



REQUEST FOR QUOTATIONS

Title: Website Development For Surrey Public Libraries

Reference No.: 1220-040-2016-039

FOR THE SUPPLY OF GOODS AND/OR SERVICES

(General Services)

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REQUEST FOR QUOTATIONS

1. INTRODUCTION

The City of Surrey (the "City") invites contractors to provide a quotation on the form attached as Schedule B to Attachment 1 (the "Quotation") for the supply of the goods (if any) and/or services described in Schedule A to Attachment 1 (the "Goods and/or Services"). The description of the Goods and/or Services sets out the minimum requirements of the City. A person that submits a Quotation (the "Contractor") should prepare a Quotation that meets the minimum requirements, and may as it may choose, in addition, also include goods, services or terms that exceed the minimum requirements.

2. ADDRESS FOR DELIVERY

A Quotation should be labelled with the Contractor's name, RFQ title and number. A Quotation should be submitted in the form attached to this RFQ as Schedule B – Quotation.

The Contractor may submit a Quotation either by email or in a hard copy, as follows:

(a) Email

If the Contractor chooses to submit by email, the Contractor should submit the Quotation electronically in a single pdf file to the City by email at: purchasing@surrey.ca

PDF emailed Quotations are preferred and the City will confirm receipt of emails. Note that the maximum file size the City can receive is 10Mb. If sending large email attachments, Contractors should phone to confirm receipt. A Contractor bears all risk that the City's equipment functions properly so that the City receives the Quotation.

(b) Hard Copy

If the Contractor chooses NOT to submit by email, the Contractor should submit one original unbound Quotation and one (1) copy (two (2) in total) which should be delivered to the City at the office of:

Name: Richard D. Oppelt, Purchasing Manager
at the following location:

Address: Surrey City Hall
Finance & Technology Department – Purchasing Section
Reception Counter, 5th Floor West
13450 – 104 Avenue, Surrey, B.C., Canada, V3T 1V8

3. DATE

The City would prefer to receive Quotations on or before April 7, 2016. The City's office hours are 8:30 a.m. to 4:00 p.m., Monday to Friday, except statutory holidays.

4. INQUIRIES

All inquiries related to this RFQ should be directed in writing to the person named below (the “**City Representative**”). Information obtained from any person or source other than the City Representative may not be relied upon.

Name: Richard D. Oppelt, Purchasing Manager
E-mail: purchasing@surrey.ca
Reference: 1220-040-2016-039

5. ADDENDA

If the City determines that an amendment is required to this RFQ, the City's Representative will issue a written addendum by posting it on the BC Bid Website at www.bcbid.gov.bc.ca (the “BC Bid Website”) and the City Website at www.surrey.ca (the “City Website”) that will form a part of this RFQ. It is the responsibility of Contractor to check the BC Bid Website and the City Website for addenda. The only way this RFQ may be added to, or amended in any way, is by a formal written addendum. No other communication, whether written or oral, from any person will affect or modify the terms of this RFQ or may be relied upon by any Contractor. By delivery of a Quotation, the Contractor is deemed to have received, accepted and understood the entire RFQ, including any and all addenda.

6. NO CONTRACT

This RFQ is simply an invitation for quotations (including prices and terms) for the convenience of all parties. It is not a tender and no obligations of any kind will arise from this RFQ or the submission of Quotations. The City may negotiate changes to any terms of a Quotation, including terms in Attachment 1 and Schedules A and B and including prices, and may negotiate with one or more Contractors or may at any time invite or permit the submission of quotations (including prices and terms) from other parties who have not submitted Quotations.

7. ACCEPTANCE

A Quotation will be an offer to the City which the City may accept at any time by signing the copy of the Quotation and delivering it to the Contractor. A Quotation is not accepted by the City unless and until both the authorized signatory and the purchasing representative have signed on behalf of the City. Delivery of the signed Quotation by the City may be by fax or pdf email.

8. CONTRACTOR'S EXPENSES

Contractors are solely responsible for their own expenses in preparing and submitting Quotations, and for any meetings, negotiations or discussions with the City or its representatives and consultants, relating to or arising from the RFQ. The City will not be liable to any Contractor for any claims, whether for costs, expenses, losses or damages, or loss of anticipated profits, incurred by the Contractor in preparing and submitting a Quotation, or participating in negotiations for a contract, or other activity related to or arising out of this RFQ.

9. CONTRACTOR'S QUALIFICATIONS

By submitting a Quotation, a Contractor represents that it has the expertise, qualifications, resources, and relevant experience to supply the Goods and/or Services.

10. CONFLICT OF INTEREST

A Contractor must disclose in its Quotation any actual or potential conflicts of interest and existing business relationships it may have with the City, its elected or appointed officials or employees. The City may rely on such disclosure.

11. SOLICITATION OF COUNCIL MEMBERS, CITY STAFF AND CITY CONSULTANTS

Contractors and their agents will not contact any member of the City Council, City staff or City consultants with respect to this RFQ, other than the contact person named in Section 4, at any time prior to the award of a contract or the cancellation of this RFQ.

12. CONFIDENTIALITY

All Quotations become the property of the City and will not be returned to the Contractor. All Quotations will be held in confidence by the City unless otherwise required by law. Contractors should be aware the City is a "public body" defined by and subject to the *Freedom of Information and Protection of Privacy Act* of British Columbia.

13. SIGNATURE

The legal name of the person or firm submitting the Quotation should be inserted in the Quotation. The Quotation should be signed by a person authorized to sign on behalf of the Contractor and include the following:

- (a) If the Contractor is a corporation then the full name of the corporation should be included, together with the names of authorized signatories. The Quotation should be executed by all of the authorized signatories or by one or more of them provided that a copy of the corporate resolution authorizing those persons to execute the Quotation on behalf of the corporation is submitted;
- (b) If the Contractor is a partnership or joint venture then the name of the partnership or joint venture and the name of each partner or joint venturer should be included, and each partner or joint venturer should sign personally (or, if one or more person(s) have signing authority for the partnership or joint venture, the partnership or joint venture should provide evidence to the satisfaction of the City that the person(s) signing have signing authority for the partnership or joint venture). If a partner or joint venturer is a corporation then such corporation should sign as indicated in subsection (a) above; or
- (c) If the Contractor is an individual, including a sole proprietorship, the name of the individual should be included.

14. MULTIPLE CONTRACTORS

The City reserves the right and discretion to divide up the Goods and/or Services, either by scope, geographic area, or other basis as the City may decide, and to select one or more Contractors to enter into discussions with the City for one or more Contracts to perform a portion or portions of the Goods and/or Services. If the City exercises its discretion to divide up the Goods and/or Services, the City will do so reasonably having regard for the RFQ and the basis of Quotations.

In addition to any other provision of this RFQ, Quotations may be evaluated on the basis of advantages and disadvantages to the City that might result or be achieved from the City dividing up the Goods and/or Services and entering into one or more Contracts with one or more Contractors.

ATTACHMENT 1



TECHNOLOGY AGREEMENT FOR SOFTWARE LICENSE AND
ON-PREMISE IMPLEMENTATION

Between

CITY OF SURREY

and

<<INSERT NAME OF CONTRACTOR>>

for

WEBSITE REDEVELOPMENT FOR SURREY PUBLIC
LIBRARIES

Reference No.: 1220-040-2016-039

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RECREATION SOFTWARE REPLACEMENT PROJECT
**TECHNOLOGY AGREEMENT FOR SOFTWARE LICENSE AND ON-PREMISE
INSTALLATION**

AGREEMENT No.: 1220-040-2016-039

THIS AGREEMENT is effective this _____ day of _____, 2016.

BETWEEN:

CITY OF SURREY
13450 - 104th Avenue
Surrey, British Columbia V3T 1V8

(the "**City**")

OF THE FIRST PART

AND:

<<INSERT NAME OF CONTRACTOR>>

(the "**Contractor**")

OF THE SECOND PART

WHEREAS the Contractor wishes to undertake the following project for the benefit of the City:

**WEBSITE DEVELOPMENT FOR SURREY PUBLIC LIBRARIES - SOFTWARE LICENSE
AND ON-PREMISE INSTALLATION**

THEREFORE in consideration of the payment of one (\$1.00) dollar and other good and valuable consideration paid by each of the parties to the other (the receipt and sufficiency of which is hereby acknowledged) the City and the Contractor agree as follows:

1. INTERPRETATION

1.1 Definitions

In this agreement the following definitions apply:

"City Representative" (or designate) who will have the duty of instituting and maintaining communication with the Contractor as to the requirements of the agreement including but not limited to receive security incident or breach notification;

"Confidential Information" means information supplied to, obtained by, or which comes to the knowledge of the Contractor and the City (or either of them) as a result of the performance of the Services and this agreement, which includes, but is not limited to Records, Personnel Information, information that relates to the business of the third party, and information that is subject to solicitor-client privilege;

"Data Breach" means any actual or reasonably suspected unauthorized access to or acquisition of Data;

“Dispute” has the meaning set out in section 19.1;

“Documentation” has the meaning set out in section 2.6;

“Enhancements” means any improvements, modifications, upgrades, updates, fixes, revisions and/or expansions to the Services that the Contractor may develop or acquire and incorporate into its standard version of the Services or which the Contractor has elected to make generally available to its customers;

“Fees” has the meaning set out in section 5.1;

“Go-Live” means the date that the software has achieved final acceptance and is being used by the City;

“Indemnitees” has the meaning set out in section 8.1;

“Invoice” has the meaning set out in section 5.2(a);

“Personal Information” means recorded information about an identifiable individual and any other types of information that, alone or in combination, would reveal the identity of a particular individual, other than business contact information;

“Record” means information, whether in oral or written form (including books, documents, maps, drawings, photographs, letters, vouchers, papers and any other thing on which information is recorded or stored by graphic, electronic, mechanical or other means), that is supplied, obtained or created in the course of using, providing or configuring the Services, or otherwise under this agreement. For greater clarity, Records includes Documentation. In this agreement, the term “Records” is interchangeable with “Data”;

“Security Incident” means any actual or reasonably suspected adverse event that compromises the availability, confidentiality, or integrity of the Data, or the ability of the City to access the Data;

“Services” has the meaning set out in section 2.1;

“Software” means the Software or Program(s) to be provided by the Contractor to the City under this Agreement;

“Source Code” means a set of instructions, written in programming language, that must be translated to machine instructions before the program can run on a computer. These instructions must be compiled into object code before the computer can understand them;

“Subscription Fee” shall mean the reoccurring fee paid to the Contractor as compensation for continued use of the Software;

“Third Party” means persons, corporations and entities other than the Contractor, City or any of their employees, contractors or agents; and

“Time Schedule” has the meaning set out in section 2.5.

1.2 Appendices

The following attached Appendices are a part of this agreement:

- (a) Appendix 1 – Scope of Services;
- (b) Appendix 1-A – Technical Requirements;
- (c) Appendix 1-B – Functional Requirements;
- (d) Appendix 2 – Fees and Payment;
- (e) Appendix 3 – Time Schedule;
- (f) Appendix 4 – Key Personnel and Sub-Contractors;
- (g) Appendix 5 – Additional Services;
- (h) Appendix 6 – Privacy Protection Schedule; and
- (i) Appendix 7 – Confidentiality Agreement.

2. GOODS AND SERVICES

2.1 Goods and Services

This Agreement sets forth the terms and conditions under which the Contractor agrees to license the Software and provide all other services, data import/export, monitoring, support, backup and recovery, and training necessary for City's productive use of such software, as further set forth in Appendix [], a future Appendix. The City shall perform its responsibilities set forth in the same Appendix [], a future Appendix. Contractor agrees to work with the City to ensure proper change management and assist in identifying any required technology upgrades within the City's network in support of this implementation. Contractor and the City shall use commercially reasonable efforts to fulfill their respective obligations in a timely manner in order to achieve the agreed milestones and dates set forth in this Agreement.

Authorized Users. Unless otherwise limited in Appendix [], a future Appendix, City and any of its employees, agents, contractors, suppliers of services or other designated users that have a need to use the Services for the benefit of the City shall have the right to operate and use the same. As part of the Services, City shall be responsible for all user identification and password change management.

Non-exclusivity. Nothing herein shall be deemed to preclude the City from retaining the services of other persons or entities undertaking the same or similar functions as those undertaken by Contractor hereunder.

The City acquires the right to use the Services acquired under this agreement at any location under the direct control of the City.

Contractor agrees to extend the terms and conditions of this agreement, including pricing, to all current and future City locations at their request.

2.2 Additional Services

The Contractor will, if requested in writing by the City, provide additional goods and perform additional services as may be listed in Appendix [], a future Appendix. The terms of this agreement will apply to any additional goods and services. The Contractor will not provide any additional goods and services in excess of the goods and scope of services requested in writing by the City.

2.3 Standard of Care

- 2.3.1 The Contractor will perform the Services with that degree of care, skill and diligence normally provided by a qualified and experienced practitioner. The Contractor represents that it has the expertise, qualifications, resources and relevant experience to provide the Goods and Services.

2.4 Term

- 2.4.1 The term of this agreement shall extend from the purchase of the Software until the "Go Live" date. Continuous one-year extensions shall continue thereafter for annual maintenance services. Such extensions shall be automatic, and shall go into effect without written confirmation, unless the City provides advance notice of the intention to not renew.
- 2.4.2 If the Term is extended, the provisions of this agreement will remain in force except where amended in writing by the parties.
- 2.4.3 If the City chooses to continue to use the Software beyond the 120 month term of this Agreement monthly license fees will continue to be paid throughout each extension in order to use the Software provided by the license grant as described in Section 11 of this Agreement.

2.5 Time

- 2.5.1 Time is of the essence.

2.6 Documentation

- 2.6.1 Documentation shall mean, collectively: **(a)** all materials published or otherwise made available to City by the Contractor that relate to the functional, operational and/or performance capabilities of the Services; **(b)** all user, operator, system administration, technical, support and other manuals and all other materials published or otherwise made available by the Contractor that describe the functional, operational and/or performance capabilities of the Services; **(c)** any Requests for Information and/or Requests for Proposals (or documents of similar effect) issued by City, and the responses thereto from the Contractor, and any document which purports to update or revise any of the foregoing; and **(d)** the results of any presentations or tests provided by the Contractor to the City.

2.7 Marks

- 2.7.1 Marks shall mean the trademarks and/or trade names of Contractor as licensed to City hereunder.

2.8 Acceptance Testing

- 2.8.1 For purposes of acceptance of the Software solution (or portions thereof), the City intends to use the following staged acceptance procedure. All timeframes specified in the following procedures may be amended by the Time Schedule.

A. Written Deliverable: The Contractor should submit interim drafts of a written deliverable to the City for review. The City agrees to review and provide comments to the Contractor on each draft within ten (10) business days after receiving it from the Contractor. The City agrees to notify the Contractor in writing by the end of this time period either stating that the written deliverable is accepted in the form delivered by the Contractor or describing in reasonable detail any substantive deficiencies that must be corrected prior to acceptance of the written deliverable. If the Contractor does not receive any such deficiency notice from the City by the end of this time period, the written deliverable will be deemed to be accepted and an approved document marked "Provisionally Approved" and dated will be provided to the City. If the City delivers to the Contractor a timely notice of deficiencies and the items specified in the notice are deficiencies, the Contractor will promptly correct the described deficiencies and return to the City for approval. The City will not unreasonably withhold, delay or condition its approval of a final written deliverable.

- 2.8.2 The Contractor is responsible for tracking status of each deliverable including but not limited to the date in which it was submitted to the City and date returned.

B. Software Deliverable: Acceptance testing is an iterative process designed to determine whether the Software deliverable performs the functions described in its approved Specifications and to discover and remove defects through repeated testing cycles. In the event of conflicts between Specifications and Software Documentation the Specifications will prevail.

- 2.8.3 The Contractor will work with the City and make a good faith effort to develop a test plan with the requisite details, understanding the level of detail required may change depending on the complexity of the requested software deliverable and to test each software deliverable.

1. Software Acceptance: For each Software deliverable the City will have five (5) business days unless an alternate time is mutually agreed upon between Contractor and City. The Software acceptance test period for each Software deliverable will start within five (5) business days, unless an alternate start date is mutually agreed upon by the Contractor and the City, after the Software deliverable is installed at the City's designated site and the Contractor has successfully completed the Contractor's installation test and notified the City that the Software deliverable is ready for testing. The Contractor will not be obligated to deliver a Software deliverable to City until the City demonstrates the readiness of the target technical platform and environment.

2. If the City determines during the Software acceptance test period that the Software deliverable contains a defect, the City will promptly send the Contractor a written notice reporting the alleged defect describing it to the Contractor in sufficient detail reasonably necessary for the Contractor to recreate it. The Contractor will modify the Software deliverable to remove the reported defect and will provide the modifications to the City for re-testing. The City will then re-test the modified portions of the Software deliverable promptly after receiving the modifications from the Contractor.

3. By the end of the Software acceptance testing period the City will provide the Contractor with a final written list reporting any outstanding defects. The City will have ten (10) business days after the receipt of the modifications to re-test the modified Software deliverable to confirm that the defects that were reported have been removed. If any defects that were reported have not been removed, the City will provide the Contractor with written notification by the end of the retesting period reporting any such defects.

4. The Contractor and the City each agrees to work diligently to achieve acceptance of Software deliverable at the earliest possible date.

2.9 Training

2.9.1 The Contractor shall provide a training plan in accordance with Appendix [], a future Appendix.

2.9.2 The City reserves the right to video and/or audio tape any and all training sessions, whether held at the City or the Contractor's site, or via teleconference. Use of such training tapes shall be strictly for City staff training purposes.

2.10 Warranties, Representations and Covenants

2.10.1 Warranty of the Software Solution

Commencing on the date that the City issues its notice of final acceptance, and extending for a period of one (1) year, the Contractor warrants that the Software furnished hereunder shall be free from programming errors and that the Software and hardware (if any) shall be free from defects in workmanship and materials and shall operate in conformity with the performance capabilities, scope of Services, functions and other descriptions and standards applicable thereto and as set forth in this agreement; that the Services shall be performed in a timely and professional manner by qualified professional personnel; and that the services, Software and hardware (if any) shall conform to the standards generally observed in the industry for similar services, Software and hardware. If the Contractor is not the original Software or hardware manufacturer, the Contractor shall obtain in writing the manufacturer's consent to pass through all Software and hardware warranties for the City's benefit. During this warranty period, the Contractor shall replace or repair any defect appearing in the Software or hardware, or deficiency in Service provided at no additional cost to the City. The Contractor's liability shall extend to all liabilities, losses, damages, claims and expenses incurred by the City caused by any breach of any of the above warranties.

2.10.2 Warranty Against Planned Obsolescence

The Contractor warrants that the Services proposed to and acquired by the City under this agreement are new and of current manufacture, and that it has no current plans for announcing a replacement line that would be marketed by Contractor as a replacement for any of the Goods and/or Services provided to the City under this Agreement and would result in reduced support for the product line within which the Software solution furnished to the City is contained. The Contractor further warrants that, in the event that a major change in hardware, software, or operating system occurs that radically alters the design architecture of the System and makes the current design architecture obsolete within five (5) years after full execution of this agreement, and if the City continues its annual maintenance contract with the Contractor, the Contractor shall provide the City with a replacement hardware, software, or operating system(s) that continues the full functionality of the systems, at no extra cost to the City.

