a Data Compromise:

(a)   Vendor shall report, either orally or in writing, to City any Data Compromise involving Transmitted Data, or circumstances that could have resulted in unauthorized access to or disclosure or use of Transmitted Data, not authorized by this Agreement or in writing by City, including any reasonable belief that unauthorized access or disclosure of Transmitted Data has occurred. Vendor shall make the report to City immediately upon discovery of the unauthorized access or disclosure, but in no event more than forty-eight (48) hours after Vendor reasonably believes there has been such unauthorized access or disclosure. Oral reports by Vendor regarding Data Compromises will be reduced to writing and supplied to City as soon as reasonably practicable, but in no event more than forty-eight (48) hours after oral report.

(b)   Immediately upon becoming aware of any such Data Compromise, Vendor shall fully investigate the circumstances, extent and causes of the Data Compromise, and report the results to City and continue to keep City informed on a daily basis of the progress of

its investigation until the issue has been effectively resolved to the reasonable satisfaction of the City.

(c) Vendor's report discussed herein shall identify: (i) the nature of the unauthorized access or disclosure, (ii) the data accessed or disclosed, (iii) who made the unauthorized use or received the unauthorized access or disclosure (if known), (iv) what Vendor has done or shall do to mitigate any deleterious effect of the unauthorized access or disclosure, and (v) what corrective action Vendor has taken or shall take to prevent future similar unauthorized access or disclosure.

(d) Within five (5) calendar days of the date Vendor becomes aware of any such Data Compromise, Vendor shall have completed implementation of corrective actions to remedy the Data Compromise, restore City access to the Services as directed by City, and prevent further similar unauthorized access or disclosure.

(e) Vendor, at its expense, shall cooperate fully with City's investigation of and response to any such Data Compromise incident.

(f) Except as otherwise required by law, Vendor will not provide notice of the incident directly to the persons whose data was involved, regulatory agencies, or other entities, without prior written permission from City.

(g) Notwithstanding any other provision of this Agreement, and in addition to any other remedies available to City under Applicable Laws, Vendor will promptly reimburse City in full for all costs incurred by City in any investigation, remediation or litigation resulting from any such Data Compromise, including but not limited to providing notification to third parties whose data was compromised and to regulatory bodies, law-enforcement agencies or other entities as required by Applicable Laws or contract; establishing and monitoring call center(s), and credit monitoring and/or identity restoration services to assist each person impacted by a Data Compromise in such a fashion that, in City's sole discretion, could lead to identity theft; and the payment of legal fees and expenses, audit costs, fines and penalties, and other fees imposed by regulatory agencies, courts of law, or contracting partners as a result of the Data Compromise.

5.12 Vendor shall ensure that its employees are aware of their obligations regarding data security and privacy under this Section 5.0, Schedule A and Schedule B of this Agreement.

5.13 In the event any governmental authorities under applicable privacy laws or otherwise make inquiries to the City or Vendor or take any actions in respect of the Transmitted Data, Vendor will, upon the City's request, cooperate with such governmental authorities. If such governmental authorities make inquiries or requests of Vendor, Vendor will, to the extent legally required or permitted, give prompt written notice to the City and allow the City to participate in any responses submitted by Vendor to such governmental authorities.

6.0 WARRANTIES AND OTHER COVENANTS

6.1 **Software Warranties:** Vendor warrants that:

(a) the Software and Services will satisfy the requirements of this Agreement; and

(b) Vendor owns or otherwise has the right to provide the Software to the City and to perform all of Vendor's other obligations under this Agreement.

6.2 **Corporate and Other Warranties:** Vendor warrants that, as of the date of this Agreement, Vendor:

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

(b)   is not under any obligation, contractual or otherwise, to request or obtain the consent of any person in order to enter into this Agreement and to perform Vendor's obligations under it;

(c)   is a corporation, duly organized, legally existing, in good standing and has not been dissolved under the laws of the jurisdiction of registration set out on the first page of this Agreement and is lawfully registered and licensed to do business in the Province of British Columbia;

(d)   has the 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 Agreement;

(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 or performance of this Agreement will constitute or result in a violation or breach or default; and

(f)   all other representations and warranties made by Vendor in this Agreement are true and accurate.

6.3   Vendor shall be responsible for providing Service interruption recovery services if Vendor experiences or suffers an interruption to the Service for any reason. Vendor shall take all necessary steps to ensure that City shall not be denied access to the Services for more than 2 hours for any reason. For example only and without limitation, Vendor shall maintain the capability to resume provision of the Services from an alternative location and via an alternative telecommunications route if an event renders the Vendor's primary infrastructure unusable or unavailable. If Vendor fails to restore the Services within 2 hours of the initial disruption of service, City may declare Vendor to be in default of this Agreement and City may seek alternate services, which would have otherwise been provided under this Agreement, from third parties. Vendor shall reimburse City for all costs reasonably incurred by City in obtaining such alternative services, with payment to be made within thirty (30) calendar days of City's written request for such payment. In the event of a Service outage or interruption, Vendor will refund or credit the City, at its election, the pro-rated amount of fees corresponding to the time Services were unavailable. Vendor's obligations in this section are in addition to any obligations of Vendor set out in a service level agreement included in this Agreement.

6.4   If the Software does not satisfy the requirements of this Agreement, Vendor must immediately, at its option and expense, either:

(a)   modify the Software to conform to the requirements of this Agreement; or

(b)   provide a workaround solution to the City's satisfaction that will meet the City's requirements.

If neither of these options is satisfactory to the City, the City may terminate this Agreement in which case the City shall have no further liability to the Vendor or seek alternate services, which would have otherwise been provided under this Agreement, from third parties and seek reimbursement of such costs from Vendor. In either case, Vendor shall refund to the City all amounts pre-paid by the City for which no Services have been rendered.

6.5   If the normal operation, possession, access or use of the Software by the City is found to infringe any third party intellectual property right or Vendor believes that this is likely, Vendor must immediately, at its option and expense, either:

(a)   obtain a licence from such third party for the benefit of the City to allow the City to access and use the Software in accordance with the terms of this Agreement; or

(b)   modify the Software so that it no longer infringes.

If neither of these options is satisfactory to the City, the City may terminate this Agreement in which case the City shall have no further liability to the Vendor and the Vendor shall refund to the City all amounts pre-paid by the City for which no Services have been rendered.

7.0   TRAINING AND SUPPORT

7.1   **Training for the City:** Vendor shall provide the training described in Schedule A as part of the Contract Price and for no additional consideration.

7.2   **Support:**   Vendor shall provide the support services described in Schedule A as part of the Contract Price and for no additional consideration.

