



REQUEST FOR PROPOSALS

PROVISION OF A LITIGATION SUPPORT SYSTEM

RFP No. PS20190221

Issue Date: March 4, 2019

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

PART A
INSTRUCTIONS AND INFORMATION

1.0 INSTRUCTIONS

- 1.1 The City is interested in selecting an entity (each, a “**Proponent**”) that submits a proposal (each, a “**Proposal**”) with the capability and experience to efficiently and cost-effectively meet the requirements described in this RFP. The City expects to select a Proponent to enter into contract negotiations. The term of any agreement is expected to be five (5) years, with five (5) possible one (1) -year extensions, for a maximum total term of 10 years.

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.

- 1.2 Proponents should submit their proposals on or before 3:00pm on the 10th day of April, 2019 (the “**Closing Time**”) by email in accordance with the following:

- Subject of the file to be: PS20190221 – Provision of a Litigation Support System – *Vendor name*.
- Document format for submissions:
 - RFP Part C in PDF format – 1 combined PDF file,
 - Appendix 2 (Commercial Proposal) in Excel format, and;
 - Any other attachments if necessary
- 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.
- If you did not receive an automated email within few minutes, check your junk folder first, and then contact Purchasing@vancouver.ca.
- Submitting the files via Drop box, FTP, or similar programs, is not acceptable.

- 1.3 To be considered by the City, a Proposal must be submitted in the form set out in Appendix 1 (the “**Proposal Form**”), completed and duly executed by the relevant Proponent.

- 1.4 Amendments to a Proposal may be submitted via the same methods, at any time prior to the Closing Time. Proposals are revocable and may be withdrawn at any time before or after the Closing Time.

- 1.5 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.

2.0 CHANGES TO THE RFP AND FURTHER INFORMATION

- 2.1 The City may amend the RFP or make additions to it at any time. 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.

3.0 EVALUATION OF PROPOSALS

- 3.1 The City currently intends that all Proposals submitted to it in accordance with the RFP will be evaluated to determine overall best value to the City. The City expects to evaluate: (i) financial terms; (ii) Proponents' skills, knowledge, reputations and previous experience(s), including experience(s) with the City (if any); (iii) Proponents' approach to meeting the City's requirements; and (iv) environmental or social sustainability impacts.
- 3.2 It is the City's strong preference that every proposal meets all of the following requirements. At the City's sole and absolute discretion, proposals which do not meet one or more of the following requirements may be set aside and given no further consideration:
- (a) Proponent has at least five years of experience in providing/supporting a litigation support system similar in scope to this RFP;
 - (b) Proponent has a strong financial profile, as demonstrated by financial statements (refer to Appendix 3 - Financial Statements), credit risk report(s), bank reference letters, etc. - which should be submitted in the Proposal;
 - (c) Proponent presents at least three (3) current and relevant references (preferably at least one reference from a municipal organization in Canada) that will agree to participate in the City's reference checks;
 - (d) Proponent proposes qualified and experienced key personnel to undertake the work and provide the services described in this RFP; and
 - (e) Proponent offers a litigation support system which meets the Business, Technical, and Security Requirements of this RFP, and which is field-tested and currently deployed with Canadian clients for at least two (2) years.

Evaluation Criteria	Evaluation Weighting
Business, Technical, and Security Requirements	60%
Implementation Plan, Support, References, Key Personnel	15%
Commercial Proposal	20%
Sustainability	5%
Total	100%

4.0 CITY'S DISCRETION

- 4.1 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 Requirements 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.

5.0 LEGAL TERMS AND CONDITIONS

- 5.1 The legal obligations of a Proponent that will arise upon the submission of its Proposal are stated in Appendix 4. 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. EXCEPT WHERE EXPRESSLY STATED OTHERWISE IN APPENDIX 4: (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 CITY REQUIREMENTS

1.0 BACKGROUND

The City's Legal Services Department provides legal advice and services to the City and City-related entities. The Legal Services Department consists of the following practice areas:

- Civil and Regulatory Litigation: advances and defends the City's legal interests before the courts and defends challenges to and enforces the City's by-laws.
- Corporate: provides legal advice and services relating to technology, sustainability, finance, procurement and capital projects.
- Development and Real Estate: provides legal advice and services relating to the City's land interests and regulatory powers, and the securing of public benefits.
- Governance and Authorities: provides legal advice on Vancouver Charter issues, City policies, by-laws, authorities and regulatory programs.

