

AGREEMENT

BETWEEN

HER MAJESTY THE QUEEN in right of Ontario

as represented by

THE DEPUTY PREMIER,

**PRESIDENT OF THE TREASURY BOARD AND MINISTER
RESPONSIBLE FOR THE POVERTY REDUCTION STRATEGY**

AND

X

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AGREEMENT

THIS AGREEMENT (the “Agreement”), made in quadruplicate is effective as of theday, 20.. (the “**Effective Date**”)

BETWEEN:

HER MAJESTY THE QUEEN in right of Ontario

as represented by

**THE DEPUTY PREMIER,
PRESIDENT OF THE TREASURY BOARD AND
MINISTER RESPONSIBLE FOR THE POVERTY REDUCTION STRATEGY**
(referred to as the “**Ministry**” or “**TBS**”)

AND:

X

(referred to as the “**Supplier**”)

In consideration of their respective agreements set out below, the parties covenant and agree as follows:

ARTICLE 1 - INTERPRETATION AND GENERAL PROVISIONS

1.1 Defined Terms

Unless otherwise specified, capitalized words and phrases have the meaning set out in the RFP and below:

“**Agreement**” means the aggregate of: (a) the Agreement, including Schedule 1, Schedule of Deliverables, Rates and Supplementary Provisions in which is included the RFP, including all Appendices and the Proposal, clarifications and other documentation provided by the Supplier or such parts of the Proposal, clarifications or other documentation that are accepted by the Ministry; Schedule 2 (Schedule of Forms), and any other schedule attached as of the Effective Date; (b) all amendments in writing executed by the Parties hereto from time to time; and (c) all Ministry approved Change Orders, Statements of Work, Orders, Rental Agreements and Service Requests made hereunder;

“**Applicant**” means the party that commences the Arbitration;

“**Arbitral Tribunal**” means the Sole Arbitrator;

“**Arbitration**” means the process for dispute resolution as described in Article 12 (Arbitration);

“**Arbitration Act, 1991 (Ontario)**” means the *Arbitration Act, 1991*, S.O. 1991, Chapter 17, as amended;

“Authority” means any government authority, agency, body or department, whether federal, provincial or municipal, having or claiming jurisdiction over the Agreement; and **“Authorities”** mean all such authorities, agencies, bodies and departments;

“Business Continuity Plans” mean the documents created, updated and implemented by the Supplier that describe how the Supplier will ensure continuity of its operations and its commitment and ability to provide the Deliverables to the OPS during the Term including during an event of Force Majeure or other emergency, disaster or disruption;

“Chair” means the Ministry representative that chairs a committee established by the Ministry under Section 12.4;

“Claim” means an Applicant’s written statement concerning a Dispute setting forth, with particularity, its position with respect to the Dispute and the material facts upon which it intends to rely;

“Cluster” means one of the organizational entities that may be revised from time to time by the Ministry in its sole discretion for managing Information & Information Technology (**“I&IT”**) across the business programs of the OPS. There are currently eight (8) Clusters, and a Cluster may include a number of ministries, related OPS Entities and officers of the Legislative Assembly and their respective offices;

“Confidential Information of the OPS” or **“OPS Confidential Information”** means all information of the Ontario Public Service that is of a confidential nature, including all confidential information in the custody or control of the OPS, regardless of whether it is identified as confidential or not, and whether recorded or not, and however fixed, stored, expressed or embodied, which comes into the knowledge, possession or control of the Supplier in connection with the Agreement. For greater certainty, OPS Confidential Information shall:

- (a) include: (i) all new information derived at any time from OPS Confidential Information whether created by the OPS, the Supplier or any third-party; (ii) all information (including Personal Information) that the OPS is obliged, or has the discretion, not to disclose under provincial or federal legislation or otherwise at law; (iii) all OPS Data; (iv) all Intellectual Property Rights of Her Majesty the Queen in right of Ontario and the Ministry; but
- (b) not include information that: (i) is or becomes generally available to the public without fault or breach on the part of the Supplier of any duty of confidentiality owed by the Supplier to the OPS or to any third-party; (ii) the Supplier can demonstrate to have been rightfully obtained by the Supplier, without any obligation of confidence, from a third-party who had the right to transfer or disclose it to the Supplier free of any obligation of confidence; (iii) the Supplier can demonstrate to have been rightfully known to or in the possession of the Supplier at the time of disclosure, free of any obligation of confidence when disclosed; or (iv) the Supplier can demonstrate is independently developed by the Supplier free of any obligation of confidence;

but the exclusions in this subsection shall in no way limit the meaning of Personal

Information or the obligations attaching thereto under the Agreement or at law;

“Confidential Information” of the Supplier means the recorded information identified in writing by the Supplier as confidential but shall not include any Confidential Information of the OPS;

“Conflict of Interest” includes, but is not limited to, any situation or circumstance where:

- (a) in relation to the RFP process, the Proponent has an unfair advantage or engages in conduct, directly or indirectly, that may give it an unfair advantage, including but not limited to (i) having or having access to information in the preparation of its Proposal that is confidential to Her Majesty the Queen in right of Ontario and not available to other Proponents; (ii) communicating with any person with a view to influencing preferred treatment in the RFP process; or (iii) engaging in conduct that compromises or could be seen to compromise the integrity of the open and competitive RFP process and render that process non-competitive and unfair; or
- (b) in relation to the performance of its contractual obligations in an OPS contract, the Supplier's other commitments, relationships or financial interests (i) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgement; or (ii) could or could be seen to compromise, impair or be incompatible with the effective performance of its contractual obligations;

“Contract” has the same meaning as “Agreement”;

“Counter-Claim” means a Respondent's written statement concerning one or more additional Disputes setting forth, with particularity, the additional Dispute or Disputes for the Arbitral Tribunal to decide;

“Customer” means any Cluster, ministry or OPS Entity and includes OPS end users;

“Date Processing Ready” means designed and capable of ensuring: (a) operation without malfunctioning, such as abnormally terminating or providing invalid or incorrect results due to date or date related data; (b) value of a current date will not cause any interruption in the operation, change in functionality, or misrepresentation of information; (c) date based processing behaves consistently for all dates prior to, during and after the Effective Date; (d) the century in any date must be specified explicitly or by unambiguous algorithms or inference rules; and (e) recognition of all leap years;

“Defence” means a Respondent's written response to a Claim setting forth, with particularity, its position on the Dispute and the material facts upon which it intends to rely;

“Deliverables” means everything including Products and Services developed for or provided to the OPS in the course of performing under the Agreement or agreed to be provided to the OPS under the Agreement by the Supplier or the Supplier's Personnel as further defined but not limited by Schedule 1, including but not limited to any goods or services or any and all Intellectual Property Rights and any and all concepts, techniques,

ideas, information, documentation and other materials, however recorded, developed or provided;

“Dispute” means a dispute or disagreement between the parties with respect to the interpretation of the Agreement, the performance of the parties, or any other matter that is in dispute;

“Effective Date” means the date first above written that is the commencement date of the Term of the Agreement;

“ERD” is the Employee Relations Division in the Ministry;

“ex-officio” means that the individual will attend meetings of any applicable committee, as set out in Article 12 of the Agreement as and when requested to do so by the Chair of the committee or designate. The ex-officio member will have no voting powers and may be excluded from all or part of any meeting by the Chair or designate. Ex-officio members shall be subject to such conditions, including confidentiality, as may be required by the Chair or designate or by the Agreement;

“Existing Equipment” means any hardware and any associated documents, materials or software that was not supplied by the Supplier under the Agreement but for which the Supplier must provide Services;

“Expiry Date” means May 7, 2018 or, if the original term is extended, the final date of the extended term;

“FIPPA” means the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended;

“Fiscal Year” means the period running from April 1 in one calendar year to, and including, March 31 in the next calendar year;

“Force Majeure” means any of the following events or circumstances which, directly causes either Party to be unable to perform all or a material part of its obligations under the Agreement:

- (i) war, civil war, armed conflict, terrorism, acts of foreign enemies or hostilities;
- (ii) nuclear or radioactive contamination of one or more Sites, unless the Supplier or any Supplier’s Personnel is the source or cause of the contamination;
- (iii) chemical or biological contamination of one or more Site from any event referred to in (i) above; or
- (iv) the discovery of any fossils, artefacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites, which, as a result of Laws and Regulations, requires the particular Site to be abandoned; and
- (v) the OPS event or occurrence described in Section 1.7;

“Hearing” shall have the meaning ascribed to such term in Section 12.7(a);

“Indemnified Parties” means each of the following and their directors, officers, advisors, agents, appointees, and employees: Her Majesty the Queen in right of Ontario, the members of the Executive Council of Ontario and Customers;

“Industry Standards” include, but are not limited to (a) the provision of any and all labour, supplies, Hardware and other goods or services that are necessary and can reasonably be understood or inferred to be included within the scope of the Agreement or customarily furnished by Persons providing Deliverables of the type provided hereunder in similar situations in Ontario and; (b) adherence to commonly accepted norms of ethical business practices, which shall include the Supplier establishing, and ensuring adherence to, measures to prevent its employees or agents from providing or offering gifts or hospitality of greater than nominal value to any person acting on behalf of or employed by Her Majesty the Queen in right of Ontario;

“Infrastructure Technology Services” is the IT division of the Ministry; and **“ITS”** has the same meaning;

“Intellectual Property Rights” means any rights under any intellectual property statute including but not limited to, the Patent Act, (Canada) Copyright Act (Canada) and Trade-Mark Act (Canada) and any other statutory provision in Canada or any rights arising at common law or at equity or when applicable, any similar law of any other country, or any provision or term of any international treaty or agreement, which may provide a right or interest in either (a) ideas, formulae, algorithms, concepts, inventions or know-how generally, including trade secret law, or (b) the expression or use of such ideas, formulae, algorithms, concepts, inventions or know-how. Intellectual Property Rights include, without limitation, Moral Rights, trade secrets, patent rights, rights in inventions, trade-marks, trade names and service marks as well as applications for, registrations, extensions, renewals and re-issuances of the foregoing, in whatever form such rights may exist and whether registered or unregistered;

“Letter of Credit” shall have the meaning ascribed to such term in Section 3.1 (Transition-In);

“Losses” means all liabilities, losses, costs, damages and expenses (including legal, expert and consulting fees);

“Malicious Code” means any computer code or software containing components embedded with security risks or designed to enable cyber attacks, harmful or hidden programs or data designed to adversely affect, disrupt, disable, damage or shut down the use or operation of any hardware, mobile devices, firmware, software, communications system or network, including without limitation, malware, spyware, worms, time bombs, logic bombs, trap doors, Trojan Horses, drop dead devices, time locks and viruses and any code that would:

- (i) limit or restrict the use of any Deliverable by the OPS;
- (ii) impair the quality and timely delivery of any Deliverables by the Vendor; or
- (iii) restrict or prevent the OPS from obtaining replacement services from any Person;

“**Minister**” means the Deputy Premier, President of the Treasury Board and Minister Responsible For The Poverty Reduction Strategy, unless reference is made to other applicable Ministers;

“**Ministry**” means Treasury Board Secretariat, and “**TBS**” has the same meaning;

“**Ministry Address**” means the address set out under the definition of “Ministry Representative”;

“**MGCS**” is the Ministry of Government and Consumer Services;

“**Ministry Representative**” mean the representative for all matters relating to the OPS in connection with the Agreement unless otherwise specified by the Ministry Representative:

Ministry Representative

Name:

Title:

Infrastructure Technology Services

Address:

Telephone Number:

Facsimile number:

E-Mail Address:

Back-up

Name:

Title:

Address:

Telephone Number:

Facsimile number:

E-Mail Address:

“**Moral Rights**” has the same meaning as in the Copyright Act (Canada) and applies to comparable rights in applicable jurisdictions;

“**Newly Created Intellectual Property**” means any Intellectual Property Rights created by the Supplier in the course of the performance of its obligations under the Agreement;

“**Non-OPS Agreement**” has the same meaning as PFO Agreement;

“**Ontario Public Sector**” or “**OPS**” means the ministries and other administrative units of the Government of Ontario over which Ministers of the Crown preside and, for the purposes of the Agreement, includes Customers;

“**OPS Data**” means any data or information pertaining to the Ontario Public Sector or DMSP3;

“OPS Entity” means: (a) an advisory, adjudicative, regulatory (including those with governing boards) or operational services agencies of the Province of Ontario ; or (b) any other entity designated by the Ministry or MGCS as an OPS Entity, which designation may be amended from time to time at the sole discretion of the Ministry or MGCS, except for the designation of a Publicly Funded Organization as an OPS Entity, which shall be treated as a change governed by the change management provisions of the Agreement .

“OPS Software” means proprietary software owned by or licensed to Her Majesty the Queen in right of Ontario;

“Out-of-Country Police Certificate (US and/or International)” is a summary of an individual’s criminal record or a declaration of the absence of any criminal record from a law enforcement agency in another country outside of Canada. Police certificates are different in each state/country and may be called police clearance certificates, good conduct certificates, judicial record extracts, etc. Where an individual has lived outside of Canada for more than six (6) months within the last five (5) years, an out-of-country police certificate from the jurisdiction(s) in which they have resided is required;

“Performance Measures” mean the Service Levels prescribed in the RFP by which compliance by the Supplier is determined;

“Person” as the context allows, includes an individual, person, company, partnership, corporation, unincorporated association, government or government agency, authority or entity howsoever designated or constituted and includes successor organizations or any combination thereof;

“Personal Information” has the meaning given to it in the FIPPA, which as at the Effective Date, means recorded information about an identifiable individual or that may identify an individual;

“Proceeding” means any cause of action, action, claim, demand, lawsuit, or other proceeding;

“Prohibited Act” means:

- (i) influencing or attempting to influence directly or indirectly any Person with a view to influencing the content of the RFP or the Ministry’s decision regarding any proposal or proposed change to the Agreement, except for participating in meetings, discussions or on committees in the normal course by authorized representatives identified in advance by each of the Parties;
- (ii) offering, giving or agreeing to give to the Ministry or any part of the OPS (or anyone employed by or acting on their behalf), or to any family member of such person, any gift or consideration of any kind as an inducement or reward:

(a) for doing or not doing, or for having done or not having done, any act in relation

to the performance of this Agreement or any other agreement with the Ministry or any part of the OPS in connection with the Services, including during the procurement process; or

- (b) for showing or not showing favour or disfavour to any person in relation to this Agreement or any other agreement with the Ministry or any part of the OPS in connection with the Services;

provided that this Section shall not apply to the Supplier (or anyone employed by or acting on its behalf) providing consideration to the Ministry or any part of the OPS in the ordinary course, or as reasonably necessary, to fulfill or comply with the obligations and liabilities of the Supplier under this Agreement or any other agreement with the Ministry or any part of the OPS in connection with the Services;

- (iii) entering into this Agreement or any other agreement with the Ministry or any part of the OPS in connection with the Services for which a commission or a fee has been paid or has been agreed to be paid by the Supplier, or on its behalf or to its knowledge, with the Ministry or any part of the OPS (or anyone employed by or acting on their behalf), or to any family member of such person, unless, before the relevant agreement is entered into, particulars of any such commission or fee have been disclosed in writing to the Ministry, provided that this Section shall not apply to a fee or commission paid by the Supplier or any of the Supplier's Personnel (or anyone employed by or acting on their behalf) to the Ministry or any part of the OPS pursuant to an agreement where such fee or commission is paid in the ordinary course, or as reasonably necessary, to fulfill or comply with the obligations and liabilities of the Supplier under this Agreement or any other agreement with the Ministry or any part of the OPS in connection with the Services without contravening the intent of this Section;

- (iv) breaching or committing any offence under any Laws and Regulations in respect of corrupt or fraudulent acts, or at common law, in respect of fraudulent acts in relation to this Agreement or any other agreement with the Ministry or any part of the OPS in connection with the Services; or

- (v) defrauding or attempting to defraud or conspiring to defraud the Ministry or any part of the OPS;

“Provincially Funded Organization” or “PFO” means:

- (a) any public sector entity of the Province of Ontario; or
- (b) any other entity designated by the Ministry or MGCS as a Provincially Funded Organization, which designation may be amended from time to time at the sole discretion of MGCS,

but excludes (i) Ontario, as represented by a ministry of Ontario over which a minister of the Crown, as appointed by the Lieutenant Governor under the *Executive Council Act*, R.S.O. 1990, c. E.25, presides, or any combination of such ministries; and (ii) OPS Entities.

“Provincially Funded Organization Agreement” or **“PFO Agreement”** means an agreement between the Supplier and a Provincially Funded Organization, as defined in Section 2.8.