7.3   **Service Level Commitments:** Vendor will ensure that the Software is available for use by the City at least 99.999 per cent of the time during the term of this Agreement. In addition to this commitment, Vendor shall also comply with the service level commitments described in Schedule A or elsewhere in this Agreement.

8.0   TERM OF AGREEMENT

Subject to earlier termination or suspension in accordance with the terms of this Agreement, the term of this Agreement will commence on the date first written above and will expire **[Insert date of expiry]**. Notwithstanding the foregoing, the City may, but is not required to, renew this Agreement on the same terms and conditions for **[●]** additional one year periods by giving Vendor written notice of renewal prior to the expiry of this Agreement. If the City does not give Vendor written notice of renewal, this Agreement will continue to be in effect, following expiry, on a month-to-month basis on the same terms and conditions subject to termination by either party on 30 days prior written notice.

9.0   CONTRACT PRICE

9.1   In consideration for the Software, Services and other obligations to be performed by Vendor under this Agreement, the City will pay Vendor the Contract Price set out in Schedule D unless the City, in good faith, disputes any amount charged.

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

9.3   The City will make payments on account of the Contract Price in the amounts and at the milestones outlined in Schedule D.

9.4   Any delay from the timeframes set out in Schedule A - Scope of Work due to the Supplier not meeting such timeframes will result in the corresponding payment dates being extended by the length of the delay.

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

(a)   the invoice must correctly set out:

(i)   the City's Purchase Order number set out on the Purchase Order to be issued by the City upon execution of this Agreement;

(ii)   the full name of the City's project manager; and

(iii)   the date and title of this Agreement,

(b)   must be signed by an officer of the Supplier and contain a statement certifying that the Supplier has achieved a specified milestone or specified percentage of completion of same in accordance with the terms of Schedule D, and sufficiently describe the specified milestone or percentage of completion of same;

(c)   if Supplier is not a resident of Canada, for any Services performed by the Supplier in Canada, the Supplier shall breakout that portion of fees in an invoice and that portion of fees will be subject to a 15% withholding tax under Canadian income tax laws and shall be remitted by the City to the Canada Revenue Agency.

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

9.7   Taxes.

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

(b)   **Supplier Liable For Corporate, Income, Capital, and Other General Taxes.** Nothing in this Section or this Agreement will make, or be interpreted so as to make the City liable to pay general (as opposed to those being specific to this Agreement) Canadian or foreign taxes, duties, excise, customs, penalties or interest amounts imposed on the Supplier or its Affiliates on account of the Supplier's or its Affiliate's import of goods, services or labour, income, capital, transfers or transactions.

(c)   **Each Party Responsible for Own Taxes.** Each of the City and the Supplier shall be responsible for paying those taxes applicable to it under Applicable Laws.

(d)   **Withholding Taxes**.

(i)   Notwithstanding any other provision to the contrary, if the City determines that it is necessary to satisfy its obligations under any Applicable Laws relating to taxes, the City may:

(1)   withhold an amount from a payment made to the Supplier; and

(2)   pay the withheld amount directly to the relevant government authority.

(ii)   If an amount withheld in accordance with Section 9.7(d) is paid by the City to the relevant government authority, it is deemed to have been paid to the Supplier on the date on which the remainder of the payment to which it relates was paid to the Supplier.

(iii)   Supplier agrees and acknowledges that it has no claim against the City for any amounts withheld and paid to the relevant government authority in accordance with Section 9.7(d).

(iv)   If the City does not withhold an amount under Section 9.7(d) which it is required to withhold pursuant to any Applicable Laws relating to taxes, the Supplier agrees to pay that amount to the City, upon request by the City and upon the City showing the Supplier the requirement to withhold under Applicable Laws.

(v)   Supplier agrees that the City shall not be required to increase any payment to the Supplier by the amount withheld by the City under Section 9.7(d).

10.0   CITY'S RIGHT TO TERMINATE

10.1   **Termination without Cause:** The City may, at any time and for any reason, terminate this Agreement in whole or in part by giving Vendor 10 days' prior written notice. If the City terminates under this section, the City will pay any reasonable wind-up costs of the Vendor up to a maximum of $5,000. Vendor will immediately refund the balance of any prepaid and unearned fees to the City and may offset any reasonable wind-up costs, up to the foregoing maximum, against the amount to be refunded to the City.

10.2   **Termination for Breach, Insolvency, Bankruptcy:** the City may terminate this Agreement (a) if Vendor is in breach of any term of this Agreement and the breach is not cured within 10 (ten) days of written notice by the City, and (b) immediately if Vendor becomes insolvent, bankrupt or is otherwise unable to carry on business. If the City terminates under this section, Vendor will immediately refund the balance of any prepaid and unearned fees to the City.

11.0   VENDOR'S OBLIGATIONS AFTER AGREEMENT TERM EXPIRES

11.1   **City's Request to Delete/Destroy Transmitted Data:**   At the City's request, Vendor will immediately, permanently and securely delete and destroy all Transmitted Data in its possession or under its control and all records thereof (in all media and devices in or on which such Transmitted Data is stored) in a manner that is appropriate for the media or device so that the Transmitted Data or any portion of it cannot be subsequently retrieved, accessed or used by Vendor or any other person. Without limiting the scope of Transmitted Data to be deleted and destroyed by Vendor, Vendor will delete and destroy the following:

(a)   all Transmitted Data in Vendor's possession or under its control including, without limitation, Transmitted Data stored on any media or device (including CD-Roms);

(b)   all work files and derivative copies of the Transmitted Data; and

(c)   all hard copies and electronic copies of reports in Vendor's possession or under its control.
Notwithstanding the foregoing, the City may ask Vendor to not delete or destroy certain Transmitted Data and Vendor shall comply with such request provided it does not conflict with Vendor's obligations under Applicable Laws.

11.2   **Obligation to Provide the City a Copy of Transmitted Data before Destruction:** Prior to the deletion and destruction of the Transmitted Data in accordance with Section 11.1, Vendor will provide the City with one or more copies of all of the Transmitted Data (in a format, medium and/or device instructed by the City) in Vendor's possession or under its control at such time.

11.3   **Declaration in Writing:** After complying with Sections 11.1 and 11.2, Vendor shall deliver a declaration in writing (in form and substance satisfactory to the City) to the City evidencing its compliance with those sections.

11.4   **Continued Safe and Secure Storage:** Until the City makes the request in Section 11.1 to delete and destroy the Transmitted Data, Vendor will continue to safely and securely store the Transmitted Data in accordance with the terms of this Agreement.