The Legal Services Department has 34 lawyers, 16 of whom are Litigation lawyers. The Litigation lawyers are supported by two (2) Paralegals and six (6) Legal Assistants.

In 2013, the City purchased (and has since been using) a number of tools from Thomson Reuters, in order to support the City's litigation processes:

- CaseLogistix, Waypoint and Case Production to perform litigation review and analysis, from document ingestion through data discovery to coding, tagging, and production; and
- Case Notebook, Timeline, Publisher to manage transcripts and important documents, pleadings, research, key facts, characters, and outlines.

The City currently requires a new Litigation Support System to replace the above-mentioned tools, as Thomson Reuters has announced that support for CaseLogistix will cease on December 31, 2019.

At the start, we would need 14 Litigation lawyers, two (2) Paralegals and four (4) Legal Assistants on-boarded to the new Litigation Support System. Later on, all of the Litigation lawyers and their support staff may be using the new Litigation Support System.

(note: if applicable, when providing pricing in Appendix 2 - Commercial Proposal, include pricing per user and/or range of users, as not all Litigation lawyers and their support may be on-boarded at the same time)

2.0 REQUIREMENTS

For details of the City's Requirements, proponents should refer to the **separate excel file, "PS20190221 - Requirements"**.

The successful proponent will implement a Litigation Support System ("LSS") for the City's Legal Services Department, meeting the City's business, technical, and security requirements as described in the **separate excel file, "PS20190221 - Requirements"**.

The City anticipates the LSS 'Go Live' date to be on or before July 1, 2019.

The scope of work includes, but is not limited to, the following:

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1. Project planning, execution, monitoring and control.
 2. Prepare a project schedule (preferably a Gantt chart), including:
 - i. work breakdown structure of required work and deliverables;
 - ii. project timelines;
 - iii. required proponent and/or City resources for each work package;
 - iv. task dependencies; and
 - v. milestones.
 3. Provide a dedicated project manager as a single point-of-contact for all project communication, including escalations. The City will provide a project manager, and will provide access to, and dedicated time from appropriate City personnel, as well as other City resources, if required (e.g. workstations, servers, network, platform software licenses, etc.).
 4. Implementation of the new LSS, to meet the business, technical, and security requirements as described in the **separate excel file "PS20190221 - Requirements"**.
 5. Migrate/convert data from the existing LSS to the new LSS system.
 6. Successful project close-out upon satisfying the agreed LSS acceptance criteria, inclusive of:
 - i) Completion of User Acceptance Tests to confirm an operationally functional LSS meeting all business, technical and security requirements;
 - ii) Demonstration of no Critical or Major Defects, and resolution of at least 75% of all other defects, where:
 - i. Critical Defect is a defect that causes termination of one or more system components or the complete system, or causes extensive data corruption, and if not resolved, a Critical Defect has no acceptable alternative method(s) for the LSS to achieve the required result(s);
 - ii. Major Defect is a defect that causes termination of one or more system components or the complete system, or causes extensive data corruption, and if not resolved, a Major Defect has a time-consuming, costly, and/or unfeasible alternative method(s) for the LSS to achieve the required result(s);
 - iii) Completion of training for system users and technical resources;
 - iv) Delivery of documentation for: a) training; b) system-admin; and c) system-use;
 - v) Successful conversion of data from the existing LSS to the new LSS;
 - vi) Completion of all deliverables according to the agreed-upon project schedule;
 - vii) Demonstration of compliance with the agreed-upon Service Level Commitment parameters for:
 - a) LSS uptime; b) Vendor support response time; and c) Vendor resolution response time.
 7. Provide post Go-Live support during the 60-day stabilization period.
 8. Provide a practical and functional liquidated damages schedule (for not meeting Service Level Commitment parameters), to be used during ongoing system/services operations.
 9. Provide automated regular data backups to the City, if solution is hosted on the Cloud.