2.10.3 Title Warranty and Warranty Against Infringement

The Contractor represents and warrants that it has the right to grant the licenses set forth under this agreement. The Contractor further represents and warrants that it has good and marketable title to the Software and any Equipment sold hereunder free and clear from all liens, encumbrances, and claims of infringement of patent, copyright, trade secret or other proprietary rights of third parties. The Contractor further represents and warrants that neither the Software in the form delivered and installed by the Contractor, nor any modifications, enhancements, updates or upgrades thereto, nor the normal use thereof by the City, will infringe any patent, copyright, trademark, trade secret or other proprietary right of any third party.

In the event that any third party makes a claim or files a lawsuit challenging the City's right to use the Software or equipment (if any), the Contractor shall defend and indemnify the City and hold it harmless for any and all losses, liabilities, judgments, damages, awards and costs (including legal fees and expenses) arising out of said claim or lawsuit, and for any monies paid in settlement thereof. In resolving any such infringement claim, the Contractor shall, in its reasonable discretion, either procure a license to enable the City to continue to use the Software or develop or obtain a non-infringing substitute acceptable to City at the Contractor's cost.

The Contractor represents and warrants that the Software and related products as described with this agreement will perform in accordance with all Documentation, contract documents, Contractor marketing literature, and any other communications attached to or referenced in this agreement.

The Contractor represents and warrants that the Software and related products, including all modifications contracted under the terms of this agreement, will meet the requirements of the City as set forth in the Contract Documents.

The City has: (i) presented detailed technical specifications of the particular purpose for which the Software is intended; (ii) provided detailed descriptions and criteria of how the Software can be defined to accomplish a particular purpose; and (iii) defined the exact procedures and techniques to be employed in testing whether the Software has achieved the defined performance of this particular purpose. Given this advanced preparation concerning, and documentation about, the City's particular purpose, the Contractor, at the time this agreement is in force, has (1) reason and opportunity to know the particular purpose for which the Software is required, and (2) that the City is relying on the Contractor's experience and knowledge of the Software to identify those components which are most suitable and appropriate. Therefore, the Contractor warrants that the Software included in this agreement is fit for the purposes for which it is intended as described in this agreement.

The Contractor represents and warrants that all products provided under this agreement are compatible with and certified for use and operation in City's operating environment.

2.10.4 Continuity of Warranty

The City may continue the warranty protection described above by purchasing and paying for on-going annual support services described below. By doing so, all warranty, warranty of fitness for a particular use, and resolution and response time warranty conditions above shall remain in effect, in perpetuity (except for the "Third party hardware" clause above), as long as payments for annual support are kept current.

2.10.5 Final Acceptance of the System

The Software proposed shall be defined to be finally accepted by the City after the installation of the training, and successful completion of the following performance examinations: software performance examination, system functional competence examination, system capacity examination, full-load processing capacity examination, system availability examination, approval of as-built, training, and system documentation. The City and its consultants shall be the sole judge of whether all conditions for final acceptance criteria have been met.

2.10.6 No Liens

The Contractor warrants that the Software and Equipment is the sole and exclusive property of the Contractor and that the Contractor is authorized to provide full use of the Software to the City as provided herein and that such Software is not subject to any lien, claim or encumbrance inconsistent with any of the City's rights under this agreement and that the City is entitled to and shall be able to enjoy quiet possession and use of the Software and Equipment without interruption by the Contractor or any other person making a claim under or through the Contractor or by right of paramount title.

2.10.7 Maintenance Services Warranty

The Contractor warrants that, in performing the Services, the Contractor shall strictly comply with the descriptions and representations as to the Services, including performance capabilities, accuracy, completeness, characteristics, configurations, standards, function and requirements, which appear in this Agreement. Its products shall be uniform in appearance and clean and presentable in accordance with generally applicable standards in the industry. Errors or omissions committed by the Contractor in the course of providing Services shall be remedied by the Contractor at its own expense.

2.10.8 Date Warranty

The Contractor warrants that all Software provided under this Agreement: (a) does not have a life expectancy limited by date or time format; (b) will correctly record, store, process, present calendar dates; (c) will lose no functionality, data integrity, or performance with respect to any date; and (d) will be interoperable with other software used by City that may deliver date records from the Software, or interact with date records of the Software ("Date Warranty"). In the event a Date Warranty problem is reported to the Contractor by City and remains unresolved after three calendar days, at City's discretion, the Contractor shall send, at the Contractor's sole expense, at least one qualified and knowledgeable representative to City's premises. This representative

will continue to address and work to remedy the failure, malfunction, defect, or nonconformity on City's premises. This Date Warranty shall last perpetually. In the event of a breach of any of these representations and warranties, the Contractor shall indemnify and hold harmless the City from and against any and all harm, injury, damages, costs, and expenses incurred by the City or a customer of the City arising out of said Breach.

2.10.9 Physical Media Warranty

The Contractor warrants to the City that each licensed copy of Software provided by the Contractor is and will be free from physical defects in the media that tangibly embodies the copy (the "Physical Media Warranty."). The Physical Media Warranty does not apply to defects discovered more than thirty (30) calendar days after the date of acceptance of the Software copy by the City. The Contractor shall replace, at the Contractor's expense, including shipping and handling costs, any Software copy provided by the Contractor that does not comply with this Warranty.

2.11 **Software Upgrades and Enhancements**

2.11.1 The Contractor shall supply:

- (a) at no additional cost updated versions of the Software to operate on upgraded versions of operating systems, upgraded versions of firmware, or upgraded versions of web browsers;
- (b) at no additional cost interface modules that are developed by the Contractor for interfacing the Software to other Software products; and
- (c) at no additional cost updated versions of the Software that encompass improvements, extensions, maintenance updates, error corrections, or other changes that are logical improvements or extensions of the original Software supplied to the City.

2.11.2 Unless otherwise mutually agreed to in writing, the Contractor shall maintain any and all Third party Software products at their most current version and at no additional charge. However, the Contractor shall not maintain any Third-party Software versions, including one version back, if any such version would prevent the City from using any functions, in whole or in part, or would cause deficiencies in the system. Any additional costs that are charged by a Third-party Software manufacturer for an upgrade to a Third-party Software product that is not covered by such product's maintenance agreement shall be charged to and paid for by the Contractor.

2.11.3 Enhancements

The Contractor shall provide the City with all Enhancements and associated documentation that are provided as general releases to the Software, in whole or in part, as part of the service. Such Documentation shall be adequate to inform the City of the problems resolved including any significant differences resulting from the release which are known by the Contractor. The Contractor warrants that each such Enhancement general release shall be tested and perform according to the requirements. The Contractor agrees to correct corrupted Data that may result from any system deficiency introduced by the Enhancement at no cost to the City. Enhancements to correct any deficiency shall be provided to the City at no additional cost. Should the Contractor not be able to correct the Deficiency so that it complies with the requirements specified in

Schedule A to the City's reasonable satisfaction in a timely manner, the City may terminate this Agreement.

3. PERSONNEL

3.1 Personnel

- 3.1.1 The Contractor agrees at all times to maintain an adequate staff of experienced and qualified employees for efficient performance under this Agreement. The Contractor agrees that, at all times, the employees of the Contractor furnishing or performing any services shall do so in a proper, workmanlike, and dignified manner.
- 3.1.2 The Contractor agrees that all persons working for or on behalf of the Contractor whose duties bring them upon the City's premises shall obey the rules and regulations that are established by the City and shall comply with the reasonable directions of the City's officers. The City may, at any time, require the removal and replacement of any of the Contractor's employees for good cause.
- 3.1.3 The Contractor shall be responsible for the acts of its employees and agents while on the Client's premises. Accordingly, the Contractor agrees to take all necessary measures to prevent injury and loss to persons or property located on the City's premises. The Contractor shall be responsible for all damages to persons or property caused by the Contractor or any of its agents or employees. The Contractor shall promptly repair, to the specifications of the City, any damage that it, or its employees or agents, may cause to the City's premises or equipment; on the Contractor's failure to do so, the City may repair such damage and the Contractor shall reimburse the City promptly for the cost of repair.
- 3.1.4 The Contractor agrees that, in the event of an accident of any kind, the Contractor will immediately notify the City's contact person and thereafter, if requested, furnish a full written report of such accident.
- 3.1.5 The Contractor shall perform the services contemplated in the agreement without interfering in any way with the activities of the City's staff or visitors.
- 3.1.6 The Contractor and its employees or agents shall have the right to use only those facilities of the City that are necessary to perform services under this agreement and shall have no right to access any other facilities of the City. The City shall also extend parking privileges to properly identified members of the Contractor's full-time staff on the same basis as they are extended to City staff.
- 3.1.7 The City shall have no responsibility for the loss, theft, disappearance of, or damage to equipment, tools, materials, supplies, and other personal property of the Contractor or its employees, subcontractors, or material-men.
- 3.1.8 The Contractor will not engage any personnel or sub-contractors, or sub-contract or assign its obligations under this Agreement, in whole or in part, without the prior written approval of the City and any attempt to do so shall be void and without further effect.
- 3.1.9 Sub-contractor Disclosure: The Contractor shall identify all of its strategic business partners related to the Services provided under this Agreement, including but not limited to all sub-contractors or other entities or individuals who may be a party to a joint venture

or similar agreement with the Contractor, and who shall be involved in any application development and/or operations.

3.2 Agreements with Sub-Contractors

3.2.1 The Contractor will preserve and protect the rights of the City with respect to any Services performed under sub-contract and incorporate the terms and conditions of this Agreement into all sub-contracts as necessary to preserve the rights of the City under this agreement. The Contractor will be as fully responsible to the City for acts and omissions of sub-contractors and of persons directly or indirectly employed by them as for acts and omissions of persons directly employed by the Contractor.

3.3 Separation of Duties and Non-Disclosure

3.3.1 The Contractor shall enforce separation of job duties, require commercially reasonable non-disclosure agreements, and limit staff knowledge of the City's data to that which is absolutely necessary to perform job duties.

3.4 Right to Remove Personnel

3.4.1 The City shall have the right at any time to require that the Contractor remove from interaction with the City any Contractor representative who the City believes is detrimental to its working relationship with the service provider. The City shall provide the Contractor with notice of its determination, and the reasons it requests the removal. If the public jurisdiction signifies that a potential security violation exists with respect to the request, the service provider shall immediately remove such individual. The Contractor shall not assign the person to any aspect of the contract or future work orders without the City's consent.

4. LIMITED AUTHORITY

4.1 Agent of City

The Contractor is not and this agreement does not render the Contractor an agent or employee of the City, and without limiting the above, the Contractor does not have authority to enter into any contract or reach any agreement on behalf of the City, except for the limited purposes as may be expressly set out in this agreement, or as necessary in order to provide the Goods and perform the Services. The Contractor will make such lack of authority clear to all persons with whom the Contractor deals in the course of providing the Goods and/or Services.

4.2 Independent Contractor

The Contractor is an independent contractor. This agreement does not create the relationship of employer and employee, a partnership, or a joint venture. The City will not control or direct the details, means or process by which the Contractor provides the Goods and performs the Services. The Contractor will determine the number of days and hours of work required to properly and completely perform the Goods and/or Services. The Contractor is primarily responsible for performance of the Goods and/or Services and may not delegate or assign any Services to any other person except as provided for in this

agreement. The Contractor will be solely liable for the wages, fringe benefits, work schedules and work conditions of any partners, employees or sub-contractors.

5. FEES

5.1 Fees

The City will pay to the Contractor the fees as set out in Appendix [], a future Appendix (the "Fees"). Payment by the City of the Fees will be full payment for the Services and the Contractor will not be entitled to receive any additional payment from the City.

5.2 Payment

Payments will be made on a milestone basis and in a manner consistent with the payment schedule as set forth as Appendix [], a future Appendix. Milestones will be tied to specific deliverables. The Contractor shall only invoice upon the City's approval of the deliverable. For software-only purchases, the Contractor may invoice for licenses/subscriptions upon contract execution, however annual maintenance and support charges will not begin until the "Go Live" date.

- (a) The Contractor will submit an invoice (the "**Invoice**") to the City requesting payment of the portion of the Fees relating to the Services provided in accordance with the milestone deliverables, and including the following information:
- (1) an invoice number;
 - (2) the Contractor's name, address and telephone number;
 - (3) the City's reference number for the Goods and/or Services: P.O. number _____;
 - (4) the percentage of Goods and/or Services completed at the end of the previous month;
 - (5) the total budget for the Goods and/or Services and the amount of the budget expended to the date of the Invoice;
 - (6) taxes (if any);
 - (7) grand total of the Invoice;
- (b) if the City reasonably determines that any portion of an Invoice is not payable then the City will so advise the Contractor;
- (c) the City will pay the portion of the Invoice which the City determines is payable within 30 days of the receipt of the Invoice, except the City may hold back from payments 10% of the amount the City determines is payable to the Contractor until such time as the Contractor provides its Final Report to the City; and
- (d) if the Contractor offer the City a cash discount for early payment, then the City may, at the City's sole discretion, pay the portion of an invoice which the City determines is payable at any time after the receipt of the Invoice.

Invoices will be submitted by the Contractor by mail or email to: surreyinvoices@surrey.ca.

Name: Jocelyn Mani
Address: City of Surrey – Finance & Technology Department
13450 - 104th Avenue
Surrey, British Columbia V3T 1V8

5.3 Payment Schedule

5.3.1 Implementation and Licensing fees will be paid by City quarterly with invoicing to occur at the end of the last month of each quarter. Additional fees or ad hoc services will be invoiced in accordance with negotiated arrangements for each service period.

5.4 Records

5.4.1 The Contractor will prepare and maintain proper records related to the Services. On request from the City, the Contractor will make the records available open to audit examination by the City at any time during regular business hours during the time the Contractor is providing the Services and for a period of six years after the Goods and Services are complete.

5.5 Non-Residents

5.5.1 If the Contractor is a non-resident of Canada and does not provide to the City a waiver of regulation letter, the City will withhold and remit to the appropriate governmental authority the greater of:

- (a) 15% of each payment due to the Contractor; or
- (b) the amount required under applicable tax legislation.

5.6 Advance Payment Prohibited

5.6.1 The City does not accept requests for down payment or partial payment. Maintenance subscriptions may be paid up to one year in advance provided that should the City terminate early, the amount paid shall be reimbursed to the City on a prorated basis; all other expenses are payable after receipt and acceptance of satisfactory compliance.

5.7 Resolution and Response Time Warranty

5.7.1 The Contractor warrants that all resolution and response times delineated below shall be adhered to as follows, as determined by the City's Department Representative.

Service Level	Service Standard	Penalty
Level 1: A "Critical" or "Level 1" error renders the software completely unusable or nearly unusable or introduces a high degree of operational risk. No workaround is available that would effectively meet the classification of a level 2 or lower. Until this error is resolved, the software usage is essentially halted.	The Contractor must respond to critical problems by ensuring that appropriate managerial personnel are made aware of the problem and that they actively track and expedite a resolution.	For not adhering to Response to First Call Time Limit, the City shall assess a 10%, per incident, penalty, based on the value of the annual support contract.
	The Contractor must assign Support or development personnel at the appropriate level to the problem for the problem's expeditious resolution	For not adhering to the Resolution Time Limit, the City shall assess a 10%, per day, penalty, based on the value of the annual support contract.
	Response to First Call Time	Level 1 penalty is to be applied against the support

	<p>Limit – within two (2) hours.</p> <p>Resolution Time Limit – Contractor shall use best efforts to resolve within one (1) day.</p> <p>If the Contractor and City staff are working to resolve a Level 1 support issue at the time that normal support hours end, the Contractor's support representatives must continue to work past the normal support hours to provide what assistance is needed at no additional cost to the City.</p>	<p>fees payments.</p>
<p>Level 2: A “High” or “level 2” error renders the software consistently unavailable or obstructed, and causes a moderate level of hindrance or risk. Workarounds may be available, but use of the software or performance is acutely degraded and causes continuing operational risk. A moderate number of users are significantly impacted, but overall the software is operational and functional.</p>	<p>Response to First Call Time Limit – within four (4) business hours.</p> <p>Resolution Time Limit – the Contractor shall use its best efforts to resolve within two (2) business days.</p>	<p>For not adhering to Response to First Call Time Limit, the City shall assess a 7.5%, per incident, penalty, based on the value of the annual support contract.</p> <p>For not adhering to the Resolution Time Limit, the City shall assess a 7.5%, per day, penalty, based on the value of the annual support contract.</p> <p>Level 2 penalty is to be applied against the support fees payments.</p>
<p>Level 3: A “Low” or “Severity 3” error has a small degree of significance, or is a minor operational or configuration issue, or is a “one off” case. A “one off” case occurs when the error occurs infrequently and cannot be replicated easily. These are errors that do not impact the daily use of the software. A low error is something does not affect normal use, and can be accepted for a period of time, but user would eventually want to be fixed.</p>	<p>Response to First Call Time Limit – within one business day.</p> <p>Resolution Time Limit – the Contractor shall use its best efforts to resolve within three (3) business days.</p>	<p>For not adhering to Response to First Call Time Limit, the City shall assess a 5%, per incident, penalty, based on the value of the annual support contract.</p> <p>For not adhering to the Resolution Time Limit, the City shall assess a 5%, per day, penalty, based on the value of the annual support contract.</p> <p>Level 3 penalty is to be applied against the support fees payments.</p>

6. CITY RESPONSIBILITIES

6.1 City Information

The City will, in co-operation with the Contractor, make efforts to make available to the Contractor information, surveys, and reports which the City has in its files and records that relate to the delivery of the Services. The Contractor will review any such material upon which the Contractor intends to rely and take reasonable steps to determine if that information is complete or accurate. The Contractor will assume all risks that the information is complete and accurate and the Contractor will advise the City in writing if in the Contractor's judgment the information is deficient or unreliable and undertake such new surveys and investigations as are necessary.

6.2 City Decisions

The City will in a timely manner make all decisions required under this agreement, examine documents submitted by the Contractor and respond to all requests for approval made by the Contractor pursuant to this agreement.

6.3 Notice of Defect

If the City believes in good faith that some portion of the Services has not been completed satisfactorily, the City may require the Contractor to correct such work prior to the City making any payment. In such event, the City will provide the Contractor with an explanation of the concern and the remedy that the City expects. The City may withhold from any payment that is otherwise due, an amount that the City in good faith finds to be under dispute, of if the Contractor does not provide a sufficient remedy. The City may retain the amount equal to the cost to the City for otherwise correcting or remedying the work not properly completed.

7. INTELLECTUAL PROPERTY INFRINGEMENT INDEMNIFICATION

7.1 Contractor shall indemnify, defend and hold City harmless from any and all actions, proceedings, or claims of any type brought against City alleging that the Services and/or Documentation or City's use of the Services and/or Documentation constitutes a misappropriation or infringement upon any patent, copyright, trademark, or other proprietary right or violates any trade secret or other contractual right of any Third Party. Contractor agrees to defend against, and hold City harmless from, any claims and to pay all litigation costs, all reasonable attorneys' fees, settlement payments and all judgments, damages, costs or expenses awarded or resulting from any claim. City shall, after receiving notice of a claim, advise Contractor of it. City's failure to give Contractor timely notification of said claim shall not effect Contractor's indemnification obligation unless such failure materially prejudices Contractor's ability to defend the claim. City reserves the right to employ separate counsel and participate in the defense of any claim at its own expense.