12.0   INSURANCE

12.1   **Required Insurance/Amounts.** Prior to commencing the Services, Vendor will obtain:

(a)   professional liability insurance with policy limits of not less than $2,000,000 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 $2,000,000, protecting the Vendor against all claims for loss or damage arising out of any error or omission of the Vendor or the Vendor's Personnel in the performance of the Services. If this coverage is provided on a claims-made basis, the coverage shall be maintained for a period of two years post completion of all Services;

(b)   technology error & omissions and cyber liability insurance with policy limits of not less than $5,000,000 per claim and an aggregate of not less than $5,000,000 protecting the Vendor and Vendor's personnel against claims such as, data security and privacy liability, PCI-DSS breach, network interruption, event management, cyber extortion and media content. If this coverage is provided on a claims-made basis, the coverage shall be maintained for a period of two years post completion of all Services; and

(c)   commercial general liability insurance policy with limits of not less than $5,000,000 per occurrence, aggregate of not less than $5,000,000, protecting the Vendor and the Vendor's Personnel against all claims for bodily injury including death, personal injury, advertising liability, completed operations, product liability, and property damage or loss, arising out of the operations of the Vendor or the actions of the Vendor or the Vendor's Personnel. The policy will:

(i)   name the City and the City's officials, employees and agents as additional insureds;

(ii)   include a cross-liability or severability of interest clause or endorsement in favour of the City;

(iii)   include blanket contractual liability coverage; and

(iv)   Include non-owned auto liability coverage.

12.2   **Required Policy Terms.** All required insurance policies will remain in full force and effect at all times until completion of the Services and all extensions and renewals of the Services or earlier cancellation of this Agreement (except professional liability and technology error & omissions and cyber liability policies which will remain in full force and effect at all times during the foregoing period plus two years), and will:

(a)   be obtained from and issued by insurers authorized to carry on business within British Columbia, on terms satisfactory to the City, acting reasonably;

(b)   be primary insurance in respect to liability arising out of the operation of the Vendor, and any insurance or self-insurance maintained by the City will be in excess of this insurance and will not contribute to such policies; and

(c)   contain a provision that such insurance coverage will not be cancelled or endorsed to reduce the limits of liability without the Vendor giving the City at least 30 days' written notice by registered mail. Should the policy be endorsed to restrict coverage midterm, written notice of such restriction will be sent by registered mail to the City no later than the effective date change; the exception is cancellation for non-payment of premium in which case the applicable statutory conditions will apply.

12.3   **Insurance Certificate.** Prior to signing this Agreement, the Vendor shall have provided, or shall provide, the City's Project Manager with evidence of all required insurance to be taken out in the form of one or more certificate(s) of insurance in form. The certificate(s) of Insurance will identify the Agreement title, Agreement number, policy holder, description of work, insurer name, insurer policy number, insurer policy period and insurer limits. Proof of insurance, in the form of such certificate(s) of insurance (or copies of the policy(ies) themselves, if requested), will be made available to the City's Project Manager at any time during the performance of the Services immediately upon request.

12.4   **Sub-contractor Insurance.** The Vendor shall ensure that any sub-contractor(s) also maintain the same insurance as the Vendor, having regard to the obligations under this Agreement that they are contracted to fulfill.

12.5   **Insurance Requirements Additional To Any Other Requirements.** Vendor will, and will cause its sub-contractor(s), to provide at its own cost, any additional insurance which is required by law or other lines of insurance coverages, endorsements, or increased limits of insurance as reasonably deemed necessary by the City or as a reasonable and prudent vendor of similar goods and services would require to protect their operations or performance of services similar to the Services outlined.

12.6   **Insurance Requirements Independent of Additional Obligations.** Neither the providing of insurance by Vendor in accordance with this Agreement, nor the insolvency, bankruptcy or the failure of any insurance company to pay any claim accruing, will be held to relieve Vendor from any other provisions of this Agreement with respect to liability of Vendor or otherwise.

13.0   EXCLUSION OF LIABILITY
Neither party shall be liable under this Agreement for any indirect, special, incidental, punitive or consequential damages (including without limitation, damages for loss of goodwill, work stoppage, computer failure or malfunction, lost or corrupted data, lost profits, lost business or lost opportunity), or any other similar damages under any theory of liability (whether in contract, tort, strict liability or any other theory), even if the other party has been informed of this possibility.

14.0   RELEASE, INDEMNIFICATION AND LIQUIDATED DAMAGES

14.1   Vendor now releases the City and its respective officials, officers, employees and agents and their respective successors, assigns, heirs and authorized representatives from all costs, losses, damages and expenses, including those caused by personal injury, death, property damage, loss and economic loss arising out of, suffered or experienced by Vendor and its officers, employees and agents in connection with Vendor's performance of the Services under this Agreement.

14.2   Vendor hereby agrees to indemnify and save harmless the City and its respective officials, officers, employees and agents and their respective successors, assigns, heirs and authorized representatives and each of them (in each case an "Indemnified Party") from and against all

costs, losses, claims, damages, actions, and causes of actions (collectively referred to as "Claims") that an Indemnified Party may sustain, incur, suffer or be put to at any time either before or after the expiration or termination of this Agreement, that arise out of the performance by Vendor of this Agreement, a breach by Vendor of this Agreement (including, without limitation, a breach of any of the confidentiality, security and privacy provisions of this Agreement), an infringement claim against the City or errors, omissions or negligent acts of Vendor or its officers, employees or agents under this Agreement excepting always that this indemnity does not apply to the extent, if any, to which the Claims are caused by errors, omissions or negligent acts of an Indemnified Party.

14.3   This indemnity will not affect or prejudice the City from exercising any other rights that may be available to it at law or in equity.

14.4   The release and indemnity set out above will survive the expiry or sooner termination of this Agreement.

14.5   The City and Vendor acknowledge and agree that Vendor's failure to properly perform the Services will cause the City to incur economic damages and losses of types and in amounts that are difficult to compute and ascertain with certainty as a basis for recovery by the City of actual damages and that liquidated damages represent a genuine estimate thereof. Accordingly, Vendor will pay the City liquidated damages in accordance with the terms of any service level agreements or other terms set out in this Agreement.

15.0   CONFIDENTIALITY

15.1   The confidentiality obligations set out in this Section 15.0 are in addition to Vendor's obligation to comply with FOIPPA, PIPA, PIPEDA and all other applicable privacy and personal information laws and the other security and privacy obligations set out in this Agreement.

15.2   In the course of or for the purpose of performing the services contemplated in this Agreement, Vendor will obtain or have access to information, including but not limited to the Transmitted Data, other personal information as well as possibly financial and business information that is confidential to the City (collectively "**Confidential Information**"). Confidential Information includes all information, in whatever form, other than:

   (a)   information which is in, or becomes part of, the public domain, not due to Vendor's breach of this Agreement or Vendor's actions;

   (b)   information which was previously in Vendor's possession and did not originate from the City; and

   (c)   information which lawfully becomes available to Vendor from a third party not under an obligation of confidence to the City regarding such information.

