

TO:	CHAIR AND MEMBERS CORPORATE SERVICES COMMITTEE MEETING ON FEBRUARY 7, 2017
FROM:	MARTIN HAYWARD, MANAGING DIRECTOR CORPORATE SERVICES AND CITY TREASURER, CHIEF FINANCIAL OFFICER AND MAT DALEY, DIRECTOR, INFORMATION TECHNOLOGY SERVICES
SUBJECT:	VENDOR OF RECORD (VOR) OSS-00415819 ARRANGEMENT FOR MOBILE DEVICES AND SERVICES

RECOMMENDATION

That on the recommendation of the Managing Director, Corporate Services and City Treasurer, Chief Financial Officer and the Director, Information Technology Services, the following actions **BE TAKEN**, with respect to Mobile Devices and Services:

- a) That approval hereby **BE GIVEN** to enter into the Vendor of Record, Province of Ontario Agreement available to the Broader Public Sector (BPS) for a three (3) year contract (2017-2020) with an optional two (2) additional, two (2) year extensions for Mobile Devices and Services (VOR OSS-00415819);
- b) The attached proposed By-law (Appendix A) **BE INTRODUCED** at the Municipal Council meeting of Tuesday, February 14, 2017:
 - i. **TO APPROVE** the agreement with Rogers Communications Canada Inc. (the "Supplier") and The Corporation of the City of London (the "Buyer") for the "Publicly Funded Organization Agreement" for Mobile Devices and Services (Schedule A); and
 - ii. **TO AUTHORIZE** the Mayor and City Clerk to execute the Agreement
- c) That the Civic Administration **BE AUTHORIZED** to undertake all administrative acts that are necessary in connection with this matter;
- d) Approval hereby given **BE CONDITIONAL** upon the Corporation negotiating satisfactory prices, terms and conditions with ranked vendors to the satisfaction of both the City Treasurer and the Director, Information Technology Services;
- e) Approval hereby given **BE CONDITIONAL** upon the Corporation entering into a formal contract, agreement or having a purchase order relating to the subject matter of this approval; and
- f) That the estimated annual on-going operating savings of \$150,000 **BE ALLOCATED** to the 2017 Multi Year Base Budget and subsequent year service review target.

PREVIOUS REPORTS PERTINENT TO THIS MATTER

Cellular Services and Hardware – Finance and Administration Committee – November 26, 2012

BACKGROUND

The City of London’s current agreement with Rogers Communications Canada Inc. for mobile devices and services, which was the result of a competitive process in 2013 (Tender 12-92) expires on March 31, 2017 with one opportunity for a 12 month renewal. The City of London has researched opportunities to find savings, while maintaining service levels within the mobile portfolio and recommends leveraging the Government of Ontario’s, Vendor of Record (VOR) OSS-00415819 through the Ministry of Government and Consumer services.

DISCUSSION

Strategic Connection:

Leveraging the Ontario VOR OSS-00415819 for Mobile Devices and Services will support the delivery of the identified elements of the *2015-2019 Strategic Plan for the City of London*:

Leading in Public Service – 3. Proactive Financial Management	
What are we doing?	How are we doing it?
B. Make sure that financial issues are not created and pushed to the future, creating problems for future generations.	Focus on financial sustainability, operational flexibility, effectiveness, and efficiencies in contract negotiations and renewals

Information Technology Services, Finance and the Purchasing and Supply Division conducted a review of the mobile services environment to determine the most advantageous approach ensuring business needs are satisfied, costs are controlled and data capacity is maximized.

Based on the City of London’s mobility requirements, this review concluded that the most advantageous approach would be to leverage the Ontario Ministry of Government and Consumer Services RFP. Through the Ontario Ministry of Government and Consumer Services RFP process, Rogers Communications Canada Inc. was selected as the primary ranked vendor, Telus Mobility as the secondary ranked vendor and Bell Mobility as the tertiary ranked vendor for the Ontario Master Agreement VOR OSS-00415819. The Ontario Master Agreement VOR OSS-00415819 concludes in 2020, with an optional two (2) additional, two (2) year extensions. Entering into this Publicly Funded Organization (PFO) Agreement allows the City of London to leverage the Province of Ontario Master

Agreement VOR (OSS-00415819 – Mobile Devices and Services) with Rogers Communications Canada Inc. while also decreasing overall cost. Under the PFO agreement, the City of London and all identified vendors agree to be bound by the provisions of the agreement.

Currently more than 100 Publicly Funded Organizations (Governments, Health Care Institutions, School Boards, Colleges, Universities and Municipalities) leverage the Ontario Ministry of Government and Consumer Services RFP for mobile devices and services. Municipal examples include: City of Mississauga, Municipality of Chatham-Kent, and the City of Brampton.

Financial Impact

Through analysis of the voice/data pricing available to the City of London from VOR OSS-00415819 it has been determined that it is less costly than the City of London's current plan.

Based on expected usage and charges it is estimated that for the initial three (3) year term of the contract there is approximately \$450,000 of cumulative cost savings (or \$150,000/year).

Multi Year Budget - Service Review

On March 10th, 2016, as part of the 2016 – 2019 Multi Year Budget approval, Municipal Council directed the City Manager to undertake service reviews that would result in permanent savings to the 2016 – 2019 budget. Contained within in the approved multiyear budget was an annual permanent 2017 service review target of \$1,000,000. Based on the annual estimated cost savings of \$150,000 identified as a result of VOR OSS-00415819, the allocation of these savings to the 2017 service review target and subsequent years would be appropriate.

Purchasing Process

The Ontario Master Agreement from VOR OSS-00415819 with Rogers Communications Canada Inc. is in compliance with the City of London's Procurement of Goods and Services Policy per section 14.4.g) Single Source:

- "It is advantageous to the City to acquire the goods or services from a supplier pursuant to the procurement process conducted by another public body."

CONCLUSION

Information Technology Services, Finance and the Purchasing and Supply Division determined the most beneficial approach in maintaining service levels and reducing costs within the City of London's Mobility portfolio is to leverage the Government of Ontario's Ministry of Government and Consumer Services Vendor of Record (VOR) OSS-00415819.

Acknowledgements

This report was prepared with the assistance of Daryn Allen, Manager Messaging and Mobility; Chris Ginty, Procurement Officer, Purchasing and Supply Division; Lisa Karlovcec, Financial Business Administrator, Finance and Corporate Services; Lynn Marshall, Solicitor II, City Solicitor's Office.

SUBMITTED BY:	REVIEWED & CONCURRED BY:
JON-PAUL MCGONIGLE MANAGER II, DIVISIONAL SUPPORT INFORMATION TECHNOLOGY SERVICES	TROY THOMPSON, CISSP, MCSE, CNE MANAGER III, INFORMATION TECHNOLOGY SERVICES
RECOMMENDED BY:	RECOMMENDED BY:
MAT DALEY DIRECTOR, INFORMATION TECHNOLOGY SERVICES	MARTIN HAYWARD MANAGING DIRECTOR, CORPORATE SERVICES AND CITY TREASURER, CHIEF FINANCIAL OFFICER

cc: Ian Collins, Senior Financial Business Administrator
John Freeman, CSCMP, Manager of Purchasing and Supply
Chris Ginty, CPPB, Procurement Officer

APPENDIX A

Bill No.
2017

By-law No.

A By-law to approve the “Master Agreement Adoption Agreement” with Rogers Communications Canada Inc. for Vendor of Record Mobile Devices and Services; and to authorize the Mayor and the City Clerk to execute the Agreement; and to approve Rogers Communications Canada Inc. as a Vendor of Record for Mobile Devices and Services for the City of London.

WHEREAS subsection 5(3) of the *Municipal Act, 2001* provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 9 of the *Municipal Act, 2001* provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS, after an open and competitive process completed by the Minister of Government Services in 2014, Her Majesty the Queen in right of Ontario has entered into an agreement with Rogers Communications Partnership for Paging and Mobile Devices and Services VOR OSS_00415819 – Stream #1;

AND WHEREAS Rogers Communications Partnership has reorganized to become Rogers Communications Canada Inc. (“Rogers”);

AND WHEREAS the Province’s agreement with Rogers provides an opportunity for Provincially Funded Organizations (PFO) to enter into agreements with Rogers for Mobile Devices and Services under substantially the same terms subject to the PFO entering into a Master Agreement Adoption Agreement with Rogers Communications Partnership and establishing independent agreements (such as purchase orders) to purchase products from Rogers;

AND WHEREAS Municipal Council of The Corporation of the City of London approves Rogers as a Vendor of Record for Mobile Devices and Services;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. The Master Agreement Adoption Agreement for Mobile Devices and Services (which allows the City to place orders and acquire Mobile Devices and Services from Rogers under the same terms of the agreement between Her Majesty the Queen in right of Canada and Rogers under MGS VOR # OSS_00415819), to be entered into between The Corporation of the City of London and Rogers, substantially in the form attached as Schedule A to this by-law, is approved.
2. Rogers is approved as a Vendor of Record for Mobile Devices and Services.
3. The Mayor and the City Clerk are authorized to execute the agreement approved under section 1 above.

4. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council on _____, 2017.

Matt Brown
Mayor

Catharine Saunders
City Clerk

First reading -
Second reading -
Third reading –

Schedule A

Master Agreement Adoption Agreement

This Master Agreement Adoption Agreement is made as of April 1, 2017 between Rogers Communications Canada Inc. (the "Vendor") and The Corporation of the City of London (the "Buyer").

Background:

The Vendor and Her Majesty the Queen in right of Ontario, as represented by the Minister of Government Services, have entered into a Master Agreement for VOR OSS-00415819 made as of February 1, 2014. (The "Ontario Master Agreement").

The Buyer wishes to enter into a separate agreement with the Vendor so that the Buyer may place orders and acquire Services and Deliverables from the Vendor in accordance with the terms of the Ontario Master Agreement, as amended herein.

For consideration, the receipt and sufficiency of which is acknowledged by the parties, the Buyer and the Vendor acknowledge and agree as follows:

(a) Adoption

The Buyer and the Vendor agree to be bound by all of the provisions of the Ontario Master Agreement as if such agreement was entered into by the Vendor and the Buyer, except where an amendment is implied mutatis mutandis and except as expressly amended in this Master Agreement Adoption Agreement. For the purposes of this document, the agreement between the Buyer and the Vendor that is being created by the adoption of the Ontario Master Agreement and the amendments referred to in this Master Agreement Adoption Agreement will be referred to as the "Buyer Master Agreement". For certainty, Her Majesty the Queen in Right of Ontario is not a party to or a guarantor under the Buyer Master Agreement.

(b) Amendments:

The following provisions of the Ontario Master Agreement will be amended for the purposes of the Buyer Master Agreement:

- (i) The definition of FIPPA in s. 1.1 of the Ontario Master Agreement is amended by inserting the phrase ", and the Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M.56" after the phrase "as amended";
- (ii) For greater certainty only, and except for section 4.3, the definition of "Indemnified Parties" in s. 1.1 of the Ontario Master Agreement is amended by inserting the phrase ", and The Corporation of the City of London, its councillors,

officers, agents, appointees and employees” after the phrase “Executive Council of Ontario”;

- (iii) The definition of “MGS Authorized Contact List” in the Ontario Master Agreement is amended by inserting the phrase “, or as provided by the Buyer from time to time” after the phrase “in the RFP”;
- (iv) Where the context requires, reference in the Ontario Master Agreement to “MGS” or the “Client” or the “Minister” or “Ontario” shall be a reference to the Buyer;
- (v) In section 1.11 of the Ontario Master Agreement, Notice shall be provided to the Buyer as follows:
 - City Clerk
 - The Corporation of the City of London
 - 300 Dufferin Avenue PO BOX 5035
 - London, Ontario
 - N6A 4L9;
- (vi) In section 1.11 of the Ontario Master Agreement, the Buyer’s Representative shall be Chris Ginty, Procurement Officer, City of London Telephone No.: 519-661-2500 Ext. 4716, email: cginty@london.ca, or as changed under section 1.11;
- (vii) Section 16.6 of the Ontario Master Agreement is amended by inserting the phrase “or the Buyer” after the phrase “Attorney General of Ontario” wherever it appears;
- (viii) Section 21.2 and section 21.5 of the Ontario Master Agreement are both amended by deleting the phrase “(a) the total amount paid and payable by all Clients under this Master Agreement and all Subordinate Agreements;” and replacing it with the phrase “(a) the total amount paid and payable by the Buyer under the Buyer Master Agreement;”;
- (ix) Sections 22.5 to 22.8, inclusive, of the Ontario Master Agreement are deleted.
- (x) This Buyer Master Agreement shall commence on the date it is made as set out on the Master Agreement Adoption Agreement, and shall terminate January 31, 2020, unless this agreement or the Ontario Master Agreements is terminated earlier in accordance with the terms of the applicable Agreement. If the Ontario Master Agreement is extended, this agreement may be extended for an optional two (2) additional, two (2) year extensions on the same terms and conditions, as set out in section 5.1 of the Ontario Master Agreement.

PROVINCIALY FUNDED ORGANIZATION NOTICE

BACKGROUND INFORMATION:

- Ontario has established various vendor of record arrangements (each a “VOR Arrangement”) for selected qualified vendors (each a “Vendor”) to supply certain products or services, or both, (the “Deliverable”) to Ontario.
- Vendors under most VOR Arrangements are required, subject to the terms of their agreement with Ontario under the applicable VOR Arrangement (each an “Ontario Agreement”), to consider requests from you (if you are a “Provincially Funded Organization”, as defined in the applicable Ontario Agreement) to make Deliverables available to you for purchase.
- In order for a Vendor to consider requests from you, the Vendor must first provide you with this Provincially Funded Organization Notice (“Notice”).
- If you continue with your request after being provided with this Notice, you will be deemed to have acknowledged and agreed to the terms set out in this Notice.

TERMS

1. Your Status in Relation to Ontario Agreements. You are not a party to any Ontario Agreement and you cannot acquire any Deliverables as a “Client” under any Ontario Agreement. If you wish to acquire products or services, or both from a Vendor, you must enter into a separate agreement with the Vendor (“Provincially Funded Organization Agreement”).
2. Provincially Funded Organization Agreement. Although Ontario is providing you with access to Vendors listed on VOR Arrangements to acquire services and Deliverables in accordance with the terms of the Ontario Master Agreement, you remain solely responsible for negotiating the terms and conditions of your Provincially Funded Organization Agreement with each Vendor, including the responsibility for ensuring that each of your Provincially Funded Organization Agreements contains business, legal or other terms and conditions as may be necessary for you.
3. Procurement Processes. You are solely responsible for ensuring that the selection of any Vendor and the procurements made under any of your Provincially Funded Organization Agreements comply with any and all procurement rules, regulations, obligations and processes to which you are subject. Any differences between the terms and conditions of an Ontario Agreement and the terms and conditions of your Provincially Funded Organization Agreement may affect whether the selection of the Vendor and the procurements made under your Provincially Funded Organization Agreement meet the procurement rules, regulations, obligations or processes to which you are subject.
4. Ontario Not Liable for Your Relationship with Vendors.

- Ontario does not endorse, recommend or approve the suitability of: (i) any Vendor as a supplier to you; (ii) the procurement process used to establish any VOR Arrangement as meeting the procurement rules, regulations, obligations and processes to which you are subject; (iii) the ordering process established for any VOR Arrangement as meeting the procurement rules, regulations, obligations and processes to which you are subject and (iv) the terms and conditions of any Ontario Agreement as a basis for, in whole or in part, any Provincially Funded Organization Agreement or any other resulting or related relationships or agreements between you and any Vendor. You are solely responsible for conducting your own independent assessment (including obtaining your own professional advice (which may include legal and business advice) as may be necessary and appropriate in your specific circumstances) to determine the suitability of the above.
- Please note that legal and other professional advice provided to Ontario with respect to the establishment of its VOR Arrangements and its Ontario Agreements was solely for the benefit of Ontario to take into account Ontario's specific legal and other concerns, and may not be applicable to or appropriate for, and may not address any of your concerns or the concerns of any other third party. Legal counsel for Ontario recommends that you obtain independent legal representation and receive independent legal advice, as well as other required independent professional advice, prior to executing any document or entering into any contract or agreement with, or acquiring any products or services from, a Vendor.
- Ontario makes no representation, assurance, warranty, or guarantee: (i) that a Vendor will enter into a Provincially Funded Organization Agreement with you; or (ii) of the quality, value or volume of products or services that may or will be sold, if any, to you.
- Ontario will not: (i) be or be deemed to be a party to, or a guarantor of any obligations or liability of any party under, any Provincially Funded Organization Agreement or any resulting or related relationship or agreement between you and any Vendor; or (ii) be responsible or liable to you for, and nothing in any agreement between you and any Vendor will have the effect of imposing or resulting in the imposition of, any costs, obligation, liability or covenant on Ontario for any matter arising under or in connection with: the VOR Arrangement; any Deliverable; the Ontario Agreement or any related documentation; any access to the VOR Arrangement or the Ontario Agreement or related documentation; any Provincially Funded Organization Agreement; any act, error or omission of the Vendor (including the provision or non-provision of any Deliverables or other products or services by the Vendor); or this Notice.
- You will not, in relation to or under any Provincially Funded Organization Agreement or under any resulting or related relationship or agreement between you and any Vendor, bring any cause of action, action, claim, demand or lawsuit against Ontario or any of its personnel as a result of: (i) any act, error or omission of the parties to any Provincially Funded Organization Agreement; or (ii) any act, error or omission of Ontario or any of its personnel.

- Any obligations, costs or liability arising under or in connection with any Provincially Funded Organization Agreement or any resulting or related relationships or agreements between you and the Vendor will remain with you and the Vendor.
 - You are solely responsible for your own contract administration with the Vendor and will not direct any issues that may arise with the Vendor to Ontario.
 - For the purposes of any Provincially Funded Organization Agreement, you have no power or authority to bind Ontario or to assume or create any obligation or responsibility, express or implied, on behalf of Ontario.
5. Data and Documentation. You will provide to Ontario, at Ontario's request, any data and documentation about your acquisition of products and services from the Vendor.
 6. Access to VOR Arrangements, Vendor/Ontario Agreements and Deliverables. It is Ontario's intention that, if you choose to access any VOR Arrangement, you will do so only to acquire products or services for your operational needs. Ontario, in its sole discretion, may delay, restrict or choose to not renew access by you to information regarding any VOR Arrangement, any Ontario Agreement and any products and services provided by the suppliers to Ontario on any VOR Arrangement.
 7. Restrictions to Becoming a Supplier to Ontario. If you choose to access the Ministry of Government Services' enterprise-wide VOR Arrangements, you are advised that, in some circumstances, you may be restricted or ineligible to submit a bid to become a supplier to Ontario under future procurement opportunities.
 8. Confidentiality. You acknowledge that information of a confidential nature to Ontario or the Vendor, regardless of whether it is identified as confidential or not ("**Confidential Information**") may come into your knowledge, possession or control. You will: (a) keep all Confidential Information confidential and secure; (b) limit the disclosure of Confidential Information to only those of your directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors who have a need to know it for the purpose of acquiring or considering the acquisition of products and services from a Vendor (the "**Purpose**") and who have been specifically authorized to have such disclosure; (c) not directly or indirectly disclose, destroy, exploit or use any Confidential Information (except for the Purpose, or except if required by order of a court or tribunal), without first obtaining: (i) the written consent of the Ministry of Government Services ("**MGS**"); and (ii) in respect of any Confidential Information about the Vendor or any other third-party, the written consent of the Vendor and any such other third-party; and (d) return all Confidential Information to MGS on demand, with no copy or portion kept by you. You will not copy any Confidential Information, in whole or in part, unless copying is essential for the Purpose. On each copy made by you, you will reproduce all notices which appear on the original.

IN WITNESS WHEREOF the parties have entered into this Master Agreement Adoption Agreement as of the date first set out above.

**The Corporation of the
City of London**

Rogers Communications Canada Inc.

Per:

Per:

Signature:
Name: Matt Brown
Title: Mayor

Signature:
Name: _____
Title: _____
I have authority to bind the Vendor.

Signature:
Name: Catharine Saunders
Title: City Clerk

We have authority to bind the Buyer.

Appendix B

AGREEMENT
FOR
PAGING AND MOBILE DEVICES AND SERVICES
MGS VOR # OSS_00415819

[*LEGAL NAME OF THE VENDOR]

[*DAY MONTH YEAR]

8.2.10.1

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THIS MASTER AGREEMENT for Paging and Mobile Devices and Services is made in duplicate, effective [*DAY MONTH YEAR].

BETWEEN:

HER MAJESTY THE QUEEN in right of Ontario
as represented by the Minister of Government Services

AND:

[*LEGAL NAME OF THE VENDOR]
(referred to as the "**Vendor**")

BACKGROUND INFORMATION:

MGS invited proposals for the provision of paging and mobile devices and related services and has selected the Vendor from among those who submitted proposals.