7.2 If the Services and/or Documentation, or any part thereof, is the subject of any claim for infringement of any patent, copyright, trademark, or other proprietary right or violates any trade secret or other contractual right of any Third Party, or if it is adjudicated by a court of competent jurisdiction that the Services and/or Documentation, or any part thereof, infringes any patent, copyright, trademark, or other proprietary right or violates any trade

secret or other contractual right of any Third Party, and City's use of the Services and/or Documentation, or any part of it, is enjoined or interfered with in any manner, Contractor shall, at its sole expense and within thirty (30) calendar days of such injunction or interference, either: (a) procure for City the right to continue using the Services and/or Documentation free of any liability for infringement or violation; (b) modify the Services and/or Documentation, or parts thereof, with non-infringing Services and/or Documentation of equivalent or better functionality that is reasonably satisfactory to City; or (c) replace the Services and/or Documentation, or parts thereof, with non-infringing Services and/or Documentation of equivalent or better functionality that is reasonably satisfactory to City.

- 7.3 Contractor shall have no obligation to indemnify City for a claim if: (a) City uses the Services in a manner contrary to the provisions of this Agreement and such misuse is the cause of the infringement or misappropriation; or (b) City's use of the Services in combination with any product or system not authorized, approved or recommended by Contractor and such combination is the cause of the infringement or misappropriation.
- 7.4 No limitation of liability set forth elsewhere in this agreement is applicable to the Intellectual Property Infringement Indemnification set forth herein.

8. INSURANCE AND DAMAGES

8.1 Indemnity

- 8.1.1 The Contractor will indemnify and save harmless the City and all of its elected and appointed officials, officers, employees, servants, representatives and agents (collectively the "**Indemnitees**"), from and against all claims, demands, causes of action, suits, losses, damages and costs, liabilities, expenses and judgments (including all actual legal costs) for damage to or destruction or loss of property, including loss of use, and injury to or death of any person or persons which any of the Indemnitees incur, suffer or are put to arising out of or in connection with any failure, breach or non-performance by the Contractor of any obligation of this agreement, or any wrongful or negligent act or omission of the Contractor or any employee or agent of the Contractor.
- 8.1.2 City hereby agrees to indemnify and hold Contractor and its affiliates, sub-contractors and agents (and each of their respective shareholders, officers, directors, employees and Contractors) harmless from and against any and all third party claims and resulting losses and damages including, but not limited to, reasonable legal fees, fines and expenses, resulting from, relating to or arising out of (i) any Software and documents, including but not limited to infringement of Intellectual Property Rights thereby (except to the extent such infringement is covered by Contractor's indemnity under Section 8.1), (ii) any breach of the terms and conditions of this agreement by City or (ii) the negligence or willful misconduct of the City or its directors, officers, employees, contractors or agents.

8.2 Survival of Indemnity

- 8.2.1 The indemnity described in section 8.1.1 will survive the termination or completion of this agreement and, notwithstanding such termination or completion, will continue in full force and effect for the benefit of the Indemnitees.

8.3 Limitation of Liability

- 8.3.1 In no event shall either party be liable for any loss of data, reprourement costs, loss of profits, loss of use or for any other consequential, indirect, exemplary, special or incidental damages arising under or in connection with this Agreement, even if the other party has been advised of the possibility of such damages.

8.4 Contractor's Insurance Policies

- 8.4.1 The Contractor will, without limiting its obligations or liabilities and at its own expense, provide and maintain throughout this agreement the following insurances in forms and amounts acceptable to the City from insurers licensed to conduct business in Canada:
- (a) commercial general liability insurance on an occurrence basis, in an amount not less than five million (\$5,000,000) dollars inclusive per occurrence against death, bodily injury and property damage arising directly or indirectly out of the work or operations of the Contractor, its employees and agents. The insurance will include cross liability and severability of interests such that the coverage shall apply in the same manner and to the same extent as though a separate policy had been issued to each insured. The insurance will include, but not be limited to: premises and operators' liability, broad form products and completed operations, owners and Contractors protective liability, blanket contractual, employees as additional insureds, broad form property damage, non-owned automobile, contingent employers liability, personal injury, and incidental medical malpractice. The City will be added as additional insured;
 - (b) professional errors and omissions insurance in an amount not less than one million (\$2,000,000) dollars insuring all professionals providing the Services from liability resulting from errors or omissions in the performance of the Services, with a 12 month maintenance period; and
 - (c) automobile liability insurance on all vehicles owned, operated or licensed in the name of the Contractor in an amount not less than three million (\$3,000,000) dollars per occurrence for bodily injury, death and damage to property.

8.5 Insurance Requirements

- 8.5.1 The Contractor will provide the City with evidence of the required insurance prior to the commencement of this Agreement. Such evidence will be in the form of a completed certificate of insurance acceptable to the City. The Contractor will, on request from the City, provide certified copies of all of the Contractor's insurance policies providing coverage relating to the Services, including without limitation any professional liability insurance policies. All required insurance will be endorsed to provide the City with thirty (30) days advance written notice of cancellation or material change restricting coverage. To the extent the City has an insurable interest, the builder's risk policy will have the City as first loss payee. The Contractor will be responsible for deductible amounts under the insurance policies. All of the Contractor's insurance policies will be primary and not require the sharing of any loss by the City or any insurer of the City.

8.6 Contractor Responsibilities

- 8.6.1 The Contractor acknowledges that any requirements by the City as to the amount of coverage under any policy of insurance will not constitute a representation by the City that the amount required is adequate and the Contractor acknowledges and agrees that the

Contractor is solely responsible for obtaining and maintaining policies of insurance in adequate amounts. The insurance policy coverage limits shall not be construed as relieving the Contractor from responsibility for any amounts which may exceed these limits, for which the Contractor may be legally liable.

8.7 Additional Insurance

8.7.1 The Contractor shall place and maintain, or cause any of its subcontractors to place and maintain, such other insurance or amendments to the foregoing policies as the City may reasonably direct.

8.8 Waiver of Subrogation

8.8.1 The Contractor hereby waives all rights of recourse against the City for loss or damage to the Contractor's property.

9. TERMINATION

9.1 By the City

9.1.1 The City may at any time and for any reason by written notice to the Contractor terminate this agreement before the completion of all the Services, such notice to be determined by the City at its sole discretion. Upon receipt of such notice, the Contractor will perform no further Services other than the work which is reasonably required to terminate the Services and return the City's property to the City. Despite any other provision of this agreement, if the City terminates this agreement before the completion of all the Services, the City may pay to the Contractor all amounts owing under this agreement for Services provided by the Contractor up to and including the date of termination, plus reasonable termination costs in the amount as determined by the City in its sole discretion. Upon payment of such amounts no other or additional payment will be owed by the City to the Contractor, and, for certainty, no amount will be owing on account of lost profits relating to the portion of the Services not performed or other profit opportunities.

9.2 Termination for Cause

9.2.1 The City may terminate this agreement for cause as follows:

- (a) If the Contractor is adjudged bankrupt, or makes a general assignment for the benefit of creditors because of its insolvency, or if a receiver is appointed because of its insolvency, the City may, without prejudice to any other right or remedy the City may have, terminate this agreement by giving the Contractor or receiver or trustee in bankruptcy written notice; or
- (b) If the Contractor is in breach of any term or condition of this agreement, and such breach is not remedied to the reasonable satisfaction of the City within 5 days after delivery of written notice from the City to the Contractor, then the City may, without prejudice to any other right or remedy the City may have, terminate this agreement by giving the Contractor further written notice.

9.2.2 If the City terminates this Agreement as provided by this Section, then the City may:

- (a) enter into contracts, as it in its sole discretion sees fit, with other persons to complete the Services;

- (b) withhold payment of any amount owing to the Contractor under this Agreement for the performance of the Services;
- (c) set-off the total cost of completing the Services incurred by the City against any amounts owing to the Contractor under this Agreement, and at the completion of the Services pay to the Contractor any balance remaining; and
- (d) if the total cost to complete the Services exceeds the amount owing to the Contractor, charge the Contractor the balance, which amount the Contractor will forthwith pay.

9.3 Curing Defaults

9.3.1 If either party is in default of any of its obligations under this Agreement, then either party may without terminating this Agreement, upon fourteen (14) days written notice to the defaulting party, remedy the default and set-off all costs and expenses of such remedy against any amounts owing to the defaulting party. Nothing in this Agreement will be interpreted or construed to mean that the non-defaulting party has any duty or obligation to remedy any default of the defaulting party. Parties agree to act reasonably and diligently to remedy issues.

10. APPLICABLE LAWS

10.1 Applicable Laws

10.1.1 This agreement will be governed by and construed in accordance with the laws of the Province of British Columbia. The City and the Contractor accept the jurisdiction of the courts of British Columbia and agree that any action under this Agreement be brought in such courts.

10.2 Codes and By-Laws

10.2.1 The Contractor will provide the Services in full compliance with all applicable laws, and regulations.

10.3 Interpretation of Laws

10.3.1 The Contractor will, as a qualified and experienced professional, interpret laws and regulations applicable to the performance of the Services. If an authority having jurisdiction imposes an interpretation which the Contractor could not reasonably have verified or foreseen prior to entering into this Agreement, then the City will pay the additional costs, if any, of making alterations to the required interpretation.

11. CONFIDENTIALITY AND DISCLOSURE OF INFORMATION

11.1 No Disclosure

11.1.1 Except as provided for by law or otherwise by this Agreement, the Contractor and the City will keep strictly confidential any information supplied to, obtained by, or which comes to the knowledge of the Contractor and the City as a result of the performance of the Goods and Services and this agreement, and will not, without the prior express written consent of the Contractor and the City, publish, release, disclose or permit to be disclosed any such Confidential Information to any person or corporation, either before, during or after

termination of this Agreement, except as reasonably required to complete the Services. The City acknowledges and agrees that the Software and documentation are confidential information of the Contractor.

11.2 Freedom of Information and Protection of Privacy Act

11.2.1 The Contractor acknowledges that the City is subject to the *Freedom of Information and Protection of Privacy Act* of British Columbia and agrees to any disclosure of information by the City required by law.

11.3 Return of Property

11.3.1 The Contractor agrees to return to the City all of the City's Data at the completion of this Agreement, including any and all copies or originals of reports provided by the City.

12. GRANT OF LICENSE

12.1 License and Use

The Contractor grants to the City a nonexclusive, nontransferable, and perpetual license to use the executable code version of the Software identified in each Schedule under this Contract, along with the related documentation, and if indicated in an applicable Appendix [], a future Appendix, the Source Code for the Software. The license begins on the date identified in the applicable Appendix [], a future Appendix as the start date for the license (the "Start Date"). Unless indicated otherwise in this agreement such use will be limited to use solely for the exercise of any function by the City. The applicable Appendix [], a future Appendix governing the license will describe the scope of each license granted to the City in further detail, and the City agrees to limit its use of the Software as described in the applicable Appendix [], a future Appendix. The City may not republish the Software or the documentation or distribute it to any third party, unless and only to the extent that this agreement or the scope of license in the applicable Appendix [], a future Appendix expressly so permits. The City will have a right to use the Software at any of its locations.

12.2 Restrictions and Limitations

12.2.1 The City acknowledges and agrees that:

- (a) it shall not copy, distribute, share, sublicense or otherwise reproduce any of the Software without the prior written permission of the Contractor;
- (b) it shall not authorize any third party to use, copy, modify, distribute, share, sublicense or otherwise reproduce any of the Software without the prior written permission of the Contractor;
- (c) it shall not attempt to decompile, reverse-engineer or otherwise disassemble any of the Software;
- (d) it shall not use any of the Software to create derivative works;
- (e) it shall not reproduce and not remove, obscure or amend any Contractor or third party proprietary notices contained in the Software;
- (f) it can only engage with the Contractor to provide any support and services to modify the Software. This will be done via maintenance support agreements.

- (g) it must have appropriate licenses from the operating system provider to use the product with the operating system;
- (h) it must have the appropriate licenses from the database provider to use the product with the database;
- (i) it shall comply with all applicable laws in performing its obligations hereunder and shall have obtained all necessary permits and governmental permissions required to perform its obligations under this Agreement;
- (j) it shall not distribute any Software to any person who infringes the Contractor's rights in respect of the Software; and
- (k) any use of the Software not expressly authorized in this agreement, as well as any and all unauthorized, unsafe, hazardous, unlawful or illegal uses of the Software is expressly prohibited.

12.3 Authorized Copies

In addition to the copies of the Software authorized by the license in the applicable Appendix [], a future Appendix, the City may make a reasonable number of copies of the Software for backup, archival, disaster recovery, testing, development, and Software management purposes. And the City may use these copies for such purposes without paying any additional fee or charge, so long as any such additional copies are not used in a production environment while the production copy or copies of the Software are used for production. No other copies of the Software may be made by or for the City. With respect to the documentation for any Software, the City may make as many copies of it in either paper-based or electronic form as the City may reasonably require for its own internal purposes. Additionally, the City may incorporate portions of the documentation in other materials, such as training and reference manuals, provided that such materials are used solely for the internal purposes of the City. If the Contractor has granted the City a license to use the Source Code for the Software, the City may make a reasonable number of copies of the Source Code, modify it, compile it, and otherwise use it as reasonably necessary to support its licensed use of the Software.

13. OWNERSHIP AND PROPRIETARY NATURE OF THE SOFTWARE

- 13.1 The Software and other related intellectual property are the confidential and proprietary products of Contractor or its licensors. The City acknowledges that the Contractor or its licensors retain all right, title and ownership to such products and the Marks; no such rights shall pass to the City except to the extent to which such rights are expressly granted by this Agreement.
- 13.2 All Intellectual Property Rights in any software services work performed by Contractor under any statement of works under this Agreement shall be owned by Contractor and be licensed to the City under the terms of Section 12.

14. INDEPENDENT SOFTWARE COMPONENTS

- 14.1 The City understands and agrees that any third party software provided to the City under this agreement is provided under license and is subject to the license terms of this agreement and the City shall comply with the trademarks and guidelines provided with the

third party software as identified in herein or as provided to the City from time to time by Contractor.

15. INTELLECTUAL PROPERTY RIGHTS

- 15.1 Intellectual Property is owned by the applicable content owner and, except as expressly set out herein, this Agreement does not grant either party any rights, implied or otherwise, to the other's Intellectual Property. For greater certainty:
- (a) The City acknowledges that the Contractor retains all right, title and interest in the Intellectual Property. The City acknowledges that it does not, by virtue of receiving a license to use the Intellectual Property, acquire any proprietary rights therein, other than the limited rights granted in this Agreement. The Contractor warrants that it is the sole owner of the Intellectual Property; and
 - (b) The Contractor acknowledges that the City retains all right, title and interest in the City's Intellectual Property. The Contractor acknowledges that it does not, by virtue of receiving a license to use the City's Intellectual Property in order to customize the Intellectual Property, acquire any proprietary right to the City's Intellectual Property, other than the limited rights granted under this Agreement. The City warrants that it owns the Intellectual Property that it provides to the Contractor for the purpose of customizing the Intellectual Property.
- 15.2 Neither party may transfer or assign its rights and obligations under this Agreement without first obtaining the other party's prior written consent.
- 15.3 Upon termination or expiry of this Agreement, all licenses granted in this Agreement shall be revoked and the Contractor shall remove the City's Intellectual Property from the software.

16. ESCROWING OF SOURCE CODE OF LICENSED SOFTWARE

- 16.1 The Contractor shall place Source Code for the Software licensed by the City in escrow with an independent Third Party (with whom a separate Escrow Agreement will be entered into by City at no additional cost to the City). The Source Code shall be kept current with the latest releases of the Software. The Source Code shall revert to the City for the City's use if the Contractor files for bankruptcy or protection from creditors in a court of law. The City shall then have full rights to use Source Code for any purposes other than resale if City terminates for cause, if the Contractor discontinues support or is acquired.
- 16.2 The Contractor will provide appropriate Source Code to the City in a timely manner in the event that the Contractor goes out of business or no longer supports the Software being licensed. The same applies if the Contractor is merged or acquired and the Software is no longer supported. Once the City obtains the Source Code, it will be a perpetual license, and there will be no additional fees due, even if additional licenses are deployed.
- 16.3 Escrow Fees. All fees and expenses charged by an escrow agent will be borne by the Contractor.

17. WORKERS' COMPENSATION BOARD AND OCCUPATIONAL HEALTH AND SAFETY

- 17.1 The Contractor will, at its own expense, procure and carry full Workers' Compensation Board coverage for itself and all workers, employees, servants and others engaged in the supply of the Goods and Services. The City has the unfettered right to set off the amount of the unpaid premiums and assessments for the Workers' Compensation Board coverage against any monies owing by the City to the Contractor. The City will have the right to withhold payment under this agreement until the Workers' Compensation Board premiums, assessments or penalties in respect of the Goods and Services have been paid in full.
- 17.2 The Contractor will provide the City with the Contractor's Workers' Compensation Board registration number and a letter from the Worker's Compensation Board confirming that the Contractor is registered in good standing with the Workers' Compensation Board.
- 17.3 The Contractor agrees that it is the prime contractor for the Services for the purposes of the *Workers Compensation Act*. The Contractor will have a safety program in place that meets the requirements of the Workers' Compensation Board Occupational Health and Safety Regulation and the *Workers Compensation Act*. As prime contractor, the Contractor will be responsible for appointing a qualified coordinator for insuring the health and safety activities for the location of the Services. That person will be the person so identified in Appendix 4 of this Agreement, and the Contractor will advise the City immediately in writing if the name or contact number of the qualified coordinator changes.
- 17.4 Without limiting the generality of any other indemnities granted by the Contractor in this agreement, the Contractor will indemnify and save harmless the Indemnitees from and against all claims, demands, causes of action, suits, losses, damages, costs, liabilities, expenses, judgments, penalties and proceedings (including all actual legal costs) which any of the Indemnitees incur, suffer or are put to arising out of or in any way related to unpaid Workers' Compensation Board assessments owing from any person or corporation engaged in the performance of this agreement or arising out of or in any way related to the failure to observe safety rules, regulations and practices of the Workers' Compensation Board, including penalties levied by the Workers' Compensation Board.
- 17.5 The Contractor will ensure compliance with and conform to all health and safety laws, by-laws or regulations of the Province of British Columbia, including without limitation the *Workers Compensation Act* and Regulations pursuant thereto.
- 17.6 The City may, on twenty-four (24) hours written notice to the Contractor, install devices or rectify any conditions creating an immediate hazard existing that would be likely to result in injury to any person. However, in no case will the City be responsible for ascertaining or discovering, through inspections or review of the operations of the Contractor or otherwise, any deficiency or immediate hazard.
- 17.7 The Contractor understands and undertakes to comply with all the Workers' Compensation Board Occupational Health and Safety Regulations for hazardous materials and substances, and in particular with the "Workplace Hazardous Materials Information System (WHMIS)" Regulations. All "Material Safety Data Sheets (MSDS)" will be shipped along with the Goods and any future MSDS updates will be forwarded.

18. BUSINESS LICENSE

- 18.1 The Contractor will obtain and maintain throughout the term of this agreement a valid City of Surrey business license.

19. DISPUTE RESOLUTION

19.1 Dispute Resolution Procedures

- 19.1.1 The parties will make reasonable efforts to resolve any dispute, claim, or controversy arising out of this agreement or related to this agreement ("**Dispute**") using the dispute resolution procedures set out in this section 19.

(a) Negotiation

The parties will make reasonable efforts to resolve any Dispute by amicable negotiations and will provide frank, candid and timely disclosure of all relevant facts, information and documents to facilitate negotiations.