15.3   Vendor will not use or reproduce the Confidential Information other than as reasonably required for the performance of the Services under this Agreement. Vendor will not, without the prior written consent of the City given on such terms and conditions as it prescribes in its sole discretion, disclose or allow access to the Confidential Information to any person, except to only those of its own employees who have a need to know the Confidential Information solely for the provision of the Services, and who have been advised of its confidential nature and have agreed to be bound by the confidentiality and restricted use provisions in this Section. Vendor will take all reasonable precautions against the Confidential Information being used by or disclosed to any unauthorized person.

15.4   If Vendor is required by any law, legal proceeding, or court or government order, to disclose any Confidential Information, Vendor shall limit its disclosure of such Confidential Information to the extent and purpose legally required, provided that prior to any disclosure Vendor will promptly notify the City in writing of the existence and the terms, and conditions of the required disclosure and, at the City's request and expense, co-operate in obtaining a protective order or other assurance that confidential treatment and restricted use will be accorded such Confidential Information.

15.5   Vendor acknowledges that a breach by Vendor or any of its employees of their respective confidentiality obligations pursuant to this Section 15.0 may cause irreparable harm and significant injury to the City that may be difficult to ascertain. Vendor agrees that it shall be liable for all damages caused to the City by such a breach and further agrees that the City shall have the right to seek equitable relief including, without limitation, injunction and specific performance, in the event of any breach or threatened breach of the provisions of this Section 15.0 in addition to all other remedies available to the City at law, in equity or otherwise. Vendor shall pay all reasonable costs and reasonable legal expenses incurred by the City in pursuing one or more remedies as a result of the breach or threatened breach by Vendor of this Section 15.0.

15.6   Vendor shall return all copies of the Confidential Information to the City, in all tangible forms and media, and delete all Confidential Information resident in any databases or systems, upon the earliest of the following dates:

(c)   expiration or earlier termination of this Agreement; and

(d)   written request of the City for return of the Confidential Information.

15.7   Vendor shall ensure that its employees are aware of their obligations of confidentiality under this Section 15.0.

15.8   Any Software manuals or other instructional material supplied by Vendor to the City will be deemed, subject to the exclusions in Section 15.2, to be Vendor's Confidential Information and the City will ensure that the City employees who are involved in the implementation and operation of the Software will comply with the obligations of this Article 15 in respect of such Confidential Information.

15.9   This Section shall survive the expiration or earlier termination of this Agreement.

16.0   NO PROMOTION OF RELATIONSHIP

16.2   Vendor will not disclose or promote its relationship with the City, including by means of any verbal declarations, announcements, sales, marketing or other literature, letters, client lists, websites, internet domain names, press releases, brochures or other written materials (the "**Communications**") without the express prior written consent of the City (except as may be necessary for Vendor to perform its obligations under this Agreement).

16.3   Furthermore, Vendor undertakes not to disclose or promote its relationship with the City in any Communications in a manner which could suggest or create an association, express or implied, between Vendor and the City. Without limiting the generality of the foregoing, Vendor will not refer to or use any website, domain name, official emblem, logo or mascot of the City of Vancouver in any Communications, without the express prior written consent of the City.

17.0   UNAVOIDABLE DELAY

17.2   Except for the performance of obligations to pay money, Vendor will be relieved from having to perform any obligation under this Agreement that is delayed or prevented due to an Unavoidable

Delay. For the purposes of this Section, an "Unavoidable Delay" means any circumstances beyond the reasonable control of the party trying to perform (such as, for example, strikes/lockouts, acts of God, war or other strife or governmental action) but expressly excludes any and all delays caused by Vendor's lack of financial resources, insolvency or strikes, lockouts or other withdrawals of services arising out of a labour dispute or labour affiliations of Vendor's employees or permitted sub-contractor's employees, or governmental action taken in the enforcement of law specifically against Vendor or its permitted sub- Contractors. If an Unavoidable Delay occurs, Vendor will: (a) as soon as possible after the occurrence of the Unavoidable Delay, give written notice to the City describing the circumstances preventing continued performance and the efforts being made to resume performance of its obligations under this Agreement, and (b) use its best efforts to resume performance and mitigate the adverse impact of the Unavoidable Delay on the City.

18.0   NOTICES

18.2   Any notice required or permitted to be given to Vendor will be sufficiently given if delivered in writing by the City to Vendor personally, by courier or registered mail, by e-mail or by fax to the following:

[Insert name of vendor]

Attention: •
E-Mail: •
Fax: •

or his/her designate set out in an "Out of Office" email.

18.3   Any notice required or permitted to be given to the City will be sufficiently given if delivered in writing by Vendor to the attention of the City personally, by courier or registered mail, by e-mail or by fax to the following:

CITY OF VANCOUVER

Attention: •
E-Mail: •
Fax: •

or his/her designate set out in an "Out of Office" email,

with a copy to:

City of Vancouver – Legal Services
453 West 12th Avenue
Vancouver, British Columbia   V5Y 1V4

Attention: *Francie Connell, Director of Legal Services*
E-Mail: *francie.connell@vancouver.ca*
Fax: *604-873-7445*
or her designate set out in an "Out of Office" email.

18.4   Any notice or other communication given (and, in the case of e-mail or fax, confirmed or acknowledged by the recipient) in accordance with this Section 18.0 shall be conclusively deemed to have been given:

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

(ii)   if given by registered mail or courier, on the Business Day following confirmation by the postal service or the courier that the notice has been delivered; and

(iii)   if given by e-mail or fax, on the day of transmission if given during the normal business hours of the recipient and on the Business Day during which such normal business hours next occur if not given during such hours on any day.

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

19.0   INJUNCTIVE RELIEF AND SPECIFIC PERFORMANCE

19.2   Vendor acknowledges that a breach by Vendor of any of its obligations under this Agreement (including, without limitation, any of the confidentiality, security or privacy obligations) may cause irreparable harm and significant injury to the City that may be difficult to ascertain. Vendor agrees that it shall be liable for all damages caused to the City by such a breach and further agrees that the City shall have the right to seek equitable relief including, without limitation, injunction and specific performance, in the event of any breach or threatened breach, of any of Vendor's obligations under this Agreement in addition to all other remedies available to the City at law, in equity or otherwise. Vendor shall pay all reasonable costs and reasonable legal expenses incurred by the City in pursuing one or more remedies as a result of the breach or threatened breach by Vendor of its obligations.