“Purchase Card” means the corporate charge card(s) used by the Ministry, as may be changed from time to time;

“Purchase Card Protocols” means the manner in which the Supplier is required to process any payments under the Agreement that the Ministry elects to make by way of Procurement Card, which shall include the requirement to: (a) collect the authorized employee's name, the abbreviated Ministry name, the expiry date, the GST exemption number and the employee's authorization; (b) contact the financial institution identified on the Procurement Card each time the Procurement Card is used for payment; (c) receive payment from the financial institution named on the Procurement Card once that institution authorizes payment; and (d) bear the cost of any and all charges relating to the use of the Procurement Card, including the financial institution's charges for payment through the Procurement Card;

“Rate” means the maximum, all inclusive price from the Effective Date of the Agreement as follows:

- (a) in respect of a Service, the maximum price, in Canadian funds, as specified in the Proposal to be charged for the applicable Service, or such lower amounts as may be provided in accordance with the Agreement; and
- (b) in respect of any Product, the maximum price, in Canadian funds, that is the *lower of*:
 - (i) the price published as the Canadian list price on the applicable Manufacturer's website to which the percentage discount is applied as set out in Schedule 1, as amended by a higher percentage discount, if any, set out in the Supplier's bid or Manufacturer's Undertaking in response to each annual RFT; and
 - (ii) a favourable price (lower than the discounted list price) for each of the Manufacturer's Products within each of the Categories that the Manufacturer may offer as set out in Schedule 1, as amended by a favourable lower price, if any, set out in the Supplier's bid or Manufacturer's Undertaking in response to each annual RFT;

which maximum price represents the maximum amount chargeable by the Supplier for the provision of the Deliverables, including but not limited to: (a) all applicable duties and taxes, including the Harmonized Sales Tax; (b) all labour, material and administration costs; (c) all travel, carriage, shipping, freight and delivery costs; (d) all insurance costs; (e) all other overhead including any fees or other charges required by law; and (f) the cost of any warranty specified in the RFP as the minimum requirement for a given Product, any documentation to be provided with the Product and any costs of certifying that a Product or Service is ready for use by the OPS;

“Record”, for the purposes of the Agreement, means any recorded information, including any Personal Information, in any form: (a) provided by the Ministry to the Supplier, or provided by the Supplier to the Ministry, for the purposes of the Agreement; or (b) created by the Supplier in the performance of the Agreement;

“Reply” means an Applicant’s written reply to a Defence, setting forth, with particularity, its response, if any, to the Defence;

“Requirements of Law” mean all applicable requirements, laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, by-laws, rules, regulations, official plans, permits, licences, authorisations, directions and agreements with all Authorities that now or at any time hereafter may be applicable to either the Agreement or the Deliverables or any part of them. Any reference to a statute shall mean the statute in force as of the effective date first above written together with all regulations made thereunder, as the same may be amended, re-enacted, consolidated and/or replaced, from time to time, and any successor statute thereto, unless otherwise expressly provided;

“Request for Proposals” means the Request for Proposals Number OSS_00466131 dated, September 16, 2014, for Desktop Management Services and Products (DMSP-03) issued by the Ministry and includes all Appendices and Addenda;

“Respondent” means the party responding to a Complaint brought by the Applicant;

“Rules” means the rules applicable to Arbitration as set out in Article 12;

“Security Clearance Check” is the process conducted by the Supplier to gather information on designated persons for submission to the Ministry in order to obtain a Security Clearance and may include all of the following:

1. A written declaration by an individual disclosing any unresolved charges and previous convictions under the offence provisions of federal statutes, including but not limited to the Criminal Code (Canada), for which a pardon under the Criminal Records Act (Canada) has not been granted;
2. A Criminal Record Check
3. An Out-of-Country Police Certificate (US and/or International)
4. Driver’s Record Check
5. Out-of-Country Driver’s Record Check (US and/or International);

“Service Credits” means any amount which the OPS is entitled to receive from the Supplier as compensation for the non-compliance by the Supplier with its obligations under the Contract. Service Credits will be applied, at the Ministry’s option, to reduce the Supplier’s charges or as a set-off against any amount that is otherwise due and owing by the Ministry to the Supplier from time to time;

“Software Media” means the electromagnetic or other media in which the Software is contained, recorded or fixed and includes disks and tape;

“Sole Arbitrator” means the sole arbitrator appointed pursuant to Sections 12.5(a) and (b);

“Subcontractor” means any contractor of the Supplier or any of its subcontractors at any tier of subcontracting;

“Supplier Address” and **“Supplier Representative”** mean:

Supplier Representative

Name:

Title:

Telephone Number:

Facsimile number:

E-Mail Address:

Supplier Back-up Representative

Name:

Title:

Telephone Number:

Facsimile number:

E-Mail Address:

“Supplier’s Intellectual Property” means: (i) Intellectual Property Rights owned by the Supplier prior to the Supplier’s performance under the Agreement; (ii) Third-Party Intellectual Property supplied by the Supplier under the Agreement; or (iii) Intellectual Property Rights created by the Supplier during the Term of the Agreement independently of the performance of its obligations under the Agreement;

“Supplier’s Personnel” means the directors, officers, partners, agents, employees, advisors, contractors including, without limitation, Subcontractors (and service providers) that are corporate entities or partnerships, volunteers of each of the following and others for whom each of the following is responsible at law in connection with the Agreement: the Supplier, its Subcontractors, and the respective affiliates of the Supplier and its Subcontractors;

“Term” means the period of time from the Effective Date first above written up to and including the earlier of: (i) the Expiry Date or (ii) the date of termination of the Agreement in accordance with its terms;

“Third-Party Intellectual Property” means any Intellectual Property Rights owned by a party other than Her Majesty the Queen in right of Ontario or the Supplier. For certainty,

Intellectual Property Rights owned by the Supplier's Subcontractor and the Supplier's suppliers shall be considered Third-Party Intellectual Property under the Agreement;

"Transition-In Plan" shall have the meaning ascribed to such term in Schedule 1;

1.2 No Indemnities from Ministry

Notwithstanding anything else in the Agreement, any express or implied reference to the Ministry or any Customer providing an indemnity or any other form of indebtedness or contingent liability that would directly or indirectly increase the indebtedness or contingent liabilities of Ontario, whether as of the Effective Date of the Agreement or at any time during the Term, shall be void and of no legal effect.

This Section shall survive the termination or expiry of the Agreement.

1.3 Entire Agreement

The Agreement embodies the entire agreement between the parties with regard to the provision of Deliverables and supersedes any prior understanding or agreement, collateral, oral or otherwise with respect to the provision of the Deliverables, existing between the parties as of the Effective Date of the Agreement.

1.4 Severability

If any term or condition of the Agreement, or the application thereof to the parties or to any Persons or circumstances, is to any extent invalid or unenforceable, the remainder of the Agreement, and the application of such term or condition to the parties, Persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby.

1.5 Interpretive Value of Documents

In the event of conflicts or inconsistencies between or among any of the provisions of the Agreement, the provisions shall govern in the following order of precedence with each taking precedence over those listed subsequently:

- (a) the Articles of the Agreement;
- (b) RFT as and when issued by the Ministry and the Supplier's responses;
- (c) in Schedule 1,
 - (i) the RFP and any Addenda issued by the Ministry;
 - (ii) the Proposal, clarifications and other documentation provided by the Supplier or such parts of the Proposal, clarifications or other documentation that are accepted by the Ministry;
- (d) Schedule 2;

1.6 Interpretation

(a) The headings in the Agreement are for convenience of reference only and in no manner modify, interpret or construe the Agreement.

(b) References to "OPS", "OPS Entity", "Ministry", "ministry", "Customer", "ITS" or other divisions or branches of Ontario are used for contract management and administrative

purposes but Her Majesty the Queen in right of Ontario as represented by the Deputy Premier, President of the Treasury Board and Minister Responsible For The Poverty Reduction Strategy or such other applicable Minister, is the legal representative and any rights or obligations under the Agreement granted to the OPS or a division or branch of Ontario shall, as the context requires, be interpreted accordingly.

1.7 Force Majeure

Subject to the Supplier's obligations for Business Continuity in Section 3.8 of the Agreement, neither party shall be liable for damages caused by delay or failure to perform its obligations under the Agreement where such delay or failure is caused by a Force Majeure event. The event shall not be considered beyond the Supplier's reasonable control if a reasonable business person applying due diligence in the same or similar circumstances under the same or similar obligations as those contained in the Agreement would have put in place contingency plans to either materially mitigate or negate the effects of such event. Without limiting the generality of the foregoing, the parties agree that Force Majeure events shall not include shortages or delays relating to supplies of Products or Services. In the case of the OPS, force majeure shall include any partial or complete disruption or slowdown affecting the OPS' operations due to strikes, labour stoppages or lockouts or other labour-related events. If a party seeks to excuse itself from its applicable obligations under the Agreement due to a Force Majeure event, that party shall immediately notify the other party of the delay or non-performance, the reason for such delay or non-performance and the anticipated period of delay or non-performance. The Supplier shall formulate and implement a Business Continuity Plan that includes such contingency measures and disaster recovery plans as are necessary to provide the Deliverables without delay, disruption or deterioration in the performance of the Supplier's obligations in connection with the Agreement. If the anticipated or actual delay or non-performance by the Supplier exceeds fifteen (15) Business Days, the Ministry may immediately terminate the Agreement by giving notice of termination and such termination shall be in addition to the other rights and remedies available to the Ministry under the Agreement, at law or in equity.

1.8 Notices by Prescribed Means

Notices shall be in writing and shall be delivered by postage-prepaid envelope, personal delivery, electronic mail (email) or facsimile and shall be addressed to, respectively, the Ministry Address to the attention of the Ministry Representative and to the Supplier Address to the attention of the Supplier Representative. Notices shall be deemed to have been given: (a) in the case of postage-prepaid envelope, five (5) Business Days after such notice is mailed; or (b) in the case of personal delivery, email or facsimile one (1) Business Day after such notice is received by the other party. In the event of a postal disruption, notices must be given by personal delivery, email or by facsimile. Unless the parties expressly agree in writing to additional methods of notice, notices may only be provided by the methods contemplated in this Section.

1.9 Governing Law

The Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. The Parties

agree that the *United Nations Convention on Contracts for the International Sale of Goods* does not apply to the Agreement.

This Section shall survive the termination or expiry of the Agreement.

1.10 Construction of Agreement

- (a) Words in the singular include the plural and vice versa and words in one gender include all genders;
- (b) The rule of construction that a document is to be construed more strictly against the party that itself or through its agent prepared it, shall not apply as it is agreed that the parties directly or through their agents have participated in the preparation of the Agreement; and
- (c) The words “including” and “includes” are not intended to be limiting and shall mean “including without limitation” or “includes without limitation” as the case may be.

1.11 Approval of Documents

- (a) Every document that is required to be provided in connection with the Agreement may be suggested by the Supplier but must be approved, in the case of the OPS, by the Customer.
- (b) Any approval required under the Agreement shall be in writing. Subject to the other provisions hereof, wherever in the Agreement approval is required with respect to any document, following such approval, such document shall not be amended, supplemented, or changed in any material manner whatsoever, without obtaining a further approval. For certainty, any reference to a document shall be deemed to include all amendments, supplements, replacements or changes thereto following approval thereof.

1.12 Supplier's Terms

No terms and conditions set forth in any form of agreement, invoice, Statement of Work, rental agreement or purchase order of the Supplier will be binding on the OPS unless set forth in a written amendment of the Agreement that is executed by the Ministry and the Supplier.

1.13 Amendments to Agreement

Any amendment of the Agreement shall not be binding unless it is in writing and executed by duly authorized representatives of the Ministry and the Supplier. No change shall be effective or shall be carried out in the absence of such an amendment.

1.14 Canadian Dollar

All references in the Agreement to dollar amounts are references to Canadian dollars.

1.15 Notification by Supplier to Ministry

During the Term, the Supplier shall advise the Ministry promptly of: (a) any contradictions, discrepancies or errors found or noted in the Agreement; (b) supplementary details, instructions or directions that do not correspond with those

contained in the Agreement; and (c) any omissions or other faults that become evident and should be corrected in order to provide the Deliverables in accordance with the Agreement and Requirements of Law.

1.16 OPS Rights and Remedies and Supplier Obligations Not Limited to Agreement

The express rights and remedies of the OPS and obligations of the Supplier set out in the Agreement are in addition to and shall not limit any other rights and remedies available to the OPS or any other obligations of the Supplier at law or in equity.

This Section shall survive the termination or expiry of the Agreement.

1.17 Condonation Not a Waiver

Any failure by the Ministry to insist in one or more instances upon strict performance by the Supplier of any of the terms or conditions of the Agreement shall not be construed as a waiver by the Ministry of its right to require strict performance of any such terms or conditions, and the obligations of the Supplier with respect to such performance shall continue in full force and effect.

1.18 Waiver

No waiver by the Ministry of any rights under the Agreement shall be effective unless in writing, duly executed by an authorised representative of the Ministry. A waiver of any breach of any provision of the Agreement by the Supplier shall not be construed as a continuing waiver of other breaches of the same provision or waiver of any other provision of the Agreement.

1.19 Delay

For delay that is demonstrated by the Supplier to be caused solely by the Ministry, the Ministry will provide equivalent additional time to the Vendor to comply with Service Level Metrics. No compensation or cost shall be paid by the Ministry.

ARTICLE 2 - NATURE OF RELATIONSHIP BETWEEN MINISTRY AND SUPPLIER

2.1 Representatives May Bind the Parties

The parties represent that their respective representatives have the authority to legally bind them to the extent permissible by the Requirements of Law.

2.2 Infrastructure Technology Services

ITS Desktop Supplier Management Office shall be the sole and exclusive representative for the OPS for all matters relating to the Agreement. The Supplier shall not contact, solicit business or take instructions from any other part of the OPS unless otherwise expressly permitted in writing by ITS. Without limiting the generality of Section 3.3, no Order will be binding under the Agreement unless it is issued by ITS and no invoice of the Supplier will be payable under the Agreement unless it is pursuant to a Order issued by ITS or as specified in writing by ITS.

2.3 Supplier Not a Partner, Agent or Employee

The Supplier shall have no power or authority to bind the Ministry or the OPS or to assume or create any obligation or responsibility, express or implied, on behalf of the Ministry. The Supplier shall not hold itself out as an agent, partner or employee of the Ministry or the OPS. Nothing in the Agreement shall have the effect of creating an employment, partnership or agency relationship between the Ministry or the OPS and the Supplier or the Supplier's Personnel or constitute an appointment under the *Public Service of Ontario Act, 2006*, S.O. 2006, Chapter 35, as amended. The Supplier shall be solely liable for all moneys payable by it on account of statutory and contractual obligations arising from payments received by it pursuant to the Agreement.

This Section shall survive the termination or expiry of the Agreement.

2.4 Responsibilities of Supplier

- (a) The Supplier agrees that it is liable for its acts and omissions and the acts and omissions of the Supplier's Personnel in the same manner as if the acts or omissions of the Supplier's Personnel were those of the Supplier. This Section is in addition to any and all of the Supplier's liabilities under the Agreement and under the general application of law. The Supplier shall advise the Supplier's Personnel of their obligations under the Agreement and shall ensure their compliance with all the applicable terms of the Agreement. In addition to any other liabilities of the Supplier pursuant to the Agreement or otherwise at law or in equity, the Supplier shall be liable for all Losses and Proceedings resulting from its actions or omissions and the actions or omissions of the Supplier's Personnel in connection with the Agreement.
- (b) The Supplier shall not be relieved of any obligation or liability under the Agreement as a result of the use by the Supplier of any Supplier's Personnel, nor shall Her Majesty the Queen in right of Ontario be liable to any of the Supplier's Personnel and the Supplier shall not make any representation or enter into any agreement with the Supplier's Personnel to the contrary.
- (c) The Supplier shall, in order to comply with the provisions of the Agreement, include applicable terms and conditions into contracts that the Supplier has with the Supplier's Personnel.
- (d) Each Manufacturer of a Product available for ordering by ITS under the Agreement shall be deemed to be a Subcontractor of the Supplier under the Agreement. The Supplier shall require each Manufacturer to enter into a Manufacturer's Undertaking in the form attached hereto as Appendix R for the Product Categories identified by the Ministry. In addition, the Supplier shall require the Manufacturer of any new Products supplied under the Agreement who has not signed a Manufacturer's Undertaking to sign the Manufacturer's Undertaking in the form attached hereto as Appendix R. The Rates provided by each Manufacturer to the Supplier as of the Effective Date shall be ceiling prices that shall not increase for the period until the Ministry conducts a RFT to select Manufacturers.

This Section shall survive the termination or expiry of the Agreement.

2.5 No Subcontracting or Assignment

The Supplier shall not subcontract or assign the whole or any part of the Agreement or any monies due under it without the prior written consent of the Ministry. Such consent shall be in the sole discretion of the Ministry and subject to the terms and conditions that may be imposed by the Ministry. Without limiting the foregoing, the Ministry shall be entitled to withhold its consent to any proposed subcontracting or assignment of the Agreement if any of the following conditions are not met:

- (a) the Ministry shall be given prior written notice of the proposed subcontracting or assignment and shall be provided with such information as it may request with respect to the proposed Subcontractor or assignee;
- (b) the Ministry shall be provided with complete, accurate information on the proposed Subcontractor or assignee including information regarding: its corporate structure and governance; its relationships with other entities; any affiliations with foreign entities; and the place or jurisdiction where it carries on or will carry on business;
- (c) the Ministry is satisfied that the subcontracting or assignment will not violate or be contrary to any OPS policy;
- (d) Any contract between the Supplier and the Subcontractor or between the Supplier and the assignee must specify that: (i) the Subcontractor or assignee is and will be able and willing to comply with all of the applicable terms and conditions of the Agreement including the Supplier's obligations and covenants under the Agreement and the requirements of Article 9 of the Agreement; (ii) clause (d)(i) of Section 2.5 shall prevail over all other provisions in the contract between the Supplier and the Subcontractor or between the Supplier and the assignee; and (iii) clause (d) of Section 2.5 shall survive the expiry or termination of the Agreement and any contract between the Supplier and the Subcontractor or between the Supplier and the assignee;
- (e) The subcontracting or assignment does not impose and shall not result in the imposition of any additional cost, obligation, liability or covenant on Her Majesty the Queen in right of Ontario and the OPS; and
- (f) Any subcontracting or assignment of the Agreement in whole or in part shall not relieve the Supplier of its performance or any responsibility, obligation, covenant or liability under the Agreement.

Without limiting the generality of the conditions which the Ministry may require prior to consenting to assignment or use of a Subcontractor by the Supplier, every contract entered into by the Supplier shall include all of the terms and conditions of the Agreement applicable to those parts of the Deliverables provided by the assignee or Subcontractor. Except for the Manufacturer's Undertaking, nothing contained in the Agreement shall create a contractual relationship between the Supplier's Personnel and the Ministry

In the event that the Ministry does not consent to the subcontracting or assignment of the Agreement, in whole or in part, any subcontracting or assignment by the Supplier in such a situation will be deemed to be grounds for termination pursuant to Section 8.1.

The Supplier shall ensure that its contracts with its Subcontractors and suppliers are assignable to the OPS if the Agreement is terminated in whole or in part in accordance with Article 8 and the OPS elects, in its sole discretion, to assume any of the contracts. As an alternative to assuming any contract made with any such Subcontractor or supplier, as set forth above, the OPS shall be entitled at its option to negotiate directly and to enter into any agreements with the Subcontractors and suppliers with respect to the provision of any Products or Services. The Supplier shall ensure that its contracts with the Subcontractors and suppliers permit the assignment of such agreements, as described in this Section 2.5, at no additional cost to the OPS. Additionally, no such contract shall prohibit any Subcontractor or supplier from entering into negotiations and new agreements with the OPS.

The Supplier acknowledges and agrees that the Ministry may, during the course of the Agreement, require direct communication with a Subcontractor regarding matters within the scope of the Subcontractor's responsibilities subcontracted to it by the Supplier. The Supplier shall facilitate such direct communication if requested by the Ministry. The Supplier agrees that nothing in the Agreement or any other document permitted under the Agreement such as an Order shall prohibit or limit the ability of the Ministry, if the Ministry so elects, to directly communicate with the Supplier's Subcontractors regarding matters within the scope of the Subcontractor's responsibilities. Such communication shall not be construed as a waiver by the Ministry of the Supplier's responsibilities or obligations under the Agreement nor will such communication relieve the Supplier of any of its responsibilities or obligations under the Agreement.

This Section shall survive the termination or expiry of the Agreement.

2.6 Change of Control

For purposes of the Agreement, any reorganization or restructuring of the Supplier that results in a new entity assuming all or part of the business and operations of the Supplier, or any sale or disposition that results in a change of control of the Supplier shall be deemed to be an assignment of the Agreement by the Supplier and shall be subject to the provisions of Section 2.5 above.