(b) Mediation

If all or any portion of a Dispute cannot be resolved by good faith negotiations within 30 days, either party may by notice to the other party refer the matter to mediation. Within 7 days of delivery of the notice, the parties will mutually appoint a mediator. If the parties fail to agree on the appointment of the mediator, then either party may apply to the British Columbia International Commercial Arbitration Centre for appointment of a mediator. The parties will continue to negotiate in good faith to resolve the Dispute with the assistance of the mediator. The place of mediation will be Surrey, British Columbia. Each party will equally bear the costs of the mediator and other out-of-pocket costs, and each party will bear its own costs of participating in the mediation.

(c) Litigation

If within 90 days of the request for mediation the Dispute is not settled, or if the mediator advises that there is no reasonable possibility of the parties reaching a negotiated resolution, then either party may without further notice commence litigation.

20. JURISDICTION AND COUNCIL NON-APPROPRIATION

- 20.1 Nothing in this agreement limits or abrogates, or will be deemed to limit or abrogate, the jurisdiction of the Council of the City in the exercise of its powers, rights or obligations under any public or private statute, regulation or by-law or other enactment.
- 20.2 The Contractor recognizes and agrees that the City cannot make financial commitments beyond the City's current fiscal year. The City will annually make bonafide requests for appropriation of sufficient funds to cover all payments covered by this agreement. If City Council does not appropriate funds, or appropriates insufficient funds, the City will notify the Contractor of its intention to terminate or reduce the services so affected within 90 days after the non-appropriation becomes final. Such termination shall take effect 90 days from the date of notification, shall not constitute an event of default and shall relieve the City, its officers and employees, from any responsibility or liability for the payment of any further amounts under this agreement.

21. GENERAL

21.1 Entire Agreement

21.1.1 This Agreement, including the Appendices and any other documents expressly referred to in this Agreement as being a part of this Agreement, contains the entire agreement of the parties regarding the provision of the Services and no understandings or agreements, oral or otherwise, exist between the parties except as expressly set out in this Agreement. This Agreement supersedes and cancels all previous agreements between the parties relating to the provision of the Services.

21.2 Amendment

21.2.1 This Agreement may be amended only by agreement in writing, signed by both parties.

21.3 Contractor Terms Rejected

21.3.1 In the event that the Contractor issues an invoice, packing slip, sales receipt, or any like document to the City, the City accepts the document on the express condition that any terms and conditions in it which constitute terms and conditions which are in addition to or which establish conflicting terms and conditions to those set out in this agreement are expressly rejected by the City.

21.4 Survival of Obligations

21.4.1 All of the Contractor's obligations to perform the Services in a professional and proper manner will survive the termination or completion of this Agreement.

21.5 Cumulative Remedies

21.5.1 The City's remedies under this Agreement are cumulative and in addition to any right or remedy which may be available to the City at law or in equity.

21.6 Notices

21.6.1 Any notice, report or other document that either party may be required or may wish to give to the other must be in writing, unless otherwise provided for, and will be deemed to be validly given to and received by the addressee, if delivered personally, on the date of such personal delivery, if delivered by facsimile, on transmission, or if by mail or email, five calendar days after posting. The addresses for delivery will be as follows:

(a) The City: Finance & Technology Department
Address: 13450 - 104th Avenue
Surrey, British Columbia V3T 1V8

Attention: Jocelyn Mani
Fax:
E-mail: Jocelyn.Mani@surrey.ca

(b) The Contractor: [Company Name]
[Street Address], [City], [Province/State] [Postal or Zip Code]

Attention: [Contact Name/PositionTitle]
Fax:
E-mail:

21.7 Unenforceability

21.7.1 If any provision of this agreement is invalid or unenforceable, it will be severed from the agreement and will not affect the enforceability or validity of the remaining provisions of the agreement.

21.8 Headings

21.8.1 The headings in this agreement are inserted for convenience of reference only and will not form part of nor affect the interpretation of this agreement.

21.9 Singular, Plural and Gender

21.9.1 Wherever the singular, plural, masculine, feminine or neuter is used throughout this agreement the same will be construed as meaning the singular, plural, masculine, feminine, neuter or body corporate where the context so requires.

21.10 Waiver

21.10.1 No waiver by either party of any breach by the other party of any of its covenants, obligations and agreements will be a waiver of any subsequent breach or of any other covenant, obligation or agreement, nor will any forbearance to seek a remedy for any breach be a waiver of any rights and remedies with respect to such or any subsequent breach.

21.11 Signature

21.11.1 This agreement may be executed in or one or more counterparts all of which when taken together will constitute one and the same agreement, and one or more of the counterparts may be delivered by fax or PDF email transmission.

21.12 Force Majeure

21.12.1 Neither party shall be liable to the other for failure or delay of performance hereunder due to causes beyond its reasonable control. Such delays include, but are not limited to, earthquake, flood, storm, fire, epidemics, acts of government, governmental agencies or officers, war, riots, or civil disturbances. The non-performing party will promptly notify the other party in writing of an event of force majeure, the expected duration of the event, and its anticipated effect on the ability of the party to perform its obligations, and make reasonable effort to remedy the event of force majeure in a timely fashion.

21.12.2 The performing party may terminate or suspend its performance under this Agreement if the non-performing party fails to perform its obligations under this Agreement for more

than fifteen (15) consecutive calendar days. City's payment obligations shall be suspended automatically if it is denied access to the Services for more than five (5) hours in any twenty-four (24) hour period.

21.13 Enurement

21.13.1 This agreement shall enure to the benefit of and be binding upon the respective successors and permitted assigns of the City and the Contractor.

IN WITNESS WHEREOF the parties hereto have executed this agreement on the day and year first above written.

CITY OF SURREY

by its authorized signatory(ies):

(Signature of Authorized Signatory)

(Print Name and Position of Authorized Signatory)

(Signature of Authorized Signatory)

(Print Name and Position of Authorized Signatory)

<<INSERT NAME OF CONTRACTOR>>

I/We have the authority to bind the Consultant.

(Legal Name of Contractor)

(Signature of Authorized Signatory)

(Signature of Authorized Signatory)

(Print Name and Position of Authorized Signatory)

(Print Name and Position of Authorized Signatory)

ATTACHMENT 2



TECHNOLOGY AGREEMENT FOR SOFTWARE-AS-A-
SERVICE IMPLEMENTATION

Between

CITY OF SURREY

and

<<INSERT NAME OF CONTRACTOR>>

for

WEBSITE REDEVELOPMENT FOR SURREY PUBLIC
LIBRARIES

Reference No.: 1220-040-2016-039

(GENERAL SERVICES)

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APPENDIX 1 – SCOPE OF SERVICES

APPENDIX 1-A – TECHNICAL REQUIREMENTS

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APPENDIX 7 – CONFIDENTIALITY AGREEMENT

DRAFT AGREEMENT - SOFTWARE as a SERVICE IMPLEMENTATION

WEBSITE REDEVELOPMENT FOR LIBRARIES

This Agreement is effective this _____ day of _____, 2016.

AGREEMENT #1220-040-2016-039

BETWEEN:

CITY OF SURREY
13450 - 104th Avenue
Surrey, British Columbia, Canada, V3T 1V8

(the "City")

OF THE FIRST PART

AND:

(Insert Full Legal Name/Address of Contractor)
(the "Contractor")

OF THE SECOND PART

WHEREAS:

- A. The Contractor has developed and owns the copyright and all other proprietary rights pertaining to and subsisting in certain computer programs and related documentation generally as set out in Appendix 1 – Scope of Services; and
- B. The Contractor desires to sell, transfer, convey, and deliver such programs and documentation, including all rights subsisting in them, to the City; and
- C. The City desires to acquire such computer programs and documentation from the Contractor.

THEREFORE in consideration of the payment of one (\$1.00) dollar and other good and valuable consideration paid by each of the parties to the other (the receipt and sufficiency of which is hereby acknowledged) the City and the Contractor agree as follows:

1. INTERPRETATION

1.1 Definitions

In this agreement the following definitions apply:

"Agreement" means this Cloud Computing Services Agreement between City and Contractor, inclusive of all schedules, attachments, addenda and other documents incorporated by reference;

“City Representative” (or designate) who will have the duty of instituting and maintaining communication with the Contractor as to the requirements of the agreement including but not limited to receive security incident or breach notification;

“Confidential Information” means information supplied to, obtained by, or which comes to the knowledge of the Contractor and the City (or either of them) as a result of the performance of the Services and this Agreement, which includes, but is not limited to, Records, Personal Information, information that relates to the business of the third party, and information that is subject to solicitor-client privilege;

“Data Breach” means any actual or reasonably suspected unauthorized access to or acquisition of Data;

“Dispute” has the meaning set out in section 26.1;

“Documentation” has the meaning set out in section 2.4;

“Enhancements” means any improvements, modifications, upgrades, updates, fixes, revisions and/or expansions to the Services that Contractor may develop or acquire and incorporate into its standard version of the Services or which the Contractor has elected to make generally available to its customers;

“Fees” has the meaning set out in section 7.1;

“Indemnitees” has the meaning set out in section 10.1;

“Invoice” has the meaning set out in section 7.2.1(a);

“Marks” has the meaning set out in section 2.5;

“Personal Information” means recorded information about an identifiable individual and any other types of information that, alone or in combination, would reveal the identity of a particular individual, other than business contact information;

“Record” means information, whether in oral or written form (including books, documents, maps, drawings, photographs, letters, vouchers, papers and any other thing on which information is recorded or stored by graphic, electronic, mechanical or other means), that is supplied, obtained or created in the course of using, providing or configuring the Services, or otherwise under this Agreement. For greater clarity, Records includes Documentation. In this Agreement, the term “Records” is interchangeable with “Data”;

“Security Incident” means any actual or reasonably suspected adverse event that compromises the availability, confidentiality, or integrity of the Data, or the ability of the City to access the Data;

“Software-as-a-Service” (SaaS) shall mean both the Software and Services provided by the Contractor to the City under this Agreement;

“Software” means the Software or Program(s) to be provided by the Contractor to the City under this Agreement;

“Subscription Fee” shall mean the reoccurring fee paid to the Contractor as compensation for continued use of the Software-as-a-Service;

“Support Services” shall mean any help, support, setup, installation, or other assistance as described in Appendix 1 – Scope of Services and in Appendix 1-A - Contractor’s Technical Response;

“Source Code” means a set of instructions, written in programming language, that must be translated to machine instructions before the program can run on a computer. These instructions must be compiled into object code before the computer can understand them;

“Term” has the meaning set out in section 4.1; and

“Third Party” means persons, corporations and entities other than Contractor, City or any of their employees, contractors or agents.

1.2 Appendices

1.2.1 The following attached Appendices are a part of this Agreement:

- (a) Appendix 1 – Scope of Services;
- (b) Appendix 1-A – Technical Requirements;
- (c) Appendix 1-B – Functional Requirements;
- (d) Appendix 2 – Fees and Payment;
- (e) Appendix 3 – Time Schedule;
- (f) Appendix 4 – Key Personnel and Sub-Contractors;
- (g) Appendix 5 – Additional Services;
- (h) Appendix 6 – Privacy Protection Schedule; and
- (i) Appendix 7 – Confidentiality Agreement.

2. SERVICES

2.1 Services

2.1.1 This Agreement sets forth the terms and conditions under which the Contractor agrees to license certain hosted “software as a service” (SaaS) and provide all other services, data import / export, monitoring, support, backup and recovery, and training necessary for City’s productive use of such software, as further set forth in Appendix 1, attached. The City shall perform its responsibilities set forth in the same Appendix 1. Contractor agrees to work with the City to ensure proper change management and assist in identifying any required technology upgrades within the City’s network in support of this implementation. Contractor and the City shall use commercially reasonable efforts to fulfill their respective obligations in a timely manner in order to achieve the agreed milestones and dates set forth in this Agreement.

Authorized Users. Unless otherwise limited in Appendix 1, City and any of its employees, agents, contractors, suppliers of services or other designated users that have a need to use the Services for the benefit of the City shall have the right to operate and use the same. As part of the Services, City shall be responsible for all user identification and password change management.

Non-exclusivity. Nothing herein shall be deemed to preclude the City from retaining the services of other persons or entities undertaking the same or similar functions as those undertaken by Contractor hereunder.

2.1.2 The City acquires the right to use the Services acquired under this Agreement at any location under the direct control of the City.

2.1.3 Contractor agrees to extend the terms and conditions of this Agreement, including pricing, to all current and future City locations at their request.

2.2 Changes

2.2.1 The City may without invalidating this Contract make a Change to the Services. If the City makes a Change to the Services, then the Department Representative, or, designate shall issue a Change Order.

2.2.2 The Department Representative, or designate may at any time give the Contractor a written request (a "Contemplated Change Order") to provide a Quotation for a specified Change that the City is considering.

2.2.3 If the Department Representative, or designate gives the Contractor a Contemplated Change Order, then the Contractor shall, as part of the Services, respond as promptly as possible with a written price quotation (a "Quotation"). The Quotation shall comply with the following:

(a) Any Quotation submitted by the Contractor for a Change or a Contemplated Change Order shall, unless expressly stated otherwise in the Quotation, be interpreted to represent the total adjustment to the Contract Price (excluding GST) owing on account for the Services contemplated by the Quotation and for certainty shall be interpreted to include compensation on account of all related costs, including but not limited to all direct, indirect, or impact, head office, overhead, and all other costs, and all markups and profits, even if the Quotation does not specifically mention such items.

2.2.4 The Department Representative, or designate may at any time, by way of a Change Order, direct the Contractor to proceed with a Change and the Contractor shall comply with such direction.

2.2.5 The Contractor shall not proceed with any Services that the Contractor intends or expects to be treated as a Change without receiving a written Change Order approving the Services as a Change.

2.2.6 If for any reason the Contractor proceeds with Services that the Contractor intends to claim as a Change before a written Change Order is issued, then verbal approval must have been received and a written Change Order pending. The Contractor shall maintain daily records, and submit them before the end of the next day to the Department Representative, or, designate for certification. Notwithstanding any other provision of the Contract Documents, no payment shall be owing to the Contractor on account of any claimed Change if the Contractor fails to maintain and submit such records. However, the mere maintenance and submission of such daily records shall not create an entitlement for the Contractor to receive payment for the claimed Change and the

Contractor's right to receive payment shall be as otherwise provided by the Contract Documents.

- 2.2.7 The Contractor shall not be entitled to rely on any oral representation (except in an emergency), site meeting discussion, site meeting minutes or other communication as approval that any Services are a Change. The Contractor shall strictly comply with the requirements of this section.
- 2.2.8 In an emergency, when it is impractical to delay the Services until the written authorization is issued, the Department Representative, or designate may issue an oral direction which the Contractor shall follow. In such event the Department Representative, or, designate shall issue a confirming Change Order at the first opportunity.
- 2.2.9 If Contractor eliminates any functionality of any of the Services provided under this Agreement and subsequently offers that functionality in other or new products (whether directly or indirectly through agreement with a Third Party), then the portion of those other or new products that contain the functions in question, or the entire product if the functions cannot be separated out, shall be provided to City at no additional charge and under the terms of this agreement, including technical support. If Contractor incorporates the functionality of the Services provided under this agreement into a newer product and continues to offer both products, City may, in its sole discretion, exercise the option to upgrade to the newer product at no additional cost.

2.3 Standard of Care

- 2.3.1 The Contractor will perform the Services with that degree of care, skill and diligence normally provided by a qualified and experienced practitioner performing Services similar to the Services, and on the understanding that the City is relying on the Contractor's experience and expertise. The Contractor represents that it has the expertise, qualifications, resources and relevant experience to provide the Goods and Services.

2.4 Documentation

- 2.4.1 Documentation shall mean, collectively: **(a)** all materials published or otherwise made available to City by the Contractor that relate to the functional, operational and/or performance capabilities of the Services; **(b)** all user, operator, system administration, technical, support and other manuals and all other materials published or otherwise made available by the Contractor that describe the functional, operational and/or performance capabilities of the Services; **(c)** any Requests for Information and/or Requests for Proposals (or documents of similar effect) issued by City, and the responses thereto from the Contractor, and any document which purports to update or revise any of the foregoing; and **(d)** the results of any presentations or tests provided by the Contractor to the City.

2.5 Marks

- 2.5.1 Marks shall mean the trademarks and/or trade names of Contractor as licensed to City hereunder.

2.6 Service Levels

- 2.6.1 The Contractor represents and warrants that the Services will be performed in a professional manner consistent with industry standards reasonably applicable to such Services.
- 2.6.2 The Contractor 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%.
- 2.6.3 If the Services availability falls below 99.99% in any month, the Contractor shall provide the 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%

- 2.6.4 The Contractor 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.
- 2.6.5 If the Contractor's system response times fall below the warranted level for two (2) or more consecutive weeks, the Contractor shall provide the City with a credit in the amount of twenty percent (20%) of the Services fees for that month. If the Contractor's system response times fall below the warranted level for six (6) out of eight (8) consecutive weeks, the Contractor shall be considered to be in default, and City may terminate the Agreement without penalty.
- 2.6.6 The Contractor shall provide the 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.
- 2.6.7 The Contractor shall provide the 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 the Services were not available, and identification of months in which agreed upon service levels were not achieved; and
 - (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.

2.6.8 The City retains the right to use a Third Party to validate Supplier's performance in meeting agreed upon service levels.

2.7 Training

2.7.1. The Contractor shall provide a training plan in accordance with Schedule A.

2.7.2 The City reserves the right to video and/or audio tape any and all training sessions, whether held at the City or the Contractor's site, or via teleconference. Use of such training tapes shall be strictly for City staff training purposes.

2.8 Warranties, Representations and Covenants

2.8.1 The City shall have the right to discontinue use of the Services for any reason and shall receive a full refund of all payments, for a period of ninety (90) calendar days after the Services Commencement Date (the "Warranty Period").

2.8.2 Services Warranty. The Contractor represents and warrants that the Services provided to the City under this Agreement shall conform to, be performed, function, and produce results substantially in accordance with the Documentation. The Contractor shall offer the City warranty coverage equal to or greater than that offered by the Contractor to any of its customers.

2.8.3 The Contractor's obligations for breach of the Services Warranty shall be limited to using its best efforts, at its own expense, to correct or replace that portion of the Services which fails to conform to such warranty, and, if the Contractor is unable to correct any breach in the Services Warranty by the date which is sixty (60) calendar days after the City provides notice of such breach, City may, in its sole discretion, either extend the time for the Contractor to cure the breach or terminate this Agreement and receive a full refund of all amounts paid to the Contractor under this Agreement.

2.8.4 Disabling Code Warranty. The Contractor represents, warrants and agrees that the Services do not contain and City will not receive from the Contractor any virus, worm, trap door, back door, timer, clock, counter or other limiting routine, instruction or design, or other malicious, illicit or similar unrequested code, including surveillance software or routines which may, or is designed to, permit access by any person, or on its own, to erase, or otherwise harm or modify any City system or Data (a "Disabling Code").

2.8.5 In the event a Disabling Code is identified, Contractor shall take all steps necessary, at no additional cost to City, to: (a) restore and/or reconstruct any and all Data lost by the City as a result of Disabling Code; (b) furnish to City a corrected version of the Services without the presence of Disabling Codes; and, (c) as needed, re-implement the Services at no additional cost to the City. This warranty shall remain in full force and effect as long as this Agreement remains in effect.