20.0   NO SUB-CONTRACTING OR ASSIGNMENT

20.2   Vendor shall not sub-contract or assign any of its rights or obligations under this Agreement to any other party without the prior written approval of the City. If the City allows Vendor to assign certain rights or obligations to another party, Vendor shall be responsible for ensuring that such other party complies with all of the confidentiality, security and privacy provisions set out in this Agreement and any other provision of the Agreement required by the City.

21.0   MISCELLANEOUS

21.2   **Time of the Essence.** Time shall be of the essence of this Agreement.

21.3   **No Waiver.** No action or failure to act by the City shall constitute a waiver of any right or duty under this Agreement, or constitute an approval or acquiescence in any breach thereunder, except as may be specifically agreed in writing by the City.

21.4   **Severability.** The invalidity, illegality or unenforceability of any portion or provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void portion or provision shall be deemed severed from this Agreement and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void. The Parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken position.

21.5   **Remedies Cumulative**. The remedies of the parties provided for in this Agreement are cumulative and are in addition to any remedies available to the Parties at law or in equity. No remedy will be deemed to exclude or restrict the right of a party to any other remedies against

the other party and a party may from time to time have recourse to one or more of the remedies specified in this Agreement or at law notwithstanding the termination of this Agreement.

21.6   **Further Assurances**. Each party shall execute such further and other documents and instruments and do such further and other acts as may be necessary to implement and carry out the provisions and intent of this Agreement.

21.7   **Entire Agreement**. This Agreement and the schedules constitute the entire agreement between the parties with respect to the subject matter hereof, and supersede all previous communications, representations and agreements, whether oral or written, with respect to the subject matter hereof. The schedules attached hereto are incorporated by reference in and form an integral part of this Agreement.

21.8   **Amendment**. This Agreement shall not be amended except as specifically agreed in writing by both the City and Vendor.

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

21.10   **Enurement**. This Agreement shall enure to the benefit of and be binding upon the City and Vendor and their respective successors and permitted assigns.

21.11   **Independent Contractor.** This Agreement is a contract for services and Vendor, its officers, directors, shareholders, partners, personnel, affiliates and agents of Vendor are not, nor are they to be deemed to be, partners, appointees, employees or agents of the City. Vendor will not represent to anyone that Vendor has any authority to bind the City in any way or that Vendor is an agent of the City.

21.12   **Governing Law and Resolution of Disputes.** In the event of a dispute under this Agreement, the parties will use commercially reasonable efforts to resolve such dispute including referring such dispute to successively higher levels of management within each party. If a dispute is not resolved in accordance with the foregoing, the parties may agree to have the dispute resolved by way of mediation or arbitration. If, despite the foregoing, a dispute is still not resolved, either party may commence a legal action in the courts of British Columbia, in which case such courts will have exclusive jurisdiction to determine all disputes arising under this Agreement and the parties now irrevocably agree to submit all disputes to the courts of British Columbia for resolution. This Agreement will be governed by the laws of the Province of British Columbia.

(Signature page follows immediately)

As evidence of their Agreement to be bound by the above contract terms, Vendor and the City each have executed this Agreement as of the day and year first above written.
[INSERT VENDOR'S FULL CORPORATE NAME]

By: _____   _____
      Signature   Print Name and Title

By: _____   _____
      Signature   Print Name and Title

CITY OF VANCOUVER

By: _____   _____
      Signature   Print Name and Title

By: _____   _____
      Signature   Print Name and Title

SCHEDULE A

SCOPE OF WORK

[Note: Agreed details relating to the scope of work – including the software functionality, implementation services, training, support services and service level commitments, to be inserted. A starting point for this Schedule A will be the set of requirements set out in an RFP and any modifications to those requirements as may be agreed by the City and the successful proponent. By way of example, set out below is an illustrative list of topics and services typically provided. Supplement or modify this list as necessary based on the set of requirements in the RFP and any agreed modifications.]

Software Functionality
The Software will have the following functionality:
[Insert a description of all software functionality]

      (a)   •;

      (b)   •; and

      (c)   •.

Implementation
Vendor will provide the following services so that the Software is ready for City use in accordance with the terms of this Agreement:
[Insert a description of all services that Vendor will perform in order to get the software ready for City use]

      (a)   •;

      (b)   •; and

      (c)   •.

Training
Vendor will provide the following training:
[Insert a description of the training that will be provided by Vendor]

      (a)   •;

      (b)   •; and

      (c)   •.

Support Services
Vendor will provide the following support services:

      (a)   **E-Mail Support:** E-Mail Support shall comprise e-mail access and response.

      (b)   **Direct Support:** Vendor shall provide the following Software support to the City during the term of this Agreement:

          (i)   advice by telephone or e-mail on the use of the Software without any limit on the amount of incident reports as follows:

               (1)   an emergency contact number and e-mail address available 24/7/365 for serious Software or Service performance issues;

(2)   for less serious issues, by phone from Monday to Saturday inclusive from 9:00 a.m. to 5:00 p.m. Pacific Standard Time;

(ii)   the dispatch out by email or mail of fix announcements to the Software, information regarding forthcoming new releases and technical newsletters;

(iii)   the creation and upload to the Software, from time to time, of patches and fixes in respect of the Software;

(iv)   the diagnosis of errors in the Software and the rectification of such errors (remotely or by attendance on site as determined by Vendor) by the issue of fixes in respect of the Software and the making of all consequential amendments (if any) to the Documentation;

(v)   any other support service offered to the City from time to time; and

(vi)   the issue of new releases of Software.

Service Level Commitments

Service Uptime:

(a) Vendor represents and warrants that the Services will be performed in a professional manner consistent with industry standards reasonably applicable to such Services.

(b) Vendor represents and warrants that the Services will be operational at least 99.99% of the time in any given month during the term of this Agreement, meaning that the outage or downtime percentage will be not more than .01%.

(c) If the Services availability falls below 99.99% in any month, Vendor shall provide City with a credit of that month's bill for Services according to the table below.

AVAILABILITY PERCENTAGE	PERCENTAGE OF CREDIT
99.60% to 99.69%	10%
99.50% to 99.59%	20%
99.00% to 99.49%	30%
97.00% to 99.00%	50%
Below 97.00%	75%

(d) Vendor represents and warrants that ninety-five percent (95%) of all transactions shall process within no more than one (1) second, and no single transactions shall take longer than five (5) seconds to process.

(e) If Vendor's system response times fall below the warranted level for two (2) or more consecutive weeks, Vendor shall provide City with a credit in the amount of twenty percent (20%) of the Services fees for that month. If Vendor's system response times fall below the warranted level for six (6) out of eight (8) consecutive weeks, Vendor shall be considered to be in default, and City may terminate the Agreement without penalty.