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** - In this Master Agreement and in each Subordinate Agreement and Subscriber Plan, these words and expressions have the following meanings:

"**Approved Scanning Vendor**" has the same meaning as "ASV" and "Approved Scanning Vendor" as set out in the PCI Glossary.

"**Attachment**" means an attachment to this Master Agreement listed in Section 1.17 (Attachments).

"**Authority**" means any government authority, agency, body or department, whether federal, provincial or municipal, having or claiming jurisdiction over this Master Agreement, the Subordinate Agreement, or the Subscriber Plan; and "**Authorities**" means all such authorities, agencies, bodies and departments.

"**Business Day**" means any working day, Monday to Friday inclusive, but excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day which the Ministry has elected to be closed for business.

"**Business Hours**" means the hours from 8:00 AM to 6:00 PM local time on a Business Day.

"**Change Management Services**" means the services described as part of the "Change Management Service Tower" in the RFP.

"**Client**" means:

- (a) 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; or

(b) an OPS Entity.

"Client Data" means all content, data and information of any kind and in any form, provided by Ontario or any OPS Entity to the Vendor to enable the Vendor to provide the Deliverables or to perform the Services or otherwise owned by or in the custody or control of Ontario or any OPS Entity; all Personal Information collected by the Vendor as part of the Services; all content, data and information that is created, developed, generated, prepared or produced by any user of a Device or that is received by the user on the Device, whether or not such content, data or information resides on the Device or is transmitted, received or otherwise communicated via, using or through a Vendor-supplied Service; and all such content, data and information that are created, developed, generated, prepared or produced as a result of any compilation (whether combined or compiled with other content, data or information or not) or developments or modifications to the content, data and information described above, but where the Vendor's content, data or information are combined or compiled with Client Data, excluding the Vendor's content, data and information that are proprietary to the Vendor immediately prior to the Master Agreement Effective Date or are proprietary to the Vendor but are not first created or produced in the performance of Services.

"Competitive Pricing Refresh" has the meaning given to it in the RFP.

"Confidential Information" means information of the other Party (the **"Disclosing Party"**), which is OPS Confidential Information or Confidential Vendor Information, as the case may be, disclosed to a Party (the **"Receiving Party"**), or which comes into the knowledge, possession, or control of the Receiving Party, its Personnel or Subcontractors under this Master Agreement.

"Confidential Vendor Information" means all information of the Vendor and of its Subcontractors that is confidential by its nature or in the circumstances in which it is received and is identified as confidential or a trade secret, which information may include confidential information of third parties, whether recorded or not, and however fixed, stored, expressed or embodied, including:

- (a) information relating to algorithms, computer code, designs, drawings, flowcharts, formulae, Intellectual Property Rights, inventions, patterns, plans, procedures, processes, reports, schematics, specifications, templates, and working papers;
- (b) electronic data, excluding Client Data, stored or processed by the Vendor; and
- (c) new information derived at any time from any such information whether created by the Vendor, Ontario, the OPS Entity or any third party;

but Confidential Vendor Information shall not include information that:

- (d) ceases to benefit from protection as confidential information or as a trade secret under legislation or at law as a result of Ontario's or the OPS Entity's use or disclosure of Deliverables or Services under this Master Agreement for any purpose whatsoever that is not expressly excluded by this Master Agreement;
- (e) is or becomes generally available to the public without fault or breach by Ontario or the OPS Entity, but only after that information becomes generally available to the public;

- (f) Ontario or the OPS Entity can demonstrate to have been rightfully obtained by Ontario or the OPS Entity, without any obligation of confidence of any kind, from a third party who had the right to transfer or disclose it to Ontario or the OPS Entity free of any obligation of confidence;
- (g) Ontario or the OPS Entity can demonstrate to have been rightfully known to or in the possession of Ontario or the OPS Entity, free of any obligation of confidence, when disclosed; or
- (h) is independently developed by Ontario or the OPS Entity without the use of any Confidential Vendor Information.

"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 the Crown and not available to other proponents; (ii) communicating with any person with a view to influencing preferred treatment in the RFP process including the giving of a benefit of any kind, by or on behalf of the proponent to anyone employed by, or otherwise connected with, MGS; 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 a Crown contract, the Vendor'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.

"Critical Service Level" has the meaning set out in the RFP.

"D&S Services" means the services described as part of the "Device and Services Service Tower" in the RFP.

"Deliverables" mean anything and everything including Devices and Services, in all forms and however recorded, that are to be delivered, provided or made available to the Client at any time by the Vendor (or its Personnel, Subcontractors or others for whom it is responsible at law) as a result of this Master Agreement, whether during the Term or following the termination of this Master Agreement, as may be more fully described in the Schedules and the RFP and the Proposal and as may be more particularly detailed in a Subordinate Agreement or a Subscriber Plan.

"Device" means a Mobile Device or a Paging Device.

"Dispute" means: (a) in respect of this Master Agreement, any dispute or disagreement between the Vendor and Ontario in connection with the respective rights and obligations of the Vendor and Ontario under the Master Agreement, or any breach thereof, whether actual, alleged or anticipated, which Ontario and the Vendor are unable to resolve without resort to the dispute resolution process outlined in more detail in Article 22; or (b) in respect of a Subordinate Agreement or a Subscriber Plan, any dispute or disagreement between the Vendor and the Client in connection with their respective rights and obligations under it, or any breach thereof, whether actual, alleged or anticipated, which the Client and the Vendor are unable to resolve without resort to the dispute resolution process outlined in more detail in Article 22.

"Documentation" means all documents, whether in printed or electronic form, related to the Deliverables; for example but not limited to user guides, training guides, flowcharts, reports, layouts and manuals.

"Executive Council" means the council of that name comprising persons appointed by the Lieutenant Governor pursuant to the *Executive Council Act*, R.S.O. 1990, c. E.25, as amended or replaced from time to time.

"FIPPA" means the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended or replaced from time to time.

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

"Governance Services" means the services described as part of the "Governance Service Tower" in the RFP.

"Government Materials" means any and all reports, data, materials, documentation, procedures and information conceived, developed or produced by the Vendor in the course of providing the Deliverables or Services to Clients under this Master Agreement or any Subordinate Agreements.

"Incident Management Services" means the services described as part of the "Incident Management Service Tower" in the RFP.

"Indemnified Parties" means each of the following and their directors, officers, advisors, agents, appointees and employees: Ontario, the OPS Entity, officers of the Legislative Assembly and officers of the Legislature and their respective offices, and the members of the Executive Council of Ontario.

"Industry Standards" include, but are not limited to (a) the provision of any and all labour, supplies, equipment and other goods or services that are necessary and can reasonably be understood or inferred to be included within the scope of this Master 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 Vendor establishing, and ensuring adherence to, precautions 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.

"Insolvency Event" means, in respect of any Person: the making of an assignment by such Person for the benefit of its creditors; the failure of such Person to pay its debts generally as they become due; the filing or commencement of a petition or other proceeding in respect of such Person under any bankruptcy, reorganization, moratorium, arrangement of debt or insolvency law; the appointment of a receiver, receiver and manager, or interim receiver in respect of such Person or any material part of its assets or business; the declaration of bankruptcy or insolvency of such Person; the acknowledgement (in writing or otherwise) by such Person of its insolvency or inability to pay its debts generally as they become due; the suspension of business by such Person; the making by such Person of any proposal, arrangement or compromise with its creditors under the *Bankruptcy and Insolvency Act* (Canada), any other statute, or otherwise; or the taking of any action for the purposes of any of the foregoing.

"Intellectual Property Rights" means any intellectual or industrial property rights protected or protectable under the laws of Canada, any foreign country, or any political subdivision of any country, including any intellectual property rights protected by legislation (such as legislation governing copyrights, industrial designs, integrated circuit topographies, patents or trademarks) or by common law (such as confidential information and trade secrets).

"IT Infrastructure" means all software and all computers, networks and related equipment, including, as applicable, central processing units and other processors, controllers, modems, communications and telecommunications equipment and other hardware and peripherals.

"Losses" includes any losses, costs, damages, expenses and any reasonable legal, expert and consultant fees.

"Malicious Code" means: (a) any program routine, device or other feature, computer code or hidden file, including any time bomb, virus, software lock, Trojan horse, drop-dead device, worm, malicious logic or trap door that may delete, disable, deactivate, interfere with or otherwise harm the Deliverables or any of Ontario's or the Client's IT Infrastructure or data; or (b) any backdoor.

"Master Agreement" means this Master Agreement for Paging and Mobile Devices and Services, together with all Schedules and Attachments and all agreements amending or supplementing this Master Agreement.

"Master Agreement Effective Date" means [*Instructions: Insert start date for Master Agreement.].

"Master Agreement Expiry Date" means [*Instructions: Insert end date for Master Agreement.], subject to extension under Section 5.1 (Term of Master Agreement and Option to Extend) in which case it is the last calendar day of the last extended term.

"merchant", for the purposes of Article 13 (Service Provider Payment Card Industry Data Security Standard Liabilities), has the meaning set out in the PCI Glossary, which is "any entity that accepts payment cards bearing the logos of any of the five members of PCI SSC (American Express, Discover, JCB, MasterCard or Visa) as payment for goods and services.

"MGS" means the Ministry of Government Services, or its successor.

"MGS Authorized Contact List" means the MGS Authorized Contact List created by MGS, as may be modified by MGS at any time and from time to time, as further described in the RFP.

"MGS Representative" means the individual designated as the MGS Representative in Section 1.11, and any other individual designated as such pursuant to Section 1.11.

"Minister (MGS)" means the Minister of Government Services, or any other person duly authorized to act on behalf of the Minister.

"Mobile Device" means a mobile phone, smartphone, air card, modem or other mobile device and related accessories, and related services other than the Services, if any, including all applicable features, functionality, capabilities and Documentation, purchased by a Client from the Vendor or its Subcontractor pursuant to a Subordinate Agreement, and any substitution or replacement for that device required or permitted by the Subordinate Agreement.

"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.

"Network Services" means the services described as part of the "Network Services Service Tower" in the RFP.

"Online Billing Solution Services" means the services described as part of the "Online Billing Solution Service Tower" in the RFP.

"Ontario" means Her Majesty the Queen in right of Ontario.

"Ontario Public Service" means the ministries and other administrative units of Ontario over which ministers of Ontario preside, and for the purposes of this Master Agreement and each Subordinate Agreement includes its agencies, boards, commissions, and Crown corporations.

"OPS Confidential Information" means all information of Ontario, the Ontario Public Service, of OPS Entities and of Ontario's and OPS Entities' Subcontractors that is confidential by its nature or in the circumstances in which it is received, including all confidential information in the custody or control of the Ontario Public Service or of Clients which may include confidential information of third parties, regardless 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 Vendor, including:

- (a) information relating to algorithms; computer programming code and software programs (including both object and source code) executable or not executable, including any reusable code, libraries, routines, sub-routines, and utilities; designs, drawings, flowcharts, formulae, Intellectual Property Rights, inventions, patterns, plans, procedures, processes, reports, schematics, specifications, templates, and working papers;
- (b) all documentation and financial information related to this Master Agreement or any Subordinate Agreement or any Subscriber Plan which is proprietary to or in the possession of Ontario or the OPS Entity;
- (c) all information and data transmitted, stored or processed on any network or computer system;
- (d) any information of the Ontario Public Service or the OPS Entity which is designated by Ontario or the OPS Entity from time to time, or which a reasonable person, having regard to the circumstances, would regard as sensitive, including all confidential information that relates to the security of Ontario or the OPS Entity, its premises, systems, databases and networks; matters of provincial or national security; and any record the disclosure of which could be injurious to the interests of Ontario or the OPS Entity;
- (e) new information derived at any time from any such information whether created by the Ontario Public Service, the Client, the Vendor or any third party;
- (f) information that Ontario or the OPS Entity is required to keep confidential, including any information of third parties; and

- (g) information that the Ontario Public Service or the OPS Entity is obliged, or has the discretion, not to disclose pursuant to law or statute;

but OPS Confidential Information shall not include information that:

- (h) is or becomes generally available to the public without fault or breach by the Vendor, but only after that information becomes generally available to the public;
- (i) the Vendor can demonstrate to have been rightfully obtained by the Vendor, without any obligation of confidence of any kind, from a third party who had the right to transfer or disclose it to the Vendor free of any obligation of confidence;
- (j) the Vendor can demonstrate to have been rightfully known to or in the possession of the Vendor, free of any obligation of confidence, when disclosed; or
- (k) is independently developed by the Vendor without the use of any OPS Confidential Information.

"OPS Entity" means one of the advisory, adjudicative and regulatory (including those with governing boards) agencies of the Province of Ontario.

"Ontario Government Insignia" means the visual identity of the government of Ontario and any Ontario government design, domain name, geographical indication, insignia, logo, official mark or other designation, indication, symbol or trademark, including any developments and modifications of them.

[*Instructions: The following definition of "Order" will apply only if the proponent was not disqualified under either Stream. If so, delete the second and third definitions of "Order" below and the instructions that precede them, as well as these instructions, before the Master Agreement is signed.]

"Order" means, subject to Section 6.3 (Orders), a contract entered into by a Client and the Vendor pursuant to this Master Agreement for the purchase by the Client of one or more Mobile Devices or the rental or purchase by the Client of one or more Paging Devices or the purchase of Services, or any combination of the above. For greater certainty, an "Order" may include one or more voice transmission plans, one or more data transmission plans, one or more paging transmission plans, or any combination of the above.

"Order" means, subject to Section 6.3 (Orders), a contract entered into by a Client and the Vendor pursuant to this Master Agreement for the purchase by the Client of one or more Mobile Devices or Services, or any combination of the above. For greater certainty, an "Order" may include one or more voice transmission plans, one or more data transmission plans, or any combination of the above.

"Order" means, subject to Section 6.3 (Orders), a contract entered into by a Client and the Vendor pursuant to this Master Agreement for the rental or purchase by the Client of one or more Paging Devices or the purchase of Services, or any combination of the above. For greater certainty, an "Order" may include one or more paging transmission plans.

"Ordering Term" means the time period more particularly described in Section 5.2 (Ordering Term).
"First Ordering Term for Stream No. 1", "First Ordering Term for Stream No. 2", "Second Ordering Term for Stream No. 1", "Second Ordering Term for Stream No. 2", "Third Ordering Term for

Stream No. 1", **"Third Ordering Term for Stream No. 2"**, **"Fourth Ordering Term for Stream No. 1"**, and **"Fourth Ordering Term for Stream No. 2"** have the meanings ascribed to them in Section 5.2 (Ordering Term).

"Ordering Term" means the time period more particularly described in Section 5.2 (Ordering Term).

"First Ordering Term for Stream No. 1", **"Second Ordering Term for Stream No. 1"**, **"Third Ordering Term for Stream No. 1"**, and **"Fourth Ordering Term for Stream No. 1"** have the meanings ascribed to them in Section 5.2 (Ordering Term).

"Ordering Term" means the time period more particularly described in Section 5.2 (Ordering Term).

"First Ordering Term for Stream No. 2", **"Second Ordering Term for Stream No. 2"**, **"Third Ordering Term for Stream No. 2"**, and **"Fourth Ordering Term for Stream No. 2"** have the meanings ascribed to them in Section 5.2 (Ordering Term).

"Paging Device" means a numeric pager, alpha-numeric pager, two-way pager, customer notification pager or other paging device, and related accessories, and related services other than the Services if any, including all applicable features, functionality, capabilities and Documentation, rented or purchased by a Client from the Vendor or its Subcontractor pursuant to a Subordinate Agreement, and any substitution or replacement for that paging device required or permitted by the Subordinate Agreement.

"Party", in respect of this Master Agreement, means Ontario or the Vendor, and **"Parties"** means both of them; but in respect of a Subordinate Agreement or a Subscriber Plan, means the Client or the Vendor, and **"Parties"** means both of them.

"PCI DSS" mean the Payment Card Industry Data Security Standard promulgated by the PCI Security Standards Council as of Version 2 dated October 2010.

"PCI Glossary" means the Payment Card Industry (PCI) Data Security Standard (DSS) and Payment Application Data Security Standard (PA-DSS) Glossary of Terms, Abbreviations and Acronyms, Version 2.0 dated October 2010.

"Performance Measurement Services" means the services described as part of the "Performance Measurement Service Tower" in the RFP.

"Permitted Use" means the use by one Party of the Confidential Information of the other Party in connection with the Party's rights, duties and obligations under this Master Agreement or the Subordinate Agreement or the Subscriber Plan and where applicable, the rights, duties and obligations that continue after termination of this Master Agreement.

"Person" includes, if the context allows, an individual, company, corporation, unincorporated association, government or government agency, authority or entity however designated or constituted and includes successor organizations.

"Personal Information" means recorded information about an identifiable individual or that may identify an individual.

"Personnel" means collectively, in the case of each Party, individuals who provide services to that party or any of its Subcontractors, whether as employees or contractors, in connection with this Master Agreement or any Subordinate Agreement or any Subscriber Plan.

"Price" means the maximum price to be charged by the Vendor for the Deliverables, as set out in Schedule B, as may be amended in accordance with this Master Agreement, and is inclusive of all labour, materials, overhead, insurance, travel expenses and applicable duties and taxes, but exclusive of harmonized sales tax (HST).

"Privacy Provisions" means, collectively, Article 18 (Privacy) and the provisions, if any, set out in the Subordinate Agreement that relate to (a) the collection, use, disclosure or transfer of personal information; (b) compliance with FIPPA; (c) compliance with the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c.5, as amended or replaced from time to time; and (d) compliance with any other legislation that would address the management of personal information or other privacy issues.

"Problem Management Services" means the services described as part of the "Problem Management Service Tower" in the RFP.

"Proceeding" means any action, claim, demand, lawsuit, or other proceeding.

"Procurement Card" means the corporate charge card(s) used by Ontario, as may be changed from time to time.

"Procurement Card Protocols" means the manner in which the Vendor is required to process any payments under a Subordinate Agreement that Ontario or OPS Entity 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 (or, if the payment is by an OPS Entity, the identifier for the OPS Entity), the expiry date 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.

"Proposal" means all of the documentation submitted by the Vendor in response to and in compliance with the RFP, including any clarifications provided by the Vendor at the request of MGS, but excluding all obligations, limitations and disclaimers imposed on or applied to Ontario or any OPS Entity.

"Provincially Funded Organization" means:

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

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 Notice" shall have the meaning ascribed to the capitalized term in Section 4.3.

"Provincially Funded Organization Agreement" means an agreement between the Vendor and a Provincially Funded Organization as defined in Section 4.3.

"Qualified Security Assessor" has the same meaning as "QSA" and "Qualified Security Assessor" as set out in the PCI Glossary.

"Record" means any recorded information, including any Personal Information, in any form: (a) provided by MGS or the Client to the Vendor, or provided by the Vendor to MGS or the Client, for the purposes of this Master Agreement, a Subordinate Agreement or a Subscriber Plan; or (b) created by the Vendor in the performance of the Subordinate Agreement or a Subscriber Plan; and shall include or exclude any information specifically and expressly described in the Subordinate Agreement as being included or excluded from this definition of "Records".

"Reporting Period" means any one (1) calendar month during the Term.

"Request For Proposals" and **"RFP"** mean the Request for Proposals for Paging and Mobile Devices and Services reference number MGS VOR# OSS-00415819, released by MGS on [*DAY MONTH], 2013, and any addenda to it.

"Requirements of Law" mean all applicable requirements, laws, statutes, codes, acts, ordinances, orders, decrees, injunctions, by-laws, rules, regulations, official plans, permits, licences, authorisations, directions of, and agreements with, all Authorities that now or at any time hereafter may be applicable to this Master Agreement, any Subordinate Agreement, any Subscriber Plan, the Vendor, the Client, the Deliverables, the Services, or any part of them.

"Schedule" means a schedule to this Master Agreement listed in Section 1.16 (Schedules), whether or not attached, together with other schedules and documents, if any, incorporated by agreement of the Parties after the Master Agreement Effective Date, but excluding all Attachments.

"Secure Web Portal" means the Vendor's secure web portal that is more fully described in the RFP, including its features, functionality and capabilities.

"Secure Web Portal Services" means the services described as part of the "Service Web Portal Services" in the RFP.

"Security Services" means the services described as part of the "Security Services Service Tower" in the RFP.

"Service Desk Services" means the services described as part of the "Service Desk Service Tower" in the RFP.

"Service Level" (where used with initial caps) has the meaning set out in the RFP.

"Service Level Credit" has the meaning set out in the RFP.

"Service Level Management Services" means the services described as part of the "Service Level Management Service Tower" in the RFP.

"Service Order Management Services" means the services described as part of the "Service Order Management Service Tower" in the RFP.

“Service Request” has the meaning set out in the RFP.