APPENDIX 1
PROPOSAL FORM

RFP No. PS20190221, Provision of a Litigation Support System (the "RFP")

Proponent's Name: _____
"Proponent"

Address: _____

Jurisdiction of Legal Organization: _____

Date of Legal Organization: _____

Key Contact Person: _____

Telephone: _____ Fax: _____

E-mail: _____

The Proponent, having carefully examined and read the RFP, including all amendments 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 4 to the RFP.

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

Executive Summary

Provide a brief executive summary of your Proposal (excluding any pricing information).

If the Software to be supplied under an Agreement will be used to collect or process credit card information, please provide the following (otherwise, indicate 'Not Applicable'):

1	A current, accurate and valid Attestation of Compliance.
2	A Charter for the PCI DSS Compliance program in your organization and define specifically who is responsible for the protection of cardholder data and the PCI DSS Compliance Program.
3	A high level organizational chart for the PCI DSS Compliance Program within your organization.
4	A comprehensive and fully completed PCI DSS Responsibility Matrix (Excel table).
5	Data Flow Diagrams of all proposed payment flows as they relate to processing, storage and transmission of credit card data for purchases, refunds and charge backs
6	Specific details of the payment solution that may impact the City of Vancouver's PCI scope as it relates to people, processes and technology.

Business, Technical and Security Requirements

Proponents shall complete and submit the separate file attachment, "**PS20190221 - Requirements**".

(note: if the proposed system contains multiple solutions/vendors, the technical requirements must be filled out for each one)

Implementation

Describe your overall proposed installation, implementation process, and methodology.

(note: pricing related to Implementation should be included in Appendix 2 - Commercial Proposal)

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Implementation - Key Personnel
Describe your Implementation Team for the LSS project, including each team member's qualifications and roles(s) and responsibility(ies).
Include details on your proposed escalation process.

Implementation - City Resources Required
Describe what City business and/or technical resources (clearly stating qualifications and/or role(s)) you will need during Implementation.
Include dates, length of time, and percentage effort you estimate are required of the City's resources.

Implementation - Additional Support
<ol style="list-style-type: none">1) Describe whether you support LSS setup and configuration only, and/or hardware setup and configuration as well.2) Describe how, and for how long, you will provide post-Go-Live support during a 60-day stabilization period.3) Describe what system-administration and system-use materials you will provide, in what format the materials will be provided, and how you will maintain/update the materials.
(note: pricing related to Support for LSS setup and configuration and/or hardware setup and configuration should be included in Appendix 2 - Commercial Proposal)

Work Plan
<ol style="list-style-type: none">1) Detail the sequential process by which you propose to undertake the work, including a timeline (e.g. Gantt Chart showing tasks, due dates, assigned responsibilities, task

dependencies, information requirements) and milestones (e.g. contract execution, completed installation and configuration of LSS, data converted, training completed, testing period, 'Go Live'/activation of LSS, etc.).

- 2) Clear state your expected lead time from contract execution to completed installation of the new LSS, to 'Go Live'/activation of LSS, and to parallel-testing of the new LSS.
- 3) Clearly state any of your assumptions, any risks to proposed timelines, and what risk-mitigation strategies you propose.

(note: as appropriate, reference the requirements described in the **separate file, "PS20190221 - Requirements"**.)

Training

- 1) What training do you recommend for the successful implementation of the new LSS?
- 2) What skills, abilities, and/or knowledge do the City users require for the successful implementation of the new LSS?
- 3) Describe the initial training you will provide (including how the training will be delivered, location(s) of training, how many days or hours, number of trainers provided, class size, etc.).
- 4) If applicable, describe any additional LSS-related training City users will require during the term of the contract.
- 5) Describe the ongoing training you will provide (including how the training will be delivered, location(s) of training, how many days or hours, number of trainers provided, class size, etc.).
- 6) What training (or training resources) can you offer to new hires who will need to use the LSS?

(note: pricing related to training (initial, ongoing, additional, new hires) should be included in Appendix 2 - Commercial Proposal)

Additional LSS-related Implementation Services

If applicable, describe any additional LSS-related Implementation Services you may offer (e.g. Machine-learning).