(f) Vendor shall provide City with any credits resulting from all unachieved service levels in the form of a check provided to City no later than the tenth (10th) business day of the month following the month in which the service levels was not achieved.

(g) Vendor shall provide City with monthly reports documenting its compliance with the service levels detailed herein. Reports shall include, but not be limited to, providing the following information:

a. Monthly Services availability by percent time, dates and minutes that Services were not available, and identification of months in which agreed upon service levels were not achieved;

b. Average transaction processing time per week, the fastest and slowest individual transaction processing time per week, the percent of transactions processed that meet the service levels stated herein, and identification of weeks in which agreed upon service levels are not met.

c. Other information requested by the City acting reasonably.

(h) City retains the right to use a third party to validate Vendor's performance in meeting agreed upon service levels.

Vendor Issue Response Time:

The following provisions shall be applicable to the response and correction of Service issues:

(a) If City detects what it considers to be an issue in the Services which causes it not to conform to, or produce results in accordance with, the Agreement, then City shall by telephone or e-mail notify Vendor of the issue.

(b) Vendor shall deliver to City and keep current a list of persons and telephone numbers (the **"Calling List"**) for City to contact in order to obtain corrections of Services issues. The Calling List shall include: (1) the first person to contact if a question arises or problem occurs; and (2) the persons in successively more responsible or qualified positions to provide the answer or assistance desired. If Vendor does not respond promptly to any request by City for telephone consultative service, City may attempt to contact the next more responsible or qualified person on the Calling List until contact is made and a designated person responds to the call.

(c) Vendor shall respond within two (2) hours to City's initial request for assistance in correcting or creating a workaround for a Services issue. Vendor's response shall include assigning fully-qualified technicians to work with City to diagnose and correct or create a workaround for the Services issue and notifying City's representative making the initial request for assistance of Vendor's efforts, plans for resolution of the issue, and estimated time required to resolve the issue.

(d) For major issues, within twenty-four (24) hours after City first reports the issue, Vendor shall provide a correction or workaround acceptable to City. Vendor's correction process shall include assigning fully-qualified technicians to work with City without interruption or additional charge.

SCHEDULE B

PRIVACY COMPLIANCE AND DATA SECURITY

Certain terms used in this document will have the meanings given below or in the Agreement. Vendor shall comply with the following terms and conditions relating to data security and compliance with applicable privacy legislation in respect of any personal information (as defined in section 1.1 below) acquired or accessed by Vendor in connection with the Agreement.

1.0   GENERAL

1.1   The following terms used in this document will have the following meanings:

    (a)   **"FOIPPA"** means the *Freedom of Information and Protection of Privacy Act* (British Columbia) as it may be amended or superseded from time to time;

    (b)   **"personal information"** has the meaning given in FOIPPA, PIPA or PIPEDA as applicable;

    (c)   **"PIPA"** means the *Personal Information Protection Act* (British Columbia) as it may be amended or superseded from time to time;

    (d)   **"PIPEDA"** means the *Personal Information Protection and Electronic Documents Act* (Canada) as it may be amended or superseded from time to time; and

    (e)   **"Transmitted Data"** means all data or information acquired, accessed or sent by the Vendor as a result of this Agreement, including all data or information acquired, accessed or sent by or through any software used by the Vendor to perform services under this Agreement, which data may include, without limitation, personal information and City proprietary or confidential information.

1.2   The Vendor shall not assign any of its rights or obligations under this document to a third party without the prior written consent of the City. If the City consents to the Vendor assigning certain of its rights or obligations to a third party, in addition to any other conditions the City may require, the Vendor shall ensure, and shall cause, its assignee to comply with the privacy and data security obligations set out in this document. Alternatively, in respect of complying with data security obligations hereunder, if the City consents to the Vendor using a third party to store the Transmitted Data (e.g. if the Vendor elects to use Infrastructure as a Service (Iaas) or Platform as a Service (Paas)), evidence satisfactory to the City that such third party is able to substantially comply with similar or a higher standard of data security than as set out in this document (e.g. ISO27001 SOC 2 Type II) shall be provided by the Vendor to the City.

2.0   PRIVACY AND DATA SECURITY

2.1   **Acknowledgment:** Vendor acknowledges that under this Agreement, it will acquire or have access to personal information. Vendor further acknowledges that both the City and Vendor have obligations under FOIPPA to protect such information and that any unauthorized collection, disclosure, use or storage of such information could result in irreparable and significant harm to the City.

2.2   **Privacy Legislation and Obligations**

    (a)   the City is subject to the provisions of FOIPPA which imposes significant obligations on the City and its contractors (including Vendor) to protect all personal information acquired, accessed or sent as a result of this Agreement.   Vendor confirms and

acknowledges its obligations to comply with the provisions of FOIPPA. Vendor further confirms and acknowledges its obligations to comply with all other Applicable Laws relating to privacy and personal information including PIPA and PIPEDA in relation to any personal information (as defined in such statutes) to which Vendor has access under this Agreement.

(b)   Vendor has implemented appropriate or will implement appropriate policies and security measures to comply with all Applicable Laws relating to privacy and personal information including FOIPPA, PIPA and PIPEDA, as well as to comply with the terms of this Agreement.

(c)   Vendor agrees that all personal information and Transmitted Data to which Vendor has access under this Agreement is "under the control" of the City for the purposes of FOIPPA. The City is only transferring physical custody of such information to Vendor, not control of that information, and the authority over the collection, use, disclosure, access, retention, destruction and integrity of all such information remains with the City. At any time during the term of the Agreement, the City may exercise the foregoing control over any such information by notice in writing to Vendor and Vendor shall comply with the instructions in the City's notice.

(d)   Vendor agrees to collect, acquire, or hold only the minimum amount of personal information and Transmitted Data required to perform its duties under this Agreement. Unless otherwise authorized by FOIPPA or other Applicable Law and approved by the City, Vendor must collect personal information directly from the individual to whom the information pertains.

(e)   At or prior to the time of collection, Vendor must inform any person from whom it collects personal information:

   2.2.e.1   The purpose for collecting it;

   2.2.e.2   The legal authority for collecting it;

   2.2.e.3   The title, business address and business telephone number of a person who can answer the individual's questions about the collection.

(f)   If an access to information request is made to Vendor under Applicable Laws relating to personal information or Transmitted Data to which Vendor has access under this agreement, Vendor shall (i) immediately, and in any event before responding to such information request, notify the City in writing of such request, and (ii) upon the City's request direct such information request to the City for the City to handle. In the case of (ii), Vendor shall, at the City's expense, deliver to the City copies of all relevant information within seven (7) days of notification by the City and shall comply with all other requests of the City.