2.7 Conflict of Interest

The Supplier shall: (a) avoid any Conflict of Interest in the performance of its contractual obligations; (b) disclose to the Ministry without delay any actual or potential Conflict of Interest that arises during the performance of its contractual obligations; and (c) comply with any requirements prescribed by the Ministry to resolve any Conflict of Interest. In addition to all other contractual rights or rights available at law or in equity, the Ministry may immediately terminate the Agreement upon giving notice to the Supplier where: (i) the Supplier fails to disclose an actual or potential Conflict of Interest; (ii) the Supplier fails to comply with any requirements prescribed by the Ministry to resolve a Conflict of Interest; or (iii) the Supplier's Conflict of Interest cannot be resolved.

This Section shall survive the termination or expiry of the Agreement.

2.8 PFO Agreement

If the Supplier opts to provide desktop management services and products to any PFO, the Supplier may only do so under a separate agreement with the PFO. If the Supplier receives a request from any PFO to supply products and services to the PFO that are the same as the Products and Services under this Agreement, the Supplier shall provide the PFO with the PFO Notice set out in the Form of PFO Agreement attached as Appendix G of the RFP. It is the responsibility of the Supplier and the PFO to negotiate and, if an agreement is reached, to enter into a separate agreement that includes the conditions set out in this Section 2.8 (the "PFO Agreement"):

- (a) Any obligation, cost or liability arising under or in connection with the PFO Agreement shall be the responsibility of the parties to the PFO Agreement. The Indemnified Parties shall not be responsible or liable for any act, error or omission of any party to the PFO Agreement and no party to the PFO Agreement shall make any representation or covenant or enter into any agreement to the contrary.
- (b) No party to the PFO Agreement shall bring or cause any Proceeding (as defined in the Agreement) to be brought against the Indemnified Parties as a result of any act or omission of the parties to the PFO Agreement or as a result of any act or omission of the Indemnified Parties in connection with the Agreement. The parties to the PFO Agreement shall indemnify and hold the Indemnified Parties harmless from any Losses (as defined in the Agreement) as a result of any Proceeding brought by any party to the PFO Agreement or for any third party claims arising out of or in connection with the PFO Agreement.
- (c) Each party to the PFO Agreement shall conduct its own due diligence and obtain independent technical, business, legal and other applicable advice with respect to the party's individual requirements. Each party acknowledges that the provisions of the Agreement are based on the OPS' concerns and requirements and may not be suitable or appropriate for a PFO.
- (d) Ontario does not:
 - (i) endorse or recommend any party to the PFO Agreement;
 - (ii) guarantee, or recommend the suitability, quality or functionality of any Deliverables or components;
 - (iii) represent that any quality, value or volume of Deliverables will be acquired under the PFO Agreement;
 - (iv) assume any responsibility for obtaining or pursuing non-OPS business for the Supplier; or,
 - (v) assume any responsibility or obligation to inform any PFO of the results of any RFT, any changes, amendments or termination of the Agreement.

- (e) The PFO Agreement shall not:
- (i) have the effect of creating an employment, partnership or agency relationship between a party to the PFO Agreement on the one hand and the Indemnified Parties on the other; or, constitute an appointment under the *Public Service of Ontario Act, 2006*, S.O. 2006, Chapter 35, as amended;
 - (ii) impose or result in the imposition of any cost, obligation, liability or covenant on the Indemnified Parties;
 - (iii) relieve the Supplier of its performance or any cost, responsibility, obligation, covenant or liability in connection with the Agreement;
 - (iv) negate, impede or impair the exercise of any rights, licences or permissions under or in connection with the Agreement by any Indemnified Parties or by any persons authorized under or in connection with the Agreement to exercise any such rights, licences or permissions on behalf of the Indemnified Parties;
 - (v) contain any express or implied reference to the Ministry or any Customer providing an indemnity or any other form of indebtedness or contingent liability that would directly or indirectly increase the indebtedness or contingent liabilities of the Indemnified Parties;
 - (vi) Encumber any OPS assets or use any Intellectual Property of Ontario which shall remain at all times the sole and exclusive property of the OPS;
or
- (f) The Supplier and the PFO remain solely responsible for obtaining independent professional advice (which may include legal and business advice) and negotiating the terms and conditions of the PFO Agreement (including all business, legal and other terms as may be necessary or desirable for the Supplier and the PFO).
- (g) Ontario does not assume any duty of care or liability or responsibility for the accuracy, completeness, or usefulness of any information or documents of Ontario for the PFO Agreement between the Supplier and the PFO. OPS' information and documents reflect the OPS' own requirements and are not intended to be a substitute for any transaction-specific advice that the PFO should independently obtain.
- (h) The PFO shall be responsible for its own contract administration with the Supplier and shall not direct any issues that may arise with the Supplier to the OPS.
- (i) The PFO is responsible for complying with applicable laws, trade agreements and other obligations including its own internal procurement policies and guidelines and shall not rely on the Ministry's procurement as a substitute for such compliance.

- (j) The PFO shall not interfere with or impede any transition activity or operations of the OPS or the performance of the Network.
- (k) The PFO or the Supplier, as applicable, shall comply with the provisions of the PFO Notice.

This Section shall survive the termination or expiry of the Agreement.

2.9 Job Offers

The Supplier shall issue job offers to the impacted employees in accordance with the RFP, Section 2.15, Appendix L and Appendix T and such other additional benefits, if any, that were included in the Supplier's Proposal attached as Schedule 1 to the Agreement.

Each employee shall have a period of ten (10) Business days from receipt of the job offer to either accept or reject the job offer by providing notice in writing of his or her election to the Supplier's Representative. An employee who does not accept the offer within ten (10) Business Days is deemed to have rejected the offer.

In the event that an impacted employee accepts the Supplier's job offer but, prior to the date of transfer, rejects that offer, the Ministry shall not be responsible or liable for any Losses or Proceedings arising out of or in connection with the actions of such employee and the Supplier shall not be relieved of any obligation, covenant, representation or warranty under the Agreement but shall be responsible and liable for providing the Products and Services in accordance with the Agreement, including the Service Levels.

As of the date of transfer of each employee from the Ministry to the Supplier, the Supplier shall be solely responsible and liable for the acts and omissions of the transferred employees.

The Supplier agrees that the offer made at the point of transfer will not require an employee to accept a loss of his/her common law employment rights with respect to subsequent unilateral changes to terms and conditions of employment made by the Supplier.

2.10 Agreement Binding

The Agreement shall enure to the benefit of and be binding upon the parties and their successors, executors, administrators and their permitted assigns.

This Section shall survive the termination or expiry of the Agreement.

ARTICLE 3 - PERFORMANCE BY SUPPLIER

3.1 Transition-In

Immediately upon finalization of the Transition-In Plan by the Supplier and approval by the Desktop Supplier Management Office, the Supplier shall perform the obligations,

including the tasks and activities, necessary to implement and complete the Transition-In Plan in accordance with RFP and the applicable provisions of the Agreement.

- (a) Within five (5) Business Days following the Effective Date of the Agreement, the Supplier shall provide irrevocable standby Letter of Credit in form and substance as the Form of Letter of Credit in Schedule 3.
- (b) The Letters of Credit shall be issued by a Bank specified in the *Bank Act*, Schedule I. All costs in connection with the Letters of Credit shall be borne solely by the Supplier.
- (c) In the event that the Supplier complies with the provisions of Agreement and in particular with the provisions of the RFP within the timeframes specified and, there are no amounts drawn down or no outstanding disputes or Proceedings between the Parties, the Ministry will return the applicable Letter of Credit in full or the Ministry will return the balance, if any, of the applicable Letter of Credit if amounts have been drawn down in accordance with the provisions of the Agreement.

3.2 Supply of Deliverables

- (a) Capability to Supply Deliverables in the Province of Ontario

The Supplier shall be able and willing to provide, and shall provide, all the Deliverables required under the Agreement to any location in the Province of Ontario as may be specified by ITS from time to time during the Term of the Agreement. For certainty, the Supplier is not required to supply Products under the Agreement until May 8, 2015, except as expressly required by ITS.

- (b) Non-Exclusive Agreement; Work Volumes

The Supplier acknowledges that it is providing the Deliverables to the OPS on a non-exclusive basis. The OPS makes no representation, assurance, warranty, guarantee or agreement regarding the value or volume of Deliverables that will be acquired under the Agreement, or regarding the accuracy, completeness or non-occurrence of changes in information provided by or on behalf of the OPS. ITS will, in its sole discretion, determine when, how much, for which location and for what period it will acquire the Deliverables from the Supplier. The OPS, or any part of the OPS, reserves the right, at any time, to obtain from any other Person, including, without limitation, any other supplier with whom the Ministry enters into an agreement pursuant to the RFP, from third parties or internally, the same or similar Deliverables including any Product Type, as those provided by the Supplier. Authorized Reseller and Certified Service Provider

The Supplier shall be authorized to sell and rent the Products supplied and provide the related Services under the Agreement. The Supplier or the Supplier's Personnel shall be authorized and certified in respect of:

- (i) the Products supplied under the Agreement; and
- (ii) the Services provided in relation to the Products.

As part of its Proposal and at any time and from time to time, the Ministry has the right to request that the Supplier supply, and the Supplier shall supply within five (5) Business Days of the request, written confirmation from the Manufacturer of the Products that the Supplier has Authorized Dealer status and is authorized to sell the Manufacturer's Products and is a certified service provider of that Manufacturer.

(c) Supplier Unable or Unwilling to Provide Product or Services

If the Supplier is unable or unwilling for any reason including, but not limited to, financial difficulties, to provide the Products or perform the related Services, then,

- (i) the Supplier shall require the Manufacturer of the Product Category to comply with the provisions of the Agreement including the terms of the Manufacturer's Undertaking such as but not limited to:

- (1) sell the Supplier's Products and Warranty Services directly to Customers at the Rates set out or calculated in accordance with the Agreement at no additional cost (such as any administrative or other costs), obligation or liability to Her Majesty the Queen in right of Ontario or any Customer; and
- (2) in respect of the new Products purchased or rented in accordance with this Section, perform the services described in the Manufacturer's Undertaking as if such reseller is the "Manufacturer" as identified in the Manufacturer's Undertaking, whether itself or through a third party subcontractor approved by the Ministry, in accordance with the Service Levels set out in the RFP, at the Rates set out or calculated in accordance with the Agreement and at no additional cost (such as any administrative or other costs), obligation or liability to Her Majesty the Queen in right of Ontario or any Customer.

For certainty, ITS shall have the right to choose, at its sole discretion, whether to acquire Products and Services at the current Rates established in accordance with the Agreement from a reseller designated by the Manufacturer for a period determined by ITS.

This Section shall survive the termination or expiration of the Agreement.

3.3 Ordering Deliverables

(a) Orders

This Agreement contemplates the issuance by ITS on behalf of the Ministry, in its

absolute discretion, of one or more Blanket Purchase Orders for the purposes of ordering specific Deliverables to be provided by the Supplier to the Ministry or Customers. ITS may order Deliverables from the Supplier at any time during the Term for delivery no earlier than [insert post-transition date] (unless another date is agreed to by the Supplier and the Ministry) by submitting an Order to the Supplier and the Supplier shall accept such Order. For the purpose of Sections 3.3, 3.4, 3.6, 3.10 and 3.12, an Order shall be interpreted to include a Rental Agreement if an order for Products is issued pursuant to a Rental Agreement.

(b) Commencement of Performance

Deliverables shall be provided only pursuant to an Order executed by a duly authorized representative of ITS and only in accordance with the Agreement. The Supplier shall commence performance only upon receipt of an Order from ITS. A Supplier, who elects to commence work, makes any financial or other commitment, or places orders for the supply of any products or services, in each case either upon a purchase order issued by an OPS entity other than ITS or prior to receipt of an Order from ITS, shall do so entirely at the risk and cost of the Supplier.

(c) Terms of the Order

The terms and conditions of the Agreement shall apply to each Order. Where applicable, an Order may include the following detailed information:

- Description and specifications of Deliverables;
- Quantity of Deliverables;
- Price of Deliverables (at the Rates set out or calculated in accordance with the Agreement)
- Location or geographical area for provision of Deliverables;
- Selected Brand or Manufacturer of each Product to be acquired;
- Timeframes for the Supplier to provide the Deliverables;
- Supplier's responsibilities;
- Service Levels to be achieved (the Agreement sets out minimum Services Levels);
- Benchmark performance criteria and standards expected of the Supplier;
- Measurement methods to monitor and report on the Supplier's performance;
- Reporting requirements

(d) Separate Orders

The terms and conditions set out in an Order shall have no effect on any other Order and shall only apply to the provision of Deliverables under that particular Order.

(e) Conflict between an Order and the Agreement

- (i) In the event of a conflict between an Order and the Agreement, the latter shall govern except that (1) with respect to the description of the Deliverables, the description set out in or attached to and forming part of any Order will prevail over the description set out in the Agreement; and (2) the Rates set out in or attached to and forming part of any Order shall prevail over the Rates set out in the Agreement, but only to the extent that the Rates in the Order are lower than the Rates set out in the Agreement.
- (ii) No terms and conditions set forth in any Order that are inconsistent with the terms and conditions of the Agreement will be binding on the OPS unless set forth in a written amendment to the Agreement that is executed by the Ministry and the Supplier.
- (iii) No terms and conditions set forth in any form of agreement, invoice or purchase order of the Supplier, even if signed or accepted by ITS, the Ministry or a Customer, will be binding on the OPS unless such terms and conditions are set forth in a written amendment of the Agreement that is executed by ITS on behalf of the Ministry and the Supplier.

(f) Electronic Ordering and Payment

If the Ministry chooses to order Deliverables or pay for them electronically, the Supplier shall ensure that its systems and processes accommodate the Ministry's requirements.

(g) Rental Agreement

Each Rental Agreement shall incorporate by reference all of the provisions of the Agreement. Any Rental Agreement which does not incorporate the Agreement by reference will not be binding on the Customer.

3.4 Products

(a) Supply of Products

The Supplier shall supply Products if and when ordered by ITS on behalf of the Ministry upon the issuance of an Order in accordance with Section 3.3 (Ordering Deliverables). The Supplier shall supply Products in accordance with the terms of the Agreement.

(b) Product Specifications

The Products supplied by the Supplier shall meet or exceed the Specifications and all other requirements as set out in the Agreement.

(c) Within Scope Products

The Supplier shall supply in accordance with the terms of the Agreement any products that the Ministry may require that are within the scope of the Products supplied under the Agreement.

(d) Third Party Warranties

Without limiting the representations, warranties and covenants provided by the Supplier under Article 10, in respect of any Deliverable where warranties are additionally provided by a Subcontractor or third party, such as by the Manufacturer of Products or licensor of software, the Supplier shall assign to the Ministry, without reservation, all of the Supplier's rights, but none of the Supplier's obligations, under all warranties provided by the third party. The Ministry shall have the right to take any action it deems appropriate to enforce such warranties. In the event that the Ministry is precluded from enforcing any such warranty in its name or the Supplier cannot assign such warranty to the Ministry, the Supplier shall, upon the Ministry's request, take such steps to enforce such warranty as the Ministry may request. The Ministry's rights under this Section are in addition and without limitation to its rights and remedies under any other applicable service or warranty agreement with any other Person, under the Agreement, at law or in equity.

This Section shall survive the termination or expiry of the Agreement.

3.5 Services

(a) Provision of Services

The Supplier shall be responsible for the performance of the Services in accordance with the terms of the Agreement. With respect to Services that are optional to acquire, ITS on behalf of the Ministry will issue an Order in accordance with Section 3.3 to order those Services.

(b) Configuration Centre

The Supplier shall operate and perform the obligations specified for the Configuration Centre as set out in Schedule 1.

(c) Information Technology Service Management

The Supplier shall provide the Services in accordance with the OPS' Information Technology Service Management framework as described in the RFP from both a process and technology perspective. The Supplier shall also be responsible for those obligations set out in the RFP with respect to the Information Technology Service Management framework.

(d) Warranty Service

(i) Warranty Services Provided by Manufacturer

The Supplier shall require all work under any Warranty Service to be performed by the Manufacturer itself or by the Supplier as long as the Supplier has Authorized Dealer status.

(ii) Term of Warranty Service

Without limiting the generality of Section 8.9 below, the term of any Warranty Service ordered by ITS that exceeds the Term of the Agreement, will not expire or terminate on the Expiry Date or termination

date of the Agreement, but shall continue for the term of the Warranty Service.

This section 3.5(d) shall survive the termination or expiry of the Agreement.

(e) Reporting

The Supplier shall meet the reporting requirements specified in Schedule 1.

3.6 Delivery, Risk of Loss, Title and Inspection

(a) Delivery, Risk of Loss and Title

(i) Delivery

1. Location of Delivery

The Supplier shall deliver the Deliverables to or at the location specified in the applicable Order. The Ministry may request and the Supplier shall agree in writing to change the delivery location no later than three (3) Business Days before the scheduled delivery date.

2. Delivery Dates

The Supplier shall deliver the Deliverables in accordance with the schedule specified in the applicable Order or Renewal schedule. The Ministry may request and the Supplier shall agree in writing to change the delivery date no later than three (3) Business Days before the scheduled delivery date.

3. Completed Delivery

a. Product

Delivery is deemed to be complete when all components of the Product have been received by the Customer at the location specified in the Order, as evidenced by the initial or signature of a Customer representative acknowledging receipt of the Products. A Product shall be deemed to be incomplete and undelivered if all components of the Product ordered in the Order are not delivered in accordance with the requirements for the Products as set out in the Order and the Agreement. The Supplier agrees that it will not ship any Product until the Supplier has confirmed that the Product is operating in conformance with the applicable Specifications.

b. Service

A Service shall be deemed to be incomplete and undelivered if not delivered in accordance with the requirements for the Services as set out in the Order and the Agreement.

4. Failure to Complete Delivery

If the Supplier does not deliver the complete Product or complete the

provision of Services in accordance with the Agreement, the OPS may, at its option, terminate the applicable Order or the Agreement without incurring any cost, liability, obligation or penalty and without prejudice to any of its other rights or remedies under the Order or the Agreement, at law or in equity.

(ii) Risk of Loss or Damage (Products)

All risk of loss or damage to any Products prior to delivery being complete will be the responsibility of the Supplier. Upon delivery having been completed in accordance with subsection 3 (Completed Delivery) above, final inspection and acceptance by the Customer, the risk of loss or damage to Products passes to the Ministry except for latent defects, fraud and the Supplier's warranty obligations.

(iii) Acceptance and Title

Deliverables are deemed accepted by the Ministry when delivery is completed in accordance with subsection 3 (Completed Delivery) above. The Supplier shall transfer good and marketable title of the Products except those Products subject to a Rental Agreement to the Ministry, without any encumbrances, upon the Product being accepted.