“Services” means, subject to Section 1.5, all services, if any, to be provided or performed pursuant to this Master Agreement or a Subordinate Agreement or a Subscriber Plan by any or all of (a) the Vendor; (b) the Vendor’s Personnel; (c) the Vendor’s Subcontractors; and (d) those for whom the Vendor is responsible; as such services are described in this Master Agreement (including the RFP and the Proposal) and as may be more particularly described in a Subordinate Agreement or Subscriber Plan, including:

- (i) D&S Services;
- (ii) Governance Services;
- (iii) Vendor Management Services;
- (iv) Change Management Services;
- (v) Incident Management Services;
- (vi) Service Desk Services;
- (vii) Service Order Management Services;
- (viii) Secure Web Portal Services;
- (ix) Problem Management Services;
- (x) Service Level Management Services;
- (xi) Performance Measurement Services;
- (xii) Online Billing Solution Services;
- (xiii) Network Services;
- (xiv) Security Services; and
- (xv) Transition Services.

“Services” means, subject to Section 1.5, all services, if any, to be provided or performed pursuant to this Master Agreement or a Subordinate Agreement or a Subscriber Plan by any or all of: (a) the Vendor; (b) the Vendor’s Personnel; (c) the Vendor’s Subcontractors; and (d) those for whom the Vendor is responsible; as such services are described in this Master Agreement (including the RFP and the Proposal) and as may be more particularly described in a Subordinate Agreement or Subscriber Plan, including:

- (i) D&S Services;
- (ii) Governance Services;
- (iii) Vendor Management Services;
- (iv) Change Management Services;
- (v) Incident Management Services;
- (vi) Service Desk Services;
- (vii) Service Order Management Services;
- (viii) Secure Web Portal Services;
- (ix) Problem Management Services;
- (x) Service Level Management Services;
- (xi) Performance Measurement Services;
- (xii) Online Billing Solution Services;
- (xiii) Network Services;
- (xiv) Security Services; and
- (xv) Transition Services;

but excluding all provisions in such documentation to the extent that they apply to Stream No. 2.

“Services” means, subject to Section 1.5, all services, if any, to be provided or performed pursuant to this Master Agreement or a Subordinate Agreement or a Subscriber Plan by any or all of (a) the Vendor; (b)

the Vendor's Personnel; (c) the Vendor's Subcontractors; and (d) those for whom the Vendor is responsible; as such services are described in this Master Agreement (including the RFP and the Proposal) and as may be more particularly described in a Subordinate Agreement or Subscriber Plan, including:

- (i) D&S Services;
- (ii) Governance Services;
- (iii) Vendor Management Services;
- (iv) Change Management Services;
- (v) Incident Management Services;
- (vi) Service Desk Services;
- (vii) Service Order Management Services;
- (viii) Secure Web Portal Services;
- (ix) Problem Management Services;
- (x) Service Level Management Services;
- (xi) Performance Measurement Services;
- (xii) Network Services;
- (xiii) Security Services; and
- (xiv) Transition Services;

but excluding all provisions in such documentation to the extent that they apply to Stream No. 1.

"service provider", for the purposes of Article 13 (Service Provider Payment Card Industry Data Security Standard Liabilities), has the meaning set out in the PCI Glossary, which is a "business entity that is not a payment brand, directly involved in the processing, storage, or transmission of cardholder data. This also includes companies that provide services that control or could impact the security of cardholder data".

"Stream" means either Stream No. 1 or Stream No. 2.

"Stream No. 1" means Stream #1 for mobile devices and services (including voice and data transmission) as more particularly described in the RFP.

"Stream No. 2" means Stream #2 for paging devices and services (including paging transmission) as more particularly described in the RFP.

"Subcontractor" means, in the case of each Party, any contractor of that Party or any of its subcontractors at any tier of subcontracting and, in the case of the Vendor, includes any of the Vendor's dealers or other subcontractors set out at any time in Schedule F (Subcontractors).

"Subordinate Agreement" means an Order or any other agreement under this Master Agreement that is entered into between the Client and the Vendor, and any amendments to it, but excluding a Subscriber Plan.

"Subscriber Plan" means – in respect of a single mobile phone, smartphone, air card, modem or other mobile device, numeric pager, alpha-numeric pager, two-way pager, customer notification pager or other paging device – a contract between the Client and the Vendor that is entered into pursuant to an Order and that consists of a transmission plan for a mobile phone, smartphone, air card, modem or other mobile device (such as a voice plan or data plan), as more particularly described under Stream No. 1 in the RFP; or a transmission plan for a numeric pager, alpha-numeric pager, two-way pager, customer notification pager or other paging device, as more particularly described under Stream No. 2 in the RFP.

"Subscriber Plan" means – in respect of a single mobile phone, smartphone, air card, modem or other mobile device – a contract between the Client and the Vendor that is entered into pursuant to an Order and that consists of a transmission plan for a mobile phone, smartphone, air card, modem or other mobile device (such as a voice plan or data plan), as more particularly described under Stream No. 1 in the RFP.

"Vendor Representative" means the individual designated as the Vendor Representative in Section 1.11, and any other individual designated as such pursuant to Section 1.11.

"Term", in respect of this Master Agreement, has the meaning given in Section 5.1 (Term of Master Agreement and Option to Extend).

"Transition Services" means the services described as part of the "Transition Services Service Tower" in the RFP, which includes Transition-Out Services.

"Transition-Out Services" means the "VOR Transition-Out Requirements" set out in the RFP, which may include, if required by MGS or the Client, services in connection with migrating the provisioning of Devices and other mobile and paging devices, and related network services to another service provider.

"Transition-Out Period" means the period of time (including any and all extensions) during which Transition-Out Services are provided, which period may commence on or prior to the Master Agreement Expiry Date and continue after the Master Agreement Expiry Date, or commence immediately after the Master Agreement Expiry Date.

"Vendor Management Services" means the services described as part of the "Vendor Management Service Tower" in the RFP.

"WSIA" means the *Workplace Safety and Insurance Act, 1997*, S.O. 1997, c.16, Sch. A., as amended or replaced from time to time.

"WSIB" means the Workplace Safety and Insurance Board of Ontario.

1.2 **Interpretation of "Include"** - In this Master Agreement and each Subordinate Agreement, unless it is otherwise clear from the context, "including" means "including without limitation" and "includes" means "includes without limitation"; the use of the word "including" or "includes" is not intended to limit any statement that precedes it to the items immediately following it.

1.3 **No Indemnities from Ontario** - Despite anything else in this Master Agreement or any Subordinate Agreement or any Subscriber Plan, any express or implied reference to Ontario or any Client 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 or the OPS Entity, whether at the time of execution of this Master Agreement or any Subordinate Agreement or any Subscriber Plan or at any time during the Term of this Master Agreement or the term of any Subordinate Agreement or the term of any Subscriber Plan, shall be void and of no legal effect. Nothing in this Section 1.3 shall be deemed to waive any claims that the Vendor may have at any time or times against Ontario or any Client.

- 1.4 **Entire Agreement** - This Master Agreement, the RFP and the Proposal (excluding any obligations, limitations or disclaimers imposed on or applied to Ontario or a Client in the Proposal) embody the entire agreement between the Parties with regard to its subject matter and supersede any prior understanding or agreement, collateral, written or otherwise, related to the subject matter of this Master Agreement that exists between the Parties at the date of execution of this Master Agreement. Subject to the terms and conditions of this Master Agreement, each Subordinate Agreement embodies the entire agreement between the Parties with regard to its subject matter and supersedes any prior understanding or agreement, collateral, written or otherwise, related to the subject matter of the Subordinate Agreement that exists between the Parties at the date of execution of the Subordinate Agreement.
- 1.5 **Vendor's and Subcontractors' Device and Subscriber Plan Terms** - Regardless of any notification to the contrary and regardless of any action taken or not taken by the Client to indicate its acceptance of any terms or conditions of the Vendor or any of its Subcontractors which refer to or would otherwise - but for this Master Agreement or the RFP - apply to any Devices or the use of the Devices or Subscriber Plans, the Vendor and the Client agree that: (a) the Client will not be bound by any of such terms and conditions that are non-standard terms and conditions, or that relate to price or costs including usage charges and cancellation fees and other charges, payment, payment of interest, security deposits, indemnification, obligation to defend, legal fees and fees to any experts or consultants or any other Person, court costs, limitations, disclaimers, imposition or limitation of liability, restriction of remedies, restrictions on government or political communications, privacy, insurance, assignments of intellectual property rights from the Client, authorizations or consents or licences of any kind from the Client, dispute resolution, suspension or termination of services, cancellation or termination of any contract, attornment to any jurisdiction, or governing law; and (b) without restricting subsection (a), the Client will not be bound by any of the Vendor's or its Subcontractors' terms and conditions that would conflict with or supersede terms and conditions in this Master Agreement or the RFP that are contained in or on any web site, invoice, policy or other document, that are sent to or made accessible to Ontario or any OPS Entity, or that are packaged with any Devices or Subscriber Plans (including any click-wrap licence, browse wrap licence, web wrap licence, shrink-wrap licence, standard form licence, or any other software licence, express or implied).
- 1.6 **Amendments** - Any changes to this Master Agreement shall only be made by written amendment signed by the Minister (MGS) and the Vendor, except where this Master Agreement expressly provides for a deemed amendment. Any changes to a Subordinate Agreement or a Subscriber Plan shall only be made by written amendment signed by the Parties, except where this Master Agreement expressly provides for a deemed amendment. No changes shall be effective or shall be carried out in the absence of such an amendment.
- 1.7 **Severability** - If any term or condition of this Master Agreement or any Subordinate Agreement or any Subscriber Plan, or the application thereof to the Parties or circumstances, is to any extent invalid or unenforceable, the remainder of this Master Agreement and the Subordinate Agreement and any Subscriber Plan, as the case may be, and the application of such term or condition to the Parties or circumstances other than those to which it is held invalid or unenforceable, shall not be affected by it.
- 1.8 **Interpretive Value of Documents** – Despite any other provision in this Master Agreement or in any other document, in the event of any conflict or inconsistency between the provisions of any document listed below, the provisions of the document that first appears on the list shall prevail

over the provisions of any document that subsequently appears on the list and the former shall govern the interpretation:

- (a) the main body of this Master Agreement;
- (b) the Schedules;
- (c) the RFP;
- (d) the Proposal;
- (e) any Subordinate Agreement;
- (f) any Subscriber Plan, if applicable.

1.9 Interpretive Value of Headings - The division of this Master Agreement into Articles, Sections and subsections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Master Agreement or any Subordinate Agreement. The Article and Section headings in this Master Agreement are not intended to be full or accurate descriptions of the text to which they refer. References in this Master Agreement to an Article, Section, subsection or Attachment refer to the applicable Article, Section, subsection or Attachment of this Master Agreement unless otherwise stated.

1.10 Force Majeure – Neither Party shall be liable for damages caused by delay or failure to perform its obligations under this Master Agreement or a Subordinate Agreement or a Subscriber Plan where such delay or failure is caused by an event beyond its reasonable control. The Parties agree that an event shall not be considered beyond one's reasonable control if a reasonable business person applying due diligence in the same or similar circumstances under the same or similar obligations as the provisions of this Master Agreement or the Subordinate Agreement or the Subscriber Plan 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 include natural disasters and acts of war, insurrection and terrorism but shall not include shortages or delays relating to supplies or services. The Vendor shall use commercially reasonable best efforts to overcome the events and overcome any delays or failures as soon as practicable. The Vendor shall implement, and shall cause its Subcontractors to implement, the contingency measures as may be necessary to minimize any disruption or deterioration in the level of service to Clients.

1.11 Notices by Prescribed Means - Notices shall be in writing and shall be delivered by postage-prepaid envelope, personal delivery or facsimile and shall be addressed to, respectively:

To the Vendor to the attention of the Vendor Representative:

[*Instructions: Insert Vendor's name and address]

Vendor Representative: [*Instructions: Insert name]

[*Instructions: Insert title]

Telephone No:

[*Instructions: Insert number]

Facsimile No:

[*Instructions: Insert number]

To MGS to the attention of the MGS Representative:

Ministry of Government Services

Supply Chain Management

I&IT Procurement Branch
700 University Avenue, 6th floor
Toronto, Ontario
M7A2S4

MGS Representative: [*Instructions: Insert name]
 [*Instructions: Insert title]

Telephone No: [*Instructions: Insert number]
Facsimile No: [*Instructions: Insert number]

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 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 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.

Each Party may change its designated representative and its address or fax number for receipt of notices by providing notice to the other Party.

- 1.12 **Governing Law and Forum** - This Master Agreement, each Subordinate Agreement and each Subscriber Plan shall be governed by the laws in effect in the Province of Ontario and the applicable federal laws of Canada. The Parties irrevocably and unconditionally submit to the jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals from them. The jurisdiction for any Proceeding commenced by the Vendor shall vest solely and exclusively in the Province of Ontario, and the Vendor shall not file a Proceeding in any other jurisdiction. The Parties agree that the *United Nations Convention on Contracts for the International Sale of Goods* does not apply to this Master Agreement, any Subordinate Agreement or any Subscriber Plan and is strictly excluded.
- 1.13 **Currency** - All amounts set out in this Master Agreement and in any Subordinate Agreement, and all payments, shall be in Canadian funds.
- 1.14 **Rights and Remedies** - The rights and remedies of the Parties under this Master Agreement and under each Subordinate Agreement are cumulative and may be exercised separately, concurrently or successively, and are in addition to and not in substitution for any rights or remedies provided at law or in equity, and shall not merge upon termination of this Master Agreement or of any Subordinate Agreement.
- 1.15 **No Waiver** - No failure by Ontario to exercise a right or remedy or insist upon performance by the Vendor of any of the terms or conditions of this Master Agreement, and no failure by any Client to exercise a right or remedy or insist upon performance by the Vendor of any of the terms or conditions of any Subordinate Agreement or any Subscriber Plan, shall be construed as a waiver of the right of Ontario or the Client, respectively, to exercise such right or remedy or require performance of those terms or conditions, and the obligations of the Vendor with respect to such performance shall continue in full force and effect, unless such waiver is in writing and signed by the Party against whom the Vendor seeks to enforce the waiver and only for the specific purpose for which it is given.

1.16 **Schedules** - This Master Agreement includes the following Schedules, which constitute an integral part of this Master Agreement and are incorporated into and form part of it:

- (a) Schedule A - The Deliverables
- (b) Schedule B - Prices
- (c) Schedule C - Reports
- (d) Schedule D - Assignment of Rights
- (e) Schedule E - Provincially Funded Organization Notice
- (f) Schedule F - Subcontractors
- (g) Schedule G - PCI DSS Compliance Validation Requirements

1.17 **Attachments** - This Master Agreement includes the following Attachments, which constitute an integral part of this Master Agreement and are incorporated into and form part of it:

- (a) Attachment 1 - Request for Proposals
- (b) Attachment 2 - Proposal Document Submitted by the Vendor

ARTICLE 2. SCOPE

2.1 **Acquisition of Deliverables and Services** – Subject to Section 6.1 (Ordering Devices and Services During the Ordering Term), MGS may acquire on behalf of Ontario, and OPS Entities may acquire on their own behalf, Deliverables and Services from the Vendor, all in accordance with the terms of this Master Agreement.

2.2 **Subordinate Agreements** - Each Subordinate Agreement shall include the terms and conditions of this Master Agreement by reference and shall constitute a separate contract from every other Subordinate Agreement. No term or condition set out in any Subordinate Agreement shall have any effect upon any other Subordinate Agreement. Each Subordinate Agreement shall be governed by all of the terms and conditions of this Master Agreement and such additional terms and conditions as may be set out in the Subordinate Agreement that are not inconsistent with the terms of this Master Agreement.

2.3 **Subscriber Plans** - Each Subscriber Plan shall include the terms and conditions of this Master Agreement by reference and shall constitute a separate contract from every other Subscriber Plan. Each Subscriber Plan shall include the terms and conditions of the applicable Subordinate Agreement by reference. No term or condition set out in any Subscriber Plan shall have any effect upon any other Subscriber Plan. Subject to Section 1.8 (Interpretive Value of Documents), each Subscriber Plan shall be governed by all of the terms and conditions of this Master Agreement and such additional terms and conditions as may be set out in the applicable Subordinate Agreement and the Subscriber Plan that are not inconsistent with the terms of this Master Agreement.

2.4 **No Obligation to Enter into any Subordinate Agreement or Subscriber Plan** - Neither Ontario or any OPS Entity is under any obligation to enter into any Subordinate Agreement or any Subscriber Plan with the Vendor.

- 2.5 **Volumes; Non-Exclusivity** - The Vendor acknowledges and agrees that Ontario makes no representation, warranty, guarantee or other agreement regarding the value or volume of Deliverables or Services to be acquired from the Vendor pursuant to this Master Agreement. The Vendor acknowledges that it enters into this Master Agreement and each Subordinate Agreement and each Subscriber Plan on a non-exclusive basis. Ontario and each OPS Entity reserves the right to contract with other parties for the same or similar products or services as those provided by the Vendor and reserves the right to obtain them internally.

ARTICLE 3. LEGAL RELATIONSHIPS BETWEEN THE PARTIES

- 3.1 **Vendor and its Personnel Not an Agent, Employee or Partner** - The Vendor shall have no power or authority to bind Ontario or any OPS Entity or to assume or create any obligation or responsibility, express or implied, on behalf of Ontario or any OPS Entity. The Vendor shall not hold out itself, or any of its Personnel, as an agent, employee or partner of Ontario or of any OPS Entity. Nothing in this Master Agreement or any Subordinate Agreement or any Subscriber Plan shall have the effect of creating an agency, employment or partnership relationship between Ontario or any OPS Entity and the Vendor (or any of the Vendor's directors, officers, Personnel, agents, partners, affiliates, volunteers or Subcontractors) pursuant to the *Employment Standards Act, 2000*, S.O. 2000, c. 41, as amended, or any other legislation or at common law, or constitute an appointment under the *Public Service of Ontario Act, 2006*, S.O. 2006, c. 35, as amended. The Vendor is solely responsible for all legally required employer and employee contributions and deductions, compensation and benefits for itself and its Personnel.

3.2 Subcontractors

- (a) **General** - Ontario acknowledges that, subject to the terms of this Master Agreement, the Vendor may use Subcontractors to provide Deliverables and Services to the Client under a Subordinate Agreement or a Subscriber Plan between the Vendor and the Client.

Despite the foregoing acknowledgement, unless otherwise stated in this Master Agreement, the Vendor shall be the primary point-of-contact for Ontario and the Client in connection with this Master Agreement and all Subordinate Agreements and all Subscriber Plans.

The Vendor shall not subcontract (except to a Subcontractor listed in Schedule F (Subcontractors)) or assign the whole or any part of this Master Agreement or any Subordinate Agreement or any Subscriber Plan without the prior written consent of the Minister (MGS); such consent shall be in the sole discretion of the Minister (MGS) and subject to the terms and conditions that may be imposed by the Minister (MGS). The Vendor shall not assign any monies due under any Subordinate Agreement without the prior written consent of the Client; such consent shall be in the sole discretion of the Client and subject to the terms and conditions that may be imposed by the Client.

Without limiting the generality of the conditions that the Minister (MGS) may require prior to consenting to the Vendor's use of a Subcontractor, the following conditions shall apply with respect to each and every subcontract entered into by the Vendor with a Subcontractor:

- (i) the Subcontractor does not impose, and the subcontract will not result in the imposition of, any additional liability on Ontario or any OPS Entity, or any additional obligation on Ontario or any OPS Entity except to the extent permitted in Section 1.5;
- (ii) the use of any Subcontractor of the Vendor shall not relieve the Vendor of any obligation or liability under this Master Agreement or any Subordinate Agreement or any Subscriber Plan;
- (iii) the terms and conditions of any subcontract entered into by the Vendor with a Subcontractor in respect of all or any part of a Subordinate Agreement or any Subscriber Plan shall be consistent in all respects with the applicable terms and conditions of this Master Agreement and the Subordinate Agreement, including that the Subcontractor shall not subcontract or assign the whole or any part of the Subordinate Agreement or the Subscriber Plan without the prior written consent of the Minister (MGS) or that the Subcontractor shall not assign any monies due under it without the prior written consent of the Client; and
- (iv) any subcontract shall provide that neither the Subcontractor nor any of its officers, directors, agents, partners or employees shall have any right or cause of action against Ontario or any OPS Entity, and that the Subcontractor shall not exercise any right or remedy arising out of the subcontract, including the right to be paid for services provided under the subcontract, except solely against the Vendor.

The Vendor shall be solely responsible for, and liable for the acts and omissions of, its Subcontractors, including its Subcontractors' compliance with all of the Vendor's obligations under this Master Agreement and any Subordinate Agreement and any Subscriber Plan, and for payment of any and all amounts resulting from any subcontract between the Vendor and its Subcontractors. No subcontracting shall release the Vendor from the performance of its obligations under this Master Agreement or any Subordinate Agreement or any Subscriber Plan.