(g)   In the case of an access to information request made to the City, Vendor, at the City's expense, shall deliver to the City copies of all relevant information within seven (7) days of notification by the City and shall comply with all other requests of the City.

(h)   All personal information and Transmitted Data shall be treated as confidential and is supplied to Vendor only for the purpose of fulfilling the obligations under this Agreement. This obligation shall survive the expiry or termination of this Agreement. No such information shall be disclosed unless Vendor is legally compelled to do so and having first challenged that requirement and given the City an opportunity to challenge that requirement.

(i)   In the event any governmental authorities under applicable privacy laws or otherwise make inquiries to the City or Vendor or take any actions in respect of the personal information or Transmitted Data, Vendor will, upon the City's request, cooperate with such governmental authorities.   If such governmental authorities make inquiries or requests of Vendor, Vendor will, to the extent legally required or permitted, give prompt written notice to the City and allow the City to participate in any responses submitted by Vendor to such governmental authorities.

(j)   Vendor must provide immediate notification to the City in the event that it receives a foreign demand for disclosure, as defined in s. 30.2 of FOIPPA, or has reason to suspect that unauthorized disclosure of personal information has occurred in response to a foreign demand for disclosure. Notice must include the nature of the foreign demand; who made the foreign demand; when the foreign demand was received; and what information was sought or disclosed in response to the foreign demand.

(k)   Once Vendor possesses or has access to personal information and Transmitted Data, such information will be stored and backed-up on servers and other equipment that are owned or controlled by Vendor and that are physically located in Canada.   Physical and electronic access to Vendor's servers are locked and restricted to only Vendor employees and authorized agents. If the location of Vendor's primary or back-up servers change, Vendor will promptly notify the City in writing of the address of the new location. Vendor will not store any such information on any other server or equipment without the prior written approval of the City.

(l)   Except with the prior written approval of or instructions from the City, Vendor shall not modify, add, delete, destroy, share, sell, match, mine, combine, manipulate or otherwise tamper with the personal information or Transmitted Data in any way.

(m)   Vendor shall not withhold any personal information or Transmitted Data to enforce payment by the City or to enforce Vendor's rights in a dispute over this Agreement.

(n)   As between the City and Vendor, the personal information and Transmitted Data are owned by the City, Vendor hereby agrees to hold such information in trust for the City, and Vendor makes no claim to any right of ownership in it.

2.3   **Authorized Purposes:** Vendor may only use the personal information and Transmitted Data to which Vendor has access under this Agreement to carry out Vendor's obligations under this Agreement and for no other purpose ("**Authorized Purposes**"). Any use or disclosure of such information by Vendor that is not expressly permitted by this Agreement will require the prior written consent of the City and must comply with all Applicable Laws.

2.4   **Restricted Access**

(a)   Vendor will permit access to personal information and Transmitted Data only to those employees and authorized agents who need such access in order to carry out the Authorized Purposes (the "**Authorized Employees**"). Vendor will at all times maintain a current list of Authorized Employees. Vendor will, upon the City's request, provide the City with the list of Authorized Employees.

(b)   Vendor will at all times have in place a knowledgeable senior person within its organization to be responsible for, or, to have the authority to ensure, compliance with the terms of this document (the "**Compliance Representative**"). The Compliance Representative will ensure that each Authorized Employee is aware of the terms of this Agreement, and to maintain proof, in writing, that the terms have been explained and understood by each Authorized Employee. Upon entering into this Agreement, Vendor will notify the City in

writing as to the name of the Vendor Compliance Representative. Vendor will promptly advise the City of any change to the Compliance Representative.

2.5 **Security:** Vendor will have appropriate physical, organizational and technological security measures (consistent with best practices in the software industry) in place to ensure that all personal information and Transmitted Data is collected, accessed, used, disclosed and destroyed only by Authorized Employees, including without limitation:

(a) restricted access to records containing paper copies of personal information and Transmitted Data;

(b) restricted access to personal information and Transmitted Data stored on computer systems and electronic storage devices and media, by using unique user IDs and passwords that are linked to identifiable Authorized Employees; and

(c) systems containing personal information and Transmitted Data will be capable of providing an audit trail and user access logs, which logs will be retained by Vendor during the term of this Agreement and for at least two (2) years following its expiry, termination, or destruction of the personal information and Transmitted Data.

(d) Vendor must ensure that the data centre and servers containing the personal information and Transmitted Data meets the following physical and electronic security requirements:

2.5.d.1 single point of entry;

2.5.d.2 access only to persons on Vendor approved access list;

2.5.d.3 log-in validation;

2.5.d.4 creation of accounts only as verified by Vendor;

2.5.d.5 external or WIFI access to servers via encrypted means; and

2.5.d.6 servers running behind secure firewall.

2.6 **No Storage, Access or Transmission outside Canada; Limited Exception:**

(a) Subject to the exception set out in subsection 2.6(b) below, Vendor will not (i) store personal information or Transmitted Data outside Canada, (ii) access or make accessible personal information or Transmitted Data from outside Canada, or (iii) otherwise permit any personal information or Transmitted Data to leave Canada.

(b) Notwithstanding the above, Vendor is permitted under subsection 33.1(1)(p) of FOIPPA to disclose personal information outside of Canada strictly under the following limited circumstances:

2.6.b.1 such disclosure is necessary for Vendor to install, implement, maintain, repair, trouble shoot, or upgrade an electronic system or equipment that includes an electronic system, or for data recovery being undertaken following failure of an electronic system;

2.6.b.2 such disclosure is limited to temporary access and storage by Vendor or its authorized sub-contractor outside of Canada for the minimum time and to the minimum amount of information necessary for the purpose set out in s. 33.1(1)(p)(i) of FOIPPA;

2.6.b.3 once the purpose of disclosure is fulfilled, all applicable personal information accessed or retained by Vendor or its authorized sub-contractor is irrevocably and permanently destroyed and deleted and all temporary access to that personal information is revoked. If requested by the City, Vendor has certified the foregoing in writing (with the City having a right to audit or verify the foregoing, acting reasonably);

2.6.b.4 all processes and requirements requested by the City in respect of such disclosure (including, without limitation, how such disclosure will be made (e.g. through a dedicated VPN) , how such information will be accessed, whether such information may only be viewed outside Canada but not retained, etc.) have been complied with by Vendor;

2.6.b.5 Vendor complies with all Applicable Laws outside Canada regarding Vendor's disclosure and handling of such information provided that if there is a conflict between such Applicable Laws outside Canada and Applicable Laws of Canada (including, without limitation, FOIPPA, PIPA and PIPEDA), Vendor shall first comply with Applicable Laws of Canada; and

2.6.b.6 upon request by the City, acting reasonably, Vendor cooperates in good faith in facilitating the audit or verification of Vendor's compliance with the foregoing by the City.