(note: pricing related to additional LSS-related Implementation Services should be included in Appendix 2 - Commercial Proposal)

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Support - Key Personnel

Describe your Support Team, including each team member's qualifications and role(s) and responsibility(ies).

Include details on your proposed escalation process.

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Appendix 5 - Form of Agreement

Review Appendix 5 - Form of Agreement, and indicate what, if any, deviations and variations you propose to the contract language.

If no deviations and variations are proposed, indicate 'None'.

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Service Level Commitments

Review the section on Service Level Commitments in Appendix 5 - Form of Agreement, and indicate what, if any, deviations and variations you propose.

Proponent may include proponent's own Service Level Agreement terms, for the City's consideration.

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References

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	
How long did it take to fully implement the Client's solution and begin parallel testing?	
What challenges were encountered in the implementation?	
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	
How long did it take to fully implement the Client's solution and begin parallel testing?	
What challenges were encountered in the implementation?	
Client Name # 1	Client Name # 1
Address (City and Country)	Address (City and Country)

Contact Name	Contact Name
Title of Contact	Title of Contact
Telephone No.	Telephone No.
E-mail Address	E-mail Address
Length of Relationship	Length of Relationship
Type of Goods and/or Services provided to this Client	Type of Goods and/or Services provided to this Client
How long did it take to fully implement the Client's solution and begin parallel testing?	
What challenges were encountered in the implementation?	

Leadership and Sustainability Questionnaires

Complete the questionnaires attached as Appendices 2 and 3.

Subcontractors

List all of the subcontractors that the Proponent proposes to use in carrying out the required services and described the scope of subcontracted work (or write "None" if no subcontractors are proposed).

Declaration of Supplier Code of Conduct

The City of Vancouver expects each supplier of goods and services to the City to comply with the supplier performance standards set out in the City's Supplier Code of Conduct ("SCC") <http://vancouver.ca/policy_pdf/AF01401P1.pdf>, which defines minimum labour and environmental standards for City suppliers and their subcontractors. To give effect to these requirements, an authorized signatory of each proposed vendor must complete the following declaration.

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 below (include all violations/convictions that have occurred in the past three years as well as plans for corrective action). 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:

Exceptions to Declaration:

Conflicts, Collusion, Lobbying

See Article 9 of Appendix 4 for instructions.

Pricing

Complete the below pricing table. All prices are to be quoted in in Canadian currency and exclusive of applicable sales taxes calculated upon such prices, but inclusive of all other costs.

**APPENDIX 2
COMMERCIAL PROPOSAL**

Complete this Appendix 3 - Commercial Proposal in the form set out below, and submitted as a separate file to the entire Proposal.

Proponent to provide:

- 1) Table 1 - project pricing
- 2) Table 2 - payment schedule
- 3) Table 3 - liquidated damages schedule (for non-compliance with Service Level Commitment parameters)

Table 1 - Project Pricing

Year	Cost Component	Description of Cost Component	Quantity Required ("A")	Unit Price, in CAD\$, excluding taxes ("B")	Extended Price, in CAD\$, excluding taxes (A x B = "C")
e.g. Year 1, 2, 3, etc.	e.g. software, software module, and/or per-User license costs			\$	\$
	e.g. hardware			\$	\$
	e.g. implementation services			\$	\$
	e.g. ongoing operational support			\$	\$
	Other - please list			\$	\$
	Etc.			\$	\$
	Etc.			\$	\$

Table 2 - Payment Schedule

Percentage of contract price	Due upon

Table 3 - Liquidated Damages Schedule

Service Level Commitment parameter not met:	Liquidated Damages, in CAD\$

APPENDIX 3
FINANCIAL STATEMENTS

**APPENDIX 4
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 4 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 4, 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 4), 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 Appendix 1 of the RFP, as completed and executed by the Proponent.
- (g) "RFP" means the document issued by the City as Request for Proposals No. PS20190221, 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 4 (except only Sections 7, 8.2 and 10 of this Appendix 4, 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 4, 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 4, 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;

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- (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
 - (f) 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 4, 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 4), 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 4, 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 4 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.