- (b) **Approval** - The first-tier Subcontractors who have been approved by Ontario to provide Deliverables and Services under this Master Agreement are listed in Schedule F (Subcontractors), along with a list of the Deliverables or Services for which the first-tier Subcontractors have been approved by Ontario. Schedule F (Subcontractors) may be amended at any time and from time to time upon the written agreement of the Minister (MGS) and the Vendor.
- (c) **Communication with Subcontractors** - The Vendor acknowledges that Ontario or any OPS Entity may, during the course of this Master Agreement, require direct communication with a Subcontractor regarding matters within the scope of the Subcontractor's responsibilities subcontracted to it by the Vendor. The Vendor agrees that nothing in this Master Agreement or any Subordinate Agreement or any Subscriber Plan shall prohibit or limit the ability of Ontario or any OPS Entity, if Ontario or the OPS Entity in its opinion determines that it is desirable in the circumstances to do so, to directly communicate with the Vendor's Subcontractors regarding matters within the scope of the Subcontractor's responsibilities. Such communication shall not be construed

as a waiver by Ontario or the OPS Entity of the Vendor's responsibility for the Vendor's compliance with its obligations under this Master Agreement or any Subordinate Agreement or any Subscriber Plan.

- (d) **Relationship** - Nothing in this Master Agreement or any Subordinate Agreement or any Subscriber Plan shall create a contractual relationship between (i) any Subcontractor or its employees or contractors and (ii) Ontario or any OPS Entity.
- (e) **Right to Enter into Agreements with Subcontractors** - Without limiting the generality of Section 2.5 (Volumes; Non-Exclusivity), the Vendor agrees that nothing in this Master Agreement or any Subordinate Agreement or any Subscriber Plan shall prohibit or prevent Ontario or any OPS Entity from entering into a contract with any of the Vendor's Subcontractors for the same or similar products or services provided by the Vendor or the Vendor's Subcontractor under this Master Agreement or under any Subordinate Agreement or any Subscriber Plan.
- (f) **Withdrawal of Approval of Subcontractor** - If the Minister (MGS), in its sole discretion, deems any of the Vendor's Subcontractors to be inappropriate, the Minister (MGS) may withdraw its approval of such Subcontractor for the purposes of this Master Agreement or any or all Subordinate Agreements or any or all Subscriber Plans. The Vendor shall immediately, upon receipt of the Minister (MGS)'s request, stop using the Subcontractor to provide Deliverables and Services under this Master Agreement or the applicable Subordinate Agreements or the applicable Subscriber Plans. The Vendor shall propose a suitable replacement for each Subcontractor deemed inappropriate by the Minister (MGS). The Vendor shall provide MGS with the opportunity to interview its proposed Subcontractor, at no cost to Ontario. The Vendor agrees that any proposed replacement must be qualified and must possess similar or greater qualifications than the Subcontractor being replaced, and that the Minister (MGS)'s approval may, at the discretion of the Minister (MGS), be subject to Article 12 (Security Clearance). If the Vendor fails to propose any replacement Subcontractor within three (3) Business Days, or proposes a replacement Subcontractor who the Minister (MGS) deems, in its sole discretion, to be inappropriate or not available in a timely manner, the Minister (MGS) may immediately terminate the Subordinate Agreement or the Subscriber Plan by giving notice of termination and such termination shall be in addition to the other rights and remedies of the Client under this Master Agreement, the Subordinate Agreement, the Subscriber Plan, at law or in equity.

Neither Ontario nor any OPS Entity shall have any liability to the Vendor or any of its Personnel arising out of or in connection with the withdrawal of approval under this subsection or the termination of any Subordinate Agreement or any Subscriber Plan in accordance with this subsection.

For certainty, the Minister (MGS) is not required to exercise its right in this subsection prior to entering into a contract with any of the Vendor's Subcontractors as permitted in subsection 3.2(e) above.

- 3.3 **Duty to Disclose Change of Control** - If the Vendor or any first-tier Subcontractor undergoes a change in control, the Vendor shall disclose such change in control to the MGS Representative

within fourteen (14) calendar days and shall comply with any reasonable terms and conditions subsequently prescribed by MGS resulting from the disclosure.

3.4 Assignment of Master Agreement or Subordinate Agreement or Subscriber Plan by Vendor

- The Vendor shall not assign the whole or any part of this Master Agreement or any Subordinate Agreement or any Subscriber Plan without the prior written consent of the Minister (MGS). Such consent shall be in the sole discretion of the Minister (MGS), acting reasonably, and subject to the terms and conditions that may be imposed by the Minister (MGS), including the following:

- (a) the consent shall be without prejudice to any rights, claims or defences that Ontario or any Client may have in respect of this Master Agreement or any Subordinate Agreement or any Subscriber Plan;
- (b) Ontario will not be deemed to have waived any right or obligation under this Master Agreement or any Subordinate Agreement or any Subscriber Plan as a consequence of granting the consent; and
- (c) Ontario will not be deemed to have waived any default, breach or non-compliance under this Master Agreement or any Subordinate Agreement or any Subscriber Plan as a consequence of granting the consent.

3.5 Assignment of Master Agreement and Subordinate Agreements and Subscriber Plans by Ontario

- Provided that the Vendor has received sixty (60) calendar days prior written notice from MGS of Ontario's intent to assign, Ontario may assign without the consent of the Vendor all or any part of this Master Agreement and all or any part of any or all Subordinate Agreements and any or all Subscriber Plans, where the assignment is required or desirable for any internal government reorganization, to any ministry, agency, board, commission, or Crown corporation of the Government of Ontario or any Provincially Funded Organization, or where such assignment is necessitated by outsourcing, privatizing, restructuring, partnering or similar activity, to a non-governmental entity.

3.6 Conflict of Interest

- The Vendor shall: (a) avoid any Conflict of Interest in the performance of its contractual obligations; (b) disclose to MGS 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 MGS to resolve any Conflict of Interest. In addition to all other contractual rights or rights available at law or in equity, the Minister (MGS) may immediately terminate this Master Agreement, and Minister (MGS) or each OPS Entity may immediately terminate any or all Subordinate Agreements or any or all Subscriber Plans, upon giving notice to the Vendor where: (a) the Vendor fails to disclose an actual or potential Conflict of Interest; (b) the Vendor fails to comply with any requirements prescribed by MGS to resolve a Conflict of Interest; or (c) the Vendor's Conflict of Interest cannot be resolved. This Section shall survive any termination or expiry of this Master Agreement and of every Subordinate Agreement and of every Subscriber Plan.

3.7 Binding Nature

- This Master Agreement and each Subordinate Agreement and each Subscriber Plan shall enure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

ARTICLE 4. PROVINCIALY FUNDED ORGANIZATIONS

- 4.1 **Provincially Funded Organization Agreements** - If the Vendor wishes to provide products and services to Provincially Funded Organizations, the Vendor may only do so under a separate agreement with a Provincially Funded Organization. If the Vendor receives a request from any Provincially Funded Organization to supply products and services to the Provincially Funded Organization that are the same as the Deliverables and the Services, the Vendor shall: (a) prior to engaging in negotiations with that Provincially Funded Organization, provide the Provincially Funded Organization with a copy of the acknowledgement as attached as Schedule E to this Master Agreement ("**Provincially Funded Organization Notice**"); and (b) subject to the Vendor's compliance with subsection (a) above, use commercially reasonable efforts to negotiate with that Provincially Funded Organization for the purpose of entering into a mutually agreeable agreement for the supply to the Provincially Funded Organization of products and services that are the same as the Deliverables and the Services ("**Provincially Funded Organization Agreement**") based on the same or similar terms (including price and the length of the term) of this Master Agreement.

The Vendor agrees that the Vendor and the Provincially Funded Organization remain solely responsible for negotiating the terms and conditions (including all business, legal and other terms as may be necessary or desirable for the Vendor and the Provincially Funded Organization) of the Provincially Funded Organization Agreement and for any resulting or related relationships and agreements between the Vendor and the Provincially Funded Organization.

- 4.2 **Status of Provincially Funded Organizations** - Provincially Funded Organizations cannot enter into any Subscriber Plan or any Order or any other subordinate agreement to this Master Agreement to acquire any Deliverables or Services or any other products and services under this Master Agreement.

- 4.3 **Ontario Not Liable for Vendor's Relationship with Provincially Funded Organizations** - The Vendor acknowledges and agrees as follows:

- (a) Ontario does not endorse, recommend or approve the suitability of: (i) any Provincially Funded Organization as a customer of the Vendor; and (ii) the terms and conditions of this Master Agreement (or any Subordinate Agreement or any Subscriber Plan under this Master Agreement) as a basis for, in whole or in part, any Provincially Funded Organization Agreement or any other resulting or related relationships or agreements between the Vendor and any Provincially Funded Organization. The Vendor is solely responsible for conducting its own independent assessment (including obtaining its own professional advice as may be necessary and appropriate in the Vendor's specific circumstances) to determine the suitability of the above.
- (b) Ontario makes no representation, assurance, warranty, or guarantee: (i) that any Provincially Funded Organizations will acquire products or services from or consider the products or services of the Vendor; or (ii) of the value or volume of products or services that may or will be ordered, if any, by any or all Provincially Funded Organizations.
- (c) Ontario will not, in respect of any Provincially Funded Organization Agreement or any resulting or related relationships or agreements between the Vendor and any Provincially Funded Organization: (i) be or be deemed to be a party to, or a guarantor of any

obligations or liability of any party under, any Provincially Funded Organization Agreements or any such relationships or agreements; or (ii) be responsible or liable to the Vendor or any third party for any costs, obligations, liabilities or covenants of the Provincially Funded Organization, and nothing in any agreement between the Vendor and any Provincially Funded Organization shall have the effect of imposing or resulting in the imposition of any costs, obligations, liabilities or covenants on Ontario.

- (d) The Vendor shall not, in relation to or under any Provincially Funded Organization Agreement or under any resulting or related relationships or agreements between the Vendor and any Provincially Funded Organization, bring any Proceedings against Ontario or any of its Personnel or any Indemnified Party as a result of: (i) any act, error or omission of the parties to the Provincially Funded Organization Agreement; or (ii) any act, error or omission of Ontario or any of its Personnel.
- (e) The Vendor is solely responsible for its own contract administration with each Provincially Funded Organization and shall not direct any issues that may arise with any Provincially Funded Organization to Ontario.
- (f) For the purposes of any Provincially Funded Organization Agreement, the Vendor acknowledges that Provincially Funded Organizations have no power or authority to bind Ontario or to assume or create any obligation or responsibility, express or implied, on behalf of Ontario.
- (g) Despite any provision in this Master Agreement or any Subordinate Agreement or any Subscriber Plan to the contrary, the Vendor shall be responsible for any and all Losses suffered by any Indemnified Party arising out of or in connection with any Provincially Funded Organization Agreement or any breach by the Vendor of this Article 4 (Provincially Funded Organizations).

4.4 Disclosure of Information

- (a) Ontario may, from time to time and at its sole discretion, inform any or all Provincially Funded Organizations of: (i) the Vendor's status as a vendor of record; (ii) the products and services of the Vendor that are available to Ontario under this Master Agreement; and (iii) the Vendor's obligation under this Section 4.4 and under Section 4.1. In addition, Ontario and any OPS Entity may disclose, and the Vendor consents to the disclosure, to Provincially Funded Organizations of this Master Agreement or any part of it (including pricing), as amended. For the purposes of the disclosure under this Section 4.4, the Vendor agrees that neither this Master Agreement or any part of it is considered to be Confidential Vendor Information and no notice to or further consent of the Vendor is required prior to disclosure to any Provincially Funded Organization.
- (b) If the Vendor is requested by a Provincially Funded Organization to do so, the Vendor shall provide to that Provincially Funded Organization the following documents and information: (i) the RFP and other related procurement documents that were publicly issued; and (ii) the Vendor's Proposal in response to the RFP, but only to the extent that it does not include OPS Confidential Information.

- (c) The Vendor agrees to provide to Ontario, at Ontario's request, data and information regarding Provincially Funded Organization access to and acquisition of products and services from the Vendor.
- (d) The Vendor consents to Ontario receiving data and information from a Provincially Funded Organization of such Provincially Funded Organization's request for access to and acquisition of products and services from the Vendor.

ARTICLE 5. TERM OF MASTER AGREEMENT, ORDERING TERM, AND TERM OF SUBORDINATE AGREEMENTS

- 5.1 Term of Master Agreement and Option to Extend** - This Master Agreement shall be in effect from and including the Master Agreement Effective Date and shall remain in force until and including the Master Agreement Expiry Date, unless terminated earlier in accordance with the terms of this Master Agreement or unless extended by the Minister (MGS), in its sole discretion, on up to two occasions only on the same terms and conditions (excluding any option to further extend this Master Agreement during the second extension) for additional periods of twenty-four (24) months each by written notice from MGS to the Vendor given not less than sixty (60) days prior to the Master Agreement Expiry Date.
- 5.2 Ordering Term** - The Ordering Term shall commence on the Master Agreement Effective Date and shall remain in force until and including the last day of the Term of this Master Agreement. The Ordering Term may consist of the following subsets:
- (a) The First Ordering Term for Stream No. 1 and the First Ordering Term for Stream No. 2 shall commence on the Master Agreement Effective Date and each shall remain in force until and including the earlier of: (a) the last day of the Term of this Master Agreement; (b) the calendar day immediately preceding the first day of the Second Ordering Term; and (c) the effective date of an applicable early termination pursuant to Section 25.1 (Termination of Stream No. 1 or Stream No. 2 for Convenience), in which case there will be no subsequent ordering terms for the terminated Stream.
 - (b) The Second Ordering Term for Stream No. 1, if any, and the Second Ordering Term for Stream No. 2, if any, shall commence on a calendar day determined by MGS, which follows the first Competitive Pricing Refresh, if any, and shall remain in force until and including the earlier of: (a) the last day of the Term of this Master Agreement; (b) the calendar day immediately preceding the first day of the Third Ordering Term, if any; and (c) the effective date of an applicable early termination pursuant to Section 25.1 (Termination of Stream No. 1 or Stream No. 2 for Convenience), in which case there will be no subsequent ordering terms for the terminated Stream.
 - (c) The Third Ordering Term for Stream No. 1, if any, and the Third Ordering Term for Stream No. 2, if any, shall commence on a calendar day determined by MGS, which follows the second Competitive Pricing Refresh, if any, and shall remain in force until and including the earlier of: (a) the last day of the Term of this Master Agreement, (b) the calendar day immediately preceding the first day of the Fourth Ordering Term, if any; and (c) the effective date of an applicable early termination pursuant to Section 25.1

(Termination of Stream No. 1 or Stream No. 2 for Convenience), in which case there will be no subsequent ordering terms for the terminated Stream.

- (d) The Fourth Ordering Term for Stream No. 1, if any, and the Fourth Ordering Term for Stream No. 2, if any, shall commence on a calendar day determined by MGS, which follows the third Competitive Pricing Refresh, if any, and shall remain in force until and including the last day of the Term of this Master Agreement.

5.3 Term of Subordinate Agreements - If the term of a Subordinate Agreement extends beyond the date of termination or expiration of this Master Agreement, the Subordinate Agreement shall survive the termination or expiration of this Master Agreement, unless terminated by MGS or a Client in accordance with Article 24, and all of the terms and conditions of this Master Agreement shall continue to apply to the Subordinate Agreement.

5.4 Term of Subscriber Plans - If the term of a Subscriber Plan extends beyond the date of termination or expiration of this Master Agreement or the Subordinate Agreement, the Subscriber Plan shall survive the termination or expiration of this Master Agreement and the Subordinate Agreement, unless terminated by MGS or a Client in accordance with Article 24, and all of the terms and conditions of this Master Agreement and the Subordinate Agreement shall continue to apply to the Subscriber Plan.

ARTICLE 6. ACQUISITION OF DEVICES AND SERVICES

6.1 Ordering Devices and Services - During the Ordering Term:

- (a) an MGS contact listed on the MGS Authorized Contact List may, on behalf of Ontario, from time to time on a non-exclusive basis, place orders for Devices or Services, or a combination of both, from the Vendor by issuing an Order; and
- (b) an OPS Entity may, on behalf of the OPS Entity, from time to time on a non-exclusive basis, place orders for Devices or Services, or a combination of both, from the Vendor by issuing an Order.

6.2 Refusal of Unauthorized Orders and Service Requests - The Vendor, and its Subcontractors, shall not:

- (a) accept from Ontario any Orders for any Devices or Services; or
 - (b) process any Service Requests received;
- from any Person other than an MGS contact listed on the MGS Authorized Contact List.

6.3 Right to Refuse MGS Orders - When an Order is issued pursuant to this Master Agreement, by an MGS contact listed on the MGS Authorized Contact List, for any Mobile Devices, Paging Devices or Services, if the Vendor is unable to meet all of the requirements of the Order at the time the Order is issued, the Vendor shall:

- (a) refuse the Order in its entirety in writing as soon as possible, but not later than eight (8) Business Hours after receipt of the Order, and the Order shall be deemed to be cancelled upon MGS receiving notice of such refusal:

- (i) by means of a notification capability in the Secure Web Portal that has been pre-approved for such purpose by MGS, or
 - (ii) at such email address as an MGS contact listed on the MGS Authorized Contact List may specify for such purpose at any time or from time to time; and
- (b) at the request of an MGS contact listed on the MGS Authorized Contact List, return any documents and materials which the Vendor received as part of the Order within two (2) Business Days following the request for its return.

The Vendor is not permitted to refuse an Order in part.

6.4 Orders - When an Order is issued pursuant to this Master Agreement by an MGS contact listed on the MGS Authorized Contact List or any OPS Entity for any Mobile Devices, Paging Devices or Services:

- (a) if the Order is accepted by the Vendor, the Order is a contract entered into by the Client and the Vendor regardless whether the Order is intended to be, or is, fulfilled by a Subcontractor of the Vendor, and the Vendor shall supply (or the Vendor's Subcontractor on the Vendor's behalf shall supply) the Devices and Services ordered under the Order; and
- (b) the Vendor shall be deemed to have accepted the Order in its entirety, without modification, upon the earliest of: (i) the Vendor's acceptance via a formal written acknowledgment to the Client; (ii) delivery of any Deliverables or Services that are the subject of the Order by the Vendor or a Subcontractor of the Vendor; (iii) the expiry of the time period set out in subsection 6.3 (a) for the receipt by the Client of the Vendor's notice of refusal to fulfill the Order; or (iv) the issuance of an invoice by the Vendor or its Subcontractor to the Client under the Order for any or all of the Deliverables ordered under that Order. Acceptance is expressly limited to the terms and conditions of this Master Agreement and such other terms and conditions as are expressly referenced in the Order. Any additions or modifications proposed by the Vendor or a Subcontractor of the Vendor are expressly rejected by the Client and are not part of the Order in the absence of an agreement in writing signed by an authorized representative of the Client.

6.5 Provision of Restricted Access to Secure Web Portal – At all times during the Term and at any time following the expiry or termination of this Master Agreement until every Subordinate Agreement and every Subscriber Plan has expired or terminated, the Vendor shall maintain the Secure Web Portal, and make the Secure Web Portal available for access and use only by:

- (a) the individuals specified by MGS who are listed on the MGS Authorized Contact List at any time in respect of Ontario's Orders and Service Requests;
- (b) each OPS Entity in respect of the Orders and Service Requests of such OPS Entity; and
- (c) MGS for audit purposes and for such other purposes as are set out in this Master Agreement or the RFP.

6.6 Right to Access and Use Secure Web Portal – Subject to Section 6.5 (Provision of Restricted Access to Secure Web Portal), the Vendor hereby grants to Ontario and each OPS Entity a transferable, irrevocable, fully paid-up, royalty-free licence and right to access and use the Secure Web Portal for the purposes set out in the RFP at any time during the Term, and at any time following the expiry or termination of this Master Agreement until every Subordinate Agreement and every Subscriber Plan has expired or terminated.

- 6.7 **Changes** - In addition to the change management provisions in the RFP, from time to time, individuals specified by MGS who are listed on the MGS Authorized Contact List may request changes to the Devices or Subscriber Plan, by executing a change request. The Vendor shall advise such individual within five (5) Business Days of receipt of a change request, whether it is able to comply with the requested change, and shall indicate the effect of the requested change on the price payable by the Client and any other change to the terms and conditions of the Subordinate Agreement or the Subscriber Plan that are necessitated by the changes requested by such individual. No changes to any Subordinate Agreement or any Subscriber Plan will be binding on a particular Client unless the Client first agrees to them in writing.
- 6.8 **Roaming** - A Client may use any Device throughout the province of Ontario and, if enabled at the request of the Client, at all of the locations outside the province of Ontario across Canada where the Vendor indicated it has coverage in its Proposal, using the Vendor's roaming service. The applicable charges for using the Vendor's roaming service are set out in Schedule B. The Vendor shall not charge any roaming fees for the use of any Device within Ontario, including all of the locations where the Vendor indicated it has coverage in its Proposal. If the Vendor charges any amount for roaming when the Device is used in Ontario, the Vendor shall credit that amount in full to the Client in the next billing cycle.
- 6.9 **Accessibility Requirements** - The Vendor's delivery of the Deliverables shall comply with all applicable requirements, specifications and standards for accessibility established in accordance with the *Accessibility for Ontarians with Disabilities Act, 2005*, S.O. 2005 c. 11, any regulations made thereto, and any direction from MGS.
- 6.10 **Risk of Loss or Damages (Devices)** - All risk of loss or damage to any Device prior to the Client taking physical possession of the Device at the location specified by the Client in the Subordinate Agreement will be the responsibility of the Vendor. Upon the Client taking physical possession of the Device at the location specified by the Client in the Subordinate Agreement, the risk of loss or damage passes to the Client.