2.8.6 Intellectual Property Warranty. The Contractor represents, warrants and agrees that: Contractor has all Intellectual Property Rights necessary to provide the Services to the City in accordance with the terms of this Agreement; the Contractor is the sole owner or is a valid licensee of all software, text, pictures, audio, video, logos and copy that provides the foundation for provision of the Services, and has secured all necessary licenses, consents, and authorizations with respect to the use of these underlying

elements; the Services do not and shall not infringe upon any patent, copyright, trademark or other proprietary right or violate any trade secret or other contractual right of any Third Party; and there is currently no actual or threatened suit against the Contractor by any Third Party based on an alleged violation of such right. This warranty shall survive the expiration or termination of this Agreement.

- 2.8.7 **Warranty of Authority.** Each party represents and warrants that it has the right to enter into this Agreement. The Contractor represents and warrants that it has the unrestricted right to provide the Services, and that it has the financial viability to fulfill its obligations under this Agreement. The Contractor represents, warrants and agrees that the Services shall be free and clear of all liens, claims, encumbrances or demands of Third Parties. The Contractor represents and warrants that it has no knowledge of any pending or threatened litigation, dispute or controversy arising from or related to the Services. This warranty shall survive the expiration or termination of this Agreement.
- 2.8.8 **Third Party Warranties and Indemnities.** The Contractor will assign to the City all Third Party warranties and indemnities that the Contractor receives in connection with any products provided to the City. To the extent that the Contractor is not permitted to assign any warranties or indemnities through to the City, the Contractor agrees to specifically identify and enforce those warranties and indemnities on behalf of the City to the extent the Contractor is permitted to do so under the terms of the applicable third party agreements.
- 2.8.9 **Date/Time Change Warranty.** The Contractor represents and warrants to the City that the Services provided will accurately process date and time-based calculations under circumstances of change including, but not limited to: century changes and daylight saving time changes. The Contractor must repair any date/time change defects at the Contractor's own expense.
- 2.8.10 **Most Favoured Customer Warranty.** The Contractor represents and warrants and agrees that the Services and other fees stated herein are and shall be the lowest fees the Contractor charges any of its other customers. In any case where the City fees are found to be higher, then the Contractor will provide the City with a retroactive refund for any overpayment.
- 2.8.11 The warranties set forth above are in lieu of all other warranties, express or implied, with regard to the services pursuant to this agreement, including, but not limited to, any implied warranties of merchantability and fitness for a particular purpose.
- 2.8.12 **Errors and Omissions: Correction.** The Contractor shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, statement of work, and other services furnished by or on behalf of the Contractor under this Agreement. The Contractor, without additional compensation, shall correct or revise any errors or omissions in the designs, drawings, statement of work, and/or other Contractor services immediately upon notification by the City. The obligation provided for in this section with respect to any acts or omissions during the Term of this Agreement shall survive any termination or expiration of this Agreement and shall be in addition to all other obligations and liabilities of the Contractor.

2.9 Software Upgrades and Enhancements

2.9.1 The Contractor shall supply:

- (a) at no additional cost updated versions of the Software to operate on upgraded versions of operating systems, upgraded versions of firmware, or upgraded versions of web browsers;
- (b) at no additional cost interface modules that are developed by the Contractor for interfacing the Software to other Software products; and
- (c) at no additional cost updated versions of the Software that encompass improvements, extensions, maintenance updates, error corrections, or other changes that are logical improvements or extensions of the original Software supplied to the City.

2.9.2 Unless otherwise mutually agreed to in writing, the Contractor shall maintain any and all Third Party Software products at their most current version and at no additional charge. However, the Contractor shall not maintain any Third Party Software versions, including one version back, if any such version would prevent the City from using any functions, in whole or in part, or would cause deficiencies in the system. If implementation of an upgrade to a Third Party Software product requires personnel in addition to the staff proposed in the Response for the Hosted Services, the City and the Contractor shall discuss whether to implement such an upgrade and, if mutually agreed upon in writing, any additional charges to be paid by the City for such upgrade. Any additional costs that are charged by a Third Party Software manufacturer for an upgrade to a Third Party Software product that is not covered by such product's maintenance agreement shall be charged to and paid for by the Contractor.

2.9.3 Enhancements

The Contractor shall provide the City with all Enhancements and associated documentation that are provided as general releases to the Software, in whole or in part, as part of the Services. Such Documentation shall be adequate to inform the City of the problems resolved including any significant differences resulting from the release which are known by the Contractor. The Contractor warrants that each such Enhancement general release shall be tested and perform according to the requirements Specifications. The Contractor agrees to correct corrupted Data that may result from any system deficiency introduced by the Enhancement at no cost to the City. Enhancements to correct any Deficiency shall be provided to the City at no additional cost and without the need for a work order. Should the Contractor not be able to correct the hosted system so that it complies with the specifications in the Statement of Work and/or Service Level Agreement (SLA), to the City's reasonable satisfaction in a timely manner, the City may terminate this Agreement.

3. TIME

3.1 Time is of the essence.

4. TERM

4.1 The Contractor will provide the Services for the period commencing on (Start Date) and terminating on (End Date) (the "**Term**").

4.2 The parties may extend the Term by mutual agreement for up to four (4) one (1) year periods. If the Term is extended, the provisions of the Agreement will remain in force except where amended in writing by the parties.

4.3 Any additional Services acquired by the City will be co-terminus with the Term of the initially acquired Services.

5. PERSONNEL

5.1 Personnel

5.1.1 The Contractor agrees at all times to maintain an adequate staff of experienced and qualified employees for efficient performance under this Agreement. The Contractor agrees that, at all times, the employees of the Contractor furnishing or performing any services shall do so in a proper, workmanlike, and dignified manner.

5.1.2 The Contractor agrees that all persons working for or on behalf of the Contractor whose duties bring them upon the City's premises shall obey the rules and regulations that are established by the City and shall comply with the reasonable directions of the City's officers. The City may, at any time, require the removal and replacement of any of the Contractor's employees for good cause.

5.1.3 The Contractor shall be responsible for the acts of its employees and agents while on the Client's premises. Accordingly, the Contractor agrees to take all necessary measures to prevent injury and loss to persons or property located on the City's premises. The Contractor shall be responsible for all damages to persons or property caused by Vendor or any of its agents or employees. The Contractor shall promptly repair, to the specifications of the City, any damage that it, or its employees or agents, may cause to the City's premises or equipment; on the Contractor's failure to do so, the City may repair such damage and the Contractor shall reimburse the City promptly for the cost of repair.

5.1.4 The Contractor agrees that, in the event of an accident of any kind, the Contractor will immediately notify the City's contact person and thereafter, if requested, furnish a full written report of such accident.

5.1.5 The Contractor shall perform the services contemplated in the Agreement without interfering in any way with the activities of the City's staff or visitors.

5.1.6 The Contractor and its employees or agents shall have the right to use only those facilities of the City that are necessary to perform services under this Agreement and shall have no right to access any other facilities of the City. The City shall also extend parking privileges to properly identified members of the Contractor's full-time staff on the same basis as they are extended to City staff.

5.1.7 The City shall have no responsibility for the loss, theft, disappearance of, or damage to equipment, tools, materials, supplies, and other personal property of the Contractor or its employees, subcontractors, or material-men.

5.2 Sub-Contractors and Assignment

- 5.2.1 The Contractor will not engage any personnel or sub-contractors, or sub-contract or assign its obligations under this Agreement, in whole or in part, without the prior written approval of the City and any attempt to do so shall be void and without further effect.
- 5.2.2 Sub-contractor Disclosure: The Contractor shall identify all of its strategic business partners related to the Services provided under this Agreement, including but not limited to all sub-contractors or other entities or individuals who may be a party to a joint venture or similar agreement with the Contractor, and who shall be involved in any application development and/or operations.

5.3 Agreements with Sub-Contractors

- 5.3.1 The Contractor will preserve and protect the rights of the City with respect to any Services performed under sub-contract and incorporate the terms and conditions of this Agreement into all sub-contracts as necessary to preserve the rights of the City under this Agreement. The Contractor will be as fully responsible to the City for acts and omissions of sub-contractors and of persons directly or indirectly employed by them as for acts and omissions of persons directly employed by the Contractor.

5.4 Separation of Duties and Non-Disclosure

- 5.4.1 The Contractor shall enforce separation of job duties, require commercially reasonable non-disclosure agreements, and limit staff knowledge of the City's data to that which is absolutely necessary to perform job duties.

5.5 Right to Remove Personnel

- 5.5.1 The City shall have the right at any time to require that the Contractor remove from interaction with the City any Contractor representative who the City believes is detrimental to its working relationship with the service provider. The City shall provide the Contractor with notice of its determination, and the reasons it requests the removal. If the public jurisdiction signifies that a potential security violation exists with respect to the request, the service provider shall immediately remove such individual. The Contractor shall not assign the person to any aspect of the contract or future work orders without the City's consent.

6. LIMITED AUTHORITY

6.1 Agent of City

- 6.1.1 The Contractor is not and this agreement does not render the Contractor an agent or employee of the City, and without limiting the above, the Contractor does not have authority to enter into any contract or reach any agreement on behalf of the City, except for the limited purposes as may be expressly set out in this agreement, or as necessary in order to provide the Goods and Services. The Contractor will make such lack of authority clear to all persons with whom the Contractor deals in the course of providing the Goods and Services.

6.2 Independent Contractor

6.2.1 The Contractor is an independent Contractor. This agreement does not create the relationship of employer and employee, a partnership, or a joint venture. The City will not control or direct the details, means or process by which the Contractor performs the Goods and Services. The Contractor will determine the number of days and hours of work required to properly and completely perform the Goods and Services. The Contractor is primarily responsible for performance of the Goods and Services and may not delegate or assign any Services to any other person except as provided for in this agreement. The Contractor will be solely liable for the wages, fringe benefits, work schedules and work conditions of any partners, employees or sub-contractors.

7. FEES AND PAYMENT

7.1 Fees

7.1.1 The City will pay to the Contractor the fees as set out in Schedule B (the “**Fees**”). Payment by the City of the Fees will be full payment for the Services and the Contractor will not be entitled to receive any additional payment from the City.

7.1.2 Fees for a particular SaaS server will begin to accrue when the SaaS server is associated with the City’s account.

7.2 Payment

7.2.1 The City shall pay for the implementation services, deliverables, initial software and subscription fee, and annual subscription fee as follows:

- (a) The Contractor will submit a monthly invoice (the “**Invoice**”) to the City requesting payment of the portion of the Fees relating to the Services provided in the previous month, and including the following information:
 - (1) an invoice number;
 - (2) the Contractor's name, address and telephone number;
 - (3) the City's reference number for the Services, **PO # _____**
 - (4) date(s) of fulfillment and/or date(s) of training and/or date(s) of Transition Assistance;
 - (5) Contractor’s list price per unit for each item, applicable discounts, City’s price per unit for each item, and extended price;
 - (6) taxes (if any);
 - (7) other applicable charges (if any);
 - (8) payment terms including any available prompt payment discounts;
 - (9) grand total of the Invoice; and
 - (10) Contractor's representative Name, Title, Location and Department.
- (b) if the City reasonably determines that any portion of an Invoice is not payable then the City will so advise the Contractor;
- (c) the City will pay the portion of an Invoice which the City determines is payable within 30 days of the receipt of the Invoice, except the City may hold back from payments 10% of the amount the City determines is payable to the Contractor until such time as the Contractor provides its Final Report to the City;
- (d) all Fees are payable in Canadian dollars; and
- (e) no interest will be payable on any overdue accounts.

7.3 Payment Schedule

Implementation and Licensing fees will be paid quarterly with invoicing to occur at the end of the last month of each quarter. Additional fees or ad hoc services will be invoiced in accordance with negotiated arrangements for each service provided.

7.4 Invoicing

7.4.1 Invoices will be submitted by the Contractor by mail to: surreyinvoices@surrey.ca.

Name: Jocelyn Mani
Address: Finance & Technology
13450 - 104th Avenue
Surrey, British Columbia V3T 1V8

Invoices and supporting documentation shall be prepared at the sole expense and responsibility of the Contractor. The City will not compensate the Contractor for any costs incurred for Invoice preparation. The City may request, in writing, changes to the content and format of the Invoice and supporting documentation at any time. The City reserves the right to request additional supporting documentation to substantiate costs at any time.

7.5 Records

7.5.1 The Contractor will prepare and maintain proper records related to the Services, including records, receipts and invoices relating to Disbursements. On request from the City, the Contractor will make the records available open to audit examination by the City at any time during regular business hours during the time the Contractor is providing the Services and for a period of six years after the Services are complete.

7.6 Resolution and Response Time Warranty

7.6.1 The Contractor warrants that all resolution and response times delineated below shall be adhered to as follows, as determined by the City's project manager.

- END OF PAGE -

Service Level	Service Standard	Penalty
<p>Level 1: A “Critical” or “Level 1” error renders the software completely unusable or nearly unusable or introduces a high degree of operational risk. No workaround is available that would effectively meet the classification of a level 2 or lower. Until this error is resolved, the software usage is essentially halted.</p>	<p>The Contractor must respond to critical problems by ensuring that appropriate managerial personnel are made aware of the problem and that they actively track and expedite a resolution.</p> <p>The Contractor must assign Support or development personnel at the appropriate level to the problem for the problem’s expeditious resolution</p> <p>Response to First Call Time Limit – within two (2) hours.</p> <p>Resolution Time Limit – Contractor shall use best efforts to resolve within one (1) day.</p> <p>If the Contractor and City staff are working to resolve a Level 1 support issue at the time that normal support hours end, the Contractor’s support representatives must continue to work past the normal support hours to provide what assistance is needed at no additional cost to the City.</p>	<p>For not adhering to Response to First Call Time Limit, the City shall assess a 10%, per incident, penalty, based on the value of the annual support contract.</p> <p>For not adhering to the Resolution Time Limit, the City shall assess a 10%, per day, penalty, based on the value of the annual support contract.</p> <p>Level 1 penalty is to be applied against the support fees payments.</p>
<p>Level 2: A “High” or “level 2” error renders the software consistently unavailable or obstructed, and causes a moderate level of hindrance or risk. Workarounds may be available, but use of the software or performance is acutely degraded and causes continuing operational risk. A moderate number of users are significantly impacted, but overall the software is operational and functional.</p>	<p>Response to First Call Time Limit – within four (4) business hours.</p> <p>Resolution Time Limit – the Contractor shall use its best efforts to resolve within two (2) business days.</p>	<p>For not adhering to Response to First Call Time Limit, the City shall assess a 7.5%, per incident, penalty, based on the value of the annual support contract.</p> <p>For not adhering to the Resolution Time Limit, the City shall assess a 7.5%, per day, penalty, based on the value of the annual support contract.</p> <p>Level 2 penalty is to be applied against the support fees payments.</p>

<p>Level 3: A “Low” or “Severity 3” error has a small degree of significance, or is a minor operational or configuration issue, or is a “one off” case. A “one off” case occurs when the error occurs infrequently and cannot be replicated easily. These are errors that do not impact the daily use of the software. A low error is something does not affect normal use, and can be accepted for a period of time, but user would eventually want to be fixed.</p>	<p>Response to First Call Time Limit – within one business day.</p> <p>Resolution Time Limit – the Contractor shall use its best efforts to resolve within three (3) business days.</p>	<p>For not adhering to Response to First Call Time Limit, the City shall assess a 5%, per incident, penalty, based on the value of the annual support contract.</p> <p>For not adhering to the Resolution Time Limit, the City shall assess a 5%, per day, penalty, based on the value of the annual support contract.</p> <p>Level 3 penalty is to be applied against the support fees payments.</p>
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7.7 Non-Residents

- 7.7.1 If the Contractor is a non-resident of Canada and does not provide to the City a waiver of regulation letter, the City will withhold and remit to the appropriate governmental authority the greater of:
- (a) 15% of each payment due to the Contractor; or
 - (b) the amount required under applicable tax legislation.

8. CITY RESPONSIBILITIES

8.1 City Information

- 8.1.1 The City will, in co-operation with the Contractor, make efforts to make available to the Contractor information which the City has in its files that relate to the delivery of the Services. The Contractor will review any such material upon which the Contractor intends to rely and take reasonable steps to determine if that information is complete or accurate. The Contractor will assume all risks that the information is complete and accurate and the Contractor will advise the City in writing if in the Contractor’s judgment the information is deficient or unreliable and undertake such new surveys and investigations as are necessary.

8.2 City Decisions

- 8.2.1 The City will in a timely manner make all decisions required under this agreement, examine documents submitted by the Contractor and respond to all requests for approval made by the Contractor pursuant to this Agreement.

8.3 Notice of Defect

- 8.3.1 If the City believes in good faith that some portion of the Services has not been completed satisfactorily, the City may require the Contractor to correct such work prior to the City making any payment. In such event, the City will provide the Contractor with an explanation of the concern and the remedy that the City expects. The City may withhold

from any payment that is otherwise due, an amount that the City in good faith finds to be under dispute, of if the Contractor does not provide a sufficient remedy. The City may retain the amount equal to the cost to the City for otherwise correcting or remedying the work not properly completed.

9. INTELLECTUAL PROPERTY INFRINGEMENT INDEMNIFICATION

- 9.1 Contractor shall indemnify, defend and hold City harmless from any and all actions, proceedings, or claims of any type brought against City alleging that the Services and/or Documentation or City's use of the Services and/or Documentation constitutes a misappropriation or infringement upon any patent, copyright, trademark, or other proprietary right or violates any trade secret or other contractual right of any Third Party. Contractor agrees to defend against, and hold City harmless from, any claims and to pay all litigation costs, all reasonable attorneys' fees, settlement payments and all judgments, damages, costs or expenses awarded or resulting from any claim. City shall, after receiving notice of a claim, advise Contractor of it. City's failure to give Contractor timely notification of said claim shall not effect Contractor's indemnification obligation unless such failure materially prejudices Contractor's ability to defend the claim. City reserves the right to employ separate counsel and participate in the defense of any claim at its own expense.
- 9.2 If the Services and/or Documentation, or any part thereof, is the subject of any claim for infringement of any patent, copyright, trademark, or other proprietary right or violates any trade secret or other contractual right of any Third Party, or if it is adjudicated by a court of competent jurisdiction that the Services and/or Documentation, or any part thereof, infringes any patent, copyright, trademark, or other proprietary right or violates any trade secret or other contractual right of any Third Party, and City's use of the Services and/or Documentation, or any part of it, is enjoined or interfered with in any manner, Contractor shall, at its sole expense and within thirty (30) calendar days of such injunction or interference, either: (a) procure for City the right to continue using the Services and/or Documentation free of any liability for infringement or violation; (b) modify the Services and/or Documentation, or parts thereof, with non-infringing Services and/or Documentation of equivalent or better functionality that is reasonably satisfactory to City; or (c) replace the Services and/or Documentation, or parts thereof, with non-infringing Services and/or Documentation of equivalent or better functionality that is reasonably satisfactory to City.
- 9.3 Contractor shall have no obligation to indemnify City for a claim if: (a) City uses the Services in a manner contrary to the provisions of this Agreement and such misuse is the cause of the infringement or misappropriation; or (b) City's use of the Services in combination with any product or system not authorized, approved or recommended by Contractor and such combination is the cause of the infringement or misappropriation.
- 9.4 No limitation of liability set forth elsewhere in this Agreement is applicable to the Intellectual Property Infringement Indemnification set forth herein.

10. INSURANCE AND DAMAGES

10.1 Indemnity

10.1.1 The Contractor will indemnify and save harmless the City and all of its elected and appointed officials, officers, employees, servants, representatives and agents (collectively the “**Indemnitees**”), from and against all claims, demands, causes of action, suits, losses, damages and costs, liabilities, expenses and judgments (including all actual legal costs) for damage to or destruction or loss of property, including loss of use, and injury to or death of any person or persons which any of the Indemnitees incur, suffer or are put to arising out of or in connection with any failure, breach or non-performance by the Contractor of any obligation of this agreement, or any wrongful or negligent act or omission of the Contractor or any employee or agent of the Contractor.