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- (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 the section titled "Conflicts; Collusion; Lobbying" in the Proposal Form.
- (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 the section titled "Conflicts; Collusion; Lobbying" in the Proposal Form.

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 the section titled "Conflicts; Collusion; Lobbying" in the Proposal Form.

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 the section titled "Conflicts, Collusion, Lobbying" in the Proposal Form.

9.4 Declaration as to 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 as set out, in all material detail, in the section titled "Conflicts, Collusion, Lobbying" in the Proposal Form.

10. GENERAL

- (a) All of the terms of this Appendix 4 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 4 will not affect the validity or enforceability of any other provision of this Appendix 4, 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 5
FORM OF AGREEMENT

**CLOUD SOFTWARE /SOFTWARE AS A SERVICE
SERVICES AGREEMENT**

[NOTE: This is a model agreement proposed to be used by the City of Vancouver for the purposes of procuring the services described in the attached RFP. The City reserves the right to replace or modify this agreement depending on the circumstances of the transaction including adding further provisions.]

THIS AGREEMENT (the "Agreement") made as of the • day of •, [2019].

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.

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- (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:

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- (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:

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- (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.

5.14 [Note to draft: If the Software to be supplied under this Agreement will be used to collect or process credit card information, the City may need to add further requirements to this Agreement to ensure the City is able to continue to meet its obligations under the PCI Data Security Standards ("PCI DSS") of the PCI Security Standards Council.]

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.

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- (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

[Note: City will consult/confirm with its Risk Management department for appropriate types and levels of insurance to be placed by the vendor once more information is known about the services.]

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

- (a) a Professional (Error and Omissions) Liability and Cyber Liability insurance policy each with limits of not less than \$5,000,000 per claim (with a sub-limit of not less than \$1,000,000 per claim for intellectual property infringement) and an aggregate of not less than \$5,000,000, protecting the 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; and
- (b) a Commercial General Liability insurance policy with limits of not less than \$5,000,000 per occurrence, aggregate of not less than \$5,000,000, and a deductible of not more than \$5000, protecting the Vendor and the Vendor's Personnel against all claims for personal injury, including death and bodily injury, and property damage or loss, arising out of the operations of the Vendor or the actions of the Vendor or the Vendor's Personnel. The policy will contain a cross liability clause in favour of the City and will

name the City and its officials, officers, employees, servants, and agents as Additional Insureds with respect to liability of the Named Insured pursuant to this Agreement.

12.2 **Required Policy Terms.** All required insurance policies will remain in full force and effect at all times until completion of the Services or earlier cancellation of this Agreement, and will:

- (a) be obtained from and issued by insurers authorized to carry on business within British Columbia, on terms satisfactory to the City's Director of Risk Management, acting reasonably;
- (b) be primary insurance in respect to liability arising out of the operation of the named insured. 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 requirement that thirty (30) days written notice of cancellation or material change resulting in reduction of coverage with respect to any of the policies, in whole or in part, will be given by the insurer to the City and the City; the exception is cancellation for non-payment of premiums in which case the applicable statutory conditions will apply.

12.3 **Insurance Certificate.** Prior to signing this Agreement, Vendor will provide the City's Project Manager with evidence of all required insurance to be taken out in the form of one or more Certificates of Insurance in form and substance satisfactory to the City which will be attached to this Agreement as Schedule C - Certificates of Insurance. The Certificates of Insurance will identify the Agreement title, number, policyholder and scope of work and must not contain any qualifications or disclaimers. Proof of insurance, in the form of such Certificates of Insurance (or copies of the policies 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 **Additional Requirements.** Vendor will provide, at its own cost, any additional insurance which is required by law to provide or which it considers necessary.

12.5 **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.

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- 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.

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- 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:

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- (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)

[INSERT VENDOR'S FULL CORPORATE NAME]

Print Name and Title

Print Name and Title

CITY OF VANCOUVER

Print Name and Title

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.]

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.

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- (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.

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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

SCHEDULE D
CONTRACT PRICE

[Note: Insert all fees to be paid by the City to the vendor under this contract]

SCHEDULE E

RFP

[SEE ATTACHED]

SCHEDULE F
VENDOR'S PROPOSAL

[SEE ATTACHED]