ARTICLE 7. PERFORMANCE BY THE VENDOR

- 7.1 **Performance** - The Vendor shall diligently carry out and complete the Services and provide all Deliverables in accordance with this Master Agreement, the Subordinate Agreement, the Subscriber Plan, Industry Standards and Requirements of Law. For greater certainty, the Vendor acknowledges and agrees that the foregoing obligation includes the performance by the Vendor of all obligations set out in the RFP, including compliance with all mandatory requirements.
- 7.2 **Performance by Specified Individuals Only** - The Vendor agrees that to the extent that specific individuals are named in this Master Agreement or any Subordinate Agreement as being responsible for the provision of any Services, only those individuals shall provide such Services. The Vendor shall not replace or substitute any of the individuals named in this Master Agreement or the Subordinate Agreement without the prior written approval of MGS, which may not arbitrarily or unreasonably be withheld. Should the Vendor require the substitution or replacement of any of the individuals named in this Master Agreement or the Subordinate Agreement, it is understood and agreed that any proposed replacement must possess similar or greater qualifications than the individual named in this Master Agreement or the Subordinate Agreement. The Vendor shall not claim fees for any such individual or replacement individual.

- 7.3 **Network Services Availability** – Unless a Service Level specified in Schedule A or the RFP specifies otherwise, network services in Ontario shall be available 24 hours per day, 7 days per week.
- 7.4 **Grant of Licence** - It is a term of each Subordinate Agreement and Subscriber Plan that the Vendor grants, or shall obtain from its Subcontractors or third parties the rights to grant, to the Client a perpetual, non-exclusive, irrevocable, transferable, fully paid-up, royalty-free licence to:
- (a) use the Device;
 - (b) without limiting the generality of subsection (a) above:
 - (i) install, use, and reproduce the software on or included with the Devices;
 - (ii) configure the software on or included with the Device in any manner in accordance with the requirements of the Client in order to optimize the use of such Device; and
 - (iii) copy, modify and distribute any Documentation; and
 - (c) sublicense the Client's rights in (a) and (b) above to any third party.

Each licence granted under this section shall survive any expiration or termination of this Master Agreement and each Subordinate Agreement and Subscriber Plan. For certainty, the licence granted above is not subject to any restrictions not set out in the Master Agreement. Also, for certainty, a Client is not obligated to acquire Services in order to exercise the licence rights granted in and to the software on or included with any Devices.

- 7.5 **Service Levels** - The Vendor acknowledges and agrees that any failure by it to meet targets of one or more Service Levels as defined in the Master Service Level Matrix in the RFP, may have a material adverse effect on the business and operations of MGS, Ontario or any one or more OPS Entities and that the actual amount of damage that may be sustained by Ontario and any OPS Entities because of such failure may be impracticable or extremely difficult to determine.

ARTICLE 8. PAYMENT FOR PERFORMANCE

- 8.1 **Price for Deliverables and Services** - In consideration of the provision of Deliverables and Services under a Subordinate Agreement, the Client shall pay no more than the relevant Prices set out in Schedule B (Prices), subject to the terms and conditions of this Master Agreement.
- 8.2 **Submission of Invoice** - Unless specified otherwise in a Subordinate Agreement, the Vendor or its Subcontractors shall submit an itemized invoice to the Client with respect to the Deliverables and Services no later than ten (10) Business Days after the end of each month for the term of the Subordinate Agreement.
- 8.3 **Content of Invoices** - Invoices submitted by the Vendor or its Subcontractors to the Client shall cover the period from the first calendar day of the month to the last calendar day of the month or a shorter term as may be applicable. The Client may require that the Vendor or its Subcontractors include additional information or supporting documentation in its invoices, upon notice to the Vendor.

- 8.4 **Approval, Amendment, Rejection** - Within ten (10) Business Days following receipt of an invoice, the Client shall approve, amend or reject the amount payable pursuant to the invoice. If the Client amends or rejects the amount payable, it shall promptly advise the Vendor or its Subcontractor in writing of the amendment or rejection, and shall indicate why the amount has been amended or rejected, and the Vendor or its Subcontractor shall provide any additional information as required by the Client to substantiate the billing statement. If the Client has approved the amount payable, payment thereof shall be due within thirty (30) Business Days following receipt of the invoice by the Client. Clients shall not be liable for payment of any interest in respect of any amount due and owing to the Vendor or any Subcontractor pursuant to a Subordinate Agreement.
- 8.5 **Payment of Invoices Issued by Vendor** – Subject to Section 8.7, if an approved invoice was submitted by the Vendor, the Client shall pay the amount of the invoice to the Vendor.
- 8.6 **Payment of Invoices Issued by Subcontractors** - Subject to Section 8.7, if an approved invoice was submitted by the Vendor's Subcontractor, the Client shall pay the amount of the invoice to the Subcontractor and the Vendor hereby acknowledges and agrees that Client's payment to the Subcontractor shall constitute payment in full of the amount owed under the Subordinate Agreement. Such payment is, to the extent of the payment, a discharge of the Client's liability to the Vendor under the Subordinate Agreement and may be deducted from any amount payable to the Vendor under the Subordinate Agreement.
- 8.7 **Duplicate Invoices** – If both the Vendor and any of its Subcontractors submit invoices to the Client for the same Deliverables or Services: (a) the Client may choose to pay either the Vendor or the Subcontractor; and (b) if the Client pays both invoices, the Vendor shall reimburse the Client in the amount paid to the Vendor under the invoice immediately upon the Vendor being informed by the Client of such circumstance or immediately upon the Vendor becoming aware of such circumstance.
- 8.8 **Invoicing Addresses** - The invoices for payment of any charges under a Subordinate Agreement shall be sent to the address specified by the Client in the Subordinate Agreement. If no address is specified, invoices shall be sent to the applicable address provided for in Section 1.11 or such other address as MGS designates from time to time in writing.
- 8.9 **Payment Address** - All payments pursuant to this Master Agreement shall be made to the Vendor or its Subcontractors at the address specified in Section 1.11 or such other address as the Vendor or its Subcontractors designates from time to time in writing. The Vendor or its Subcontractors shall provide to MGS and the relevant Client at least one (1) month's prior notice in writing of any change in the Vendor's or its Subcontractors address for payment purposes.
- 8.10 **Procurement Card Payments** - Ontario or any OPS Entity may make payments under any Subordinate Agreement by way of Procurement Card and the Vendor shall accept and process any such payments in accordance with Procurement Card Protocols.
- 8.11 **Hold Back** - The Client shall have the right to hold back a part or the whole of any payment if, in the opinion of the Client acting reasonably, the Vendor or its Subcontractors has failed to comply with any requirements of this Master Agreement or the Subordinate Agreement or the Subscriber Plan.

- 8.12 **Payment of Taxes and Duties** - The Vendor or its Subcontractors shall pay or charge and remit, as required, all applicable taxes and duties, including excise taxes incurred by or on the Vendor's behalf or its Subcontractors behalf with respect to this Master Agreement and each Subordinate Agreement.
- 8.13 **Net Prices** - Unless otherwise specified, all Prices for the Deliverables shall be net prices in Canadian currency. For certainty, Prices are exclusive of harmonized sales tax (HST).
- 8.14 **Taxes Shown Separately** - Taxes, if payable by the Client, shall be identified as and shown as separate items on each invoice, at the rates in effect at the time when the Client requests the Deliverables or Services from the Vendor.
- 8.15 **Withholding Tax** - The Client shall withhold any applicable withholding tax from amounts due and owing to the Vendor or its Subcontractors under each Subordinate Agreement and shall remit it to the appropriate government in accordance with applicable tax laws. This Section shall survive any termination or expiry of this Master Agreement and of each Subordinate Agreement.
- 8.16 **Service Level Credits for Critical Service Level Breaches** - The Vendor acknowledges and agrees that MGS can seek to enforce against it any Service Level Credit remittance for any Critical Service Level breaches not previously enforced throughout the Term of this Master Agreement.
- 8.17 **No Expenses or Additional Charges** - There shall be no other charges payable by Ontario or any OPS Entity under this Master Agreement or any Subordinate Agreement to the Supplier other than the Prices.

ARTICLE 9. REPORTING

- 9.1 **Provision of Reports** - The Vendor shall provide to MGS the reports specified in the RFP.
- 9.2 **Format** - The Vendor shall provide each report in electronic form in accordance with the format set out in Schedule C to this Master Agreement.
- 9.3 **Security Report Requirement** - The Vendor shall provide immediate notice to the Client of any security incident. In addition, the Vendor shall provide security incident reports to the Client in accordance with the terms specified in the RFP. The Vendor shall also notify MGS of the security incident and provide MGS with a copy of each security incident report.
- 9.4 **Costs** - The Vendor shall be solely responsible for any and all costs associated with preparing, supporting, and producing reports required under this Master Agreement or the RFP.
- 9.5 **Other Reports** - The Vendor shall provide to MGS from time to time, in a format approved by MGS, any other information and documentation that MGS reasonably requests or which is otherwise required by this Master Agreement or the RFP.

ARTICLE 10. CHANGE MANAGEMENT

- 10.1 **Change Request** - Either MGS or the Vendor may submit to the other, in writing, a detailed change request in respect of the Deliverables, including innovative goods and service changes, the implementation of enhanced goods and services or a modification of this Master Agreement, in accordance with the provisions of this Article 10, in which case the Vendor shall also perform the Change Management Services that are a part of the Services.
- 10.2 **Evaluation** - The Vendor agrees that, upon request by MGS, it will provide an evaluation of the extent to which, if any, the implementation of the change would result in a change to the risk or consequences of a disruption in or failure to provide the Deliverables in accordance with the terms hereof.
- 10.3 **Change Order** - If MGS and the Vendor agree in principle to proceed to implement any change set out in a change request, the party who originated the request will prepare and the parties will negotiate a change order setting out the following information, as applicable:
- (a) a detailed description of the proposed change;
 - (b) any new responsibilities or modifications of the existing responsibilities of the Parties in connection with the proposed change;
 - (c) any related changes to the descriptions of the Deliverables, the Price and other Schedules of this Master Agreement;
 - (d) a detailed description of any acceptance test that will be conducted or test period that will apply to the implementation of the change; and
 - (e) a detailed description, including the applicable time period, of any contingency process to be implemented by the Parties.
- 10.4 **Change Order Execution** - Upon agreement between MGS and the Vendor regarding the terms of the change order, the change order will be executed by the Minister (MGS) and the Vendor, and this Master Agreement and the relevant Schedules will be revised in accordance with the change order.

ARTICLE 11. TESTING

- 11.1 **Testing and Acceptance** - Any Subordinate Agreement or Subscriber Plan may specify that the Client shall be entitled to carry out the tests as may be specified in the Subordinate Agreement or Subscriber Plan before the Client is required to accept the provision of the Deliverables. The testing shall be carried out for the period specified in the Subordinate Agreement or Subscriber Plan and in the manner specified in the Subordinate Agreement or Subscriber Plan. Upon completion of the testing, the Client shall advise the Vendor of any failure of the Deliverables to comply with any service levels, specifications or other requirements set out in the RFP, the Subordinate Agreement or Subscriber Plan and at no cost to the Client, the Vendor shall remedy the failure within the time as may be specified in the RFP or the applicable Subordinate Agreement or Subscriber Plan or if no time is specified, as soon as is reasonably practicable. The Client shall be entitled to carry out any necessary re-testing to enable the Client to confirm that any deficiencies with the Deliverables have been corrected. When the Client is satisfied that the Deliverables comply with the service levels, specifications or other requirements set out in the RFP, the Subordinate Agreement or Subscriber Plan, the Client will provide an acknowledgement

of acceptance to the Vendor. None of the Deliverables shall be deemed to be accepted by a Client prior to the delivery of the acknowledgment of acceptance.

ARTICLE 12. SECURITY CLEARANCE

- 12.1 **Compliance** - The Vendor shall comply with, and shall cause its Subcontractors to comply with, Ontario's security clearance requirements set out in this Article during the Term of this Master Agreement and the term of each Subordinate Agreement.
- 12.2 **Initial Requirements and Amendments** - Ontario's security clearance requirements in effect as of the Master Agreement Effective Date are set out in Sections 12.3 to 12.7 below. Ontario reserves the right to modify its security clearance requirements at any time and from time to time. Consequently, Ontario may, at any time and from time to time, provide thirty (30) calendar days prior written notice to the Vendor of any amendments to Sections 12.3 to 12.7, and the amended security clearance requirements shall be deemed to be set out in this Article and this Master Agreement shall be deemed to be amended accordingly.
- 12.3 **Definition** - In this Article, "Security Clearance Check" includes all of the following:
- (a) 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;
 - (b) A police records check through the Canadian Police Information Centre and provincial and municipal police force records for information about the individual in relation to:
 - (i) 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;
 - (ii) findings of guilt in relation to federal statutes for which a court has granted a discharge;
 - (iii) charges laid under the offence provisions of any federal statutes that are unresolved; and
 - (iv) records of judicial orders in effect made in relation to the offence provisions of federal statutes;
 - (c) A police records check in other jurisdictions as deemed necessary by the information provided to the Security Services and Contingency Planning Branch (SSCPB) during a Security Clearance Check;
 - (d) If deemed necessary by SSCPB considering the circumstances of the Deliverables or Services, a driving records check.
- 12.4 **Requirement and Renewal** - When notified by MGS, the Vendor shall require:
- (a) each partner, director, officer and shareholder as requested by SSCPB; and

- (b) each employee, agent and subcontractor who are or will be engaged in providing the Deliverables or Services;

to undergo a Security Clearance Check.

The Security Clearance Check shall be renewed at the intervals as may be specified by the Minister (MGS).

12.5 Written Consent - The Vendor shall obtain:

- (a) written consent on specified forms provided by the Ontario government from each partner, director, officer and shareholder as requested by SSCPB, and from each of its employees, agents and subcontractors who are or will be engaged in providing the Deliverables or Services; and
- (b) any other information that SSCPB, in its sole discretion, may deem necessary in order to conduct a Security Clearance Check of the individual.

12.6 Changes - During the Term of this Master Agreement and the term of each Subordinate Agreement, Vendor shall ensure that within five business days of any change:

- (a) that individuals provide written declarations as required under Section 12.3 whenever new or different information is available for that individual for the purpose of enabling SSCPB to update the individual's Security Clearance Check;
- (b) the Vendor notifies SSCPB of changes in partners, directors, officers and shareholders as requested by SSCPB, and of employees, agents and subcontractors who are or will be engaged in providing Deliverables or Services for the purpose of enabling SSCPB to conduct the individual's Security Clearance Check.

12.7 Default under Master Agreement and Subordinate Agreement - During the Term of this Master Agreement and the term of each Subordinate Agreement, the Vendor shall be in default under this Master Agreement and the Subordinate Agreement if:

- (a) within five business days, the Vendor fails to provide notification to SSCPB as required under Section 12.6;
- (b) without having a Security Clearance Check or update as required, the Vendor or if the Vendor is a corporation if any of its partners, directors officers and shareholders or any of the Vendor's employees, agents and subcontractors who are or will be engaged in providing the Deliverables or Services:
 - (i) has been convicted under the offence provisions of a federal statute for which a pardon under the *Criminal Records Act* (Canada) has not been granted;
 - (ii) has been granted an absolute or conditional discharge in relation to a federal offence and in the case of an absolute discharge, it was granted less than one year from the date of disposition of the offence by the court and in the case of a conditional discharge, it was granted less than three years from the date of disposition of the offence by the court;
 - (iii) is subject to a charge for a federal offence that remains unresolved; or

- (iv) is subject to a judicial order in effect made in relation to the offence provisions of federal statutes; and
- (c) in the sole discretion of the SSCP/B any of the information obtained from a Security Clearance Check or update is incompatible with:
 - (i) the proper and impartial provision of the Deliverables or Services in accordance with the terms and conditions of this Master Agreement and the Subordinate Agreement;
 - (ii) the safety of employees of the Ontario Public Service, clients or the public;
 - (iii) the reputation of or public confidence in the OPS;
 - (iv) the security of revenue, equipment or any other property of the Ontario Public Service; or
 - (v) the confidentiality or integrity of Records, Personal Information or OPS Confidential Information.

ARTICLE 13. SERVICE PROVIDER PAYMENT CARD INDUSTRY DATA SECURITY STANDARD LIABILITIES

- 13.1 **Requirement 12.8.2 of the PCI DSS** - The Parties hereby acknowledge that Requirement 12.8.2 of the PCI DSS requires service providers or merchants to maintain written agreements that include an acknowledgement that the service provider or merchant is responsible for the security of cardholder data the service provider/merchant possesses.
- 13.2 **Requirement 12.8.4 of the PCI DSS** - The Parties hereby acknowledge that Requirement 12.8.4 of the PCI DSS requires service providers/merchants to maintain a program to monitor service providers/merchants' PCI DSS compliance status.
- 13.3 **Acknowledgement** - The Vendor hereby acknowledges that the Vendor is considered to be a "service provider" or "merchant" under Requirement 12.8 of the PCI DSS.
- 13.4 **Vendor's Access to "cardholder data"** - The Vendor hereby acknowledges that in providing the Deliverables and Services to Ontario and OPS Entities under this Master Agreement and each Subordinate Agreement and each Subscriber Plan, the Vendor has access to "cardholder data" as defined in the PCI Glossary.
- 13.5 **Acknowledgement of PCI DSS compliance** - The Vendor hereby acknowledges that it is PCI DSS compliant as of the Master Agreement Effective Date. The Vendor shall provide evidence to MGS of its PCI DSS compliance by way of:
 - (a) A PCI Compliance Certificate issued by a Qualified Security Assessor; or
 - (b) A validation document commensurate with the Vendor's service level (refer to Schedule G) as determined by the PCI SSC.
- 13.6 **Security and Confidentiality of Cardholder Data** - In relation to its responsibilities and obligations under this Master Agreement and each Subordinate Agreement and each Subscriber Plan, the Vendor agrees that it shall be responsible at all times for the security of cardholder data that it possesses, including the functions relating to storing, processing, transmitting and destroying cardholder data. The Vendor agrees that the cardholder data it obtains through the provision of the Deliverables and Services will be held in strict confidence and accessed only for

the explicit business purpose of this Master Agreement, the Subordinate Agreement and the Subscriber Plan or in accordance with acceptable standards and no less rigorously than the Vendor protects its own customers' confidential information.

- 13.7 **Maintaining PCI DSS compliance** - The Vendor shall be responsible for completing any activities required to maintain PCI DSS compliancy for the Deliverables and Services provided on an ongoing basis including but not limited to:
- (a) Completing the PCI DSS annual validation document commensurate with the Vendor's service level (refer to Schedule G); and
 - (b) Completing any PCI quarterly network vulnerability scans required in connection with the Deliverables and Services, carried out by an Approved Scanning Vendor.
- 13.8 **Demonstrating PCI DSS compliance** - When requested by the Client, the Vendor shall demonstrate PCI DSS compliancy for the Deliverables and Services provided and the Vendor shall share the results of PCI DSS compliancy activities including but not limited to the PCI DSS annual validation document and the PCI quarterly network vulnerability scans.
- 13.9 **Auditing PCI DSS compliance** - During the Term of this Master Agreement, the term of each Subordinate Agreement and the term of each Subscriber Plan, the Vendor shall permit and assist MGS in conducting audits of the operations of the Vendor to verify that the Vendor is PCI DSS compliant. MGS shall provide the Vendor with at least ten (10) business days prior notice of its requirement for such audit.
- 13.10 **Costs** - The Vendor shall pay all costs associated with obtaining and maintaining its compliance to PCI DSS and for obtaining evidence of validation of compliance.
- 13.11 **Evidence** - The Vendor agrees to provide MGS or an OPS Entity, as the case may be, with evidence of its service provider(s) registration in the respective card brand merchant registration programs as applicable upon the request of MGS or the OPS Entity.
- 13.12 **Subcontractors** - The Vendor shall maintain a written agreement with each of its Subcontractors, which is a service provider, that includes an acknowledgement that the service provider is responsible for the security of cardholder data that the service provider possesses, transmits or to which it has access.
- 13.13 **Non-compliance** - The Vendor shall immediately inform MGS of all non-compliance issues for PCI DSS compliancy for the Deliverables and Services provided. The Vendor shall be required to remediate all non-compliance issues within 30 business days of the expiry of PCI Compliance Status. The Vendor shall be solely responsible for all penalties and fees levied as a result of the non-compliant issues.
- 13.14 **Return or Destruction of Cardholder Data** - The Vendor guarantees the return or verified destruction of all cardholder data received by the Vendor in providing the Deliverables or the Services under this Master Agreement and each Subordinate Agreement and each Subscriber Plan or, in the case of private information, upon completion of the need for the private information in compliance with applicable privacy legislation.
- 13.15 **Injunctive Relief** - The Vendor agrees that Ontario is entitled to obtain injunctive relief without posting bond in order to prevent or remedy breach of the confidentiality obligations of this Article.