10.1.2 City hereby agrees to indemnify and hold Contractor and its affiliates, sub-contractors and agents (and each of their respective shareholders, officers, directors, employees and Contractors) harmless from and against any and all third party claims and resulting losses and damages including, but not limited to, reasonable legal fees, fines and expenses, resulting from, relating to or arising out of (i) any breach of the terms and conditions of this Agreement by City or (ii) the negligence or willful misconduct of the City or its directors, officers, employees, contractors, or agents.

10.2 Survival of Indemnity

10.2.1 The indemnity described in sections 10.1.1 and 10.1.2 will survive the termination or completion of this Agreement and, notwithstanding such termination or completion, will continue in full force and effect for the benefit of the Indemnitees.

10.3 Limitation of Liability

10.3.1 In no event shall either party be liable for any loss of data, procurement costs, loss of profits, loss of use or for any other consequential, indirect, exemplary, special or incidental damages arising under or in connection with this Agreement, even if the other party has been advised of the possibility of such damages.

10.4 Contractor's Insurance Policies

10.4.1 The Contractor will, without limiting its obligations or liabilities and at its own expense, provide and maintain throughout this agreement the following insurances in forms and amounts acceptable to the City from insurers licensed to conduct business in Canada:

- (a) commercial general liability insurance on an occurrence basis, in an amount not less than three million (\$5,000,000) dollars inclusive per occurrence against death, bodily injury and property damage arising directly or indirectly out of the work or operations of the Contractor, its employees and agents. The insurance will include cross liability and severability of interests such that the coverage shall apply in the same manner and to the same extent as though a separate policy had been issued to each insured. The insurance will include, but not be limited to: premises and operators' liability, broad form products and completed operations, owners and Contractors protective liability, blanket contractual, employees as additional insureds, broad form property damage, non-owned

- automobile, contingent employers liability, personal injury, and incidental medical malpractice. The City will be added as additional insured; and
- (b) professional errors and omissions insurance in an amount not less than one million (\$2,000,000) dollars insuring all professionals providing the Services from liability resulting from errors or omissions in the performance of the Services, with a 12 month maintenance period.

10.5 Insurance Requirements

- 10.5.1 The Contractor will provide the City with evidence of the required insurance prior to the commencement of this Agreement. Such evidence will be in the form of a completed certificate of insurance acceptable to the City. The Contractor will, on request from the City, provide certified copies of all of the Contractor's insurance policies providing coverage relating to the Services, including without limitation any professional liability insurance policies. All required insurance will be endorsed to provide the City with thirty (30) days advance written notice of cancellation or material change restricting coverage. To the extent the City has an insurable interest, the builder's risk policy will have the City as first loss payee. The Contractor will be responsible for deductible amounts under the insurance policies. All of the Contractor's insurance policies will be primary and not require the sharing of any loss by the City or any insurer of the City.

10.6 Contractor's Responsibilities

- 10.6.1 The Contractor acknowledges that any requirements by the City as to the amount of coverage under any policy of insurance will not constitute a representation by the City that the amount required is adequate and the Contractor acknowledges and agrees that the Contractor is solely responsible for obtaining and maintaining policies of insurance in adequate amounts. The insurance policy coverage limits shall not be construed as relieving the Contractor from responsibility for any amounts which may exceed these limits, for which the Contractor may be legally liable.

10.7 Additional Insurance

- 10.7.1 The Contractor shall place and maintain, or cause any of its sub-contractor to place and maintain, such other insurance or amendments to the foregoing policies as the City may reasonably direct.

10.8 Waiver of Subrogation

- 10.8.1 The Contractor hereby waives all rights of recourse against the City for loss or damage to the Contractor's property.

11. TERMINATION

11.1 By the City

- 11.1.1 The City for any reason may with 90 days written notice to the Contractor terminate this agreement before the completion of the Term, such notice to be determined by the City at its sole discretion. Upon receipt of such notice, the Contractor will perform no further Services other than the work which is reasonably required to complete the Services. Despite any other provision of this agreement, if the City terminates this agreement

before the completion of all the Services, the City will pay to the Contractor all amounts owing under this agreement for Services provided by the Contractor up to and including the date of termination, plus reasonable termination costs in the amount as determined by the City in its sole discretion. Upon payment of such amounts no other or additional payment will be owed by the City to the Contractor, and, for certainty, no amount will be owing on account of lost profits relating to the portion of the Goods and Services not performed or other profit opportunities.

11.2 Termination for Cause

11.2.1 The City may terminate this agreement for cause as follows:

- (a) If the Contractor is adjudged bankrupt, or makes a general assignment for the benefit of creditors because of its insolvency, or if a receiver is appointed because of its insolvency, the City may, without prejudice to any other right or remedy the City may have, terminate this Agreement by giving the Contractor or receiver or trustee in bankruptcy written notice; or
- (b) If the Contractor is in breach of any term or condition of this Agreement, and such breach is not remedied to the reasonable satisfaction of the City within 5 days after delivery of written notice from the City to the Contractor, then the City may, without prejudice to any other right or remedy the City may have, terminate this Agreement by giving the Contractor further written notice.

11.2.2 If the City terminates this Agreement as provided by this Section, then the City may:

- (a) enter into contracts, as it in its sole discretion sees fit, with other persons to complete the Services;
- (b) withhold payment of any amount owing to the Contractor under this Agreement for the performance of the Services;
- (c) set-off the total cost of completing the Services incurred by the City against any amounts owing to the Contractor under this Agreement, and at the completion of the Services pay to the Contractor any balance remaining; and
- (d) if the total cost to complete the Services exceeds the amount owing to the Contractor, charge the Contractor the balance, which amount the Contractor will forthwith pay.

11.3 Curing Defaults

11.3.1 If either party is in default of any of its obligations under this Agreement, then either party may without terminating this Agreement, upon fourteen (14) days written notice to the defaulting party, remedy the default and set-off all costs and expenses of such remedy against any amounts owing to the defaulting party. Nothing in this Agreement will be interpreted or construed to mean that the non-defaulting party has any duty or obligation to remedy any default of the defaulting party. Parties agree to act reasonably and diligently to remedy issues.

12. APPLICABLE LAWS

12.1 Applicable Laws

12.1.1 This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia. The City and the Contractor accept the jurisdiction of the

courts of British Columbia and agree that any action under this Agreement be brought in such courts.

12.2 Codes and By-Laws

12.2.1 The Contractor will provide the Services in full compliance with all applicable laws and regulations.

12.3 Interpretation of Laws

12.3.1 The Contractor will, as a qualified and experienced professional, interpret laws and regulations applicable to the performance of the Services. If an authority having jurisdiction imposes an interpretation which the Contractor could not reasonably have verified or foreseen prior to entering into this Agreement, then the City will pay the additional costs, if any, of making alterations so as to conform to the required interpretation.

13. DATA PRIVACY

13.1 The Contractor will use City Data only for the purpose of fulfilling its duties under this Agreement and for City's sole benefit, and will not share such Data with or disclose it to any Third Party without the prior written consent of City or as otherwise required by law. By way of illustration and not of limitation, Contractor will not use such Data for Contractor's own benefit and, in particular, will not engage in "data mining" of City Data or communications, whether through automated or human means, except as specifically and expressly required by law or authorized in writing by City.

13.2 All City Data will be stored on servers located solely within Canada.

13.3 The Contractor will provide access to City Data only to those Contractor employees, contractors and subcontractors who need to access the Data to fulfill Contractor obligations under this Agreement. The Contractor will ensure that, prior to being granted access to the Data, Contractor staff who perform work under this Agreement have all undergone and passed criminal background screenings; have successfully completed annual instruction of a nature sufficient to enable them to effectively comply with all Data protection provisions of this Agreement; and possess all qualifications appropriate to the nature of the employees' duties and the sensitivity of the Data they will be handling.

13.4 To assist the City in meeting its confidentiality and disclosure of information obligations, the Contractor will implement, maintain, and use appropriate and sufficient administrative, technical, and physical security measures to protect the confidentiality and integrity of all electronically maintained or transmitted City data. Contractor will protect said data according to commercially acceptable standards and no less rigorously than it protects its own confidential information.

14. CONFIDENTIALITY AND DISCLOSURE OF INFORMATION

14.1 No Disclosure

14.1.1 Except as provided for by law or otherwise by this Agreement, the Contractor and the City will keep strictly confidential any information supplied to, obtained by, or which

comes to the knowledge of the Contractor and the City as a result of the performance of the Services and this Agreement, and will not, without the prior express written consent of the Contractor and the City, publish, release, disclose or permit to be disclosed any such information, (the "Confidential Information") to any person or corporation, either before, during or after termination of this Agreement, except as reasonably required to complete the Services.

14.2 Return of Property and City Data

The Contractor agrees to return to the City all of the City's property including any and all Data at the completion of this Agreement, including any and all copies and/or originals of reports provided by the City.

15. SECURITY

15.1 Security

The Contractor shall disclose its non-proprietary security processes and technical limitations to the City such that adequate protection and flexibility can be attained between the City and the Contractor. For example: virus checking and port sniffing – the City and the Contractor shall understand each other's roles and responsibilities. The Contractor and the City recognize that security responsibilities are shared. The Contractor is responsible for providing a secure application services and/or infrastructure within the context of the services being provided to the City. The City is responsible for securing City owned and operated infrastructure.

15.2 Access to Data, Security Logs and Reports

The Contractor shall provide reports to the City in a format as specified in the service level agreement (SLA) agreed to by both the Contractor and the City. Reports shall include latency statistics, user access, user access IP address, user access history and security logs for all City files related to this Agreement.

15.3 Import and Export of Data

The City shall have the ability to import or export data in piecemeal or in entirety at its discretion without interference from the Contractor. This includes the ability for the City to import or export data to/from other service providers.

15.4 Data Ownership

All Data shall become and remain the property of the City.

15.5 Data Protection

Protection of personal privacy and Data shall be an integral part of the business activities of the service provider to ensure there is no inappropriate or unauthorized use of City information at any time. To this end, the Contractor shall safeguard the confidentiality, integrity and availability of Data and comply with the following conditions:

- (a) The Contractor shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against

unauthorized access, disclosure or theft of Personal Information and Data. Such security measures shall be in accordance with recognized industry practice and not less stringent than the measures the Contractor applies to its own Personal Information and Data of similar kind;

- (b) Without limiting the foregoing, the Contractor warrants that all City Data will be encrypted in transmission (including via web interface) using Transport Layer Security (TLS) at an encryption level equivalent to or stronger than 128-bit AES encryption. Further, the Contractor warrants that all City Data will be encrypted while in storage at an encryption level equivalent to or stronger than 256-bit AES encryption;
- (c) At no time shall any Data or processes — that either belong to or are intended for the use of the City or its officers, agents or employees — be copied, disclosed or retained by the Contractor or any party related to the Contractor for subsequent use in any transaction that does not include the City;
- (d) The Contractor shall not use any information collected in connection with the service issued from this agreement for any purpose other than fulfilling the service;
- (e) All facilities used to store and process City Data will implement and maintain administrative, physical, technical, and procedural safeguards and best practices at a level sufficient to secure such City Data from unauthorized access, destruction, use, modification, or disclosure. Such measures will be no less protective than those used to secure Contractor's own data of a similar type, and in no event less than reasonable in view of the type and nature of the Data involved; and
- (f) The Contractor shall at all times use industry-standard and up-to-date security controls, technologies and procedures including, but not limited to firewalls, strong authentication, anti-malware protections, intrusion detection and prevention, regular patch management and vulnerability scanning, security event logging and reporting, and transport and storage encryption in providing the Services under this Agreement.

15.5.1 Prior to the effective date of this Agreement, the Contractor will at its expense conduct or have conducted the following and thereafter, the Contractor will at its expense conduct or have conducted the following at least once per year, and immediately after any actual or reasonably suspected Data Breach:

- (a) Audit of Contractor's security policies, procedures and controls;
- (b) Certification under (SOC) 2 Type 2 attestation, ISO/IEC 27001/27002/27018, CSA STAR Level 2 certification, or equivalent third party certification;
- (c) A vulnerability scan, performed by a City-approved third party, of Contractor's systems and facilities that are used in any way to deliver Services under this Agreement; and
- (d) A formal penetration test, performed by a process and qualified personnel approved by the City, of Contractor's systems and facilities that are used in any way to deliver Services under this Agreement.

15.5.2 The Contractor will provide City the reports or other documentation resulting from the above audits, certifications, scans and tests within seven (7) business days of the Contractor's receipt of such results.

15.5.3 Based on the results of the above audits, certifications, scans and tests, the Contractor will, within thirty (30) calendar days of receipt of such results, promptly modify its security

measures in order to meet its obligations under this Agreement, and provide the City with written evidence of remediation.

15.5.4 The City may require, at its expense, that the Contractor perform additional audits and tests, the results of which will be provided to the City within seven (7) business days of the Contractor's receipt of such results.

15.6 Data Destruction

15.6.1 The Contractor acknowledges and agrees that, upon termination or expiry of this Agreement, or at any time during the term of this Agreement at the City's request, all City data in the possession of the Contractor shall be destroyed using a "Purge" or "Destroy" method, as defined by NIST Special Publication 800-88, such that ensures that data recovery is infeasible.

15.6.2 The Contractor must provide the City with a backup of all Data prior to performing data destruction unless otherwise instructed by the City in writing. The Contractor must receive confirmation from the City that all Data to be destroyed has been received.

15.6.3 The Contractor agrees to provide a "Certificate of Sanitization/Disposition" within a reasonable period of performing Data Destruction for each piece of media that has been sanitized which includes, at a minimum, the following information:

- Type of Media Sanitized;
- Description of Sanitization Process and Method Used;
- Tool Used for Sanitization;
- Verification Method;
- Date of Sanitization; and
- Signature of Contractor.

16. SECURITY INCIDENT OR DATA BREACH RESPONSE

16.1 When either a Security Incident or a Data Breach is suspected, investigation is required to commence without delay. If the Contractor becomes aware of a suspected Security Incident or suspected Data Breach, the Contractor will inform the City Clerk immediately (unless a Data Breach is conclusively ruled out, in which case notification must be within 24 hours) by contacting the City's 24x7 IT on-call staff at 604-591-4444 and selecting the option for critical services.

16.2 If a Data Breach is confirmed, immediate remedial action is required; the Contractor must notify the City Clerk immediately by contacting the City's 24x7 IT on-call staff as described above.

16.3 Immediately upon becoming aware of any suspected Security Incident, the Contractor shall fully investigate the Security's Incident's circumstances, extent and causes. The Contractor must then report the results to City Clerk and continue to keep City Clerk informed on a daily basis of the progress of its investigation until the issue has been effectively resolved.

- 16.4 Oral reports by the Contractor regarding Security Incidents and Data Breaches will be reduced to writing and supplied to the City Clerk as soon as reasonably practicable, but in no event more than forty-eight (48) hours after the oral report.
- 16.5 For any confirmed Security Incident, the Contractor's report discussed herein shall identify: (i) the nature of the incident, (ii) the cause or suspected cause of the incident, (iii) what the Contractor has done or shall do to mitigate the incident. and (iv) what corrective action Contractor has taken or shall take to prevent future similar incidents.
- 16.6 For an actual or suspected Data Breach, the Contractor's report discussed herein shall identify: (i) the nature of the unauthorized use or disclosure, (ii) the Data used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure (if known), (iv) what Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Contractor has taken or shall take to prevent future similar unauthorized use or disclosure.
- 16.7 Contractor, at its expense, shall cooperate fully with City's investigation of and response to any Data Breach, including allowing the City to participate as is legally permissible in the breach investigation.
- 16.8 Contractor will not provide notice of the Data Breach directly to the persons whose Data were involved, regulatory agencies, or other entities, without prior written permission from City.
- 16.9 Notwithstanding any other provision of this Agreement, and in addition to any other remedies available to City under law or equity, Contractor will promptly reimburse City in full for all costs incurred by City in any investigation, remediation or litigation resulting from any Data Breach, including but not limited to providing notification to Third Parties whose Data were compromised and to regulatory bodies, law enforcement agencies or other entities as required by law or contract; establishing and monitoring call center(s), and credit monitoring and/or identity restoration services to assist each person impacted by a Data Breach 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 Breach.

17. INTELLECTUAL PROPERTY RIGHTS

- 17.1 Intellectual Property is owned by the applicable content owner and, except as expressly set out herein, this Agreement does not grant either party any rights, implied or otherwise, to the other's Intellectual Property. For greater certainty:
- (a) The City acknowledges that the Contractor retains all right, title and interest in the Intellectual Property. The City acknowledges that it does not, by virtue of receiving a license to use the Intellectual Property, acquire any proprietary rights therein, other than the limited rights granted in this Agreement. The Contractor warrants that it is the sole owner of the Intellectual Property; and
 - (b) The Contractor acknowledges that the City retains all right, title and interest in the City's Intellectual Property. The Contractor acknowledges that it does not, by virtue of receiving a license to use the City's Intellectual Property in order to customize the Intellectual Property, acquire any proprietary right to the City's Intellectual Property, other than the limited rights granted under this Agreement.

The City warrants that it owns the Intellectual Property that it provides to the Contractor for the purpose of customizing the Intellectual Property.

17.2 Neither party may transfer or assign its rights and obligations under this Agreement without first obtaining the other party's prior written consent.

17.3 Upon termination or expiry of this Agreement the Contractor shall remove the City's Intellectual Property from the software.

18. PROTECTION OF PERSONAL INFORMATION

18.1 Refer to Appendix 6 – Privacy Protection Schedule.

19. RESPONSE TO LEGAL ORDERS, DEMANDS OR REQUESTS FOR DATA

19.1 Except as otherwise expressly prohibited by law, the Contractor will:

- (a) If required by a court of competent jurisdiction or an administrative body to disclose City Data, Contractor will notify City in writing immediately upon receiving notice of such requirement and prior to any such disclosure;
- (b) Consult with City regarding its response;
- (c) Cooperate with City's reasonable requests in connection with efforts by City to intervene and quash or modify the legal order, demand or request; and
- (d) Upon City's request, provide City with a copy of its response.

19.2 If City receives a subpoena, warrant, or other legal order, demand or request seeking City Data maintained by Contractor, City will promptly provide a copy to Contractor. Contractor will supply City with copies of Data required for City to respond within forty-eight (48) hours after receipt of copy from City, and will cooperate with City's reasonable requests in connection with its response.

20. DATA RETENTION AND DISPOSAL

20.1 City Records fall under the City's retention policies, not the Contractors. The Corporate Records program is governed by the *Corporate Records By-law, 2010, No. 17002*, adopted by Council on March 22, 2010.

21. DATA TRANSFER UPON TERMINATION OR EXPIRATION

21.1 Upon termination or expiration of this Agreement, Contractor, or a new owner (s) in the event of a merger, takeover or new partnership, will ensure that all City Data are securely transferred to City, or a Third Party designated by City, within ten (10) calendar days of any such event, all as further specified in the technical specifications attached as APPENDIX 1-A. Contractor will ensure that such migration uses facilities and methods that are compatible with the relevant systems of City, and that City will have access to City Data during the transition. In the event that it is not possible to transfer the aforementioned Data to City in a format that does not require proprietary software to access the Data, Contractor shall provide City with an unlimited use, perpetual license to any proprietary software necessary in order to gain access to the Data.

