

SCHEDULE B - ATTACHMENT 2



SOFTWARE as a SERVICE AGREEMENT IMPLEMENTATION

Title: MY SURREY PORTAL IDENTITY MANAGEMENT SOFTWARE

Reference No.: 1220-030-2016-030

FOR THE SUPPLY OF GOODS AND SERVICES

(GENERAL SERVICES)

TABLE OF CONTENTS

SOFTWARE as a SERVICE AGREEMENT IMPLEMENTATION

1. INTERPRETATION	60
1.1 Definitions.....	60
1.2 Appendices.....	62
2. SERVICES	63
2.1 Services.....	63
2.2 Changes.....	63
2.3 Standard of Care.....	64
2.4 Documentation.....	64
2.5 Marks.....	64
2.6 Service Levels.....	64
2.7 Training.....	66
2.8 Warranties, Representations and Covenants.....	66
2.9 Software Upgrades and Enhancements.....	68
3. TIME	69
4. TERM	69
5. PERSONNEL	69
5.1 Personnel.....	69
5.2 Sub-Contractors and Assignment.....	70
5.3 Agreements with Sub-Contractors.....	70
5.4 Separation of Duties and Non-Disclosure.....	70
5.5 Right to Remove Personnel.....	70
6. LIMITED AUTHORITY	71
6.1 Agent of City.....	71
6.2 Independent Contractor.....	71
7. FEES AND PAYMENT	71
7.1 Fees.....	71
7.2 Payment.....	71
7.3 Payment Schedule.....	72
7.4 Invoicing.....	72
7.5 Records.....	72
7.6 Resolution and Response Time Warranty.....	72
7.7 Non-Residents.....	74
8. CITY RESPONSIBILITIES	74
8.1 City Information.....	74
8.2 City Decisions.....	74
8.3 Notice of Defect.....	74
9. INTELLECTUAL PROPERTY INFRINGEMENT INDEMNIFICATION	75

10. INSURANCE AND DAMAGES	76
10.1 Indemnity	76
10.2 Survival of Indemnity	76
10.3 Limitation of Liability	76
10.4 Contractor's Insurance Policies.....	76
10.5 Insurance Requirements.....	77
10.6 Contractor's Responsibilities.....	77
10.7 Additional Insurance	77
10.8 Waiver of Subrogation	77
11. TERMINATION	77
11.1 By the City	77
11.2 Termination for Cause	78
11.3 Curing Defaults.....	78
12. APPLICABLE LAWS	78
12.1 Applicable Laws.....	78
12.2 Codes and By-Laws.....	79
12.3 Interpretation of Laws	79
13. DATA PRIVACY	79
14. CONFIDENTIALITY AND DISCLOSURE OF INFORMATION.....	79
14.1 No Disclosure	79
14.2 Return of Property and City Data	80
15. SECURITY	80
15.1 Security	80
15.2 Access to Data, Security Logs and Reports	80
15.3 Import and Export of Data.....	80
15.4 Data Ownership.....	80
15.5 Data Protection.....	80
15.6 Data Destruction	82
16. SECURITY INCIDENT OR DATA BREACH RESPONSE.....	82
17. INTELLECTUAL PROPERTY RIGHTS.....	83
18. PROTECTION OF PERSONAL INFORMATON	84
19. RESPONSE TO LEGAL ORDERS, DEMANDS OR REQUESTS FOR DATA.....	84
20. DATA RETENTION AND DISPOSAL	84
21. DATA TRANSFER UPON TERMINATION OR EXPIRATION	84
22. INTERRUPTIONS IN SERVICE; SUSPENSION AND TERMINATION OF SERVICE; CHANGES TO SERVICE	85
23. RIGHTS AND LICENSE IN AND TO CITY DATA.....	86

24. ESCROWING OF SOURCE CODE OF LICENSED SOFTWARE.....	87
25. WORKERS' COMPENSATION BOARD, AND OCCUPATIONAL HEALTH AND SAFETY	87
26. DISPUTE RESOLUTION	88
26.1 Dispute Resolution Procedures.....	88
27. JURISDICTION AND COUNCIL NON-APPROPRIATION.....	88
28. GENERAL.....	89
28.1 Entire Agreement.....	89
28.2 Amendment	89
28.3 Contractor's Terms Rejected	89
28.4 Survival of Obligations	89
28.5 Cumulative Remedies.....	89
28.6 Notices	89
28.7 Unenforceability.....	90
28.8 Headings	90
28.9 Singular, Plural and Gender.....	90
28.10 Waiver	90
28.11 Signature	90
28.12 Force Majeure	90
28.13 Enurement.....	91

APPENDIX 1 – SCOPE OF SERVICES

APPENDIX 1-A – TECHNICAL REQUIREMENTS

APPENDIX 2 – FEES AND PAYMENT

APPENDIX 3 – TIME SCHEDULE

APPENDIX 4 – KEY PERSONNEL AND SUB-CONTRACTORS

APPENDIX 5 – ADDITIONAL SERVICES

APPENDIX 6 – PRIVACY PROTECTION SCHEDULE

APPENDIX 7 – CONFIDENTIALITY AGREEMENT

DRAFT AGREEMENT – SOFTWARE as a SERVICE IMPLEMENTATION

MY SURREY PORTAL IDENTITY MANAGEMENT SOFTWARE

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

AGREEMENT #1220-030-2016-030

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;

“Change” means an addition to, deletion from or alteration of the Services, as agreed to by the parties in accordance with Section 2.2;

“Change Order” has the meaning set out in Section 2.2.4;

“City Data” means all information, whether in oral or written (including electronic) form, created by or in any way originating with City, and all information that is the output of any computer processing, or other electronic manipulation, of any information that was created by or in any way originating with City, in the course of using and configuring the Services provided under this Agreement;

“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, Personal Information, information that relates to the business of the third party, and information that is subject to solicitor-client privilege;

“Contemplated Change Order” has the meaning set out in Section 2.2.2;

“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;

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

“Go-Live Date” means the date on which the City is able to utilize the Software/SaaS with complete functionality, as acknowledged in writing by both parties;

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

“Intellectual Property Rights” has the meaning set out in section 15;

“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 information, whether in oral or written form 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;

“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-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, 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 2 – Fees and Payment;
- (d) Appendix 3 – Time Schedule;
- (e) Appendix 4 – Key Personnel and Sub-Contractors;
- (f) Appendix 5 – Additional Services;
- (g) Appendix 6 – Privacy Protection Schedule; and
- (h) 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 Goods, Services and Software for the benefit of the City shall have the right to operate and use the same. As part of the Services, City shall have the responsibility 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 Goods, Services, and Software 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 nine (9) 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: City of Surrey – Information Technology
Address: 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.

Service Level	Service Standard	Service Credit
<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, service credit, 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, service credit, based on the value of the annual support contract.</p> <p>Level 1 service credit 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, service credit, 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, service credit, based on the value of the annual support contract.</p> <p>Level 2 service credit 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, service credit, 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, service credit, based on the value of the annual support contract.</p> <p>Level 3 service credit is to be applied against the support fees payments.</p>
--	---	--

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.

Refer to Schedule E for additional information.

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 Schedule D – 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 – Information Technology
13450 - 104th Avenue
Surrey, British Columbia, Canada, V3T 1V8

Attention:
Fax:
E-mail:

(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.

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

I/We have the authority to bind the City.

(Signature of Authorized Signatory)

(Signature of Authorized Signatory)

(Print Name and Position 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)