- 13.16 **Material Breach** - The Vendor hereby acknowledges that any violation of this Article amounts to a material breach of contract and entitles the Minister (MGS) to immediately terminate this Master Agreement and any or all Subordinate Agreements and any or all Subscriber Plans without penalty.
- 13.17 **Conflicts** - If a conflict or inconsistency arises between any confidentiality provisions in this Article and Article 19 (Confidentiality), the more stringent confidentiality obligation shall govern.
- 13.18 **Survival** - The protective requirements of this Article shall survive the termination or expiry of this Master Agreement and of every Subordinate Agreement and of every Subscriber Plan.

ARTICLE 14. AUDIT REQUIREMENTS

- 14.1 **Annual Security Audit** - On twenty-four (24) hours notice, MGS, a Client or group of Clients, shall have the right to conduct a security audit of the Vendor, its Subcontractors, or both, including their cellular wireless network. Except as set out below, the cost of each security audit shall be borne by the Client and each Client shall be limited to conducting one security audit per calendar year throughout the Term. Clients must request a security audit through the MGS Representative. The purpose of the security audit is to ensure that the Vendor and its Subcontractors are in compliance with the security requirements set out in this Master Agreement or RFP and with any additional security requirements set out by a Client in a Subordinate Agreement or Subscriber Plan. Any security audit conducted for a Client must be submitted to both MGS and the Client for review and assessment. MGS or a Client may appoint an internal or external auditor to conduct any security audit, and the auditor shall be entitled to obtain and to make copies of any books, records and documentation in any form, and to take extracts from them, for the purpose of carrying out the audit.

If in MGS' or the Client's sole opinion, the security audit does not satisfy the security requirements set out in this Master Agreement or the RFP or the applicable Subordinate Agreement or Subscriber Plan, MGS or the Client shall notify the Vendor of the security problems and the Vendor shall remedy same, arrange for the auditor to conduct a subsequent audit and submit an amended audit report within ninety (90) days of receipt of notice. As of the date MGS or the Client provided notice to the Vendor of the security problems, MGS or the Client shall have the right to suspend the provision of the Deliverables and any payment to the Vendor until the time as MGS and the Client have reviewed the revised audit report and are satisfied that the problems have been remedied. The Vendor shall be responsible for all costs associated with remedying any problems identified by the audit and re-submitting the security audit report. The failure of the Vendor or its Subcontractors to comply with the applicable security requirements within the ninety (90) day period shall be deemed to be an event of termination for the purposes of Article 23 and 24 of this Master Agreement.

- 14.2 **Incident Management Security Audit** - MGS or Clients shall have the right to conduct incident management security audits in accordance with the terms set out by a Client in a Subordinate Agreement or Subscriber Plan or under any of the following circumstances:
- (a) A security incident occurs;

- (b) The Vendor has failed to meet the service levels set out in this Master Agreement or RFP;
- (c) The Vendor has implemented a change to its mobile wireless network infrastructure, operational procedures or policies in respect of the Deliverables that are deemed by MGS or a Client to raise security concerns for a Client or MGS. MGS or a Client may audit the changes to ensure that the Vendor or its Subcontractors is in compliance with the security requirements set out in this Master Agreement or the RFP and the applicable Subordinate Agreement and Subscriber Plan and that no vulnerabilities or new threats are presented as a result of the changes.

14.3 **Incident Management Security Audit (continued)** - MGS or a Client may appoint an internal or external auditor to conduct an audit pursuant to Section 14.2 and the auditor shall be entitled to obtain and to make copies of any of the Vendor's, or those of its Subcontractors, books, records and documentation, and to take extracts, for the purpose of carrying out the audit. The Vendor shall pay costs of all incident management security audits and of remedying any security gaps identified by the auditor. MGS and Clients shall have the right to suspend the provision of the Deliverables and payment to the Vendor until the security gaps have been remedied within thirty (30) days, or the other time period as agreed between the Parties. Failure by the Vendor or its Subcontractors to remedy any security gaps shall be deemed to be an event of termination for the purposes of Articles 23 and 24 of this Master Agreement.

14.4 **Co-operation** - The Vendor shall co-operate with and extend all necessary support and information to MGS or Clients to facilitate any audit. The Vendor shall ensure that Subcontractors co-operate with and extend all necessary support and information to MGS or Clients to facilitate any audit.

14.5 **Compliance** - While MGS and any of its advisors retained to conduct a review or audit are on the Vendor's premises or using the Vendor's systems or networks, they shall comply with all reasonable rules, regulations and policies established from time to time by the Vendor. The review or audit shall be carried out so as to minimize the disruption to the Vendor's normal operating procedures.

14.6 **Document Retention and Audit (Vendor)** - During and for seven (7) years after the Term of this Master Agreement and the term of each Subordinate Agreement, the Vendor shall (a) maintain, and shall require its Subcontractors to maintain, all necessary records to substantiate (i) all charges and payments under each Subordinate Agreement and (ii) that the Deliverables and Services were provided in accordance with each Subordinate Agreement and with Requirements of Law; and (b) permit and assist MGS and each Client in conducting audits of the operations of the Vendor and its Subcontractors to verify (i) and (ii) above. MGS or a Client shall provide the Vendor with at least ten (10) Business Days prior notice of its requirement for such audit, and the Vendor and its Subcontractors shall make the records readily available to MGS and Clients for inspection, and for the purposes of making photocopies or taking excerpts.

ARTICLE 15. TITLE

15.1 **Ontario Government Intellectual Property** - The Vendor agrees that all right, title and interest, including all Intellectual Property Rights, in and to all concepts, techniques, ideas, information and

materials, however recorded, (including images and data) provided by Ontario or any Client to the Vendor, and all assets provided by Ontario or any Client to the Vendor in connection with this Master Agreement or any Subordinate Agreement or any Subscriber Plan, shall remain the sole property of Ontario or that Client at all times.

- 15.2 **Rights Owned by Ontario Government** - The Vendor hereby assigns to Ontario, and shall cause its Subcontractors to assign to Ontario, all right, title and interest in and to the Government Materials and all Intellectual Property Rights therein. Further, the Vendor waives and shall cause the Subcontractors to waive, all moral rights in connection with or respecting the Government Materials in favour of Ontario. Ownership vests from the time the Government Materials are conceived, developed or produced.
- 15.3 **Rights Assignment – Waiver** - The Vendor shall obtain from each of its employees, agents and Subcontractors who contribute to the Government Materials a written assignment of rights in the form attached as Schedule D with respect to the contribution to the Government Materials, including a waiver of the Person's moral rights in connection with the Government Materials. The Vendor shall submit such written assignment of rights and waiver to the Client.
- 15.4 **Title to Mobile Devices** – The Vendor shall transfer good and marketable title to the Mobile Devices to the Client, free and clear of any and all liens, charges or encumbrances, however created, upon the Devices being received by the Client.
- 15.5 **Additional Steps** - At the request of MGS or a Client, at any time during the term of this Master Agreement and thereafter, the Vendor shall take all steps and execute all documents required to permit MGS to carry out the intent of this Article.
- 15.6 **Survival** - The provisions of this Article shall survive the termination or expiry of this Master Agreement and of every Subordinate Agreement and of every Subscriber Plan.

ARTICLE 16. INDEMNIFICATION

- 16.1 **IP Indemnification** - Despite the limitations of liability set out in Article 21 (Limitation of Liability), the Vendor 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) any breach of subsection 17.3(h); or
 - (b) any actual or possible unauthorized use, infringement, inducement of infringement or violation of any Intellectual Property Rights that arises from or is alleged to arise from:
 - (i) the performance of the Services by the Vendor (or its directors, officers, Personnel, agents, partners, affiliates, volunteers or Subcontractors or others for whom it is responsible at law) as a result of this Master Agreement or a Subordinate Agreement or a Subscriber Plan;
 - (ii) the exercise by any Indemnified Parties of any rights or permissions under this Master Agreement or a Subordinate Agreement or a Subscriber Plan; or
 - (iii) the use, distribution, or disposal by any Indemnified Parties of anything supplied by the Vendor (or its directors, officers, Personnel, agents, partners, affiliates,

volunteers or Subcontractors or others for whom it is responsible at law) as a result of this Master Agreement or a Subordinate Agreement or a Subscriber Plan, including Devices.

If any such performance, exercise of rights or permissions, use, distribution or disposal is held, or is likely, in the reasonable opinion of the Client, to be held to constitute an infringement, inducement of infringement or violation of any Intellectual Property Rights or an infringement of any Moral Rights, and such performance, exercise of rights or permissions, use or disposal 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 this Master Agreement or the Subordinate Agreement or a Subscriber Plan, or at law or in equity, the Vendor shall, at its expense, either:

- (1) obtain such rights or permissions and waivers as are necessary so that such performance, exercise of rights or permissions, use or disposal becomes non-infringing; or
- (2) replace or modify the Deliverables or Services or anything supplied so that the infringing portion no longer infringes (without any loss of quality, functionality or ease of use) to the Client's satisfaction;

and shall make every reasonable effort to correct the situation with minimal effect upon the operations of the Client. If neither of the foregoing alternatives is reasonably available, the Minister (MGS) may terminate this Master Agreement and the Client may terminate all or any part of the Subordinate Agreement or terminate the Subscriber Plan without further obligation or liability to the Vendor and, without prejudice to any other rights and remedies as may be available to any of the Indemnified Parties under this Master Agreement or the Subordinate Agreement or the Subscriber Plan, or at law or in equity, the Vendor shall refund to the Client all amounts paid with respect to such Deliverables or Services or anything supplied that infringes.

Upon receipt of such refund, the licence granted with respect to such Deliverables supplied that infringes and for which a refund has been provided shall terminate.

16.2 Client Modification - With respect to a Subordinate Agreement or a Subscriber Plan, the Vendor shall not have any liability to Ontario or the Client under Section 16.1 (a) (IP Indemnification) to the extent that any infringement or violation of any Intellectual Property Rights, other than Moral Rights, is caused by further development or modification made by Ontario or the Client not authorized by the Vendor to the Deliverables.

16.3 Confidentiality, PCI DSS and Privacy Indemnification - Despite the limitations of liability set out in Article 21 (Limitation of Liability), the Vendor 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 Vendor of: (a) its obligations under Article 19 (Confidentiality); (b) its obligations under Article 13 (Service Provider Payment Card Industry Data Security Standard Liabilities); or (c) the Privacy Provisions.

16.4 Other Indemnification - Except for any liability arising pursuant to the indemnities provided for in Section 16.1 (IP Indemnification) or 16.3 (Confidentiality, PCI DSS and Privacy Indemnification), the Vendor shall, subject to the limitation of liability in Section 21.2 (Vendor's Liability for

Damages) indemnify and hold harmless the Indemnified Parties from and against 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 Vendor, its Subcontractors or the Vendor's Personnel in the course of the performance of the Vendor's obligations under the Subordinate Agreement or the Subscriber Plan or otherwise in connection with this Master Agreement or the Subordinate Agreement or the Subscriber Plan.

- 16.5 **Notice** – Each Party shall notify the other Party in writing of the commencement of any Proceeding referred to in Section 16.1 (IP Indemnification), 16.3 (Confidentiality, PCI DSS and Privacy Indemnification), or 16.4 (Other Indemnification).
- 16.6 **Defence** – The Vendor shall, at its expense, to the extent requested by the Attorney General of Ontario, participate in or conduct the defence of any Proceedings against any Indemnified Parties referred to in Sections 16.1 (IP Indemnification), 16.3 (Confidentiality, PCI DSS and Privacy Indemnification), or 16.4 (Other Indemnification) and any negotiations for their settlement. Ontario may elect to participate in or conduct the defence of any such Proceedings by notifying the Vendor in writing of such election without prejudice to any other rights or remedies of Ontario under this Master Agreement, the Subordinate Agreement, the Subscriber Plan, at law or in equity. Each Party participating in the defence shall do so by actively participating with the other's counsel. No settlement shall be entered into by the Vendor unless it has obtained the prior written approval of the Attorney General of Ontario. If the Vendor is requested by the Attorney General of Ontario to participate in or conduct the defence of any such Proceedings, Ontario agrees to co-operate with and assist the Vendor to the fullest extent possible in the Proceedings and any related settlement negotiations. If Ontario conducts the defence of any such Proceedings, the Vendor agrees to co-operate with and assist Ontario to the fullest extent possible in the Proceedings and any related settlement negotiations.
- 16.7 **Survival** - The provisions of this Article shall survive the termination or expiry of this Master Agreement and of every Subordinate Agreement and of every Subscriber Plan.

ARTICLE 17. REPRESENTATIONS, WARRANTIES AND COVENANTS

- 17.1 **Representations and Warranties of the Vendor as to this Master Agreement** - The Vendor makes the following representations and warranties to Ontario as of the date of execution of this Master Agreement, and acknowledges that Ontario is relying upon them:
- (a) the Vendor is duly incorporated or, if a partnership, formed, and validly subsisting under the laws of its governing jurisdiction with full power, right and authority to enter into this Master Agreement, and to perform its obligations under this Master Agreement;
 - (b) the individual executing this Master Agreement on behalf of the Vendor is duly authorized to do so;
 - (c) this Master Agreement constitutes a legal, valid and binding agreement of the Vendor enforceable in accordance with its terms;
 - (d) the Vendor is properly qualified or licensed if qualification or licensing is necessary for the conduct of its business;

- (e) there is no agreement with any other Person which would in any way interfere with the rights of Ontario or any OPS Entity under this Master Agreement;
- (f) as of the Master Agreement Effective Date, the Vendor is not the subject of, and is not aware of and does not reasonably foresee being the subject of, an Insolvency Event; and
- (g) all statements, promises and representations set out in the Proposal and in this Master Agreement are accurate and complete and the Vendor is not aware of any facts or circumstances that would render the statement, promise or representation inaccurate or incomplete.

Throughout the Term of this Master Agreement, the Vendor covenants to take any actions required to ensure that the foregoing representations and warranties continue to be true and covenants not to take any actions that would cause any of the foregoing representations and warranties not to be true, and acknowledges that Ontario and each Client is relying upon such covenants.

17.2 Representations and Warranties of Ontario as to this Master Agreement - Ontario makes the following representations and warranties to the Vendor as of the date of execution of this Master Agreement, and acknowledges that the Vendor is relying upon them:

- (a) the execution and delivery of this Master Agreement has been duly authorized; and
- (b) this Master Agreement constitutes a legal, valid and binding agreement of Ontario enforceable in accordance with its terms.

17.3 Representations and Warranties of the Vendor as to Subordinate Agreements - The Vendor makes the following representations and warranties to Ontario as of the Master Agreement Effective Date, and acknowledges that Ontario and each Client will be relying upon them:

- (a) the Vendor is duly incorporated or, if a partnership, formed, and validly subsisting under the laws of its governing jurisdiction with full power, right and authority to enter into the Subordinate Agreement, and to perform its obligations under the Subordinate Agreement;
- (b) the execution, delivery and performance of the Subordinate Agreement by the Vendor have been duly authorized;
- (c) the Subordinate Agreement constitutes a legal, valid and binding agreement of the Vendor enforceable in accordance with its terms;
- (d) the Vendor is properly qualified or licensed if qualification or licensing is necessary for the conduct of its business;
- (e) there is no agreement with any other Person which would in any way interfere with the rights of Ontario or the OPS Entity under the Subordinate Agreement or interfere with the ability of the Vendor to perform its obligations under the Subordinate Agreement;

- (f) all Services will be performed: (i) in a proper, diligent, professional and competent manner that meets or exceeds Industry Standards by persons qualified and skilled in their occupation; and (ii) in accordance with, and not in violation of, Requirements of Law;
- (g) the Vendor:
 - (i) has entered into a written agreement, or will have entered into a written agreement prior to the performance of any Services under the Subordinate Agreement, with each of its employees performing Services under the Subordinate Agreement, or has established and published employee policies binding on its employees performing Services under the Subordinate Agreement; or
 - (ii) has entered into a written agreement, or will enter into a written agreement prior to the performance of any Services under the Subordinate Agreement, with each of its Subcontractors performing Services under the Subordinate Agreement;

which contains the following minimum terms: (1) the employee or Subcontractor, as applicable, irrevocably assigns to the Vendor of all of its Intellectual Property Rights to work created, developed, generated, prepared or produced in the course of employment or performing its obligations under a contract with the Vendor, as applicable; (2) the employee or Subcontractor, as applicable, irrevocably waives its moral rights in favour of the Vendor and the Vendor's assignees in and to any work created by the employee or Subcontractor in the course of employment or performing its obligations under a contract with the Vendor, as applicable; and (3) terms and conditions that protect the confidentiality of the Vendor's confidential information, including any confidential information of the Vendor's customers, on terms that are no less protective as the confidentiality obligations set out in this Master Agreement;

- (h) the Vendor has not entered into, or is bound by, any arrangement which would in any way restrict Ontario's or the Client's ability to exercise the Intellectual Property Rights or permissions granted under this Master Agreement or any Subordinate Agreement;
- (i) to the best of the Vendor's knowledge, there are no claims made or Proceedings pending or anticipated relating to the ownership or use of the Deliverables or any part of the Deliverables;
- (j) the Vendor has, or shall obtain, all the rights for it to provide the Deliverables, including the right to grant all of the rights and licences that it grants under this Master Agreement or a Subordinate Agreement, and for the Client to use and enjoy the same without interference and the consent of no other Person is required to do so;
- (k) neither the Deliverables nor the Services shall, to the best of Vendor's knowledge, in any way infringe or violate, or induce infringement or violation of, any Intellectual Property Rights or any other right of any third party including any patents or patent applications;
- (l) the media containing any Deliverables shall be new and free from defects in manufacture, materials, and design, and shall function properly under ordinary use for ninety (90) calendar days after receipt;

- (m) unless a different performance or workmanship warranty for a particular Deliverable is set out in Schedule A or in the RFP (in which case that performance or workmanship warranty shall apply to that particular Deliverable), the Deliverables provided under a Subordinate Agreement are free from any and all defects in performance and workmanship and the Vendor agrees to remedy and correct defects in the Deliverables that arise during the ninety (90) day period immediately following delivery to the Client, to the satisfaction of, and at no cost to, the Client;
- (n) the Vendor:
 - (i) shall not, and shall require its suppliers not to, knowingly incorporate Malicious Code into the Deliverables or into Ontario's or the Client's IT Infrastructure; the parties agree that the phrase "knowingly incorporate Malicious Code" shall mean that the Vendor has either: a) intentionally included Malicious Code in the Deliverables, or b) has unintentionally allowed Malicious Code to be included in the Deliverables where such Malicious Code would have been detectable using the then current commercially available virus detection tools;
 - (ii) to the extent the Vendor is aware of any Malicious Code introduced into the Deliverables or into Ontario's or the Client's IT Infrastructure, shall, and shall require its suppliers to, immediately notify Ontario or the Client, as the case may be, in writing of such introduction. Without limiting any other right or remedy of Ontario or the Client, if any Malicious Code is found by the Vendor or its supplier to have been introduced into the Deliverables or into Ontario's or the Client's IT Infrastructure due to a breach of this Section 17.3 (n), the Vendor shall assist, and if applicable, require its suppliers to assist, Ontario or the Client, as the case may be, in reducing the effects of such Malicious Code, and if the Malicious Code causes an interruption of, or otherwise a loss of, operational efficiency or data in the Deliverables or in Ontario's or the Client's IT Infrastructure, or the operations of Ontario's or the Client's business operations generally, the Vendor shall, and shall require its suppliers to, restore operational efficiency and to the maximum extent possible, restore data or, when not possible, mitigate losses to the maximum extent possible;
- (o) the Deliverables shall contain nothing that is designed intentionally for the specific purpose of creating or fostering prejudice, bias or discrimination in respect of age, race, colour, ancestry, citizenship, place of origin, creed, record of offences, sex, family or marital status or handicap of an individual, group or class of persons;
- (p) each Device is a generally commercially available product;
- (q) internal use by Clients of the Deliverables will not violate any open source software licences that apply to any part of the Deliverables; and
- (r) all Devices for which title is transferred to a Client shall be of good and marketable title, free and clear of any and all liens, charges or encumbrances.