- 21.2 Contractor will provide a fully documented service description and perform and document a gap analysis by examining any differences between its Services and those to be provided by its successor.
- 21.3 Contractor will provide a full inventory and configuration of servers, routers, other hardware, and software involved in service delivery along with supporting documentation, indicating which if any of these are owned by or dedicated to City.
- 21.4 Contractor shall implement its contingency and/or exit plans and take all necessary actions to provide for an effective and efficient transition of service with minimal disruption to City. Contractor will work closely with its successor to ensure a successful transition to the new service and/or equipment, with minimal downtime and effect on City, all such work to be coordinated and performed no less than ninety (90) calendar days in advance of the formal, final transition date.

22. INTERRUPTIONS IN SERVICE; SUSPENSION AND TERMINATION OF SERVICE; CHANGES TO SERVICE

- 22.1 Notwithstanding the Force Majeure provisions contained herein, the Contractor shall be responsible for providing disaster recovery Services if the Contractor experiences or suffers a disaster. The Contractor shall take all necessary steps to ensure that City shall not be denied access to the Services for more than five (5) hours in the event there is a disaster impacting any Contractor infrastructure necessary to provide the Services. The Contractor shall maintain the capability to resume provisions of the Services from an alternative location and via an alternative telecommunications route in the event of a disaster that renders the Contractor's primary infrastructure unusable or unavailable. If the Contractor fails to restore the Services within five (5) hours of the initial disruption of service, the City may declare Contractor to be in default of this Agreement and the City may seek alternate services, which would have otherwise been provided under this Agreement, from third parties. The Contractor shall reimburse the City for all costs reasonably incurred by the City in obtaining such alternative services, with payment to be made within thirty (30) calendar days of the City's written request for such payment.
- 22.2 In the event of a service outage, the Contractor will refund or credit City, at City's election, the pro-rated amount of fees corresponding to the time Services were unavailable.
- 22.3 From time to time it may be necessary or desirable for either the City or Contractor to propose changes in the Services provided. Such changes shall be made to any software used by the Contractor to provide the Services that simply improve the speed, efficiency, reliability, or availability of existing Services and do not alter or add functionality, and such Enhancements will be implemented by the Contractor on a schedule no less favorable than provided by the Contractor to any other customer receiving comparable levels of Services.
- 22.4 The Contractor will provide the City with thirty (30) calendar days prior notice of any times that the Services will be unavailable due to non-emergency maintenance or Enhancements. The Contractor will schedule any such times that the Services will be unavailable during the hours of 12:00a.m. and 4:00a.m. Pacific Standard Time (PST). In the event of unscheduled and unforeseen times that the Services will be unavailable for any reason, except as otherwise prohibited by law, the Contractor will immediately notify

the City and cooperate with the City's reasonable requests for information regarding the Services being unavailable (including causes, effect on Services, and estimated duration).

- 22.5 The City may suspend or terminate (or direct the Contractor to suspend or terminate) an end user's access to Services in accordance with the City's policies. The City will assume sole responsibility for any claims made by end user regarding the City's suspension/termination or directive to suspend/terminate such Services.
- 22.6 The Contractor may suspend access to Services by the City immediately in response to an act or omission that reasonably appears to jeopardize the security or integrity of Contractor's Services or the network(s) or facilities used to provide the Services. Suspension will be to the minimum extent, and of the minimum duration, required to prevent or end the security issue. The suspension will be lifted immediately once the breach is cured. The Contractor may suspend access to Services by the City in response to a material breach by the City of any terms of use the City has agreed to in connection with receiving the Services. The Contractor will immediately notify the City of any suspension of the City access to Services.
- 22.7 The Contractor may suspend access to Services by the City in response to an act or omission that poses a significant threat to the security or integrity of the Contractor's Services or the network(s) or facilities used to provide the Services. The Contractor will provide City with at least fifteen (15) business days advance written notice of intent to suspend and justification for suspension. The City will have fifteen (15) business days to review and respond to such notice, and to correct any such action or omission prior to suspension. If the City's response resolves the issue to the parties' mutual satisfaction, suspension will not occur. If the City is unable to resolve the issue within the stated timeframe, then suspension will be to the minimum extent, and of the minimum duration, required to prevent or end the security issue. Any such suspension will be lifted immediately once the breach is cured.

23. RIGHTS AND LICENSE IN AND TO CITY DATA

- 23.1 The parties agree that as between them, all rights, in and to City Data shall remain the exclusive property of the City, and the Contractor has a limited, nonexclusive license to access and use these Data as provided in this Agreement solely for the purpose of performing its obligations hereunder.
- 23.2 All City Data created and/or processed by the Services is and shall remain the property of the City and shall in no way become attached to the Services, nor shall Contractor have any rights in or to the Data of the City.
- 23.3 This Agreement does not give a party any rights, implied or otherwise, to the other's Data, content, or intellectual property, except as expressly stated in the Agreement.
- 23.4 The City retains the right to use the Services to access and retrieve City Data stored on Contractor's Services infrastructure at any time at its sole discretion.
- 23.5 The Contractor shall agree to support the City to conduct a Data export annually for archiving purposes.

24. ESCROWING OF SOURCE CODE OF LICENSED SOFTWARE

- 24.1 The Contractor shall place Source Code for the Software licensed by the City in escrow with an independent third-party (with whom a separate Escrow Agreement will be entered into by City at no additional cost to the City). The Source Code shall be kept current with the latest releases of the Software. The Source Code shall revert to the City for the City's use if the Contractor files for bankruptcy or protection from creditors in a court of law. The City shall then have full rights to use Source Code for any purposes other than resale if City terminates for cause, if the Contractor discontinues support or is acquired.
- 24.2 The Contractor will provide appropriate Source Code to the City in a timely manner in the event that the Contractor goes out of business or no longer supports the Software being licensed. The same applies if the Contractor is merged or acquired and the Software is no longer supported. Once the City obtains the Source Code, it will be a perpetual license, and there will be no additional fees due, even if additional licenses are deployed.
- 24.3 Escrow Fees. All fees and expenses charged by an escrow agent will be borne by the Contractor.

25. WORKERS' COMPENSATION BOARD, AND OCCUPATIONAL HEALTH AND SAFETY

- 25.1 The Contractor will, at its own expense, procure and carry full Workers' Compensation Board coverage for itself and all workers, employees, servants and others engaged in the supply of the Goods and Services. The City has the unfettered right to set off the amount of the unpaid premiums and assessments for the Workers' Compensation Board coverage against any monies owing by the City to the Contractor. The City will have the right to withhold payment under this Agreement until the Workers' Compensation Board premiums, assessments or penalties in respect of the Goods and Services have been paid in full.
- 25.2 The Contractor will provide the City with the Contractor's Workers' Compensation Board registration number and a letter from the Worker's Compensation Board confirming that the Contractor is registered in good standing with the Workers' Compensation Board.
- 25.3 The Contractor agrees that it is the prime contractor for the Services for the purposes of the *Workers Compensation Act*. The Contractor will have a safety program in place that meets the requirements of the Workers' Compensation Board Occupational Health and Safety Regulation and the *Workers Compensation Act*. As prime contractor, the Contractor will be responsible for appointing a qualified coordinator for insuring the health and safety activities for the location of the Services. That person will be the person so identified in this Agreement, and the Contractor will advise the City immediately in writing if the name or contact number of the qualified coordinator changes.
- 25.4 Without limiting the generality of any other indemnities granted by the Contractor in this Agreement, the Contractor will indemnify and save harmless the Indemnitees from and against all claims, demands, causes of action, suits, losses, damages, costs, liabilities, expenses, judgments, penalties and proceedings (including all actual legal costs) which any of the Indemnitees incur, suffer or are put to arising out of or in any way related to unpaid Workers' Compensation Board assessments owing from any person or

corporation engaged in the performance of this Agreement or arising out of or in any way related to the failure to observe safety rules, regulations and practices of the Workers' Compensation Board, including penalties levied by the Workers' Compensation Board.

25.5 The Contractor will ensure compliance with and conform to all health and safety laws, by-laws or regulations of the Province of British Columbia, including without limitation the *Workers Compensation Act* and Regulations pursuant thereto.

25.6 The City may, on twenty-four (24) hours written notice to the Contractor, install devices or rectify any conditions creating an immediate hazard existing that would be likely to result in injury to any person. However, in no case will the City be responsible for ascertaining or discovering, through inspections or review of the operations of the Contractor or otherwise, any deficiency or immediate hazard.

26. DISPUTE RESOLUTION

26.1 Dispute Resolution Procedures

The parties will make reasonable efforts to resolve any dispute, claim, or controversy arising out of this Agreement or related to this Agreement (“**Dispute**”) using the dispute resolution procedures set out in this section 26.

(a) Negotiation

The parties will make reasonable efforts to resolve any Dispute by amicable negotiations and will provide frank, candid and timely disclosure of all relevant facts, information and documents to facilitate negotiations.

(b) Mediation

If all or any portion of a Dispute cannot be resolved by good faith negotiations within 30 days, either party may by notice to the other party refer the matter to mediation. Within 7 days of delivery of the notice, the parties will mutually appoint a mediator. If the parties fail to agree on the appointment of the mediator, then either party may apply to the British Columbia International Commercial Arbitration Centre for appointment of a mediator. The parties will continue to negotiate in good faith to resolve the Dispute with the assistance of the mediator. The place of mediation will be Surrey, British Columbia. Each party will equally bear the costs of the mediator and other out-of-pocket costs, and each party will bear its own costs of participating in the mediation.

(c) Litigation

If within 90 days of the request for mediation the Dispute is not settled, or if the mediator advises that there is no reasonable possibility of the parties reaching a negotiated resolution, then either party may without further notice commence litigation.

27. JURISDICTION AND COUNCIL NON-APPROPRIATION

27.1 Nothing in this Agreement limits or abrogates, or will be deemed to limit or abrogate, the jurisdiction of the Council of the City in the exercise of its powers, rights or obligations under any public or private statute, regulation or by-law or other enactment.

27.2 The Contractor recognizes and agrees that the City cannot make financial commitments beyond the City's current fiscal year. The City will annually make bonafide requests for appropriation of sufficient funds to cover all payments covered by this Agreement. If City Council does not appropriate funds, or appropriates insufficient funds, the City will notify the Contractor of its intention to terminate or reduce the services so affected within 90 days after the non-appropriation becomes final. Such termination shall take effect 90 days from the date of notification, shall not constitute an event of default and shall relieve the City, its officers and employees, from any responsibility or liability for the payment of any further amounts under this Agreement.

28. GENERAL

28.1 Entire Agreement

This Agreement, including the Appendices and any other documents expressly referred to in this Agreement as being a part of this Agreement, contains the entire agreement of the parties regarding the provision of the Services and no understandings or agreements, oral or otherwise, exist between the parties except as expressly set out in this Agreement. This Agreement supersedes and cancels all previous agreements between the parties relating to the provision of the Services.

28.2 Amendment

This Agreement may be amended only by agreement in writing, signed by both parties.

28.3 Contractor's Terms Rejected

In the event that the Contractor issues an invoice, packing slip, sales receipt, or any like document to the City, the City accepts the document on the express condition that any terms and conditions in it which constitute terms and conditions which are in addition to or which establish conflicting terms and conditions to those set out in this Agreement are expressly rejected by the City.

28.4 Survival of Obligations

All of the Contractor's obligations to perform the Services in a professional and proper manner will survive the termination or completion of this Agreement.

28.5 Cumulative Remedies

The City's remedies under this Agreement are cumulative and in addition to any right or remedy which may be available to the City at law or in equity.

28.6 Notices

Any notice, report or other document that either party may be required or may wish to give to the other must be in writing, unless otherwise provided for, and will be deemed to be validly given to and received by the addressee, if delivered personally, on the date of such personal delivery, if delivered by facsimile, on transmission, or if by mail or email, five calendar days after posting. The addresses for delivery will be as follows:

(a) The City: City of Surrey – Finance & Technology Department
13450 - 104th Avenue
Surrey, British Columbia, Canada, V3T 1V8

Attention: Jocelyn Mani
Fax:
E-mail: Jocelyn.Mani@surrey.ca

(b) The Contractor: [Company Name]
[Street Address], [City], [Province/State] [Postal or Zip
Code]

Attention: [Contact Name/PositionTitle]
Fax:
E-mail:

28.7 Unenforceability

If any provision of this Agreement is invalid or unenforceable, it will be severed from the Agreement and will not affect the enforceability or validity of the remaining provisions of the Agreement.

28.8 Headings

The headings in this Agreement are inserted for convenience of reference only and will not form part of nor affect the interpretation of this Agreement.

28.9 Singular, Plural and Gender

Wherever the singular, plural, masculine, feminine or neuter is used throughout this Agreement the same will be construed as meaning the singular, plural, masculine, feminine, neuter or body corporate where the context so requires.

28.10 Waiver

No waiver by either party of any breach by the other party of any of its covenants, obligations and agreements will be a waiver of any subsequent breach or of any other covenant, obligation or agreement, nor will any forbearance to seek a remedy for any breach be a waiver of any rights and remedies with respect to such or any subsequent breach.

28.11 Signature

This Agreement may be executed in or one or more counterparts all of which when taken together will constitute one and the same agreement, and one or more of the counterparts may be delivered by fax or PDF email transmission.

28.12 Force Majeure

Neither party shall be liable to the other for failure or delay of performance hereunder due to causes beyond its reasonable control. Such delays include, but are not limited to, earthquake, flood, storm, fire, epidemics, acts of government, governmental agencies or officers, war, riots, or civil disturbances. The non-performing party will promptly notify the other party in writing of an event of force majeure, the expected duration of the event, and its anticipated effect on the ability of the party to perform its obligations, and make reasonable effort to remedy the event of force majeure in a timely fashion.

The performing party may terminate or suspend its performance under this Agreement if the non-performing party fails to perform its obligations under this Agreement for more than fifteen (15) consecutive calendar days. City's payment obligations shall be suspended automatically if it is denied access to the Services for more than five (5) hours in any twenty-four (24) hour period.

- END OF PAGE -

28.13 Enurement

This Agreement shall enure to the benefit of and be binding upon the respective successors and permitted assigns of the City and the Contractor.

IN WITNESS WHEREOF the parties hereto have executed this agreement on the day and year first above written.

CITY OF SURREY

by its authorized signatory(ies):

(Signature of Authorized Signatory)

(Print Name and Position of Authorized Signatory)

(Signature of Authorized Signatory)

(Print Name and Position of Authorized Signatory)

<<INSERT NAME OF CONTRACTOR>>

I/We have the authority to bind the Consultant.

(Legal Name of Contractor)

(Signature of Authorized Signatory)

(Signature of Authorized Signatory)

(Print Name and Position of Authorized Signatory)

(Print Name and Position of Authorized Signatory)

(APPENDICES 1 THROUGH 7 WILL BE INSERTED LATER WHEN AN AGREEMENT IS ASSEMBLED FOR EXECUTION INCLUDING INFORMATION FROM THE RFP AND SUCCESSFUL PROPOSAL.)

APPENDIX 1 – SCOPE OF SERVICES

APPENDIX 2 – FEES AND PAYMENT

APPENDIX 3 – TIME SCHEDULE

APPENDIX 4 – KEY PERSONNEL AND SUB-CONSULTANTS

APPENDIX 5 – ADDITIONAL SERVICES

APPENDIX 6 – PRIVACY PROTECTION SCHEDULE

APPENDIX 7 – CONFIDENTIALITY AGREEMENT

SCHEDULE A – SCOPE OF SERVICES

WEBSITE DEVELOPMENT FOR SURREY LIBRARIES

The Goods and Services include without limitation the supply and delivery of material, the provision of skilled labour, and equipment to perform website development for Surrey Libraries website (www.surreylibraries.ca) and any other requirements.

Project Objectives: An On-Premise or Software-as-a-Service (SaaS) Software solution to manage Surrey Libraries website. The sections below provides a specific outline of solution specifications of the software the City plans to purchase, as well as the implementation services necessary to successfully implement the selected On-Premise or SaaS Software.

1. SCOPE OF SERVICES

The City plans to deliver a website that is governed by the following principles:

- UX Vision: A user-friendly, accessible site that offers clarity to users and can integrate with existing and new services. It is a destination for fun, discovery, and community engagement.
- User-friendly/centered: Help users get the information they want by focusing on common user expectations and offering delightful experiences.
- Flexible: A design and content system that fits the needs of the library.
- Sustainable: Plan for content, technical, and information architecture that can be easily maintained for the long term.
- Seamless: Whenever possible integrate services and design interaction so users can have a seamless experience.

The Engagement will include:

- Envisioning workshops (requirements gap analysis)
- Information architecture (e.g. card sort, tree testing & final structure)
- Wireframes (developed using iterative approach)
- Content planning (Audit/Inventory & mapping)
- Governance (plan development & implementation)

1.1 SOLUTION SPECIFICATIONS

The Contractor to provide resources to assist the City Library's website with website planning and implementation of the pre-built solution framework.