3.7 Service Levels and Performance Measures

(a) Service Levels

The Supplier shall provide the Deliverables in accordance with no less than the Service Levels specified as minimum requirements in the Agreement.

(b) Requirement to Meet or Exceed Performance Measures

The Supplier shall meet or exceed the Service Levels specified in Appendix "N" of the RFP.

(c) Failure to Meet Performance Measures

The Supplier agrees that, if Performance Measures are not met, the Ministry may exercise the rights and remedies specified in Appendix S of the RFP, including, without limitation, the requirement that the Supplier provide service level credits, the right to award business to another supplier, and/or the right to terminate the Agreement.

3.8 Business Continuity

The Supplier shall have Business Continuity Plans in place as of the Effective Date and shall periodically update them to the reasonable satisfaction of the Ministry to ensure the Supplier's own continuity of operations and ability to provide the Deliverables to the OPS during the Term of the Agreement including during an event of Force Majeure or other emergency, disaster or disruption.

The Business Continuity Plans shall:

- (a) specifically address, among other things, the absence or reduction of staff, facilities and information technology and how these will be managed so as to ensure the Supplier's supply chain is not disrupted in a manner that will prevent or impair the provision of the Deliverables to the OPS in accordance with the Agreement; and
- (b) include a methodology by which the Business Continuity Plans will be continuously monitored and updated by the Supplier during the Term of the Agreement. The Ministry reserves the right to review the Supplier's Business Continuity Plans.

The Supplier's Business Continuity Plans shall provide for contingency management. The Supplier should document the use of disaster recovery planning within its own organization as part of its Business Continuity Plan, including the use of:

1. Emergency response teams with the assignment of responsibilities and duties among the team members;
2. General locations (e.g. city, region) for alternate operating facilities and the inclusion of permanent backup or alternate power sources, the expected time to restore services and minimum duration before refuelling is required;
3. Supply chain management processes in place, in relation to the identification and provisioning (for example, stocking of equipment, arrangements for a priority delivery of equipment) of those critical supplies that are deemed necessary to maintain service continuity to Customers;
4. Communications plans, and, in particular, provision for Customer relationship management and incident management and a description of the roles of the Supplier's representatives responsible for these functions and for informing Customers.

Upon a request from the Ministry, the Supplier shall provide a copy of the Supplier's Business Continuity Plan to the Ministry for the Ministry's review.

3.9 Use and Access Restrictions

The Supplier acknowledges that unless it obtains specific written preauthorization from the Ministry, any access to or use of OPS property, technology or information that is not necessary for the performance of its contractual obligations with the Ministry is strictly prohibited. The Supplier further acknowledges that the Ministry may monitor the Supplier to ensure compliance with this Section. This Section is in addition to and shall not limit any other obligation or restriction placed upon the Supplier.

The OPS will give the Supplier and the Supplier's Personnel access to its premises, systems or networks only to the extent such access is reasonably required in order for the Supplier to perform in accordance with the Agreement. However, access by the Supplier and the Supplier's Personnel to the OPS' premises, systems or networks shall be subject to compliance, at the Supplier's cost, with the OPS' regulations, rules, procedures, policies and requirements established from time to time by the OPS including those relating to security clearances and operating procedures. The Supplier

shall determine the applicable rules, regulations, procedures, policies and requirements from the Customer and from publicly available sources, shall comply and cause the Supplier's Personnel to comply with them.

The Supplier agrees that any and all hardware including servers and all operating system and application software provided by the Ministry shall be used only for performance of its contractual obligations and shall be returned to the Ministry, unencumbered, on demand by the Ministry but in any event no later than upon expiry or termination of the Agreement.

3.10 Supplier to Comply With Reasonable Change Requests

The Ministry may, in writing, request changes to the Agreement, which may include altering, adding to, or deleting any of the Deliverables. The Supplier shall comply with all reasonable Ministry change requests and the performance of such request shall be in accordance with the terms and conditions of the Agreement. If the Supplier is unable to comply with the change request, it shall promptly notify the Ministry and provide reasons for such non-compliance. In any event, any such change request shall not be effective until a written amendment reflecting the change has been executed by the parties. This Section shall also apply to any change requests made by the Ministry pursuant to an Order.

3.11 Pricing for Requested Changes

Where a Ministry change request includes an increase in the scope of the previously contemplated Deliverables, the Ministry shall set out, in its change request, the proposed prices for the contemplated changes. Where the Rates in effect at the time of the change request:

- (a) include pricing for the particular type of Products or Services contemplated in the change request, the Supplier shall not unreasonably refuse to provide those Products or Services at prices consistent with those Rates; or
- (b) are silent to the applicable price for the particular products or services contemplated in the change request, the price shall be negotiated between the Ministry and the Supplier within ten (10) Business Days;

and in any event, such change request shall not become effective until a written amendment reflecting the change has been executed by the parties.

3.12 Performance by Specified Individuals Only

The Supplier agrees that to the extent that specific individuals are named in the Agreement or Order as being responsible for the provision of the Deliverables, only those individuals shall provide the Deliverables under the Agreement or Order. The Supplier shall not replace or substitute any of the individuals named in the Agreement without the prior written approval of the Ministry. Should the Supplier require the substitution or replacement of any of the individuals named in the Order or the Agreement, it is understood and agreed that any proposed replacement must possess

similar or greater qualifications than the individual named in the Order or the Agreement. The Supplier shall not claim fees for any replacement individual greater than the Rates established under the Order or the Agreement.

If the Customer, in its sole discretion, deems any of the Supplier's Personnel to be inappropriate for the work, the Customer may require the Supplier to replace such Personnel. The Supplier shall immediately, upon receipt of the Customer's request, initiate the replacement and removal of the individual(s). The Supplier shall submit to the Customer the name and resume of a suitable replacement for each of the Supplier's Personnel deemed inappropriate by the Customer. The Supplier shall provide the Customer with the opportunity to interview the proposed Supplier's Personnel, at no cost to the Customer. The Supplier agrees that any proposed replacement Supplier's Personnel must be qualified in the same position and must possess similar or greater qualifications than the individual being replaced, and that the Customer's approval may, at the Customer's discretion, be subject to Article 9 (Security Clearance Checks). The Supplier shall not charge the Customer more than: (a) the Rate for the role performed by the individual being replaced; and (b) if applicable, the ceiling price originally specified in the Service Request or Order for the Services being provided; even if the replacement Personnel holds a more senior position or has more experience or qualifications than the individual(s) being replaced. If the Supplier fails to propose any replacement Supplier's Personnel within three (3) Business Days, or proposes replacement Supplier's Personnel who the Customer deems, in its sole discretion, to be inappropriate or not available in a timely manner, the Ministry or the Customer may immediately terminate the Service Request or Order, in whole or in part, by giving notice of termination and such termination shall be in addition to the other rights and remedies of the Ministry or Customer under the Service Request or Order or the Agreement, at law or in equity. The Indemnified Parties shall have no liability or obligation to the Supplier or any of the Supplier's Personnel arising out of or in connection with such termination of the Order or any replacement or request for replacement of any Supplier's Personnel.

3.13 Continuous Improvement

3.13.1 The Supplier shall have an on-going obligation throughout the Term to identify new or potential improvements and report to the Ministry once every six months, except as otherwise set out below, on:

- (a) the emergence of new and evolving relevant technologies which could improve the Desktop Products and Services and the technological advances potentially available including, new or potential improvements to the Desktop Products and Services including quality enhancements, improved Service Level metrics, responsiveness, performance enhancements, customer services and improved Product specification based on OPS business requirements;
- (b) changes in business processes and ways of working that would enable the Desktop Products and Services to be delivered at lower costs, higher Service Level metrics

and increased benefits to the OPS.

1.1 The Supplier shall ensure that the information that it provides to the Ministry shall be in the form of a written accurate and complete proposal specifying in detail, the nature of the proposed technological change, any increase in operational, financial or other benefits to Ontario, reduction of risk to Ontario, any proposed changes in the compensation to be paid to the Supplier, the proposed time period for the implementation of the change, applicable Service Level metrics by which the Supplier's performance is to be measured and applicable Service Credits. The Supplier shall provide any further information that the Ministry requests.

1.2 The provisions of the Supplier's proposal shall be consistent with the terms of the Agreement. The Ministry may, in its sole discretion, accept the proposal with or without conditions, request modifications or reject it as the Ministry deems appropriate. The Ministry reserves the right, at any time, not to proceed with the subject matter of any proposal or Change Request. Any changes that are outside the scope of the RFP will be rejected

- (c) If the Ministry wishes to incorporate any improvement identified by the Supplier, the Ministry will initiate a Change Request and the Supplier shall:
- i) develop and submit for the approval of the Ministry, a plan for the implementation of the improvement within ten (10) Business days of the Ministry's Change Request;
 - ii) implement and test the improvement in accordance with the provisions of an implementation plan approved by the Ministry; and
 - iii) conduct testing in accordance with the acceptance testing provisions set out in the Agreement.

3.13.2 In addition to the general areas for continuous improvement set out above, the Supplier shall comply with the requirements set out below.

(a) Service Levels

- (i) For the monthly operational meetings and as per Appendix J, Reporting Requirements , the Supplier shall provide Service Level Metrics reports that include improvement plans setting out the actions to be taken by the Supplier to improve service delivery.
- (ii) On or before the end of each year of the Agreement, the Supplier shall provide the Ministry with a written report setting out a review of the Supplier's performance, including a review of the Supplier's compliance with the Service Level metrics, during the previous twelve (12) month period.

(b) Incident Management

- (i) The Supplier shall ensure that standardized methods and procedures prescribed by the Ministry are used to respond to Incidents promptly and efficiently, and to provide consistent analysis and documentation to the Ministry.
- (ii) The Supplier shall align Incident Management activities and priorities with those of the Ministry.
- (iii) The Supplier shall provide a plan to the Ministry indicating the measures that the Supplier shall take to improve the resolution time of Incidents by:
 - Identifying opportunities to improve the number and percentage of Incidents that can be resolved remotely; and
 - Identifying opportunities to increase the percentage of Incidents closed by the service desk or via self-service without requiring additional levels of support.
- (c) Problem Management
 - (i) The Supplier shall provide a plan to the Ministry identifying ways to reduce the number of recurring Problems.
 - (ii) The Supplier shall include in the plan measures that the Supplier shall implement for overall quality improvement to reduce the number of Problems.
- (d) Change Management
 - (i) The Supplier shall increase the accuracy and completeness of the Supplier's assessment of the impact of a Change on timing, quality, cost, risks, resources and the impact on the provision of Products and Services or specific Customers.
 - (ii) The Supplier shall minimize the number of outstanding Change Requests.
 - (iii) The Supplier shall improve its overall Change Management process by:
 - Reducing the number of disruptions to Services, defects and re-work caused by or in connection with inaccurate specifications, or a poor or incomplete impact assessment
 - Reducing the number of Changes where remediation is invoked
 - Reducing the number of failed Changes
- (e) CMDB
 - (i) The Supplier shall establish and maintain an accurate and complete CMDB to:
 - Improve audit compliance

- Increase quality and accuracy of CI information
- (ii) The Supplier shall provide accurate and complete data and validation of all data required to be provided to the Ministry under the Agreement.
- (f) Availability Management
 - (i) The Supplier shall identify how techniques such as component failure impact analysis, fault tree analysis, service failure analysis, technical observation and expanded incident lifecycle can be used to improve Availability management.
- (g) Capacity Management:
 - (i) The Supplier shall identify improvement opportunities in the implementation of capacity-related changes.
 - (ii) The Supplier shall identify quality and operations improvements to:
 - Decrease the amount of unused capacity expenditures
 - Decrease the cost of unplanned capacity expenditures
 - Increase the accuracy of capacity forecasts
 - Decrease the number of inaccurate business forecast inputs
 - Decrease the number of Incidents related to capacity/performance issues
 - Decrease the number of Service Level metrics missed due to capacity
- (h) Service Continuity Management:
 - (i) The Supplier shall identify improvement opportunities for its Business Continuity Plans, disaster recovery and provide a risk assessment and mitigation as part of the Supplier's plan.
- (i) Knowledge Management/Training
 - (i) The Supplier shall assist in increasing the percentage of Incidents closed by the OPS service desk by providing proper knowledge records and appropriate technical resources.
 - (ii) The Supplier shall decrease the routing of tickets to the incorrect workgroup in order to decrease any outage time.
 - (iii) The Supplier shall make improvements to knowledge records and the Supplier's training plans in support of areas identified in Service Improvement Plans.
- (j) Security Management

- (i) The Supplier shall monitor for security threats, and proactively implement security improvements, including mitigation, where required to comply with the provisions of the Agreement or the Ministry deems necessary.
- (ii) The Supplier shall identify and implement improvement measures for managing the confidentiality, integrity and availability of the information and data relating to the provisions of Products and Services to the OPS.
- (iii) The Supplier shall conduct periodic audits, at minimum intervals of twelve months, of its own security practices to continually improve overall security functions and controls and provide the audit reports to the Ministry within thirty (30) days of the completion of the audit.
- (k) Financial Management:
 - (i) The Supplier shall on an annual basis or as directed by ITS identify improvements to the Supplier's billing process.
 - (ii) The Supplier shall on an annual basis or as directed by ITS identify improvements to increase the accuracy and efficiency of charges without increasing the cost of the Products or Services.
 - (iii) The Supplier shall on an annual basis or as directed by ITS perform audits of its own financial information to ensure accuracy and identify processes or procedural improvements that improve accuracy and completeness.

3.14 Data Protection

- (a) The Supplier shall, commencing on the Effective Date, establish, keep current and maintain complete segregation of OPS Data in its databases and servers throughout the Term, with full, unrestricted access to the Ministry as specified in the Agreement including the ability to retrieve any or all OPS Data at any time during the Term.
- (b) Without limiting any other obligation of the Supplier under the Agreement, the Supplier shall not, under any circumstances, without the prior express written consent of the Ministry:
 - (i) alter, delete, destroy, move, or withhold OPS Data from the Ministry;
 - (ii) engage in data mining;
 - (iii) access or use OPS Data for any purpose other than as specifically authorized by this Agreement;
 - (iv) engage in any excess data collection; or

- (v) disclose OPS Data to any third party.
- (c) The Supplier shall give access to OPS Data only to authorized individuals of the Supplier and the Supplier's Personnel that have completed security clearance checks in accordance with the Agreement.
- (d) The Supplier shall:
 - (i) where the Supplier receives a request for OPS Data, resist the disclosure of information and provide the Ministry with immediate notice of such access to data requests, where permitted by law;
 - (ii) cooperate, as requested by the Ministry, in any privacy investigation or regulatory investigation;
 - (iii) provide regular reports at a frequency and in form and content determined by the Ministry for OPS Data, including reports on the disclosure of any OPS Data;
 - (iv) provide adequate backup of data to protect against any loss and shall establish and maintain processes that ensure: the authenticity and integrity of data; preservation and the probative value of the data; documentary holds can be instituted to preserve the metadata of original documents; prevention of over-writing of back-up files.
- (e) Despite any other provision or any dispute that may arise under the Agreement, the Supplier shall provide OPS Data and any and all derivatives to the Ministry on demand and in any event on expiry or termination of the Agreement in form and format usable by the Ministry. The data and derivatives shall be provided periodically as required by the Ministry and a full and complete dump of all data and derivatives shall be provided upon termination or expiry of the Agreement.

3.15 Location of Data

- (a) The Supplier shall keep and maintain all OPS Data and backup in Ontario and identify the location where the OPS Data and back up are stored, and shall not move the OPS Data during the Term except with the prior express written consent of the Ministry. In exceptional circumstances that fall within the provisions of Force Majeure and are approved by the Ministry, oral approval of the Ministry will be adequate.
- (b) Any activities conducted with respect to the OPS Data including storage, conversion, recovery or processing shall be done in a location that allows the OPS to comply with all applicable statutory obligations.

ARTICLE 4 - PAYMENT FOR PERFORMANCE AND AUDIT

4.1 Rates

(a) Payment According to Rates

Except in the case of a Rental Agreement between the Supplier and the Customer, or if the Ministry otherwise directs, the Ministry shall, subject to the Supplier's compliance with the provisions of the Agreement, pay the Supplier for the Deliverables ordered and accepted by the OPS at no more than the Rates established under the Agreement. The minimum discount specified in the Supplier's Proposal shall be the minimum discount applicable during the Term, unless otherwise amended in accordance with the terms of the Agreement. The minimum discounts specified in the Proposal that are applicable to Products (or components of Products) shall be applicable to new technology or replacement Products (or components of Products) as they are made available by the Supplier and ordered by the OPS during the Term. The Rates for Products and Services specified in the Supplier's Proposal shall be the maximum Rates for the Products and Services, unless otherwise amended in accordance with the terms of the Agreement, and such Rates shall also be applicable to Services related to the new technology or replacement Products (or components of Products).

(b) Rate Adjustment

Products

The Supplier agrees that the Rates for Products specified by the Supplier in its Proposal shall be the maximum price for the Products during the Term, unless: (i) Section 4.11 (Favourable Pricing) applies, in which case the Supplier shall offer the applicable Product at the lower price for the remainder of the Term; or (ii) the Supplier offers a Product to any Customer at a lower Rate at any time during the Term, in which case the lower Rate shall become the maximum Rate for such Product for the remainder of the Term.

The Supplier agrees that the minimum discounts for Products may be amended upwards in accordance with the RFP, Section 1.2.2 and Section 2.14 during the Term in accordance with the pricing methodology set out in the RFP and more particularly Section 2.14 (Product Pricing Methodology) of the RFP. For certainty, any amendment to the minimum discount shall be to provide a better discount to Customers and not to decrease the minimum discount.

Services

The Supplier agrees that the price for Services specified by the Supplier in its Proposal shall be the maximum price for the Services during the Term, unless the Supplier's response to the Year three (3) RFT provides lower prices for Services.

The Supplier agrees that the minimum discounts for Services may be amended upwards during the Term in accordance with the pricing methodology set out in the RFP and more particularly Section 2.14 (Product Pricing Methodology) of the RFP. For certainty, any amendment to the minimum discount shall be to provide a better discount to Customers and not to decrease the minimum discount.

(c) Overpayment

If the Ministry determines that the Ministry has paid the Supplier for Products and Services at prices and fees that are higher than the Rates, the amount of the overpayment shall be deemed to be an amount owing by the Supplier to the Ministry and, in addition to any other remedy available to the Ministry, the Ministry may, at its discretion, exercise its right of set-off under Section 4.4 (Hold Back or Set Off) in respect of the overpayment.