Throughout the term of each Subordinate Agreement, the Vendor covenants to take any actions required to ensure that the foregoing representations and warranties continue to be true and covenants not to take any actions that would cause any of the foregoing representations and

warranties not to be true, and acknowledges that Ontario and each Client is relying upon such covenants.

- 17.4 **Representations and Warranties of the Vendor as to Subscriber Plans** – The provisions of Section 17.3 (Representations and Warranties of the Vendor as to Subordinate Agreements) apply to each Subscriber Plan, except that each instance of the term "Subordinate Agreement" is replaced by "Subscriber Plan".
- 17.5 **Representations and Warranties of Ontario as to Subordinate Agreements** - Ontario makes the following representations and warranties to the Vendor as of the date of execution of this Master Agreement, and acknowledges that the Vendor will be relying upon them:
- (a) the execution and delivery of the Subordinate Agreement has been duly authorized; and
 - (b) the Subordinate Agreement constitutes a legal, valid and binding agreement of the Client enforceable in accordance with its terms.
- 17.6 **Representations and Warranties of Ontario as to Subscriber Plans** – The provisions of Section 17.5 (Representations and Warranties of Ontario as to Subordinate Agreements) apply to each Subscriber Plan, except that each instance of the term "Subordinate Agreement" is replaced by "Subscriber Plan".
- 17.7 **Third Party Warranties** - Without limiting any other representations and warranties provided by the Vendor, in respect of any Deliverable where warranties are additionally provided by the Vendor's Subcontractor or a third party, the Vendor assigns to the Client, without reservation, all of the Vendor's rights, but none of the Vendor's obligations, under all warranties provided by the third party. The Client shall have the right to take any action it deems appropriate to enforce such warranties. If the Client is precluded from enforcing any such warranty in its name or the Vendor cannot assign such warranty to the Client, the Vendor shall, upon the Client's request, take such steps to enforce such warranty as the Client may request. The Client'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.
- 17.8 **Survival** - The provisions of this Article shall survive the termination or expiry of this Master Agreement and of every Subordinate Agreement and of every Subscriber Plan.

ARTICLE 18. PRIVACY

- 18.1 **FIPPA** - The Parties acknowledge and agree that FIPPA applies to and governs all Records and may require the disclosure of such Records to third parties. Furthermore, the Vendor agrees:
- (a) to keep Records secure;
 - (b) to provide Records to the Client within seven (7) calendar days of being directed to do so by the Client for any reason including an access request or privacy issue;

- (c) not to access any Personal Information unless the Client 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 Client;
- (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 its directors, officers, employees, agents, partners, affiliates, volunteers or Subcontractors who have a need to know it for the purpose of providing the Deliverables and who have been specifically authorized by MGS 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 Client would improve the adequacy and effectiveness of the Vendor's measures to ensure the security and integrity of Personal Information and Records generally; and
- (h) that any confidential information supplied to the Client may be disclosed by the Client where it is obligated to do so under FIPPA, by an order of a court or tribunal or pursuant to a legal proceeding;

and the provisions of this Section shall prevail over any inconsistent provisions in this Master Agreement.

18.2 **Survival** - The provisions of this Article shall survive the termination or expiry of this Master Agreement and of every Subordinate Agreement and of every Subscriber Plan.

ARTICLE 19. CONFIDENTIALITY

19.1 **Confidentiality** - Subject to the Privacy Provisions, each Receiving Party shall keep all Confidential Information confidential and provide the Confidential Information to the Disclosing Party on demand with no copy or portion kept by the Receiving Party in any form or on any media. Each Receiving Party shall limit the disclosure of Confidential Information to only those of its Personnel and Subcontractors who have a need to know it for the Permitted Use and who have been specifically authorized to have such disclosure. Each Receiving Party agrees that its Personnel and Subcontractors shall not directly or indirectly disclose, destroy, exploit or use any Confidential Information except for the Permitted Use, or except if required by order of a court or tribunal, without first obtaining:

- (i) the written consent of the Disclosing Party, and
- (ii) in respect of any Confidential Information about any third party, the written consent of such third party.

- 19.2 **Restrictions on Copying** - The Receiving Party shall not copy any Confidential Information, in whole or in part, without the written consent of the Disclosing Party. All copies of Confidential Information made with the consent of the Disclosing Party shall include all notices that appear on the original. All such copies of Confidential Information shall be delivered to the Disclosing Party promptly on receipt of a written request from the Disclosing Party.
- 19.3 **Declaratory Order and Other Relief** - Each Receiving Party acknowledges that breach of any provision of this Article may cause irreparable harm to the Disclosing Party or to any third party to whom the Disclosing Party owes a duty of confidence, and that the injury to the Disclosing Party or to any third party may be difficult to calculate and inadequately compensable in damages. Each Receiving Party agrees that the Disclosing Party is entitled to obtain an order declaratory of the rights of the Parties or injunctive relief, if such remedy would otherwise be available, (without proving any damage sustained by it or by any third party) and any other remedy for any actual or potential breach of the provisions of this Master Agreement or the Subordinate Agreement.
- 19.4 **Notice and Protective Order - OPS Confidential Information** - If the Vendor, or any of its Personnel or Subcontractors become legally compelled to disclose any OPS Confidential Information, the Vendor shall provide Ontario with prompt notice to that effect to allow Ontario to seek one or more protective orders or other appropriate remedies to prevent or limit such disclosure, and it shall co-operate with Ontario and its legal counsel to the fullest extent. If such protective orders or other remedies are not obtained, the Vendor shall disclose only that portion of OPS Confidential Information, which they are legally compelled to disclose, only to such person or persons to which they are legally compelled to disclose, and they shall provide notice to each such recipient - in co-operation with legal counsel for Ontario - that such OPS Confidential Information is confidential and subject to non-disclosure on terms and conditions substantially similar to and not materially less protective than those in this Master 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.
- 19.5 **Receiving Party's Personnel and Subcontractors** - Each Receiving Party shall advise its Subcontractors and its Personnel of the requirements of this Article and take appropriate action to ensure their compliance with its terms.
- 19.6 **Notification of Loss** - The Receiving Party shall notify the Disclosing Party promptly in writing of any loss of inability to account for the Confidential Information of the Disclosing Party.
- 19.7 **No Representations** - Except as otherwise provided in this Master Agreement, neither Party makes any representations or warranties to the other Party about the adequacy, accuracy or suitability of the Confidential Information for any purpose.
- 19.8 **Remedies** - The specific remedies set out are in addition and without prejudice to any other remedy to which either Party may be entitled under this Master Agreement either at law or in equity.
- 19.9 **Conflict with Privacy Provisions** - If a conflict or inconsistency arises between any provision in this Article and the Privacy Provisions, the Privacy Provisions shall govern.
- 19.10 **Survival** - The provisions of this Article shall survive the termination or expiry of this Master Agreement and of every Subordinate Agreement and of every Subscriber Plan.

ARTICLE 20. INSURANCE

- 20.1 **General** - Without limiting any other provision in this Article, the Vendor shall, at its own expense, put in effect 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 business person would acquire in like circumstances. The Vendor shall maintain such insurance throughout the Term of the Master Agreement and, if the term of any Subordinate Agreement or the term of any Subscriber Plan extends beyond the Term of the Master Agreement, until the expiry or termination of every Subordinate Agreement and every Subscriber Plan.
- 20.2 **Commercial General Liability Insurance** - The insurance required by Section 20.1 (General) shall include commercial general liability insurance on an occurrence basis to an inclusive limit of not less than two million Canadian dollars (C\$2,000,000), per occurrence of property damage, bodily injury (including death) or personal injury, and which provides the following minimum coverage:
- (a) the Indemnified Parties as additional insureds with respect to any liability arising in the course of the performance of the Vendor's obligations under this Master Agreement, each Subordinate Agreement and each Subscriber Plan or arising otherwise in connection with this Master Agreement, any Subordinate Agreement or any Subscriber Plan;
 - (b) cross liability;
 - (c) a contractual liability coverage endorsement;
 - (d) a products and completed operations endorsement;
 - (e) a non-owned automobile coverage with blanket contractual endorsement;
 - (f) an employer's liability coverage endorsement, if the Vendor is not subject to the WSIA;
 - and
 - (g) 30 days written notice to MGS of cancellation, termination or material change.
- 20.3 **Errors and Omissions Liability Insurance** - The insurance required by Section 20.1 (General) shall include errors and omissions liability insurance, insuring liability for errors and omissions in the provision of the Deliverables and/or the performance of or failure to perform the Services, in the amount of two million Canadian dollars (C\$2,000,000) per claim and in the annual aggregate.
- 20.4 **Proof of Insurance** - Before the Vendor signs this Master Agreement, the Vendor shall provide to the MGS Representative proof of the insurance required by Sections 20.2 (Commercial General Liability Insurance) and 20.3 (Errors and Omissions Liability Insurance) in the form of valid certificates of insurance that reference this Master Agreement and confirm the coverage set out in this Article. The Vendor shall provide renewal replacements to the MGS Representative on or before any subsequent policy renewals. Each certificate of insurance and renewal replacement must reference this Master Agreement by name, date and the full legal name of each Party. Upon the request of the MGS Representative, a copy of each policy shall be made available to the MGS Representative. The Vendor 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 or Services.

- 20.5 **Excess Liability** - Any claim by Ontario or any OPS Entity under any insurance required by this Article shall not be subject to or limited by Article 21 (Limitation of Liability). The insurance amounts provided for shall not be construed so as to relieve or limit the liability of the Vendor in excess of such coverage and shall not preclude Ontario or the OPS Entity from taking such other actions as are available to it under any provisions of this Master Agreement, any Subordinate Agreement or any Subscriber Plan or otherwise at law or in equity.
- 20.6 **Proof of WSIA Coverage** – If the Vendor is subject to the WSIA, it shall submit a valid WSIB clearance certificate of WSIA coverage to the MGS Representative, prior to the Master Agreement Effective Date. In addition, the Vendor shall, from time to time at the request of the MGS Representative, provide additional WSIB clearance certificates. The Vendor 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 by its Subcontractors, from time to time during the Term of this Master Agreement, the term of each Subordinate Agreement and the term of each Subscriber Plan, under the WSIA, failing which the Client shall have the right, in addition to and not in substitution for any other right it may have at law or in equity, to pay to the WSIB any amount due pursuant to the WSIA and unpaid by the Vendor or its Subcontractors and to deduct such amount from any amount due and owing from time to time to the Vendor pursuant to the Subordinate Agreement together with all costs incurred by the Client in connection therewith.

ARTICLE 21. LIMITATION OF LIABILITY

- 21.1 **Categories of Damages** – For the purposes of this Article, direct damages are those damages that fall within the scope of subsection (a) or (b) below, or both:
- (a) damages that arise naturally from breach of this Master Agreement, a Subordinate Agreement or a Subscriber Plan itself or that are reasonably contemplated at the time the Parties enter into this Master Agreement, a Subordinate Agreement or a Subscriber Plan as being the probable consequences of breach of this Master Agreement, the Subordinate Agreement or the Subscriber Plan, but exclude those damages that, in order to be reasonably contemplated, require knowledge of special circumstances, which are not known to both Parties at the time the Parties enter into this Master Agreement or the Subordinate Agreement;
 - (b) damages that are reasonably foreseeable as being the probable consequences of a tort that falls within the scope of this Master Agreement, a Subordinate Agreement or a Subscriber Plan, subject to any express limitation or negation of the tort duty, or of the right to sue in tort, set out in this Master Agreement or the Subordinate Agreement.

For the purposes of this Article, all damages of any type whatsoever that fall within the scope of this Master Agreement, the Subordinate Agreement or the Subscriber Plan, which are not direct damages, are categorized as indirect damages.

- 21.2 **Vendor's Liability for Damages** – Subject to Section 21.3 (Property Damage, Bodily Injury (Including Death) or Personal Injury (Vendor's Liability)) and Section 21.4 (Exception (Vendor's Liability)), if circumstances arise where the Client is entitled to recover from the Vendor damages arising in the course of the performance of the Vendor's obligations under this Master Agreement, a Subordinate Agreement or a Subscriber Plan or arising otherwise in connection with this Master

Agreement, a Subordinate Agreement, or a Subscriber Plan, the Vendor's aggregate liability to the Client for direct damages, shall not exceed the greater of:

- (a) the total amount paid and payable by all Clients under this Master Agreement and all Subordinate Agreements; or
- (b) two million Canadian dollars (C\$2,000,000).

Subject to Section 21.3 (Property Damage, Bodily Injury (Including Death) or Personal Injury (Vendor's Liability)) and Section 21.4 (Exception (Vendor's Liability)), the Vendor shall have no liability for indirect damages in respect of this Master Agreement, the Subordinate Agreement or the Subscriber Plan.

21.3 Property Damage, Bodily Injury (Including Death) or Personal Injury (Vendor's Liability) – The limitations of liability in Section 21.2 (Vendor's Liability for Damages) shall not apply in respect of damages for any property damage, bodily injury (including death) or personal injury.

21.4 Exception (Vendor's Liability) – The limitation of liability in Section 21.2 (Vendor's Liability for Damages) shall not apply where the Client would be entitled to recover from the Vendor under: (a) any express exceptions in this Master Agreement to Section 21.2 (Vendor's Liability for Damages); or (b) any indemnity in this Master Agreement for infringement, inducement of infringement, or misappropriation of Intellectual Property Rights or infringement of any Moral Rights, breach of confidentiality, breach of privacy obligations, or breach of Article 13 (Service Provider Payment Card Industry Data Security Standard Liabilities).

21.5 Client's Liability for Damages – Subject to Section 21.6 (Property Damage, Bodily Injury (including Death) or Personal Injury (Client's Liability)) and subject to Section 21.7 (Exception (Client's Liability)), if circumstances arise where the Vendor is entitled to recover damages from the Client, the Client's aggregate liability to the Vendor for direct damages shall be the greater of:

- (a) the total amount paid and payable by all Clients under this Master Agreement and all Subordinate Agreements; or
- (b) two million Canadian dollars (C\$2,000,000).

Subject to Section 21.6 (Property Damage, Bodily Injury (Including Death) or Personal Injury (Client's Liability)) and Section 21.7 (Exception (Client's Liability)), the Client shall have no liability for indirect damages in respect of this Master Agreement, the Subordinate Agreement or the Subscriber Plan.

21.6 Property Damage, Bodily Injury (Including Death) or Personal Injury (Client's Liability) - The limitations of liability in Section 21.5 (Client's Liability for Damages) shall not apply in respect of damages for any property damage, bodily injury (including death) or personal injury.

21.7 Exception (Client's Liability) – The limitation of liability in Section 21.5 (Client's Liability for Damages) shall not apply where the Vendor would be entitled to recover from the Client under: (a) any express exceptions in this Master Agreement to Section 21.5 (Client's Liability for Damages); or (b) any infringement, inducement of infringement, or misappropriation of the Vendor's Intellectual Property Rights or infringement of any Moral Rights.

- 21.8 **No Proceedings or Liability Relating to Competitive Pricing Refresh** - The Vendor agrees that:
- (a) the Vendor and its Subcontractors will not bring any Proceedings against Ontario, any OPS Entity or any Indemnified Party, or any of their respective Personnel; and
 - (b) Ontario, each OPS Entity, each Indemnified Party, and each of their respective Personnel, will have no liability whatsoever to the Vendor or its Subcontractors;
- as a result of or relating to the Competitive Pricing Refresh (including the manner or process in which the Competitive Pricing Refresh is carried out, and the results or outcome of the Competitive Pricing Refresh).
- 21.9 **Survival** - The provisions of this Article shall survive the termination or expiry of this Master Agreement and of every Subordinate Agreement and of every Subscriber Plan.

ARTICLE 22. RESOLUTION OF DISPUTES

- 22.1 **First Instance** - Subject to Section 22.2 (Exclusions), in the event of any Dispute, the personnel of the Parties dealing directly with the subject matter of the Dispute shall attempt to resolve the Dispute between them.
- 22.2 **Exclusions** - Despite any provision to the contrary in this Master Agreement, this Article does not apply to:
- (a) any violation of the rights of Ontario or any OPS Entity, or of the rights of the Vendor or any of its affiliates, under any intellectual property rights statute;
 - (b) any dispute in respect of the Privacy Provisions, any other privacy legislation, any other statute under which Ontario has the discretion or obligation not to disclose any records or other information, Section 3.6 (Conflict of Interest), or any Competitive Pricing Refresh; or
 - (c) the right of the Minister (MGS) to terminate this Master Agreement or to terminate either Stream No. 1 or Stream No. 2, or the right of a Client to terminate a Subordinate Agreement or any portion thereof or any Subscriber Plan.

In addition, for greater certainty, the Parties acknowledge that if the Minister (MGS) or a Client exercises any right of termination set out in this Master Agreement or a Subordinate Agreement or a Subscriber Plan, such termination shall not be delayed or prevented by the dispute resolution process set out in this Article.

- 22.3 **Referral To Representatives** - Any Dispute referred to in Section 22.1 that is not resolved within five (5) Business Days shall be referred to the MGS Representative and the Vendor Representative, respectively, for resolution. If the Dispute is not resolved within five (5) Business Days following the referral, the matter shall be referred to the senior management of MGS and of the Vendor, respectively.
- 22.4 **Referral To Senior Executives** - Upon the Dispute being referred to senior management, the two senior managers shall meet in order to provide each other with all information with respect to the matter in issue which is appropriate and relevant to its resolution. The senior managers shall

negotiate in an effort to resolve the Dispute without the necessity of any formal proceeding. During the course of the negotiation, in order that each of the Parties may be fully advised of the other's position, all reasonable requests made by one Party to the other for non-privileged information related to this Master Agreement shall be honored. The specific format for the negotiations shall be within the discretion of the senior managers, but may include the preparation of agreed-upon statements of fact or written statements of position furnished to the other Party.

- 22.5 **Resort To Arbitration** - If the senior managers have not resolved the Dispute within ten (10) Business Days following its referral to them (or three (3) Business Days if either Party has notified the other that the matter must be dealt with on an urgent basis), then subject to any contrary agreement of the Parties, either Party may initiate arbitration proceedings pursuant to Sections 22.6 to 22.8, provided that unless otherwise agreed by the Parties, no arbitrator shall consider or determine any question of law or jurisdiction, including any question as to whether the Dispute is arbitrable.
- 22.6 **Selecting An Arbitrator** - The Party desiring arbitration shall notify the other Party of the desire and the Parties shall attempt to agree, within three (3) Business Days, on a single arbitrator who shall be named to resolve the Dispute. If the Parties are unable to agree, either Party may request the ADR Institute of Ontario, Inc. to provide a list of no more than three (3) persons from whom the arbitrator shall be selected by mutual agreement, but if no the arbitrator is appointed within a further five (5) Business Days, the Parties or any of them may apply to a Justice of the Ontario Court of Justice to name a single arbitrator. Any person named as an arbitrator is to be suitably qualified by education and professional experience to deal with the matters which are the subject of the arbitration.
- 22.7 **Rules of Arbitration** - The arbitration shall take place in Toronto, Ontario and shall be conducted in English in accordance with the National Arbitration Rules of the ADR Institute of Canada, Inc. in effect at the date of commencement of the arbitration. The decision of the arbitrator shall be final and binding on the Parties to the arbitration and no appeal shall be taken from any determination unless:
- (a) the determination contains an error of law which results in a determination which is patently unreasonable; or
 - (b) an appeal is expressly provided for in section 46(1) of the *Arbitration Act, 1991* (Ontario).
- 22.8 **Arbitration Process** - Each of the Parties shall co-operate with the arbitrator and shall provide the arbitrator with all information in their possession or under their control necessary or relevant to the matter being determined. The Parties shall use their best efforts to cause any arbitration hearing that may be held to be completed as soon as practicable. The arbitrator shall make an award as soon as possible and, if at all practicable, within five (5) Business Days after the conclusion of the arbitration hearing. If by this Article 22 any Dispute is to be referred to arbitration, the making of a final award shall be a condition precedent to any right of action by either Party against the other. Judgment upon an award, including any interim award, rendered by the arbitrator may be entered in any Court having jurisdiction thereof. Subject to Section 22.5, the arbitrator may consider and determine all questions arising in relation to the Dispute, and has the right to grant permanent and interim damages or injunctive relief, and shall have the discretion to award costs including reasonable legal fees, interest and costs of the arbitration.

Except as modified by this Master Agreement, the provisions of the *Arbitration Act, 1991* (Ontario), as amended from time to time, shall govern any arbitration conducted under this Section.

- 22.9 **Performance Despite Dispute** - The Vendor shall continue performing its obligations under this Master Agreement, each Subordinate Agreement and each Subscriber Plan while the Dispute is being resolved or arbitrated, unless the Vendor is requested, in writing, not to do so by MGS or a Client.