SCHEDULE A-1 – HIGH LEVEL REQUIREMENTS

	<u>Mandatory</u>	<u>Desirable</u>	<u>Nice to Have</u>	<u>SaaS</u>	<u>Meets Requirement (Yes/No)</u>	<u>On-Premise</u>	<u>Meets Requirement (Yes/No)</u>
<u>Pre-Built Solution Offers:</u>	<absolutely must be included>	<meets requirement>	<optional>	<applies to SaaS solution>	<circle Y or N>	<applies to On-Premise solution>	<circle Y or N>
Implementation							
Responsive Site: any web-based solution must be at minimum a responsive site capable of full functionality across all common device formats (phones, tablets, desktops). Ideally, it will be a mobile-first implantation.	X			X	Y or N	X	Y or N
Accessible: the solution should aim for WCAG 2.0 AA compliance at a minimum, and strive for greater.	X			X	Y or N	X	Y or N
Open Source: For any On-Premise solution, there is a strong preference for open-source technology to be used.		X		X	Y or N	X	Y or N
Open License: For any custom-developed solutions, there is a strong preference for all relevant code to be released under an MIT License.		X		X	Y or N	X	Y or N
Minimum Browser and Device support: the proposed implementation should be fully functional in all modern browsers: IE 10, Edge, Chrome, Safari, Firefox, etc.	X			X	Y or N	X	Y or N
Security							
Physically in Canada: For any On-Premise or SaaS solution, all data must physically reside in Canada	X			X	Y or N	X	Y or N

Encrypted Storage: All stored demographic or personally identifiable data must be stored encrypted.	X			X	Y or N	X	Y or N
Encrypted End Points: All web interfaces must be encrypted. All forms, logins, search, 3rd-party referenced assets, etc., must be transferred over encrypted channel (SSL).	X			X	Y or N	X	Y or N
Encrypted Communications: All inter-server communications must be encrypted and/or behind firewall. Primarily, this means web-to-database communications, but could also include load balancers, cache servers, etc.	X			X	Y or N	X	Y or N
CMS/Administrative							
Sharable Assets: The library wants to be able to share web site assets outside of the CMS itself – pulling in assets from the City’s web team, and sharing generated assets back out easily.			X	X	Y or N	X	Y or N
Extensible: The proposed publishing solution should be extensible so that as needs change and grow, the CMS can fairly quickly and cheaply be extended to meet those new, unknown needs.		X		X	Y or N	X	Y or N
Customizable Editing UI: The interface for writing should be customizable to be task focused, to help enforce the Library Style Guide and Content Best Practices. For instance, not just a single text-block for all templates, but perhaps guided entry with specific fields for specific content types.		X		X	Y or N	X	Y or N

Fast, Reliable: The system must not slow down the administrative user. The UI must be able to handle sizable content and asset libraries with aplomb. It must work consistently.	X			X	Y or N	X	Y or N
Solid Analytics: The solution must allow for robust Google Analytics.	X			X	Y or N	X	Y or N
Analytics Reporting: The solution should provide views into analytics reports within the solution (i.e. page views for a given page).			X	X	Y or N	X	Y or N
Image Editing: The system should support integrated image editing tools: at least, cropping/resizing, but ideally a full-suite of modern tools: Responsive images, content-aware scaling, and integrated CDN support.		X		X	Y or N	X	Y or N
Integrated Events Calendar: Integrated responsive events calendar software with ability to feature images and clear intuitive interface for both staff entering data and public looking for programs		X		X	Y or N	X	Y or N
Editorial Workflow: The system must support the Libraries' internal editorial workflow: drafts, editing controls, multi-user publishing rules & collaborative tasks.	X			X	Y or N	X	Y or N
Multi-tier Permissions: The system must support a variety of users with differing roles and access into the publishing tool.	X			X	Y or N	X	Y or N

Previews & Archives: the system must support full-UI previews that are shareable for review purposes, as well as content archival tools.	X			X	Y or N	X	Y or N
Diff Tools: The system should support content-version differentiation tools to allow for easier editorial workflow.		X		X	Y or N	X	Y or N
Help Documentation: The system should include or allow for extensive, customizable help documentation to assist in future staff on-boarding and gentle reminders for less frequently used functionality.	X			X	Y or N	X	Y or N
Internationalization: support for multi-lingual content (Google Translate).	X			X	Y or N	X	Y or N
Integration							
Ability to provide template that supports or has integration with:							
• Catalogue Search	X			X	Y or N	X	Y or N
• Social Media Feed		X		X	Y or N	X	Y or N
• Polling		X		X	Y or N	X	Y or N
• Forms			X	X	Y or N	X	Y or N
UI							
Robust Pattern Library or flexible template which allows integration with library vendor scripts, events software feeds, videos, widgets, etc. on website pages	X			X	Y or N	X	Y or N
Content modelling with vendor and testing to inform design of site.		X		X	Y or N	X	Y or N
Ability to easily post alerts on site	X			X	Y or N	X	Y or N
Roadmaps							
Support path for delivered features	X			X	Y or N	X	Y or N

Support path for unmet requirements/features offered in the future	X			X	Y or N	X	Y or N
Training							
Plans and executes training for system users	X			X	Y or N	X	Y or N
Resources							
Solution provider has in-house expertise to augment internal implementation team	X			X	Y or N	X	Y or N
Licensing & Support							
Provide Licensing Model (Timeframe & Costing)	X			X	Y or N	X	Y or N
There is strong-preference for a secured, web- and/or app-based support system that provides clear status and ticket-threads and customer has access to view and change status priority.	X			X	Y or N	X	Y or N
Provide all literature on licensing & support	X			X	Y or N	X	Y or N
Provide Support Service Level agreement	X			X	Y or N	X	Y or N
Provide Disaster Recovery Plan	X			X	Y or N	X	Y or N

1.2 RESOURCES

The Contractor shall ensure that senior qualified staffs are available during the contract life cycle. Project staff are to be agreed upon at the time of task order award and shall work on the project until its completion or until written approval is obtained from the City designated contracting official authorized to grant substitutions. In the event the City rates the performance of any Contractor or sub-contractor personnel as unsatisfactory, The Contractor shall replace that employee within 5 business days of written notification from the contracting official. The City reserves the right to refuse any individual or replacement individual for performance or work-related deficiencies.

The City reserves the right to reject key or non-key personnel proposed by the Contractor. The City may designate its staff members or affiliates to perform on specific task orders.

1.3 PROJECT MANAGER

The City requires that the Contractor take responsibility for providing extensive project management for the implementation of the Surrey Libraries website development. The Contractor is expected to guarantee the successful, timely completion of those aspects of the project over which it has control. The City intends to take responsibility for meeting its

obligations as defined in an agreed upon Statement of Work (SOW) which will be finalized during the contract negotiations process.

Contractor should provide a project plan for achieving the objectives of the project including an explanation of the role of all key personnel, the role of City staff (including time commitment), and an overall project timeline. A description of a recommended team structure (including an organizational team chart), listing key personnel functions, staffing profiles and responsibilities to cover the software and implementation; training and support should also be included. The detailed plan should thoroughly discuss how the Contractor will successfully implement the Surrey Libraries website development requirements. Key components to include in the project plan shall include estimated timeframe, overview of deliverables, assumptions, and assumed vendor and City responsibilities.

The City will provide a full-time Surrey Libraries website development project manager (PM).

1.4 PROJECT MANAGER RESPONSIBILITIES

The Contractor shall provide a qualified PM who will be responsible for overseeing all aspects of the services to be provided to implement the Surrey Libraries website development solution, and who serves as the vendor's primary contact for management and administration of the project. The PM shall not be replaced by the vendor without prior written approval by the City and it may request the designation of other required staff by the vendor. The primary duties of the PM include, but are not limited to:

- Create and provide a project plan and a master project schedule with identified milestones. Key components should include:
 - Hardware and software installation if applicable
 - Process and workflow analysis
 - System design and configuration
 - Ongoing User testing and research
 - Required modifications and customizations
 - Required system integrations
 - Tasks
 - Roles and Responsibilities
 - Data Formats
 - Descriptions of Interfaces
 - Ongoing Testing planning and execution
 - Ongoing Training development and delivery
 - System acceptance
- Facilitate communication among project team members
- Make commitments and decisions on behalf of the Proponent team
- Implement changes to the project plan
- Manage project progress, including issues and potential schedule changes
- Attend and participate in progress review meetings
- Provide weekly status reports
- Develop and manage an ongoing collaboration plan with Surrey Public Libraries for a continuous integration approach to site development

1.5 DELIVERY OF SERVICES FOR IMPLEMENTATION

Objective 1: Provide project management and coordination	
Deliverable 1.1	Baseline Detailed Project Work Plan
Purpose	To establish a mutually agreed-upon project baseline before significant work occurs and to identify the specific tasks and resource levels necessary to timely deliver the elements in the work plan.
Content	A hierarchical work breakdown structure, including task dependencies, schedules, deliverables, and the Contractor and the City resource assignments broken down to a sufficient level of detail to allow effective project control. The project work plan should also include a detailed analysis of key project performance indicators.
Deliverable 1.2	Project Status Reports
Purpose	To provide clear ongoing communications to stakeholders concerning the status of the project.
Content	<p>A weekly report containing sufficiently detailed information to enable the City to determine the status of the project and any variance from the detailed project plan, schedule, or budget. The status report will include, at a minimum:</p> <ol style="list-style-type: none"> 1. Technical status of the project including deliverable status, configuration status, and forecasted deliverable status for the next reporting period; 2. Resource status for the project including staff utilization; 3. Schedule status for the project including task status, milestones completed, phases completed, schedule trends, and schedule summary; 4. Comparison of actual percent complete versus scheduled for the work breakdown structure; 5. Issues, risks, and resource constraints which are effecting or could affect progress including the proposed or actual resolution; 6. Proposed changes to the project work plan, reasons for the changes, and approval/disapproval determination for any proposed changes; and 7. Updated detailed project work plan with approved changes highlighted.
Objective 2: Perform initial installation (On-Premise Software Only)	
Deliverable 2.1	Hardware Specifications
Purpose	To provide the City with all necessary hardware specifications to enable preparation of the City's Information Technology section (IT) for installation of the licensed Software at least 45 days prior to the scheduled installation. Hardware specifications should include but is not limited to: database, application, internet, and other servers and associated data storage devices to meet all of the Technical and Functional Requirements specified in this RFP.
Content	Detailed specifications of the hardware and associated environmental requirements for the proposed system.

Objective 3: Assist with Business Process Design, Address Gaps, and Configure Software	
Deliverable 3.1	System Configuration Documentation
Purpose	To document how the system was configured and the business process decisions behind the configuration. To identify gaps where the Software cannot be configured to meet desired business processes and identify resolutions for those gaps, as well as to clearly communicate the system configuration.
Content	A document that effectively describes the entire system configuration, including decisions made and the logic behind those decisions. The document will identify specific business activities that cannot be automated with the licensed Software, describe alternative solutions, identify related cost, schedule, and design impacts, recommend solutions and document decisions. The City will work in parallel to document their business processes to work with the proposed Software configuration. This deliverable will confirm the shared understanding between the City and the Contractor of the requirements and the method by which they will be satisfied during the implementation of the licensed Software. It should identify existing requirements that need to be revised or clarified for unambiguous interpretation and address additional requirements identified during work sessions with the City's stakeholders.
Deliverable 3.2	Application Architecture Documentation
Purpose	To concisely document the licensed Software's architecture and interfaces in a manner understandable to all project participants.
Content	A document that details: <ol style="list-style-type: none"> 1. The major modules of the software and the interfaces between them; 2. For each software module, the major data inputs, functions to be performed, and major data outputs; and 3. All external interfaces, including a description of the information sent and received, and the method and timing of the interface.
Objective 4: Develop Interfaces	
Deliverable 4.1	Interface Specifications
Purpose	To document the specifications for system interfaces defined in the RFP and by mutual agreement between City and the Contractor.
Content	A document that defines the specifications for necessary interfaces at a sufficient level of detail to support development of interfaces.
Deliverable 4.2	Tested Interfaces
Purpose	To deliver the real-time or near-real-time functionality that effectively connects the Licensed Software to the required interface programs.
Content	Software code and/or configuration parameters to make the interfaces specified in the Interface Specifications operational. Certification that the interfaces are working in accord with the associated specifications.

Objective 5: Perform testing	
Deliverable 5.1	Test Plan and Scripts
Purpose	To define the approach for testing of the licensed Software.
Content	A document that: <ol style="list-style-type: none"> 1. Defines the overall testing process 2. Includes all necessary test scripts – these will be developed by the Contractor and must adhere to the City’s quality standards; 3. Defines a mechanism for tracking test performance and completion; 4. Defines procedures for managing the test environment, including change control; 5. Defines procedures for assigning severity to problems encountered; and 6. Defines entrance and exit criteria for each round of testing.
Deliverable 5.2	Tested Software
Purpose	To ensure the Software as configured is ready for business use. The City will conduct user acceptance testing.
Content	Software certified as ready for use/user-acceptance testing.
Objective 6: Training	
Deliverable 6.1	Training Plan
Purpose	To define the approach and schedule for end-user training.
Content	Provide a document that: <ol style="list-style-type: none"> 1. Outlines a proposed time frame for training sessions 2. Provides a content outline to guide development the training session(s); 3. High level identification of attendees and instructors; and 4. Provides a mechanism for tracking completion of training
Deliverable 6.2	Develop and Provide Training Materials
Purpose	To develop and provide the City with all materials for each training session. The Contractor must provide sufficient copies to be delivered as part of this project.
Content	Content and materials for each training session tailored to the City’s configuration.
Deliverable 6.3	Training
Purpose	To train the system end users on system administration and configuration of the licensed Software.
Content	The delivery of user and technical systems operation training in accord with the Training Plan.
Objective 7: Provide go-live support and stabilization services	
Deliverable 7.1	Go-Live and Stabilization Plan
Purpose	To define the steps necessary for a successful Go-Live and subsequent stabilization of the Licensed Software.
Content	A detailed task plan, including a readiness checklist and resource assignments, to support moving the licensed Software into productive use. It will include a contingency plan in the event that the Go-Live fails. The plan should anticipate a minimum of two dry runs and include a back-out strategy and clearly defined go/no-go decision points. It will also include a stabilization plan that details the Contractor’s commitments to stabilization and the transition to full support by the City’s staff.

Deliverable 7.2	Technical Operations Manual (On-premise software solution only)
Purpose	To guide the City's IT staff if applicable an in the technical operation and maintenance of licensed Software after implementation, including site-specific customizations and operational considerations.
Content	An online technical operations manual that describes the procedures necessary to operate and maintain the Licensed Software after implementation, customized to the City's configuration.
Content	Implemented Licensed Software in Productive Use.
Deliverable 7.3	Stabilization Services
Purpose	To provide the City with support services for a defined period of time subsequent to Go-Live, including the identification and resolution of malfunctions and operational issues.
Content	Stabilization services, commencing at Go-Live and terminating at Services final acceptance.

1.6 ACCEPTANCE OF DELIVERABLES

All deliverables shall be submitted to the City on the date agreed to by the City and the Contractor. Furthermore, all deliverables will be deemed acceptable by the designated City Staff Project Management Office (PMO).

Specific deliverables shall be defined in each task order. Failure to meet task order requirements may result in Contractor default. All contract and task order deliverables shall meet the standards of the order and follow the terms and conditions of contract award.

1.7 MILESTONES

DATE	MILESTONES
APRIL 8, 2016	Quote submission to the City – Closing Date of RFQ
APRIL/MAY, 2016	Shortlisted Finalists Demonstrations
MAY/JUNE, 2016	Award contract
JUNE/JULY, 2016	Begin Visioning, Website Development
NOVEMBER, 2016	Testing/Training
DECEMBER, 2016	Release Website



SCHEDULE B - QUOTATION

RFQ Title: Website Development For Surrey Public Libraries

RFQ No: 1220-040-2016-039

CONTRACTOR

Legal Name: _____

Address: _____

Phone: _____

Fax: _____

Email: _____

CITY OF SURREY

City Representative: Richard D. Oppelt, Purchasing Manager

Address: Surrey City Hall
Finance & Technology Department – Purchasing Section
Reception Counter – 5th Floor West
13450 - 104 Avenue, Surrey, B.C., Canada, V3T 1V8

E-mail for PDF Files: purchasing@surrey.ca

1. If this Quotation is accepted by the City, a contract will be created as described in:
 - (a) the Agreement;
 - (b) the RFQ; and
 - (c) other terms, if any, that are agreed to by the parties in writing.

2. Capitalized terms used and not defined in this Quotation will have the meanings given to them in the Agreement and RFQ. Except as specifically modified by this Quotation, all terms, conditions, representations, warranties and covenants as set out in the Agreement and RFQ will remain in full force and effect.

3. I/We have reviewed the RFQ Attachment 1 – Draft Agreement. If requested by the City, I/we would be prepared to enter into that Agreement, amended by the following departures (list, if any):

Section	Requested Departure(s) / Alternative(s)

4. The City requires that the successful Contractor have the following in place **before providing the Goods and/or Services:**

- (a) Workers' Compensation Board coverage in good standing and further, if an "Owner Operator" is involved, personal operator protection (P.O.P.) will be provided,
Workers' Compensation Registration Number _____;
- (b) Prime Contractor qualified coordinator is Name: _____
and Contact Number: _____;
- (c) Insurance coverage for the amounts required in the proposed Agreement as a minimum, naming the City as additional insured and generally in compliance with the City's sample insurance certificate form available on the City's Website [Standard Certificate of Insurance](#);
- (d) City of Surrey or Intermunicipal Business License: Number _____;
- (e) If the Contractor's Goods and/or Services are subject to GST, the Contractor's GST Number is _____; and
- (f) If the Contractor is a company, the company name indicated above is registered with the Registrar of Companies in the Province of British Columbia, Canada, Incorporation Number _____.

As of the date of this Quotation, we advise that we have the ability to meet all of the above requirements **except as follows** (list, if any):

Requested Departure(s) / Alternative(s)

5. The Contractor acknowledges that the departures it has requested in Sections 3 and 4 of this Quotation will not form part of the Agreement unless and until the City agrees to them in writing by initialing or otherwise specifically consenting in writing to be bound by any of them.

SECTION B-1

Changes and Additions to Specifications:

6. In addition to the warranties provided in the Agreement, this Quotation includes the following warranties:

-
-
7. I/We have reviewed the RFQ Attachment 1, Schedule A – Specifications of Goods and Scope of Services, to Attachment 1. If requested by the City, I/we would be prepared to meet those requirements, amended by the following departures and additions (list, if any):

Requested Departure(s) / Alternative(s) / Addition(s)

SECTION B-2

Fees and Payments

8. The Contractor offers to supply to the City of Surrey the Goods and/or Services for the prices plus applicable taxes as follows:



Schedule_B-1_Embedded_Financial_Work



Schedule_B-2_Embedded_Financial_Work

SECTION B-3

Time Schedule:

9. Contractors should provide an estimated schedule, with major item descriptions and times indicating a commitment to provide the Goods and perform the Services within the time specified (use the spaces provided and/or attach additional pages, if necessary).

MILESTONE DATES _____

ACTIVITY	SCHEDULE									
	1	2	3	4	5	6	7	8	9	10

SAMPLE

SECTION B-4

Key Personnel & Sub-Contractors:

10. Contractor should provide information on the background and experience of all key personnel proposed to provide the Goods and/or Services (use the spaces provided and/or attach additional pages, if necessary):

Key Personnel

Name: _____
Experience: _____
Dates: _____
Project Name: _____
Responsibility: _____

11. Contractor should provide the following information on the background and experience of all sub-contractors and material suppliers proposed to undertake a portion of the Goods and/or Services (use the spaces provided and/or attach additional pages, if necessary):

<i>Description Of Goods & Services</i>	<i>Sub-Contractors & Material Suppliers Names</i>	<i>Years Of Working With Contractor</i>	<i>Telephone Number And Email</i>

SECTION B-5

Experience and References:

12. Contractor's relevant experience and qualifications in delivering Goods and/or Services similar to those required by the Agreement (use the spaces provided and/or attach additional pages, if necessary):

13. Contractor's relevant references (name and telephone number) (use the spaces provided and/or attach additional pages, if necessary). The City's preference is to have a minimum of three references. Previous clients of the Contractor may be contacted at the City's discretion.

Metro Vancouver’s Non-Road Diesel Engine Emissions Regulation By-law:

14. Contractor should confirm they are in compliance with By-law (if applicable):

Applicable as follows Not applicable to this project

No.	Equipment Description	Engine Tier Designation	Engine Registration Number as Issued by Metro Vancouver
1		<input type="checkbox"/> Tier 0 or <input type="checkbox"/> Tier 1	
2		<input type="checkbox"/> Tier 0 or <input type="checkbox"/> Tier 1	
3		<input type="checkbox"/> Tier 0 or <input type="checkbox"/> Tier 1	
4		<input type="checkbox"/> Tier 0 or <input type="checkbox"/> Tier 1	
5		<input type="checkbox"/> Tier 0 or <input type="checkbox"/> Tier 1	

SAMPLE

- END OF PAGE -

15. I/We the undersigned duly authorized representatives of the Contractor, having received and carefully reviewed the RFQ and the Agreement, submit this Quotation in response to the RFQ.

This Quotation is offered by the Contractor this _____ day of _____, 201__.

CONTRACTOR

I/We have the authority to bind the Contractor

(Legal Name of Contractor)

(Signature of Authorized Signatory)

(Signature of Authorized Signatory)

(Print Name and Position of Authorized Signatory)

(Print Name and Position of Authorized Signatory)

This Quotation is accepted by the City this _____ day of _____, 201__.

CITY OF SURREY

(Signature of Authorized Signatory)

(Signature of Purchasing Representative)

(Print Name and Position of Authorized Signatory)

(Print Name of Purchasing Representative)

(Signature of Authorized Signatory)

(Print Name and Position of Authorized Signatory)