4.2 Invoices

Each invoice issued by the Supplier for any Deliverables shall be: itemized; supported by all applicable substantiating documents such as receipts; and, detailed with respect to the Deliverables for which the invoice is provided with all applicable information. Harmonized Sales Tax (HST), though included in the price, shall be shown separately on each invoice. The Supplier shall provide complete, accurate invoices with all substantiating documentation. ITS may dispute invoices if insufficient billing details or insufficient substantiating documentation are provided by the Supplier and payments by the OPS under such invoices are not due and owing until the Supplier has provided the necessary corrective action and the invoices are approved by ITS. The Supplier shall not invoice the OPS for any Products or Services delivered in any previous OPS fiscal year and the OPS shall not be responsible to pay for any Products or Services received but not billed in any previous fiscal year. The only exception will be those charges for Products or Services due to Service Requests submitted between March 19th and March 31st may be billed in the following OPS fiscal year if so requested by ITS.

4.3 Default Billing and Payment Process

Unless the parties expressly set out an alternative billing and payment process in Schedule 1, the following process shall govern:

- (a) the Supplier shall provide the Ministry with a monthly billing statement no later than ten (10) Business Days after the end of each month and that billing statement shall include: (i) the reference number assigned to the Agreement by the Ministry; (ii) a description of the Deliverables provided for the relevant month; and (iii) taxes, though included in the Rates, should be identified as separate items;
- (b) the Ministry will approve or reject the billing statement within fifteen (15) Business Days of receipt of the statement and in the event that the Ministry rejects the billing statement, it will so advise the Supplier promptly in writing and the Supplier shall provide additional information as required by the Ministry to substantiate the billing statement;
- (c) each billing statement is subject to the approval of the Ministry before any payment is released and payment will be made within sixty (60) calendar days of such approval except where the OPS disputes its obligation to pay in which case payment will be deferred until the dispute is resolved; and
- (d) the Ministry may make payments under the Agreement by way of a Procurement Card and the Supplier shall accept and process any such payments in

accordance with Procurement Card Protocols;

and any clause set out above that is not expressly replaced in Schedule 1 with an alternative provision shall remain in full force and effect.

4.4 Hold Back or Set Off

The OPS may hold back payment or set off any amounts owed to the OPS by the Supplier against any amounts owed to the Supplier by the OPS under the Agreement if, in the opinion of the Ministry acting reasonably, the Supplier has failed to comply with any requirements of the Agreement.

4.5 No Expenses or Additional Charges

There shall be no other charges payable by the OPS under the Agreement to the Supplier other than the Rates established under the Agreement.

4.6 Payment of Taxes and Duties

Unless otherwise stated, the Supplier shall pay all applicable taxes, including the HST and excise taxes incurred by or on the Supplier's behalf with respect to the Agreement.

This Section shall survive the termination or expiry of the Agreement.

4.7 Withholding Tax

The Ministry shall withhold any applicable withholding tax from amounts due and owing to the Supplier under the Agreement and shall remit it to the appropriate government in accordance with applicable tax laws.

This Section shall survive the termination or expiry of the Agreement.

4.8 Interest on Overdue Amounts

If a payment is in arrears through no fault of the Supplier or the Supplier's Personnel, the Ministry may pay interest if authorized and directed by Treasury Board and on such terms and conditions as Treasury Board may specify. The *Financial Administration Act*, R.S.O. 1990, CHAPTER F.12

4.9 Document Retention and Audit

(a) For seven (7) years after the Expiry Date or any date of termination of the Agreement, the Supplier shall maintain all necessary records to substantiate (i) all charges and payments under the Agreement and (ii) that the Deliverables were provided in accordance with the Agreement and with the Requirements of Law.

(b) During the Term, and for seven (7) years after the Term, the Supplier shall permit and assist the Ministry in conducting audits of the operations of the Supplier to verify (i) and (ii) above. The Ministry shall provide the Supplier with at least five (5) Business Days prior notice of its requirement for such audit. The Ministry may retain or appoint an internal or external auditor to conduct the audit. The audit rights set out in this Section shall not in any manner restrict the exercise of the authority of the Office of the Auditor General of Ontario or Corporate Security Branch of the Ministry to conduct an audit at any time. Other authorities of

Ontario, pursuant to Requirements of Law, may exercise their responsibilities including the right to audit at any time. In each case, the OPS or other authorities of Ontario shall be entitled, at the Supplier's cost, to obtain and to make copies of any records and to take extracts from the records for the purpose of carrying out the audit. The Supplier shall co-operate and shall cause the Supplier's Personnel to co-operate with and extend all necessary support and information to facilitate the audit. The Supplier consents to the release of information including any confidential or proprietary information to the auditor or to any Person for purposes of verifying compliance by the Supplier with the applicable Service request, Rental Agreement or Order and the Agreement.

- (c) Without limiting any other rights of the Ministry under the Agreement, the Ministry shall have the right to review or audit the contents of the Product Matrix at any time during the Term without notice. The Ministry may, at any time, review prices offered by the Supplier including prices submitted pursuant to the annual RFT process for Products and Services to ensure the Supplier's compliance with the Agreement and the Supplier shall provide any information requested by the Ministry in connection with such review. The Ministry may disclose pricing and other information of the Supplier whether or not confidential or proprietary, to third parties for purposes of audit, financing or to determine whether or not the OPS is receiving favourable pricing from the Supplier. The Ministry may engage third parties and use third party tools to verify compliance by the Supplier with the applicable Service request, Rental Agreement or Order and the Agreement.

This Section shall survive the termination or expiry of the Agreement.

4.10 Market Competitive Pricing

- (a) The Supplier represents and warrants to, and covenants with, the Ministry that for the Term of this Agreement, the OPS shall receive Rates equal to the best prices available on the market for the Deliverables taking into account the status of the OPS as a major customer providing a considerable volume of business to the Supplier (the "Best Pricing"). The Supplier shall review Best Pricing with the Ministry on an annual basis.
- (b) The Supplier shall comply with the pricing provisions in the Agreement.

4.11 Disbursements

The OPS shall have no obligation to pay any travel or accommodation expenses incurred by the Supplier or the Supplier's Personnel in the provision of any Deliverables except where the OPS has expressly agreed to do so, in writing, in advance. Where previously authorized in writing by the OPS, expenses for travel or accommodation shall not be included by the Supplier in any price quotation and shall be billed separately. The OPS will not be liable for any costs associated with meals or travel time for the Supplier or the Supplier's Personnel. If the OPS has agreed in writing, in advance to pay any travel and accommodation expenses, the Supplier shall meet the following conditions:

- (a) the OPS must pre-approve the expense in writing;

- (b) reimbursement of the expense must be permitted under the Ministry's policy;
- (c) the expense must be incurred with respect to a Deliverable that the OPS has accepted;
- (d) the expense must be actually incurred and supported by receipts or invoices acceptable to the OPS;
- (e) the expense shall not exceed the rates permitted by the OPS from time to time in accordance with the Ministry's policy; and,
- (f) travel and accommodation expenses will be billed separately and charged in accordance with the Ministry's policy as may be amended from time to time.

4.12 Product and Service Matrix

The Supplier shall supply a Product and Service Matrix at the times and in the form specified in Schedule 1.

ARTICLE 5 - CONFIDENTIALITY AND FIPPA

5.1 Confidentiality and Promotion Restrictions

Any publicity or publication related to the Agreement shall be at the sole discretion of the Ministry. The Ministry may, in its sole discretion, acknowledge the Deliverables provided by the Supplier in any such publicity or publication. The Supplier shall not make use of its association with the Ministry without the prior written consent of the Ministry. Without limiting the generality of this Section, the Supplier shall not, among other things, at any time directly or indirectly communicate with the media or the public in relation to the Agreement unless it has first obtained the express written authorization to do so from the Ministry.

5.2 OPS Confidential Information

During and following the Term, the Supplier shall: (a) keep all OPS Confidential Information confidential and secure; (b) limit the disclosure of OPS Confidential Information to only those of the Supplier's Personnel who have a need to know it for the purpose of providing the Deliverables and who have been specifically authorized to have such disclosure; (c) not directly or indirectly disclose, destroy, exploit or use any OPS Confidential Information (except for the purpose of providing the Deliverables, or except if required by order of a court or tribunal), without first obtaining: (i) the written consent of the Ministry and (ii) in respect of any OPS Confidential Information about any third-party, the written consent of such third-party; (d) provide OPS Confidential Information to the Ministry on demand; and (e) return all OPS Confidential Information to the Ministry before the end of the Term, with no copy or portion kept by the Supplier.

5.3 Restrictions on Copying

The Supplier shall not copy any OPS Confidential Information, in whole or in part, unless copying is essential for the provision of the Deliverables. On each copy made by the

Supplier, the Supplier must reproduce all notices that appear on the original.

5.4 Injunctive and Other Relief

The Supplier acknowledges that breach of any provisions of this Article may cause irreparable harm to the Ministry or to any third-party to whom the Ministry owes a duty of confidence, and that the injury to the Ministry or to any third-party may be difficult to calculate and inadequately compensable in damages. The Supplier agrees that the Ministry is entitled to obtain injunctive relief (without proving any damage sustained by it or by any third-party) or any other remedy against any actual or potential breach of the provisions of this Article.

5.5 Notice and Protective Order

If the Supplier or any of the Supplier's Personnel become legally compelled to disclose any OPS Confidential Information, the Supplier will provide the Ministry with prompt notice to that effect in order to allow the Ministry to seek one or more protective orders or other appropriate remedies to prevent or limit such disclosure, and it shall co-operate with the Ministry and its legal counsel to the fullest extent. If such protective orders or other remedies are not obtained, the Supplier will disclose only that portion of OPS Confidential Information which the Supplier is legally compelled to disclose, only to such person or persons to which the Supplier is legally compelled to disclose, and the Supplier shall provide notice to each such recipient (in co-operation with legal counsel for the Ministry) that such OPS Confidential Information is confidential and subject to non-disclosure on terms and conditions equal to those contained in the Agreement and, if possible, shall obtain each recipient's written agreement to receive and use such OPS Confidential Information subject to those terms and conditions.

5.6 FIPPA Records and Compliance

The Supplier and the Ministry acknowledge and agree that FIPPA applies to and governs all Records and may require the disclosure of such Records to third parties. Furthermore, the Supplier agrees:

- (a) to keep Records secure;
- (b) to provide Records to the Ministry within seven (7) calendar days of being directed to do so by the Ministry for any reason including an access request or privacy issue;
- (c) not to access any Personal Information unless the Ministry determines, in its sole discretion, that access is permitted under FIPPA and is necessary in order to provide the Deliverables;
- (d) not to directly or indirectly use, collect, disclose or destroy any Personal Information for any purposes that are not authorized by the Ministry;
- (e) to ensure the security and integrity of Personal Information and keep it in a physically secure and separate location safe from loss, alteration, destruction or intermingling with other records and databases and to implement, use and

maintain the most appropriate products, tools, measures and procedures to do so;

- (f) to restrict access to Personal Information to those of the Supplier's Personnel who have a need to know it for the purpose of providing the Deliverables and who have been specifically authorized by the Ministry Representative to have such access for the purpose of providing the Deliverables;
- (g) to implement other specific security measures that in the reasonable opinion of the Ministry would improve the adequacy and effectiveness of the Supplier's measures to ensure the security and integrity of Personal Information and Records generally; and
- (h) that any confidential information supplied to the Ministry may be disclosed by the Ministry where it is obligated to do so under FIPPA, by an order of a court or tribunal or pursuant to a Proceeding;

5.7 Obligations

The Supplier shall:

- (a) keep and cause all the Supplier's Personnel to keep all OPS Confidential Information in their custody or under their control, in Ontario;
- (b) ensure that all storage, conversion, recovery or processing by the Supplier or any of the Supplier's Personnel of data containing OPS Confidential Information is done in Canada and that any back-up, hot site or redundancy arrangements of the Supplier or any of the Supplier's Personnel for data storage, conversion, recovery or processing are located in Canada;
- (c) Ensure that the Configuration Centre, servers, the Electronic Bridge (XML bridge) and any ENA connection to the OPS Network are located in Ontario;
- (d) include all of the confidentiality provisions in its agreements with the Supplier's Personnel, implement and require implementation of appropriate training regarding the obligations relating to confidentiality and enforce such provisions;
- (e) ensure that in the event that the disposal of OPS Confidential Information is authorized, that the disposal is conducted in a manner so as to destroy all identifying information;
- (f) implement and maintain specific procedures to ensure revocation of access privileges including retrieval of identity badges, pass-keys and passwords in the event of termination of employment or contract of any of the Supplier's Personnel;
- (g) design and implement and cause the Supplier's Personnel to design and implement such physical and electronic auditing, security and control systems as are necessary, including access control and detection, which record the identity

of any Person that accesses, views, alters, deletes or copies any record constituting OPS Confidential Information;

- (h) ensure that there are appropriate policies, procedures and controls to prevent access (direct or remote) from outside Canada, to OPS systems, databases, software or networks for any purposes including technical support, patch management, software upgrades or testing;
- (i) ensure that access to areas where Confidential Information of the OPS is stored, converted, recovered, processed or used is restricted by the Supplier to specific authorized Supplier's Personnel (with appropriate security clearances) solely for the purpose of and to the extent necessary to discharge the Supplier's obligations under the Agreement; and
- (j) immediately notify and cause the Supplier's Personnel to immediately notify the Ministry Representative or designate in the event of any breach or potential breach of the provisions of this Article 5.

5.8 Survival

This Article 5 shall survive the termination or expiry of the Agreement.

ARTICLE 6 - INTELLECTUAL PROPERTY

6.1 Ministry Intellectual Property and Assets

The Supplier agrees that all Intellectual Property Rights and every other right, title and interest in and to all hardware including servers (and all operating system and application software provided with the hardware), concepts, techniques, ideas, information and materials, however recorded, (including images and data) provided by the OPS to the Supplier shall remain the sole property of Her Majesty the Queen in right of Ontario at all times.

6.2 No Use of Ontario Government Insignia

The Supplier shall not use any trade-mark, official mark, insignia or logo of Her Majesty the Queen in right of Ontario except where required to provide the Deliverables and only if it has received the prior written permission of the Ministry to do so.

6.3 Ownership of Intellectual Property

The Ministry shall be the sole owner of any Newly Created Intellectual Property including, but not limited to, Documentation such as any document in written hard copy or electronic form such as any study, log, analysis, report, certification, Proposal, statement of work, record, documentation provided or arising in connection with any consulting, professional or expert services or similar item. For certainty and without limiting the generality of the preceding sentence, any Deliverables arising from or in connection with the Image Development, Management and Maintenance Services (as defined in the RFP) provided by the Supplier or the Supplier's Personnel (including any image management design, specifications, base image, image master, associated

guides, patch management, test patch media, automated packages, all processes and packages developed as part of the Services and all build, design, installation and quality assurance documentation) shall be Newly Created Intellectual Property for which the Ministry shall be the sole owner. The Supplier irrevocably assigns to and in favour of the Ministry and the Ministry accepts every right, title and interest in and to all Newly Created Intellectual Property in the Deliverables, immediately following the creation thereof, for all time and irrevocably waives in favour of the Ministry all Moral Rights including rights of integrity and to all Newly Created Intellectual Property in the Deliverables, immediately following the creation thereof, for all time. To the extent that any of the Deliverables include, in whole or in part, the Supplier's Intellectual Property, the Supplier grants to the OPS a licence to use that Supplier's Intellectual Property in the manner contemplated in this Article, the total consideration for which shall be payment of the Rates to the Supplier by the OPS.

6.4 Presumption Governing Ownership

The presumption governing the Agreement shall be that the Ministry shall be the sole owner of any Intellectual Property Rights in any form contained in any of the Newly Created Deliverables.

6.5 Ownership of Supplier's Intellectual Property

The Ministry agrees that the Intellectual Property Rights in the Supplier's Intellectual Property shall, as between the Ministry and the Supplier, be owned by the Supplier and its licensors but excluding any rights relating to the visual identity of the OPS, the security provisions of the OPS, and any OPS Confidential Information and OPS Software, contained in the Supplier's Intellectual Property.

6.6 Supplier's Grant of Licence

(a) For those parts of the Deliverables that are Supplier's Intellectual Property, except for the asset security management software, the Supplier grants to the OPS, including each Customer, a perpetual, world-wide, non-exclusive, irrevocable, transferable, royalty free, fully paid up right and licence: (a) to use, modify, reproduce and distribute, in any form, those Deliverables; and (b) to authorize other Persons, including agents, contractors or sub-contractors, to do any of the former on behalf of the OPS. The license granted under this Section 6.6 shall survive the expiry or termination of the Agreement.

(b) Without limiting the generality of the foregoing, if the OPS is licensed to use any parts of the Deliverables that are Supplier's Intellectual Property in conjunction with any operating system, the licence granted above shall include the right of the OPS to use the parts of the Deliverables that are Supplier's Intellectual Property in conjunction with any other operating system without any fee or other charge being due to the Supplier regardless of whether the operating system was in existence or not in existence at the time the Supplier's Intellectual Property was originally licensed to the OPS.

(c) For the asset security management software, the Supplier shall, pursuant to an Order for the software, install the software on the Product(s) and grant to the OPS, including each Customer, in accordance with the Rates, a world-wide, non-exclusive, irrevocable,

transferable, royalty-free, fully paid-up right and licence for an annual term, or three year term, as set out in the applicable Order, to use, distribute, maintain and support the software, and to permit the exercise of any such rights by any other Person, including agents, advisors, consultants, contractors and subcontractors providing any products or services, from time to time, to the OPS.

6.7 No Restrictive Material in Deliverables

The Supplier shall not incorporate into any Deliverables anything that would restrict the right of the OPS, including each Customer to modify, further develop or otherwise use the Deliverables in any way that the OPS deems necessary, or that would prevent the OPS from entering into any contract with any contractor other than the Supplier for the modification, further development of or other use of the Deliverables.

6.8 Assurances Regarding Moral Rights

At the request of the Ministry, at any time or from time to time, the Supplier shall execute and agrees to cause the Supplier's Personnel to execute an irrevocable written waiver of any Moral Rights or other rights of integrity in the applicable Deliverable(s) in favour of the Ministry, such waiver to be in the form set out in Schedule 2, and which waiver may be invoked without restriction by any person authorized by the Ministry to use the Deliverables. The Supplier shall deliver such written waiver(s) to the Ministry within 10 Business Days of the receipt of the request from the Ministry.

6.9 Copyright Notice

The Supplier shall place a copyright notice on all recorded Deliverables it provides to the Ministry under the Agreement in the following form:

"© Queen's Printer for Ontario, 2014"

6.10 Further Assurances Regarding Copyright

At the request of the Ministry, at any time or from time to time, the Supplier shall execute and agrees to cause the Supplier's Personnel to execute a written assignment of copyright in the applicable Deliverable(s) to the Ministry in the form set out in Schedule 2. The Supplier shall deliver such written assignment(s) to the Ministry within 10 Business Days of the receipt of the request from the Ministry. The Supplier shall assist the Ministry in preparing any Canadian copyright registration that the Ministry considers appropriate. The Supplier will obtain or execute any other document reasonably required by the Ministry to protect the Intellectual Property Rights of the Ministry.