2.7 **Information Retention, Transfer to the City and Destruction:**

(a) **Vendor's Retention, Transfer to the City and Destruction:** Vendor is only permitted to retain personal information, Transmitted Data or any records of such information in any form whatsoever (including without limitation hard copy or electronic formats) during the term of this Agreement and for one year after the end of the term. During this period of time, Vendor shall hold all such information in compliance with the security, privacy and confidentiality requirements of this Agreement. Any personal information that is used by or on behalf of the City to make a decision that directly affects the individual must be retained for at least one year after being used so the affected individual has a reasonable opportunity to obtain access to that personal information. At any time during the term of this Agreement and for a period of one year after the end of the term, Vendor shall, at the City's request, transfer a copy of any such information to the City in a format reasonably requested by the City. Upon the expiry of one year after the end of the term, Vendor will transfer a copy of all such information to the City in a format reasonably requested by the City and then permanently and securely destroy all such information and all records thereof in a manner that is appropriate for the media so all such information or any portion of it cannot be subsequently retrieved, accessed or used by Vendor or any other person. After all such information is transferred to the City and subsequently destroyed, Vendor shall deliver a written notice of confirmation to the City (in form and substance satisfactory to the City).

2.8 **Inspection and Compliance**

(a) During this Agreement and during the period of time that Vendor is permitted by this document to retain personal information and Transmitted Data, the City's authorized representative may, on reasonable notice and during regular business hours, enter Vendor's premises and/or will be given access to Vendor's computer systems to inspect any personal information and Transmitted Data in the possession of Vendor or any of Vendor's information management policies or practices relevant to its compliance with this Agreement.

(b)   the City may request Vendor to provide a written certificate confirming Vendor's compliance with all obligations under this document, and if so requested, Vendor will within ten (10) business days either:

2.8.b.1 provide such certificate; or

2.8.b.2 provide a notice of non-compliance in accordance with section 1.9.

(c)   Vendor will promptly forward to the City any records that the City may request in order to review whether Vendor is complying with this Agreement.

(d)   If requested by the City, acting reasonably, Vendor will appoint an independent, external auditor at the City's expense to review Vendor's information and security practices under this Agreement. Vendor will provide copies of the results of any such audit to the City within seven (7) days of receiving the auditor's report.

(e)   Vendor will promptly and fully comply with any investigation, review, order or ruling of the Office of the Information and Privacy Commissioner (British Columbia) in connection with the personal information and Transmitted Data.

2.9   **Written Notice of Non-Compliance.** Vendor will immediately notify the City in writing of any non-compliance or anticipated non-compliance with this document and will further inform the City of all steps Vendor proposes to take to address and prevent recurrence of such non-compliance or anticipated non-compliance.

2.10   **Survival:** The obligations in this document shall survive the expiration or earlier termination of this Agreement.

3.0   ADDITIONAL TERMS GOVERNING STORAGE AND ACCESS OF INFORMATION

3.1   Vendor shall, in respect of storage of, and access to, personal information and Transmitted Data:

(a)   take a physical inventory, at least annually, of all records containing such information, to identify any losses;

(b)   ensure that records are not removed from storage premises without appropriate written authorization from the City;

(c)   use physically secure areas for the storage of records and restrict access to Authorized Employee;

(d)   ensure that access to documentation about computer systems that contain such information is restricted to Authorized Employees;

(e)   ensure that users of a system or network that processes such information are uniquely identified and that, before a user is given access to the system or such information, their identification is authenticated each time;

(f)   implement procedures for identification and authentication, which include:

(i)   controls for the issue, change, cancellation and audit-processing of user identifiers and authentication mechanisms;

(ii)   ensuring that authentication codes or passwords:

    (1)   are generated, controlled and distributed so as to maintain the confidentiality and availability of the authentication code;

    (2)   are known only to the authorized user of the account;

    (3)   are pseudo-random in nature or vetted through a verification technique designed to counter triviality and repetition;

    (4)   are no fewer than 6 characters in length;

    (5)   are one-way encrypted;

    (6)   are excluded from unprotected automatic log-on processes; and

    (7)   are changed at irregular and frequent intervals at least semi-annually;

(g)   maintain and implement formal procedures for terminated employees who have access to such information, with prompts to ensure revocation or retrieval of identity badges, keys, passwords and access rights;

(h)   take reasonable security measures in respect of such information displayed on computer screens or in hardcopy form to prevent viewing or other access by unauthorized persons;

(i)   implement automated or manual controls to prevent unauthorized copying, transmission or printing of such information; and

(j)   implement control procedures to ensure the integrity of such information being stored, notably its accuracy and completeness.

3.2   Vendor must store personal information and Transmitted Data on agreed-upon media in accordance with prescribed techniques that store such information in a form that only Authorized Employees may access. These techniques may include translating such information into code (encryption) or shrinking or tightly packaging such information into unreadable form (compression).

3.3   Vendor shall store backup copies of personal information and Transmitted Data off-site under conditions which are the same as or better than originals.

3.4   Vendor shall securely segregate personal information and Transmitted Data from information owned by others (including Vendor), including by installing access barriers to prevent information elements from being associated (including compared or linked, based on similar characteristics) with other information, including:

    (a)   separate storage facilities for such information;

    (b)   authorization before a person is granted access to computers containing such information; and

    (c)   entry passwords and the employment of public key encryption/smart card technology where practicable.

3.5   Vendor shall ensure the integrity of personal information and Transmitted Data stored, processed or transmitted through its system or network.

3.6   Vendor shall co-operate with, and assist in, any City investigation of a complaint or concern that personal information or Transmitted Data has been collected, used, handled, disclosed, stored, retained or destroyed contrary to the terms of this Agreement, FOIPPA, PIPA, PIPEDA or any other Applicable Laws.

3.7   As per section 2.8, the City shall be able to access Vendor's premises and other places where Vendor's servers and other equipment are located to recover any or all the City records, personal information and Transmitted Data and for auditing purposes to ensure compliance with the terms of this Agreement.

SCHEDULE C

INSURANCE CERTIFICATES

TO BE ATTACHED UPON AWARD

SCHEDULE D

CONTRACT PRICE

TO BE ATTACHED UPON AWARD

SCHEDULE E

RFP

TO BE ATTACHED UPON AWARD

SCHEDULE F

VENDOR'S PROPOSAL

TO BE ATTACHED UPON AWARD