6.11 Ministry May Prescribe Further Compliance

The Ministry reserves the right to prescribe the specific manner in which the Supplier shall perform its obligations relating to this Article.

6.12 Survival

This Article 6 shall survive the termination or expiry of the Agreement.

ARTICLE 7 - INDEMNITY, LIMITATION OF LIABILITY AND INSURANCE

7.1 Intellectual Property Rights Indemnity

Despite Section 7.5 (Limitation of Liability), the Supplier shall indemnify and hold harmless the Indemnified Parties from and against all Losses and Proceedings, by whomever made, sustained, incurred, brought or prosecuted, for any actual or possible infringement, inducement of infringement, misappropriation or violation of any Intellectual Property Rights or infringement of any Moral Rights arising out of or in connection with:

- (a) the Deliverables (including the provision, use or disposal of the Deliverables) or the performance of the Services;
- (b) the failure of the Supplier or the Supplier's Personnel to perform the Supplier's obligations pursuant to Moral Rights waivers; or
- (c) the exercise of any rights, licences or permissions under the Agreement by any Indemnified Parties or by any persons authorized in or under the Agreement to exercise any such rights, licences or permissions.

If anything in subsection (a) or (c) above or resulting from the failure described in subsection (b) above is held, or is likely, in the reasonable opinion of Her Majesty the Queen in right of Ontario, to be held to constitute an infringement, inducement of infringement, misappropriation or violation of any Intellectual Property Rights or an infringement of any Moral Rights, or anything in subsection (a) or (c) above or resulting from the failure described in subsection (b) above is enjoined or threatened to be enjoined or held or threatened to be held improper by way of declaration, then without prejudice to any other rights and remedies as may be available to any of the Indemnified Parties under the Agreement (including Orders), or at law or in equity, the Supplier shall also, at its expense, either:

- (i) obtain the rights, licences, permissions and waivers as are necessary so that such Deliverables, Services or exercise of rights, licences or permissions becomes non-infringing; or
- (ii) replace or modify the Deliverables or the Services so that the infringing portion no longer infringes (without any loss of quality or functionality) to the satisfaction of Her Majesty the Queen in right of Ontario,

and shall make every reasonable effort to correct the situation with minimal effect upon the operations of the OPS. If neither of paragraphs (i) or (ii) above is reasonably available, the Ministry may terminate all or any part of the Agreement (including any Orders) and without prejudice to any other rights and remedies as may be available to any of the Indemnified Parties under the Agreement (including Orders), or at law or in equity, the Supplier shall refund to the OPS all amounts paid with respect to the Deliverables or anything supplied that infringes.

7.2 Confidentiality Indemnity

Despite Section 7.5 (Limitation of Liability), the Supplier shall indemnify and hold harmless the Indemnified Parties from and against all Losses and Proceedings, by whomever made, sustained, incurred, brought or prosecuted arising out of or in connection with a breach by the Supplier of its obligations under Article 5 (Confidentiality and FIPPA).

7.3 Data Loss Indemnity

Despite Section 7.5 (Limitation of Liability), the Supplier shall indemnify and hold harmless the Indemnified Parties from and against all Losses and Proceedings by whomever made, sustained, incurred, brought or prosecuted arising out of or in connection with a breach of Section 3.14 and Section 3.15 by the Supplier or the Supplier's Personnel.

7.4 General Indemnity

In addition to Section 7.1 (Intellectual Property Rights Indemnity), Section 7.2 (Confidentiality Indemnity) and Section 7.3 (Data Loss Indemnity) but subject to Section 7.5 (Limitation of Liability), the Supplier shall indemnify and hold harmless the Indemnified Parties from and against all Losses and Proceedings, by whomever made, sustained, incurred, brought or prosecuted, arising out of, or in connection with anything done or omitted to be done by the Supplier, or the Supplier's Personnel, in the course of the performance of the Supplier's obligations under the Agreement (including any Order) or otherwise in connection with the Agreement (including any Order).

7.5 Limitation of Liability

The provisions of this Section shall apply regardless of the basis on which one Party is entitled to claim damages from the other Party, including but not limited to: breach of contract or tort, including but not limited to, negligence.

Either Party shall be entitled to seek relief by way of an order (including an order for injunctive relief or specific performance) or declaration.

- (a) Circumstances may arise where Her Majesty the Queen in right of Ontario is entitled to claim damages from the Supplier for the heads of claim listed below in clauses (i) to (vii) of this Section.
 - (i) All damages arising from any Losses and Proceedings in connection with Intellectual Property Rights infringement and a breach of the Representations and Warranties provided by the Supplier in Section 10.1(m), (n), (o) and (p);
 - (ii) All damages arising from any Losses and Proceedings in connection with third party bodily injury (including death), personal injury, property damage;
 - (iii) All damages arising from any Losses and Proceedings in connection with breach of confidentiality as set out in Article 5;

- (iv) All amounts paid to the Supplier under the Agreement for Deliverables for which the Supplier is in default or the use or operation of which is impaired or otherwise affected by the default;
 - (v) Reasonable costs of the OPS to obtain any products or services in replacement of any Deliverables for which the Supplier is in default or the use or operation of which is impaired or otherwise affected by the default;
 - (vi) Reasonable costs of the OPS to continue operations until any replacement products or services required to be provided under clause (v) above are available for use;
 - (vii) All damages arising from any default or breach of the Agreement by the Supplier not covered by clauses (i) to (vi) above of this Section or as a result of any other cause of action that may be asserted by Her Majesty the Queen in right of Ontario against the Supplier.
- (b) Circumstances may arise where the Supplier is entitled to claim damages from Her Majesty the Queen in right of Ontario. In each such instance, if Ontario is found liable, Ontario will be responsible only for direct damages arising from any default or breach of the Agreement subject to the provisions of Section 7.5(c)(ii) below.
- (c) Limitation of Liability

Notwithstanding any other provision of this Section, the amount of damages for which either party is liable to the other party for any claim arising out of or in connection with the Agreement shall not exceed:

- (i) in the case of a claim by Her Majesty the Queen in right of Ontario against the Supplier, other than a claim referred to in Section 7.3 and in clauses (i) and (iii) of Section 7.5(a) above, a total aggregate of fifty million dollars (\$50,000,000) over the Term of the Agreement or thereafter in connection with claims under the Agreement. Subject to the aggregate limit of liability set out above, there shall be no limit on the number of claims that Her Majesty the Queen in right of Ontario may bring against the Supplier; and
- (ii) in the case of any claim brought by the Supplier (on its own behalf or on behalf of the Supplier's Personnel including any Subcontractor or supplier) against Her Majesty the Queen in right of Ontario, a total aggregate of fifty million dollars (\$50,000,000) over the Term of the Agreement or thereafter in connection with claims under the Agreement. Subject to the aggregate limit of liability set out above, there shall be no limit on the number of claims that the Supplier may bring on its own behalf or on behalf of the Supplier's

Personnel including any Subcontractor or supplier against Her Majesty the Queen in right of Ontario.

For greater certainty,

- (I) there shall be no limit on the amount of damages for which the Supplier may be liable to Her Majesty the Queen in right of Ontario under Section 7.3 and clauses (i) and (iii) of Section 7.5(a) above;
- (II) the limits of liability set out herein are the maximum amounts that Her Majesty the Queen in right of Ontario is entitled to claim against the Supplier and the Supplier's Personnel collectively, and the maximum amounts that the Supplier is entitled to claim on its own behalf and on behalf of all of the Supplier's Personnel collectively from Her Majesty the Queen in right of Ontario and any Customer that obtains Deliverables pursuant to the Agreement; and
- (III) Neither party is liable to the other for any consequential, indirect, incidental, or special damages, including lost profits or lost opportunity costs arising out of or in connection with the Agreement, but this exclusion shall not apply to damages arising in connection with all Losses and Proceedings referred to in Section 7.3 and clauses (i), (ii) and (iii) above of this Section 7.5(a).

7.6 Supplier's Insurance

The Supplier hereby agrees to put in effect and maintain insurance for the Term, at its own cost and expense, with insurers having a secure A.M. Best rating of B + or greater, or the equivalent, all the necessary and appropriate insurance that a prudent person in the business of the Supplier would maintain including, but not limited to, the following:

- (a) commercial general liability insurance on an occurrence basis for third party bodily injury, personal injury and property damage, to an inclusive limit of not less than five million dollars (\$5,000,000.00) per occurrence, not less than five million dollars (\$5,000,000.00) products and completed operations aggregate. The policy is to include the following:
 - the Indemnified Parties as additional insureds with respect to liability arising in the course of performance of the Supplier's obligations under, or otherwise in connection with, the Agreement;
 - contractual liability coverage;
 - cross-liability clause;
 - employers liability coverage (or compliance with the paragraph below

entitled “Proof of W.S.I.A. Coverage” is required);

- 30 day written notice of cancellation, termination or material change;
- tenants legal liability coverage (if applicable and with applicable sub-limits);
- non-owned automobile coverage with blanket contractual coverage for hired automobiles.

(b) errors and omissions liability insurance, insuring liability for errors and omissions in the performance or failure to perform the Services contemplated in the Agreement, in the amount of not less than five million dollars (\$5,000,000.00) per claim and in the annual aggregate.

7.7 Proof of Insurance

The Supplier shall provide the Ministry with proof of the insurance required by the Agreement in the form of valid certificates of insurance that reference the Agreement and confirm the required coverage, before the Effective Date of the Agreement by the Ministry, and renewal replacements on or before the expiry of any such insurance. A copy of each insurance policy shall be provided to the Ministry. The Supplier shall ensure that each of its Subcontractors obtains all the necessary and appropriate insurance that a prudent person in the business of the Subcontractor would maintain and that the Indemnified Parties are named as additional insureds with respect to any liability arising in the course of performance of the Subcontractor’s obligations under the subcontract for the provision of the Deliverables.

7.8 Proof of W.S.I.A. Coverage

If the Supplier is subject to the Workplace Safety and Insurance, incomplete Act (“WSIA”), it shall submit a valid clearance certificate of WSIA coverage to the Ministry prior to the Effective Date of the Agreement by the Ministry. In addition, the Supplier shall, from time to time at the request of the Ministry, provide additional WSIA clearance certificates. The Supplier covenants and agrees to pay when due, and to ensure that each of its Subcontractors pays when due, all amounts required to be paid by it and its Subcontractors, from time to time during the Term, under the WSIA, failing which the Ministry shall have the right, in addition to and not in substitution for any other right it may have pursuant to the Agreement or otherwise at law or in equity, to pay to the Workplace Safety and Insurance Board any amount due pursuant to the WSIA and unpaid by the Supplier or its Subcontractors and to deduct such amount from any amount due and owing from time to time to the Supplier pursuant to the Agreement together with all costs incurred by the Ministry in connection therewith.

7.9 Supplier's Participation in Proceedings

The Supplier shall, at its expense, to the extent requested by the Ministry, participate in or conduct the defence of any Proceeding against any Indemnified Parties referred to in this Article and any negotiations for their settlement. The Ministry may elect to participate in or conduct the defence of any such Proceeding by notifying the Supplier in writing of such election without prejudice to any other rights or remedies of the Ministry under the Agreement, Agreement, at law or in equity. Each Party participating in the defence shall do so by actively participating with the other's counsel. The Supplier shall enter into no settlement unless it has obtained the prior written approval of the Ministry. If the Supplier is requested by the Ministry to participate in or conduct the defence of any such Proceeding, the Ministry agrees to co-operate with and assist the Supplier to the fullest extent possible in the Proceeding and any related settlement negotiations. If the Ministry conducts the defence of any such Proceeding, the Supplier agrees to co-operate with and assist the Ministry to the fullest extent possible in the Proceeding and any related settlement negotiations.

7.10 Liabilities of the Supplier

The liabilities and obligations of the Supplier under the Agreement shall not be restricted to any amounts set forth in Section 7.6 and such insurance amounts provided for therein shall not be construed so as to relieve or limit the liability of the Supplier in excess of such coverage and shall not preclude the Indemnified Parties from taking such other actions as are available under any provision of the Agreement or otherwise at law or in equity.

7.11 Survival

This Article 7 shall survive the termination or expiry of the Agreement.

ARTICLE 8 - TERMINATION, EXPIRY AND EXTENSION

8.1 Immediate Termination of Agreement and Orders

The following events constitute material and substantive breach of the Agreement and are cause for termination. The Ministry may immediately terminate the Agreement or any Order, or both, upon giving notice to the Supplier where:

- (a) the Supplier is adjudged bankrupt, makes a general assignment for the benefit of its creditors or a receiver is appointed on account of the Supplier's insolvency;
- (b) the Supplier breaches any provision in Article 5 (Confidentiality and FIPPA) of the Agreement;
- (c) the Supplier breaches the Conflict of Interest Section in Article 2 (Nature of Relationship Between Ministry and Supplier) of the Agreement;

- (d) the Supplier, prior to or after executing the Agreement, makes a misrepresentation or omission or provides inaccurate or incomplete information to the Ministry;
- (e) if any of the representations and warranties of the Supplier as set out in the Agreement are inaccurate or untrue;
- (f) the Supplier undergoes a change in control which adversely affects the Supplier's ability to satisfy some or all of its obligations and covenants under the Agreement;
- (g) the Supplier subcontracts or assigns part or all of the Deliverables or assigns the Agreement without first obtaining the written approval of the Ministry;
- (h) the Supplier has failed to meet one or more Performance Levels that give rise to the right of termination as set out in Appendix "S" of the RFP; or
- (i) the Supplier's acts or omissions constitute a failure to perform any obligation or a default of any provision of the Agreement which failure or default does not come within the provisions of clauses (a) – (h) of this Section 8.1;

and the above rights of termination are in addition to all other rights of termination available at law, or events of termination by operation of law.

8.2 Dispute Resolution by Rectification Notice

Subject to Section 8.1, where the Supplier fails to comply with any of its obligations under the Agreement or under an Order, the Ministry may issue a rectification notice to the Supplier setting out the manner and time frame for rectification. Within seven (7) Business Days of receipt of that notice, the Supplier shall either: (a) comply with that rectification notice; or (b) provide a rectification plan satisfactory to the Ministry. If the Supplier fails to either comply with that rectification notice or provide a satisfactory rectification plan, the Ministry may immediately terminate the Agreement. Where the Supplier has been given a prior rectification notice, the second subsequent non-compliance by the Supplier with the same obligation shall allow the Ministry in its sole discretion to immediately terminate the Agreement. Where the Supplier has been given two (2) or in the sole discretion of the Ministry, more notices under this Section 8.2, the Ministry, upon giving a third or subsequent such notice, whether such notices relate to the same default or to separate occurrences may, at its option, elect for the notice of termination to be effective immediately or at such other time as the Ministry may, in its discretion, specify.

8.3 Termination on Notice

The Ministry reserves the right to terminate the Agreement or any Order, or both, without cause, and without any cost, penalty, obligation or liability upon thirty (30) days prior written notice to the Supplier.

8.4 Termination for Non-Appropriation

If the Agreement or any Order extends into a Fiscal Year subsequent to its Effective Date, continuation of the Agreement or Order is conditional upon an appropriation of moneys by the Legislature of Ontario (the "Legislature") sufficient to satisfy payments due under the Agreement or Order. In the event that such moneys are not available as a result of: (i) non-appropriation by the Legislature for the Fiscal Year in which payment becomes due; and (ii) the payment being neither charged nor chargeable to an appropriation of the Legislature for a previous Fiscal Year, the Ministry may terminate the Agreement or Order upon giving notice to the Supplier. Termination shall become effective on the date of the beginning of the first Fiscal Year for which funds have not been appropriated.

8.5 Supplier's Obligations on Termination (including Expiry) of an Order

On termination (including expiry) of an Order, the Supplier shall, in addition to its other obligations under the Order and the Agreement and at law:

- (a) at the request of the Ministry, provide the Ministry with any completed or partially completed Deliverables under the Order;
- (b) provide the Ministry with a report detailing: (i) the current state of the provision of Deliverables by the Supplier at the date of termination of the Order; and (ii) any other information requested by the Ministry pertaining to the provision of the Deliverables and performance of the Order;
- (c) as may be required by the Ministry, either (i) immediately refund any pre-paid amounts paid by the OPS prorated to the effective date of termination or, (ii) continue to provide any pre-paid warranty and other pre-paid Services in accordance with the provisions of the Agreement for such period as determined by the Ministry in which case, all applicable provisions of the Agreement shall survive and continue to apply in accordance with the Agreement;
- (d) execute such documentation as may be required by the Ministry to give effect to the termination of the Order; (e) comply with any other instructions provided by the Ministry, including but not limited to instructions for facilitating the transfer of its obligations to another Person; and
- (f) comply with all obligations in connection with Warranty and other applicable Services that survive termination of the Order.

This Section shall survive the termination or expiry of the Order and the Agreement.

8.6 Supplier's Obligation Upon Termination (including Expiry) of the Agreement

Commencing upon any notice of termination or at any time prior to or within one month after the scheduled expiration, termination or non-renewal of the Agreement, and continuing, if required by the Ministry, after the date of termination or expiry, the Supplier shall, upon request by the Ministry, provide Transition Out Services for the fee specified in the Rate Bid Form as the Transition Out Rate for a calendar month. The Ministry will

determine when the Transition Out Services will commence and may, in its sole discretion, require Transition Out Services for a period in excess of one month. If the Ministry requires Transition Out Services for an additional period, the applicable Rate will be the Transition Out Rate quoted in the Rate Bid Form for a full month of Transition Out Services; if the additional period is part of a month, the fee applicable will be a pro rata portion determined as follows: the monthly fee multiplied by the number of days for which Transition Out Services are provided in that month divided by the total number of days in that month. For example, if Transition Out Services are required for the month of April and half of May and if the Transition Out Rate is \$100, the total Rate for Transition Out Services will be $\$100 + (100 \times 15 / 31)$. If Transition Out Services continue past the effective date of termination or expiration of the Agreement, the provisions of the Agreement shall survive the termination or expiry of the Term of the Agreement for the purposes of such Transition Out Services.

In addition to its other obligations under each Order and the Agreement and at law, on termination (including expiry) of the Agreement, the Supplier shall:

- (a) at the request of the Ministry, provide the Ministry with any completed or partially completed Deliverables under each Order;
- (b) provide the Ministry with a report detailing: (i) the current state of the provision of Deliverables by the Supplier under each Order at the date of termination; and (ii) any other information requested by the Ministry pertaining to the provision of the Deliverables and performance of each Order and the Agreement;
- (c) at the request of the Ministry, immediately refund any pre-paid amounts paid by the OPS prorated to the effective date of termination;
- (d) execute such documentation as may be required by the Ministry to give effect to the termination of the Agreement and each Order;
- (e) comply with any other instructions provided by the Ministry, including but not limited to instructions for facilitating the transfer of its obligations to another Person; and
- (f) comply with all obligations in connection with Warranty and other applicable Services that survive termination of the Agreement for the duration of the outstanding warranty period.

This Section shall survive the termination or expiry of the Agreement.

8.7 Payment Upon Termination

On termination of a Purchase Order or the Agreement, the Ministry shall only be responsible for the payment of the Deliverables provided in accordance with the Order or Agreement up to and including the effective date of any termination. Termination shall not relieve the Supplier of its warranties and other responsibilities relating to the Deliverables performed or money paid. In addition to its other rights of hold back or set

off, the Ministry may hold back payment or set off against any payments owed if the Supplier fails to comply with its obligations on termination.

8.8 Termination in Addition to Other Rights

The express rights of termination in the Agreement are in addition to and shall in no way limit any rights or remedies of the Ministry under the Agreement, at law or in equity. The termination rights under this Article 8 may be exercised (a) by the Ministry for the purposes of terminating one or more Orders; or (b) by the Ministry for the purposes of terminating the Agreement, which shall have the effect of terminating any one or more Orders determined by the Ministry.

8.9 Expiry and Extension of Agreement and Survival of Orders

- (a) Agreement: The Agreement shall expire on the original Expiry Date, unless the Ministry exercises its option to extend the Agreement by up to two (2) extensions of up to one (1) year each, such extension to be upon the same terms, conditions and covenants contained in the Agreement, except the Rates offered by the Supplier for Products and Services. The option to renew may be exercised by the Ministry based on lower Rates for Products and Services offered by the Supplier in year three (3) of the Term for the first extension and year four (4) for the second extension. The option shall be exercisable by the Ministry giving written notice to the Supplier not less than thirty (30) days prior to the original Expiry Date or end of the first extension. The notice shall set forth the precise duration of the extension.
- (b) Orders: The term of any Order executed prior to the end of the Term of the Agreement may continue beyond the Term of the Agreement, for the term specified in the particular Order. For certainty, if any Warranty Service for a Product continues beyond the Term of the Agreement, the Order under which the Warranty Service was ordered shall be deemed to extend beyond the Term of the Agreement for the term of the Warranty Service. The provisions of the Agreement shall survive the expiry of the Term of the Agreement for the purposes of any such Orders. Any provision of the Agreement that survives the expiry or termination of the Agreement shall continue to apply and survive the expiry or termination of each Order.

ARTICLE 9 - SECURITY CLEARANCE CHECKS

9.1 Definitions

“Company Level Check” is a security screening check, which requires checks to be conducted on all Directors and Officers of the company, regardless of whether they will have direct involvement in the work associated with the procurement which was deemed to require security screening. In order to be issued a company level clearance, all Directors and Officers of the company and the Company Security Officer (CSO) must consent to security screening and obtain clearances. Company-level screening checks are conducted only where the security risk assessment indicates the necessity.

“Company Security Officer” is a person who holds that standing in the Contractor Security Screening Program. A Company Security Officer (or CSO) plays an administrative role in the security screening process on behalf of his or her company and must hold a valid security clearance issued by ERD, prior to performing that role. The CSO is responsible for the verification of identity for workers requiring screening for contracted work, where required.

“Criminal Record Check” is a search of the Canadian Police Information Centre (CPIC) database maintained by the RCMP, using an individual's name, date of birth and any other information necessary to verify identity, for information about the individual relating to:

- Convictions under the offense provisions of federal statutes recorded in the CPIC system;
- Records of discharges (absolute and conditional) which have not been removed from the CPIC system, in accordance with the *Criminal Records Act (Canada)*. Note: Information about absolute discharges will not be collected after one (1) year from the date of disposition. Information about conditional discharges will not be collected after three (3) years from the date of disposition;
- Charges that have been laid but are not resolved (unresolved charges) under the offense provisions of federal statutes; and
- Records of judicial orders in effect (e.g. warrants) that are related to federal offence charges or convictions.

“Driver’s Record Check” is conducted where driving is a requirement for the contract where a valid driver’s licence is required. It involves a check of provincial databases for information regarding driving history using the individual’s driver licence number. This check provides a three year history of *Highway Traffic Act (Ontario)* and *Criminal Code of Canada* convictions and any current suspensions, along with the driver’s current listed address and licence status.

“General Level Security Screening Check” requires the individual to obtain a criminal record check (see the definition for criminal record check for additional information). A general level security screening check may also include a driver’s record check, and/or an out-of-country police certificate (US and/or international), where required.

Out-of-Country Driver’s Record Check (US and/or International)

Driver’s record check is conducted where driving is a requirement for the contract where a valid driver’s licence is required. When the individual has lived outside Canada for more than six (6) months within the last five (5) years, an out of country driver records check from the jurisdiction(s) in which they have resided is required. This check includes information such as current suspensions, along with the driver’s current listed address and licence status.

“Security Screening Check” is the process conducted by the Supplier to gather information on designated persons for submission to the Ministry in order to obtain a Security Clearance and includes all of the following:

1. A written declaration by an individual disclosing any unresolved charges and previous convictions under the offence provisions of federal statutes, including but not limited to the *Criminal Code (Canada)*, for which a pardon under the *Criminal Records Act (Canada)* has not been granted;
2. A Criminal Record Check.

“Security Clearance” means a decision made by ERD following receipt of the Security Screening Check documents that will permit the person being cleared to engage in the performance of the services.

9.2 Security Screening Check

- (a) Security Clearances are not provided in perpetuity and are subject to revocation by the Ministry at its sole discretion at any time. Security Screening Checks shall be renewed at the intervals as may be specified by ERD.
- (b) On notification from the Ministry, the Supplier shall, during the Term, provide to the ERD, completed Security Screening Checks for all persons engaged in the performance of the services who are either not cleared or for whom a renewal is required. All documents shall be provided through the Supplier’s designated Company Security Officer.
- (c) All Security Screening Checks shall be provided in form and content acceptable to the ERD and shall include all required consents.
- (d) If a person or company has been deemed by the Ministry to require a Security Clearance they shall not engage in the performance of the services unless they have been provided a Security Clearance by the ERD.

9.3 Changes

- (a) During the Term of this Agreement, the Supplier shall report to the ERD, within five Business Days thereof, any change to:
 - (i) any information provided as part of a Security Screening Check process;
 - (ii) employees, agents and subcontractors or, where a Company Level Check is required, partners, directors, officers and shareholders, who are or will be engaged in providing the security screening documents or engaged in the performance of the services.

- (b) The ERD, shall assess the above information and may instruct the Supplier to comply with any instructions arising which may include requests for provision of information to amend existing Security Clearances or provide for new Security Clearances.

9.4 Default under Agreement

During the Term of this Agreement, the Supplier shall be in default under this Agreement if they fail to comply with the requirements of this Article.

9.5 Additional Security Clearances

The Supplier and the Supplier's Personnel shall undergo additional annual or other periodic security clearances, provide the information and complete the forms required for the clearances upon request by the OPS at any time during the Term and any extensions.

The security clearances may include:

- (i) A further OPP investigation into the individual's background information included in the completed "Personal History For Security Clearance Investigation" form;
- (ii) Copies of fingerprints for the cross verification of information obtained from the Canadian Police Information Centre (CPIC) inquiries and verification in compliance with the *Identification of Criminals Act*, and
- (iii) A detailed financial background evaluation, reference checks and family interview.

The Supplier is responsible for all costs in connection with security clearances for itself and for the Supplier's Personnel. The Supplier shall ensure that all security clearances for itself and for the Supplier's Personnel continue to be valid for as long as the Supplier and the Supplier's Personnel provide Deliverables under the Agreement.

ARTICLE 10 - REPRESENTATIONS AND WARRANTIES

The Supplier makes the following representations, warranties and covenants as of the commencement of the Term and continuing thereafter and acknowledges that the OPS is relying upon such representations, warranties and covenants.

10.1 Representations and Warranties of the Supplier

- (a) The Supplier is a corporation duly incorporated or a partnership or sole proprietorship duly registered and validly existing under the laws of the jurisdiction under which it is governed, has all necessary corporate power and authority to own its properties and assets and carry on its business and to enter into the Agreement. The Supplier is duly licensed, registered and qualified in all

jurisdictions where its property is owned or leased or the nature of the activities conducted by it makes such licensing, registration or qualification necessary.

- (b) The Supplier has taken all necessary corporate action to authorize the creation, signing, delivery and performance of the Agreement. It has or will, prior to the commencement of the Term, obtain, maintain, and, as applicable, renew all necessary permits, licenses and approvals necessary in connection with the Agreement.
- (c) There is no agreement with any other Person, which would in any way interfere with the rights of the OPS under the Agreement.
- (d) The Supplier is a resident of Canada within the meaning of the Income Tax Act (Canada). If the Supplier is not a resident of Canada within the meaning of the Income Tax Act (Canada), the Supplier shall clearly indicate in its invoices that it is not a resident of Canada within the meaning of the Income Tax Act (Canada) and that it may be subject to withholding tax.
- (e) There are no Proceedings that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets, or the condition, financial or otherwise, of the Supplier or in any impairment of the Supplier's ability to perform its obligations and covenants under the Agreement.
- (f) All statements, promises and representations set out in the Proposal or in the Agreement are accurate and complete and the Supplier is not aware of any facts or circumstances that would render any such statement, promise or representation inaccurate or incomplete.
- (g) The Supplier will be responsible, accountable and liable for all acts and omissions of the Supplier's Personnel in connection with the Agreement as if such acts and omissions were those of the Supplier.
- (h) The Supplier hereby represents and warrants that it shall fulfil its obligations and covenants and that the Deliverables shall be provided fully, diligently and expeditiously in a professional, competent, safe, prudent and timely manner by persons qualified and skilled in their occupations and furthermore that all Deliverables will be provided in accordance with: (a) the Agreement; (b) Requirements of Law; and (c) Industry Standards provided the Industry Standards are not inconsistent with (a) and (b). If any of the Deliverables, in the opinion of the Ministry, are inadequately provided or require corrections, the Supplier shall forthwith make the necessary corrections at its own expense as specified by the Ministry in a rectification notice. The Supplier shall ensure that at all times there shall be a sufficient number of persons (including all relevant grades of supervisory staff) with the requisite level of skill and experience engaged in the performance of the obligations and provision of Deliverables in accordance with the Agreement.

- (i) The Supplier shall ensure that any of the Supplier's Personnel who are granted access to OPS' premises, systems, databases or networks will not exercise such access for any purpose other than and only to the extent necessary for compliance by the Supplier with its obligations under the Agreement. Further, the Supplier shall ensure that the Supplier and the Supplier's Personnel, at their cost, comply with all security requirements, including any identification that the OPS may stipulate during the Term of the Agreement.
- (j) The Supplier or the Supplier's Personnel have not taken and will not take any action in collusion or collaboration with any Person including any Person that has submitted or participated in submitting a proposal in response to the RFP that could be reasonably expected to result in any increase in the price payable by the OPS for any Deliverables or that would otherwise be reasonably expected to adversely affect the rights or interests of the Indemnified Parties in connection with the Agreement.
- (k) The Supplier shall not disrupt or interfere with the OPS' day-to-day operations and business in the course of providing the Deliverables under the Agreement. The Supplier shall develop and implement a Business Continuity Plan that includes such contingency measures and disaster recovery plans as are necessary to provide the Deliverables without delay, disruption or deterioration in the performance of its obligations in connection with the Agreement. The Business Continuity Plan shall include the immediate implementation of measures acceptable to the OPS to remedy any breach, failure or delay with respect to any Deliverables to be provided by or on behalf of the Supplier hereunder, and where necessary, provide additional or alternative Products or Services that meet or exceed the requirements of the OPS but at no additional cost and without adversely impacting the rights, licences and privileges of the OPS under the Agreement.
- (l) The Supplier agrees to warrant and assume responsibility for each Product that it sells or rents to the Customer under this Agreement. The Supplier is responsible for the warranty and maintenance of all Products furnished through this Agreement including providing warranty and maintenance call numbers, accept, process, and respond to those calls, and be liable for and pay for all warranty and maintenance activities. In general, the Supplier warrants that:
 - 1. Each Product shall conform to the specific technical information published in the Manufacturer's product manuals or data sheets.
 - 2. Each Product will operate according to and meet the relevant Specifications and the requirements of the Agreement, including the mandatory specifications provided in the RFP.

3. Each Product has been properly designed, manufactured and suitable for its intended use.
 4. Each Product is free of defects in material and workmanship, problems or failures.
 5. Warranty documents for Products shall be delivered to the Ministry with the Products. If the warranty for any Product is breached, the Supplier will remedy such warranty breach in accordance with the applicable Warranty Service ordered for or included with that Product.
- (m) The Supplier has obtained or will obtain all necessary rights and authority to convey good and marketable title and to grant any rights, licences and permissions (including rights, licences and permissions to all the Supplier's Intellectual Property) as specified in the Agreement, free and clear of any encumbrances. The signing of the Agreement by the Supplier, the provision of the Deliverables and the use of the Deliverable as contemplated in the RFP, the Agreement and Order shall not infringe or induce the infringement or misappropriation of the Intellectual Property Rights of any third party nor breach, infringe, violate or contravene any third party rights or licences in the course of the performance by the Supplier of any of its covenants and obligations under the Agreement. The Supplier further represents and warrants that it has all of the necessary rights and permission to license directly to the OPS the Supplier's Intellectual Property (including Third-Party Intellectual Property contained therein or included therewith) on the terms set out in the Agreement, and that it has obtained assurances with respect to all the Supplier's Intellectual Property (including Third-Party Intellectual Property contained therein or included therewith) that any Moral Rights including rights of integrity associated therewith have been waived.
- (n) The Supplier has not entered into, or is bound by, any arrangement which would in any way restrict the OPS' ability to exercise the Intellectual Property Rights, licences or permissions granted under the Agreement.
- (o) All Software and software media when provided to the OPS as part of any Deliverables, or when used by the Supplier in the provision of any Services, shall be free of any Malicious Code or defect which would limit or restrict the use of any Deliverable by the OPS, impair the quality and timely delivery of any Deliverable by the Supplier or restrict or prevent the OPS from obtaining replacement Deliverables from any Person.
- (p) All the features and functions of the Deliverables provided hereunder shall be maintained and supported to the Specifications set out in the Agreement, during the Warranty Period.

- (q) The Supplier shall make available for purchase or rental by the OPS the most current version of a Product (including the most recent releases and applicable service packs of any software included in the definition of Hardware) generally available at the time of the purchase based on the Rates established under the Agreement.
- (r) The Documentation supplied with the Products shall contain a complete and accurate description thereof, and is a complete and accurate guide to the operation of the Products, and shall be updated from time to time during the Warranty Period and during the period the Ministry or Customer is obtaining maintenance and support Services, so as to remain complete and accurate and reflect all changes made to the Products during that period.
- (s) Notwithstanding any agreement or arrangement between the Supplier and any third party prohibiting or limiting the Supplier from providing the representations and warranties and indemnities set out in the Agreement with respect to the Deliverables provided by the Supplier to the OPS, the Supplier shall continue to be bound by all of the representations and warranties and indemnities set out in the Agreement.
- (t) The Supplier will perform its covenants and obligations under the Agreement in accordance with all Requirements of Law, including the *Freedom of Information and Protection of Privacy Act* and the *Ontarians with Disabilities Act, 2001*.

This Section shall survive the termination or expiry of the Agreement.

10.2 Specific Warranties

The following warranties apply to the Deliverables (including any Software and technology included in the Deliverables), that contain any open source software or technology licensed under an open source licence:

- (i) That the applicable items of open source software or technology and the applicable open source licences are fully disclosed to the Ministry in a list to be provided to the Ministry; but in any event, any open source software provided as part of the Deliverables shall be at the Vendor's risk.
- (ii) That any use by Ontario of the open source components of the Deliverables will not adversely impact the rights and interests in Ontario's proprietary technology (for example, loss of ownership rights due to the viral nature of the open source software license requirements);
- (iii) That the use of any open source software provided with, or embedded in, the Deliverables by the Supplier shall not create, or purport to create, obligations

on Ontario to grant license or usage rights with respect to any source code or object code belonging to Ontario outside of this Agreement;

(iv) That any open source software used in the Deliverables or in the provision of any of the Services will not subject Ontario to all or part of the license obligations relating to any open source software;

(v) That the Supplier has or will have the right to license, sub-license, distribute, support and issue any new releases of any open source software or other technology that is a component of, or embedded within the Deliverables or used by the Supplier or to provide the Services;

(vi) Where the Deliverables include any open source software, a warranty that the scope of the licence(s) for the identified open source software or technology is no less than the scope of the license for the Deliverable being delivered to Ontario, in which the open source software or technology (or any components thereof) have been incorporated;

(vii) Where the Deliverables include any open source software, a warranty that there are no additional or more onerous restrictions included in the licence(s) for the open source software than the restrictions included in the license for any remaining components of the Deliverable in which the open source software (or any components thereof) have been incorporated.

This Section shall survive the termination or expiry of the Agreement.

ARTICLE 11 - GOVERNANCE

11.1 Governance Structure

The Ministry intends, as at the Effective Date, to establish, but is not obligated under the Agreement to establish, a governance structure comprised of the following:

1. Desktop Supplier Management Office constituted by ITS;
2. Governance Committee; and
3. committees internal to the OPS to address issues related to, among other things: architecture, security, operations and/or transition, service level metrics and dispute resolution.

The Supplier agrees that, if the Ministry chooses not to implement a governance structure or not to establish the Desktop Supplier Management Office or any committee or committees, the Ministry's decision shall not reduce, affect or otherwise act as a

waiver by the Ministry of any of the obligations of the Supplier under the Agreement, nor shall it be considered a breach by the Ministry of the Agreement.

11.2 Business and Management Processes and Risk Mitigation Strategies

The Supplier agrees that the Ministry has the sole right to determine, establish and require the implementation of all business and management processes and risk mitigation strategies applicable to or related to the Agreement. These processes and strategies include processes and strategies designed to ensure the supply of Deliverables to Customers in accordance with the terms of the Agreement.

11.3 Desktop Supplier Management Office

The Ministry, in its sole discretion, may at any time establish an internal Desktop Supplier Management Office to, among other things: (a) manage Supplier performance; (b) administer the Agreement; and (c) provide support to the Governance Committee and such other committees as it, in its sole discretion, determines necessary.

11.4 Committees

(a) Establishment of Committees

The Ministry, in its sole discretion, may at any time and from time to time establish a committee or committees in relation to any matter under or in relation to the Agreement. These committees may or may not include representatives of the Supplier and third parties. All committees will be chaired by a Chair appointed by the Ministry. The committees may include the Governance Committee.

The Governance Committee will provide executive direction, approvals and oversight. The Governance Committee will also review issues relating to scope such as the introduction of new Services and new Products. The Governance Committee will be chaired by the Corporate Chief Information Officer or his or her designate and at the discretion of the Chair, the participants may include:

1. selected executive representatives from the business/program areas of the OPS;
2. an ex-officio representative of the industry or applicable Manufacturer;
3. not more than two ex-officio representatives of the Supplier under the Agreement;
4. financial, technical or legal representatives, as required; and
5. such other participants as the Chair or designate may determine necessary or desirable.

(b) Committee Processes and Procedures

The Chair of a committee may, at its discretion, vary the representation of participants at any time (including the number of Supplier representatives and the

seniority and experience of these representatives), determine frequency of meetings, quorum, agendas and such administrative matters as may arise.

(c) Supplier Participation in Committees

(i) Assignment of Supplier Representatives

The Supplier will assign representative(s) to participate at the required level in all committees where Supplier representation is requested by the Ministry. The Supplier shall supply representatives to attend and participate at committee meetings at no charge to the Ministry. The Supplier's representative must have the appropriate knowledge, skills and expertise necessary to participate in and to meet the objectives of the committee and the authority to bind the Supplier to any decision or commitment made by that representative.

(ii) Confidentiality

Without limiting the provisions set out in Article 5 (Confidentiality and FIPPA), the Supplier agrees that the Supplier and its representative(s) will maintain as confidential all matters and information disclosed arising out of or in connection with the Supplier's participation in a committee.

(iii) Ex-Officio

The Supplier's representative(s) on a committee shall participate in the capacity of an ex-officio member. For certainty, an ex-officio member will have no voting powers and may be excluded from all or part of any meeting by the Chair or his or her designate.

11.5 Escalation Process for Dispute Resolution

(a) Escalation Process

The Supplier shall institute and maintain internal to its organization and require the Supplier's Personnel to institute and maintain internal to each of their respective organizations, an escalation process such that any default by the Supplier or the Supplier's Personnel including failure to meet a Service Level is brought to the attention of the Supplier's senior management and such other individuals in the Supplier's organization as is necessary to provide appropriate reports to the Ministry Representative as required in the Agreement.

Subject to subsection 11.5(b), in the event of any Dispute, the parties shall attempt to resolve the Dispute promptly by negotiation in the manner set out in this Section 11.5 by notifying the other party in writing of the Dispute.

1. Initial Step: Operations Level

If a party provides written notice to the other party of a Dispute, the following representatives will attempt to resolve the Dispute, and will initially meet (in person or by telephone) for that purpose within ten (10) Business Days of the written notice:

Ministry: Manager, Desktop Supplier Management Office

Supplier: Account Executive, X

2. Second Step: Management Level

If the parties are unable to resolve the Dispute within ten (10) Business Days after the first meeting described in paragraph 1 above (or such longer period as may be mutually agreed upon), the representatives set out in paragraph 1 above will refer the matter to the following executive-level representatives, who will initially meet (in person or by telephone) to attempt to resolve the dispute or disagreement within twenty (20) Business Days after the initial meeting described in paragraph 1 above:

Ministry: Director, Desktop Management Office

Supplier: Director of Sales, Public Sector, X

3. Third Step: Executive Level

If the parties are unable to resolve the Dispute within twenty (20) Business Days after the first meeting described in paragraph 1 above (or such longer period as may be mutually agreed upon), the representatives set out in paragraph 1 above will refer the matter to the following executive-level representatives, who will initially meet (in person or by telephone) to attempt to resolve the dispute or disagreement within thirty (30) Business Days after the initial meeting described in paragraph 1 above:

Ministry: Executive Lead, Infrastructure Technology Services,

Supplier: Vice President, Business Development, X

4. Fourth Step: Senior Executive Level

If the parties are unable to resolve a Dispute within thirty (30) Business Days after the first meeting described in paragraph 2 above (or such longer period as may be mutually agreed upon), the representatives set out in paragraph 2 above will refer the matter to the following senior executive-level representatives, who will initially meet (in person or by telephone) to attempt to resolve the dispute or disagreement within forty (40) Business Days after the initial meeting described in paragraph 1 above:

Ministry: Corporate Chief, Infrastructure Technology Services or Corporate Chief Information Officer, Ministry of Government Services

Supplier: President and CEO, X

If the senior executive-level representatives of the parties are unable to resolve the Dispute within forty (40) Business Days after their initial meeting (or such longer time as may be agreed), the provisions of Article 12 (Arbitration) shall apply.

- (b) Exclusions to Escalation Process - Despite the escalation process described in subsection (a) above:
 - (i) the Ministry shall have the right, at its sole discretion, to have a Dispute escalated at any time to any level described in subsection 11.5(a) above; and
 - (ii) the parties are not obligated to follow the escalation procedure set out in subsection 11.5(a) and may pursue its legal rights immediately where a Dispute is in respect of: (1) any claim involving third parties; or (2) intellectual property and breach of confidentiality claims, whether initiated by third parties or by the parties to the Agreement.

ARTICLE 12 - ARBITRATION

12.1 Jurisdiction and Scope

- (a) If a Dispute cannot be resolved in accordance with the terms set out in Article 14, a Dispute shall be submitted to arbitration ("Arbitration"). The rules governing Arbitration are set out below.
- (b) The Arbitration shall be governed by the *Arbitration Act*, 1991 (Ontario).
- (c) Each of the Parties expressly acknowledges and agrees that:
 - (i) it shall not apply to the courts of Ontario or any other jurisdiction to attempt to enjoin, delay, impede or otherwise interfere with or limit the scope of the Arbitration or the powers of the arbitral tribunal;
 - (ii) the award of the arbitral tribunal shall be final and binding on the Parties and there shall be no appeal therefrom of whatsoever nature or kind to any court, tribunal or other authority, except as set out below; and
 - (iii) the award of the arbitral tribunal may be entered and enforced by any court in any jurisdiction having jurisdiction over the Parties and/or the subject matter of the award and/or the properties or assets of either of the Parties as set out in the *Arbitration Act*, 1991 (Ontario);

provided, however, that the foregoing shall not prevent either Party from applying to the courts of Ontario for a determination with respect to any matter or challenge provided for in the *Arbitration Act*, 1991 (Ontario).

- (d) The arbitral tribunal has the jurisdiction to deal with all matters arising out of or relating to this Agreement, or the breach, termination or validity thereof including, without limitation, the jurisdiction:
 - (i) to determine any question of law, including equity arising in the Arbitration;
 - (ii) to determine any question of fact including questions of good faith, dishonesty or fraud arising in the Arbitration;

- (iii) to order any Party to furnish such further details of that Party's case, as to fact or law, as it may require;
 - (iv) to require or permit the Parties to give evidence under oath or solemn affirmation;
 - (v) to order the Parties or either of them to make interim payments towards the costs of the Arbitration; and
 - (vi) to award interest on any sum and to any date at such rates as it determines to be appropriate.
- (e) Unless the Parties shall at any time otherwise agree in writing, the arbitral tribunal shall have the power, on the application of either of the Parties or of its own motion (but in either case only after hearing or receiving any representations from the parties concerned which it determines in its discretion to be appropriate):
- (i) to allow other parties to be joined in the Arbitration with their express consent, and make a single final award determining all disputes between them;
 - (ii) to allow any Party, upon such terms (as to costs and otherwise) as it shall determine, to amend its Claim, Defence, Reply, Counter-Claim or Defence to Counter-Claim;
 - (iii) to extend or abbreviate any time limits;
 - (iv) to direct the Parties to exchange written statements, whether or not verified by oath or affirmation, of the evidence of witnesses, and direct which of the makers of such statements are to attend before it for oral examinations;
 - (v) to determine what witnesses (if any) are to attend before it, and the order and manner (including cross-examination, as recognised under the laws of Ontario) in which, and by whom, they are to be orally examined;
 - (vi) to conduct such further or other inquiries as may appear to it to be necessary or expedient;
 - (vii) to order the Parties to make any property or thing available for its inspection or inspection by the other Party and inspect it in their presence;
 - (viii) to order the Parties to produce to it, and to each other for inspection, and to supply copies of, any documents or classes of documents in their respective possession, control or power which it determines to be relevant;
 - (ix) to order the preservation, storage or other disposal of any documents, devices, equipment or thing under the control of any of the Parties relevant to the Dispute before it; and
 - (x) to make interim orders for security for costs for any Party's own costs, and to secure all or part of any amount in dispute in the Arbitration.

12.2 Applicable Law, Language and Place of Arbitration

- (a) The law governing the Arbitration shall be the laws of the Province of Ontario and the applicable laws of Canada.
- (b) The language of the Arbitration shall be English.
- (c) The place of the Arbitration shall be the City of Toronto, Ontario, Canada.

12.3 Appointment of Arbitral Tribunal

- (a) The arbitral tribunal shall be composed of one arbitrator.
- (b) Arbitration commences when a Party (the "Applicant") serves a notice on the other Party (the "Respondent") demanding arbitration, identifying the Dispute and nominating an arbitrator.
- (c) Within fifteen (15) days of the receipt by Respondent of the notice, the Respondent may, by notice to the Applicant, concur in the appointment of the proposed arbitrator or may disagree with the nomination of the proposed arbitrator, and failing the delivery of such notice by the Respondent, the Respondent shall be deemed to have concurred in the appointment of the proposed arbitrator nominated by the Applicant.
- (d) If the Respondent disagrees with the nomination of the proposed arbitrator pursuant to paragraph (c) above, then, within fifteen (15) days of delivery of the Respondent's notice to that effect, the Respondent and the Applicant shall agree on the individual to be appointed as the arbitrator, failing which the arbitrator may be appointed by a Judge of the Ontario Court (General Division) on the application of either the Applicant or the Respondent, on notice to the other. Upon such appointment, such individual shall act as the sole Arbitrator and shall constitute the arbitral tribunal.
- (e) Any decision of the arbitral tribunal shall be rendered in writing and shall contain a recital of the facts upon which the decision is made and the reasons thereof. Otherwise, the decision including the award shall conform with the requirements set out in the *Arbitration Act*, 1991 (Ontario).
- (f) The arbitral tribunal will determine the procedure to be followed in the arbitration, in accordance with the *Arbitration Act*, 1991.

12.4 Meetings and Hearings

- (a) The arbitral tribunal shall appoint the time, date and place of meetings and the Hearing in the Arbitration, and will give all the parties adequate notice of these. The place of all proceedings in the Arbitration shall be as set out in Section 15.2 and all proceedings shall take place there.
- (b) All proceedings and the rendering of the award will be in private and the Parties shall ensure that the conduct of the arbitration, the information disclosed by the parties in the course of the arbitration and the terms of the award shall be kept confidential, subject to an order of a court or tribunal or the Requirements of Law.

12.5 Miscellaneous

- (a) All written statements and responses thereto and other notices, requests and demands, required or permitted hereunder, shall be in writing.
- (b) The Arbitrator shall be paid his or her normal professional fees for his or her time and attendance in dealing with a Dispute, which fees, unless otherwise directed by the Arbitral Tribunal, shall be paid equally by the Applicant and the Respondent.
- (c) Unless the Parties otherwise permit, time is of the essence of the Arbitration.

IN WITNESS WHEREOF the parties hereto have executed the Agreement effective as of the date first above written.

**Her Majesty the Queen in right of Ontario, as
 represented by the Deputy Premier,
 President Of The Treasury Board and
 Minister Responsible For The Poverty
 Reduction Strategy**

Signature: _____

Name: _____

Title: _____

Date of Signature: _____

Signature: _____

Name: _____

Title: _____

Date of Signature: _____

I have authority to bind the Supplier

Schedule 1 - Schedule of Deliverables, Rates and Supplementary Provisions

The Request for Proposal and any Addenda issued by the Ministry; and, the Proposal, clarifications and other documentation provided by the Supplier or such parts of the Proposal, clarifications or other documentation that are accepted by the Ministry, shall form part of this Schedule 1.

Schedule 2 – Schedule of Forms

Pursuant to the Article of the Agreement entitled Intellectual Property, these forms shall be executed by the Supplier in the manner contemplated by the Agreement where the Deliverables include Intellectual Property Rights.

ASSIGNMENT OF COPYRIGHT

THIS ASSIGNMENT made in triplicate as of [*insert date].

In consideration of the Ministry entering into the Agreement for [**insert description] dated [*insert date of Agreement] the undersigned agreed to assign and now does assign and transfer unto the Ministry all of its right, title and interest in and to the copyright in Canada and internationally of the original work(s) entitled “[**at the time of execution of the assignment, specific Deliverable to be inserted]” for the remainder of the unexpired term of the copyright.

IN WITNESS WHEREOF the undersigned has executed this Assignment of Copyright as of the date written above.

[Supplier]

Signature: _____
I have authority to bind the Supplier

Name: _____

Date: _____

WAIVER OF MORAL RIGHTS

THIS WAIVER OF MORAL RIGHTS made in triplicate as of [*insert date].

I, [** insert legal name of the individual], an author of any or all of the Deliverables as defined in the Agreement for [insert description], dated [** insert date**] between [** insert legal name of the Supplier] and Her Majesty the Queen in right of Ontario as represented by the Deputy Premier,
President of The Treasury Board and Minister Responsible For The Poverty Reduction Strategy.

(“the Ministry”), hereby expressly, irrevocably and without restriction, waive in favour of the Ministry, all Moral Rights with respect to the Deliverables and this waiver may be invoked without restriction by any person authorized by the Ministry to use the Deliverables.

In this Waiver of Moral Rights, "Moral Rights" has the same meaning as in the Copyright Act, R.S.C. 1985, c. C-42, as amended or replaced from time to time and includes comparable rights in applicable jurisdictions.

IN WITNESS WHEREOF I have executed this Waiver of Moral Rights as of the date written above.

[Instructions: Insert legal name of individual]

Signature:

Name:

Date:

[Bank Letterhead]

IRREVOCABLE STANDBY LETTER OF CREDIT

Letter of Credit No. _____

Issue
date _____

TO: Her Majesty the Queen in right of Ontario
as represented by the Deputy Premier,
President of the Treasury Board and
Minister Responsible for the Poverty Reduction Strategy
Infrastructure Technology Services
222 Jarvis street, 3rd Floor
Toronto, Ontario
M7A 0B6

Attention: Director, Telecommunications Services Branch,
Infrastructure Technology Services

We, the **[Insert name and address of Bank - the address must be in Ontario]** (the "**Bank**") hereby issue to and in favour of Her Majesty the Queen in right of Ontario as represented by the the Deputy Premier, President of the Treasury Board and Minister Responsible for the Poverty Reduction Strategy (the "**Minister**") our Irrevocable Standby Letter of Credit for the account of **[Insert exact legal name of Supplier]** (the "**Customer**") for an amount not to exceed **one million dollars (\$ 1,000,000)** in lawful money of Canada.

This Letter of Credit is given as security for the obligations of the Customer incurred or to be incurred to the Minister set out in or relating to the provisions relating to Transition-In and in particular the Transition-In Plan within the prescribed timeframes as set out in the Agreement for Desktop Management Services and Products (DMSP3) dated **[Insert the Effective Date of the Agreement]** between Her Majesty the Queen in right of Ontario as represented by the the Deputy Premier, President of the Treasury Board and Minister Responsible for the Poverty Reduction Strategy and **[Insert the exact legal name of Supplier]** (the "**Contract**").

The Minister is authorized, subject only to the terms of this Letter of Credit, to draw on the Bank from time to time and at any time, in the event that the Minister requires payment under this Letter of Credit. The Bank shall issue payment without enquiring whether the Minister has a right as between the Minister and the Customer to make

such demand, and without recognizing any claims of the Customer or other remedies available to the Minister at any time and from time to time.

All drawing requests under this Letter of Credit shall be made by a written demand for payment by the Minister that shall state the Letter of Credit No. and Issue Date and shall state that the amount drawn is in connection with the obligations of the Customer incurred or to be incurred in connection with Transition under the Contract. Any one of: the Deputy Minister, Ministry of Government Services, Deputy Minister, Treasury Board Secretariat and Secretary of Treasury Board and Management Board of Cabinet (the “**Deputy Minister**”) or the Corporate Chief, Infrastructure Technology Services (the “**Corporate Chief**”) or the Director, *[Insert the name of the DMSP Branch]* Branch, Infrastructure Technology Services (the “**Director**”) or any of their respective heirs, successors and assigns is duly authorized to sign the written demand by and for the Minister.

The Bank shall honour your demand for payment not later than the second Business day following receipt of the written demand for payment, provided the drawing request is presented at the address of the Bank stated above before 5 p.m. on the date this Letter of Credit expires. All drawings shall be made payable to the “Minister of Finance”.

Partial drawings are permitted under this Letter of Credit up to the full amount of this Letter of Credit.

The amount of credit from time to time available by this Letter of Credit may be reduced by such amount as shall be specified in writing by direction given to the Bank by the Minister and over the signature of one of: the Deputy Minister or the Corporate Chief or the Director, or any of their respective heirs, successors and assigns.

This Letter of Credit is transferable in its entirety to the successors and assigns of the Minister.

This Letter of Credit will expire on *[Insert Date]*, but shall be deemed to be automatically extended without any formal amendment or notice to that effect, from year to year for successive periods of one year each from the present or any future expiration date hereof, unless not less than ninety days prior to the present or any future expiration, the Bank shall notify the Minister in writing, by prepaid registered mail at Treasury Board Secretariat, 222 Jarvis, 3rd floor, Toronto, Ontario, M7A 0B6 to the attention of the following two persons: Corporate Chief, Infrastructure Technology Services and the Director, *[Insert the name of the DMSP Branch]* Branch, Infrastructure Technology Services or their nominees. The notice shall state that the Bank elects not to renew this Letter of Credit beyond its current expiry. Upon receipt by the Minister of such notice the Minister may draw before 5:00 p.m.

Toronto time on the current expiry date the full amount hereunder by the written demand for payment.

Notwithstanding any reference in this Letter of Credit to other documents, statutes, instruments or agreements or references in such other documents, instruments or agreements to this Letter of Credit, this Letter of Credit contains this entire agreement among the Bank, the Minister and the Customer relating to the obligations of the Bank hereunder. The Bank acknowledges and agrees that this Letter of Credit is irrevocable.

Except as far as otherwise expressly stated herein, this Letter of Credit is subject to the International Standby Practices ("**ISP98**"), International Chamber of Commerce publication No. 590. This Letter of Credit shall also be governed by and construed in accordance with the laws of the Province of Ontario and the applicable laws of Canada except to the extent that such laws are inconsistent with the ISP98

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AUTHORIZED SIGNATURE

NAME:

TITLE: -----

AUTHORIZED SIGNATURE

TITLE: -----