ARTICLE 23. TERMINATION OF MASTER AGREEMENT AND ORDERING TERM

23.1 **Termination of Master Agreement and Ordering Term** - The Minister (MGS) may terminate this Master Agreement (which shall include the Ordering Term) immediately upon written notice to the Vendor if any of the following events occurs:

- (a) the Vendor fails to comply with any of the terms of this Master Agreement or of any Subordinate Agreement if that failure continues unremedied for ten (10) Business Days or more after written notice of that failure is given to the Vendor;
- (b) the Vendor is in default under Article 12 (Security Clearance) or Article 14 (Audit Requirements), or is in breach of an obligation in relation to Security Services;
- (c) any Insolvency Event occurs with respect to the Vendor;
- (d) the Vendor breaches any provision in Article 19 (Confidentiality) or any Privacy Provisions;
- (e) the Vendor breaches Section 3.6 (Conflict of Interest) or any other conflict of interest provisions applicable to a Subordinate Agreement;
- (f) the Vendor subcontracts for the provision of part or all of the Deliverables or Services or sells, assigns or transfers its interest in this Master Agreement or any of its obligations under it to any third Person without the prior written approval required under Section 3.2 (Subcontractors);
- (g) the Vendor, prior to or after executing this Master Agreement or any Subordinate Agreement, makes a material misrepresentation or omission or provides materially inaccurate information to Ontario;
- (h) the Vendor undergoes a change in control which, in the sole opinion of the Client, adversely affects the Vendor's ability to satisfy some or all of its obligations under this Master Agreement or any Subordinate Agreement; or
- (i) the Vendor fails to comply with the Requirements of Law.

Any termination of this Master Agreement under this Section is without prejudice to the rights of Ontario to exercise or pursue any other remedies that may be available to Ontario under this

Master Agreement, at law or in equity. All such other remedies shall survive any termination of this Master Agreement and remain in full force and effect thereafter.

23.2 Termination of Master Agreement for Convenience - The Minister (MGS) reserves the right to terminate this Master Agreement (which shall include the termination of the Ordering Term) at any time, without cause and without penalty, upon sixty (60) calendar days prior written notice to the Vendor.

23.3 Effect of Expiry or Termination of Master Agreement - Upon termination of this Master Agreement, MGS or the Client will, as the case may be, pay to the Vendor any undisputed amounts due and payable to the Vendor up to the date of termination of the Master Agreement; any amounts payable but not yet due under any Subordinate Agreement that survives the termination of this Master Agreement shall be paid in accordance with the terms of the Subordinate Agreement.

Despite the expiry or other termination of this Master Agreement for any reason, the terms and conditions of this Master Agreement shall continue to apply to, and shall remain in full force and effect: (a) in respect of Transition-Out Services, until the end of the Transition-Out Period; and (b) in respect of each Subordinate Agreement then in effect.

23.4 Obligations on Termination of this Master Agreement - Upon termination of this Master Agreement (including the termination of the Ordering Term), the Vendor shall, in addition to its other obligations under this Master Agreement and at law:

- (a) promptly return all OPS Confidential Information, Records, Personal Information, and Client Data to Ontario;
- (b) provide the MGS Representative with a report detailing (i) the current state of the provision of Deliverables and Services by the Vendor under all Subordinate Agreements entered into at any time by the Vendor including all Subscriber Plans, up to and including at the date of termination, and (ii) any other information requested by MGS pertaining to the provision of the Services and performance of such Subordinate Agreements and Subscriber Plans;
- (c) provide or continue to provide Transition-Out Services during the Transition-Out Period;
- (d) execute such documentation as may be required by MGS to give effect to the termination of this Master Agreement;
- (e) co-operate with MGS and Clients to the extent necessary to effect the timely and orderly termination of this Master Agreement, and to permit the non-disrupted business operation of the Client and the migration by the Client to new goods and services with the least amount of inconvenience and disruption as is reasonable in the circumstances; and
- (f) comply with any other reasonable instructions provided by MGS, including but not limited to instructions for facilitating the transfer of its obligations to another Person.

- 23.5 **Express Rights in Addition to Other Rights** - The express rights of termination in this Master Agreement are in addition to and shall in no way limit any rights or remedies of Ontario or the OPS Entity under this Master Agreement, at law or in equity.
- 23.6 **Termination for Non-Appropriation** - If this Master Agreement extends into a Fiscal Year subsequent to its execution, continuation of this Master Agreement is conditional upon an appropriation of moneys by the Legislature of Ontario (the "**Legislature**") sufficient to satisfy payments due under this Master Agreement. 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, MGS may terminate this Master Agreement upon giving notice to the Vendor. Termination shall become effective on the date of the beginning of the first Fiscal Year for which funds have not been appropriated.
- 23.7 **Survival** - The provisions of this Article shall survive the termination or expiry of this Master Agreement and of every Subordinate Agreement and of every Subscriber Plan.

ARTICLE 24. TERMINATION OF SUBORDINATE AGREEMENTS AND SUBSCRIBER PLANS

- 24.1 **Termination by Client** - A Client may terminate any Subordinate Agreement or any portion thereof or any Subscriber Plan, immediately upon written notice to the Vendor if any of the following events occurs:
- (a) the Vendor fails to comply with any of the terms of this Master Agreement or the Subordinate Agreement or any Subscriber Plan if that failure continues unremedied for ten (10) Business Days or more after written notice of that failure is given by the Client to the Vendor;
 - (b) the Client terminates another Subordinate Agreement or any Subscriber Plan in accordance with this Section 24.1;
 - (c) the Vendor is in default under Article 12 (Security Clearance) or Article 14 (Audit Requirements), or is in breach of an obligation in relation to Security Services;
 - (d) any Insolvency Event occurs with respect to the Vendor;
 - (e) the Vendor breaches any provision in Article 19 (Confidentiality) or any Privacy Provisions;
 - (f) the Vendor breaches Section 3.6 (Conflict of Interest) or any other conflict of interest provisions applicable to a Subordinate Agreement or any Subscriber Plan;
 - (g) the Vendor subcontracts for the provision of part or all of the Services or sells, assigns or transfers its interest in the Subordinate Agreement or any Subscriber Plan or any of its obligations under it to any third Person without the prior written approval of the Client except as expressly contemplated and permitted by Section 3.2 (Subcontractors);

- (h) the Vendor, prior to or after executing the Subordinate Agreement or any Subscriber Plan, makes a material misrepresentation or omission or provides materially inaccurate information to the Client;
- (i) the Vendor undergoes a change in control which, in the sole opinion of the Client, adversely affects the Vendor's ability to satisfy some or all of its obligations under the Subordinate Agreement or any Subscriber Plan; or
- (j) the Vendor fails to comply with the Requirements of Law.

Any termination of a Subordinate Agreement or any portion thereof or of a Subscriber Plan under this Section is without prejudice to the Client's right to exercise or pursue any other remedies that may be available to the Client under the Subordinate Agreement or the Subscriber Plan, as the case may be, at law or in equity. All such other remedies shall survive any termination of the Subordinate Agreement and the termination of the Subscriber Plan and remain in full force and effect thereafter.

- 24.2 **Termination for Convenience** - Each Client reserves the right to terminate any Subordinate Agreement or any portion thereof or any Subscriber Plan at any time, without cause and without penalty, upon thirty (30) calendar days prior written notice to the Vendor.
- 24.3 **Termination for Non-Appropriation** - If a Subordinate Agreement extends into a Fiscal Year subsequent to its execution, continuation of the Subordinate Agreement is conditional upon an appropriation of moneys by the Legislature of Ontario (the "**Legislature**") sufficient to satisfy payments due under the Subordinate Agreement. 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 Client may terminate the Subordinate Agreement upon giving notice to the Vendor. Termination shall become effective on the date of the beginning of the first Fiscal Year for which funds have not been appropriated.
- 24.4 **Effect of Expiry or Termination of a Subordinate Agreement** - Upon termination of a Subordinate Agreement or any part thereof, the Client will, as the case may be, pay to the Vendor any undisputed amounts due and payable to the Vendor up to the date of termination of those portions of the Subordinate Agreement terminated.
- 24.5 **Obligations on Termination** - The Vendor shall, in addition to its other obligations under the Subordinate Agreement or Subscriber Plan, as applicable, and at law:
- (a) upon termination of a Subordinate Agreement, promptly return all OPS Confidential Information, Records, Personal Information and Client Data to the Client;
 - (b) upon termination of a Subordinate Agreement, provide the Client with a report detailing (i) the current state of the provision of the Deliverables and Services by the Vendor at the date of termination, and (ii) any other information requested by the Client pertaining to the provision of the Services and performance of the Subordinate Agreement;
 - (c) upon termination of a Subordinate Agreement, comply with its obligations under Section 15.4 (Rights Assignment – Waiver);

- (d) upon termination of a Subordinate Agreement or Subscriber Plan, execute such documentation as may be required by the Client to give effect to the termination of the Subordinate Agreement;
- (e) upon termination of a Subordinate Agreement or Subscriber Plan, co-operate with MGS and Clients to the extent necessary to effect the timely and orderly termination of the Subordinate Agreement or Subscriber Plan, as applicable, or both, and to permit the non-disrupted business operation of the Client and the migration by the Client to new goods and services with the least amount of inconvenience and disruption as is reasonable in the circumstances;
- (f) upon termination of a Subordinate Agreement or Subscriber Plan, comply with any other reasonable instructions provided by the Client, including but not limited to instructions for facilitating the transfer of its obligations to another Person.

24.6 **Express Rights in Addition to Other Rights** - The express rights of termination that apply to a Subordinate Agreement or a Subscriber Plan are in addition to and shall in no way limit any rights or remedies of the Client under this Master Agreement, the Subordinate Agreement, the Subscriber Plan, at law or in equity.

24.7 **Survival** - The provisions of this Article shall survive the termination or expiry of this Master Agreement and of every Subordinate Agreement and of every Subscriber Plan.

ARTICLE 25. TERMINATION OF A STREAM

25.1 **Termination of Stream No. 1 or Stream No. 2 for Convenience** - The Minister (MGS) reserves the right to terminate either Stream No. 1 or Stream No. 2 (which shall include the termination of the applicable subset of the Ordering Term in respect of Stream No. 1 or Stream No. 2, as the case may be) at any time, without cause and without penalty, upon sixty (60) calendar days prior written notice to the Vendor.

ARTICLE 26. GENERAL

26.1 **Promotion Restrictions - Master Agreement** - Any publicity or publications related to this Master Agreement shall be at the sole discretion of Ontario. Ontario may, in its sole discretion, acknowledge any Deliverables or Services provided by the Vendor in any such publicity or publication. The Vendor shall not make use of its association with Ontario in relation to this Master Agreement without the prior written consent of MGS. Without limiting the generality of this Section, the Vendor shall not, among other things, at any time directly or indirectly communicate with the media in relation to this Master Agreement unless it has first obtained the express written authorization to do so by MGS.

26.2 **Promotion Restrictions - Subordinate Agreements and Subscriber Plans** - Any publicity or publications related to any Subordinate Agreement or any Subscriber Plan shall be at the sole discretion of the Client. The Client may, in its sole discretion, acknowledge any Deliverables or Services provided by the Vendor in any such publicity or publication. The Vendor shall not make use of its association with the Client in relation to any Subordinate Agreement or any Subscriber Plan without the prior written consent of the Client. Without limiting the generality of this Section,

the Vendor shall not, among other things, at any time directly or indirectly communicate with the media in relation to any Subordinate Agreement or any Subscriber Plan unless it has first obtained the express written authorization to do so by the Client.

- 26.3 **Disclosure to the Ontario Public Service** - Despite anything to the contrary in this Master Agreement, any Subordinate Agreement or any Subscriber Plan, the Vendor and each Client consents to the disclosure, and the provision of a copy, of this Master Agreement and each Subordinate Agreement (including any amendments to any of them and any related or resulting documents) and each Subscriber Plan and data about the acquisition of Deliverables and Services by the Client pursuant to each Subordinate Agreement, at any time and from time to time to the Ontario Public Service and to the members of the Executive Council of Ontario and their advisors and staff.
- 26.4 **Marketing Restrictions** - The Vendor and its Subcontractors shall not issue or distribute any marketing or promotional material via e-mail to Ontario or any OPS Entity or any employee thereof regarding the Deliverables or the Services or referencing this Master Agreement or a Subordinate Agreement unless in each case it has received the prior written consent of MGS to do so.
- 26.5 **Ontario Government Insignia** - The Vendor and its Subcontractors shall not use any Ontario Government Insignia unless it has received the prior written authority of MGS to do so.
- 26.6 **Survival** - Despite the termination or expiry of this Master Agreement, however occurring, those terms and conditions thereof which are intended or are in the context thereof capable of operating thereafter, shall continue in full force and effect.

ARTICLE 27. RENTAL OPTIONS FOR PAGING DEVICES (STREAM NO. 2)

- 27.1 **End of Rental Term Options** – The Client shall have the following options with respect to each rented Paging Device:
- (a) **Return Paging Devices** – Unless the Client exercises the option to purchase or the option to renew the rental as set out in subsection 27.1 (a) and (b), on expiration or other termination of the rental term for a Paging Device, the Client shall return the Paging Device to the Vendor's designated location in the Province of Ontario within ten (10) days following the expiry of the rental term.
 - (b) **Purchase Option** – On five (5) days prior written notice to the Vendor, the Client may purchase any rented Paging Device for an amount calculated by subtracting the total fees paid by the Client to the Vendor, from the date of delivery of the Paging Device to the Client to the effective date of the notice of purchase, from the price of the Paging Device set out in Schedule B. If this purchase amount is equal to or greater than the price of the Paging Device set out at Schedule B, the Client shall have the option to purchase the Paging Device from the Vendor for one dollar. Upon payment of the purchase amount, the rental with respect to the Paging Device shall terminate; the Client shall be relieved of all of its obligations to the Vendor pursuant to the rental and the Vendor shall transfer title to the Paging Device, free and clear of any and all liens, charges or encumbrances, however created, to the Client.

- (c) **Renewal Option** – On five (5) days prior written notice to the Vendor, the Client may renew the rental on a month-to-month basis, and all other provisions of this Master Agreement and the applicable Subordinate Agreement and the applicable Subscriber Plan shall continue to apply, except that the Client may exercise the return or purchase options set out in subsections 27.1 (a) or (b) at any time.

27.2 Return of Paging Devices - In connection with the return of a Paging Device:

- (a) **Packing** - At the Client's risk and expense (including all costs and expenses of transportation and in-transit insurance), the Client shall pack and return the Paging Device to the Vendor using a carrier of the Client's choice. The Client is responsible for erasing all of the Client's data from Paging Devices returned to the Vendor.
- (b) **Return of Like Paging Devices** - The Vendor acknowledges and agrees that in the course of maintenance of Paging Devices, parts and components of Paging Devices may be replaced or substituted with like parts, and accordingly that Paging Devices returned may not necessarily correspond to the serial numbers of the original Paging Devices.
- (c) **Return Condition** - All rented Paging Devices returned to the Vendor shall be returned (or delivered) in "as is" condition. The Client will not incur any charge resulting from or in connection with the condition of the Paging Devices returned or of missing parts or components.

IN WITNESS WHEREOF the parties hereto have executed this agreement as of the date first written above.

HER MAJESTY THE QUEEN in right of Ontario
as represented by the Minister of Government
Services

Per:

Signature: _____

Name: _____

Title: _____

Pursuant to delegated authority.

[*LEGAL NAME OF THE VENDOR]

Per:

Signature: _____

Name: _____

Title: _____

I have authority to bind the corporation.

**SCHEDULE A TO MASTER AGREEMENT –
DELIVERABLES**

[*Instructions: Schedule A will contain descriptions of the Devices or Services or both to be provided by the Vendor including, but not limited to, the following:

- a) the various Services and related
 - categories and plans;
 - optional features;
 - geographic service areas;
 - wireless service depots.

- b) lists of Devices and related
 - accessories;
 - services;
 - documentation.

Delete this instruction before the Master Agreement is signed.]

**SCHEDULE B TO MASTER AGREEMENT –
PRICES**

[*Instructions: Schedule B will contain Prices for the Devices or Services or both, as applicable, including the Rate Bid Forms submitted in the Vendor's Proposal, excluding any Stream for which the Proponent was disqualified. Delete this instruction before the Master Agreement is signed.]

**SCHEDULE C TO MASTER AGREEMENT –
REPORTS**

[*Instructions: Schedule C will contain formats for the reports required by Article 9 of the Master Agreement.]

**SCHEDULE D TO MASTER AGREEMENT –
ASSIGNMENT OF RIGHTS**

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

In consideration of Her Majesty the Queen in right of Ontario entering into an agreement for the provision of Paging and Mobile Devices and Services dated [insert date of agreement] the undersigned agreed to assign and now does assign and transfer unto Her Majesty the Queen in Right of Ontario all of its right, title and interest in and to the copyright in Canada and internationally of the original work entitled "[specific work to be inserted by the Client]" for the remainder of the unexpired term of the copyright.

IN WITNESS WHEREOF the undersigned has executed this assignment.

[Vendor's Name]

I have authority to bind the Vendor.

Signature:

Name:

Date:

WAIVER OF MORAL RIGHTS

THIS WAIVER OF MORAL RIGHTS made in duplicate.

I, [insert legal name of the individual], am an author of all or any of the Deliverables as that term is defined in the Master Agreement for Paging and Mobile Devices and Services dated [insert date of agreement] between [insert legal name of the Vendor] and Her Majesty the Queen in right of Ontario and expressly, irrevocably and without restriction, waive in favour of Her Majesty the Queen in right of Ontario and all sublicensees and assignees all my Moral Rights with respect to the original work entitled "[specific work to be inserted]".

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.

[*Instructions: Insert legal name of the individual]

Signature: _____

Date: _____

Address: _____

**SCHEDULE E TO MASTER AGREEMENT –
PROVINCIALY FUNDED ORGANIZATION NOTICE**

[INSTRUCTION TO THE VENDOR: PRIOR TO responding to requests from a Provincially Funded Organization, forward a copy of this document to the Provincially Funded Organization. This Provincially Funded Organization Notice may not be amended.]

PROVINCIALY FUNDED ORGANIZATION NOTICE

BACKGROUND INFORMATION:

- o Ontario has established various vendor of record arrangements (each a "VOR Arrangement") for selected qualified vendors (each a "Vendor") to supply certain products or services, or both, (the "Deliverable") to Ontario.
- o Vendors under most VOR Arrangements are required, subject to the terms of their agreement with Ontario under the applicable VOR Arrangement (each an "Ontario Agreement"), to consider requests from you (if you are a "Provincially Funded Organization", as defined in the applicable Ontario Agreement) to make Deliverables available to you for purchase.
- o In order for a Vendor to consider requests from you, the Vendor must first provide you with this Provincially Funded Organization Notice ("Notice").
- o If you continue with your request after being provided with this Notice, you will be deemed to have acknowledged and agreed to the terms set out in this Notice.

TERMS

1. Your Status in Relation to Ontario Agreements. You are not a party to any Ontario Agreement and you cannot acquire any Deliverables as a "Client" under any Ontario Agreement. If you wish to acquire products and services from a Vendor, you must enter into a separate agreement with the Vendor ("**Provincially Funded Organization Agreement**").
2. Provincially Funded Organization Agreement. Although Ontario is providing you with access to Vendors listed on VOR Arrangements, you remain solely responsible for negotiating the terms and conditions of your Provincially Funded Organization Agreement with each Vendor, including the responsibility for ensuring that each of your Provincially Funded Organization Agreements contains business, legal or other terms and conditions as may be necessary or desirable for you.
3. Procurement Processes. You are solely responsible for ensuring that the selection of any Vendor and the procurements made under any of your Provincially Funded Organization Agreements comply with any and all procurement rules, regulations, obligations and processes to which you are subject. Any differences between the terms and conditions of an Ontario Agreement and the terms and conditions of your Provincially Funded Organization Agreement may affect whether the selection of the Vendor and the procurements made under your Provincially Funded Organization Agreement meet the procurement rules, regulations, obligations or processes to which you are subject.

4. Ontario Not Liable for Your Relationship with Vendors.

- o Ontario does not endorse, recommend or approve the suitability of: (i) any Vendor as a supplier to you; (ii) the procurement process used to establish any VOR Arrangement as meeting the procurement rules, regulations, obligations and processes to which you are subject; (iii) the ordering process established for any VOR Arrangement as meeting the procurement rules, regulations, obligations and processes to which you are subject; and (iv) the terms and conditions of any Ontario Agreement as a basis for, in whole or in part, any Provincially Funded Organization Agreement or any other resulting or related relationships or agreements between you and any Vendor. You are solely responsible for conducting your own independent assessment (including obtaining your own professional advice (which may include legal and business advice) as may be necessary and appropriate in your specific circumstances) to determine the suitability of the above.

Please note that legal and other professional advice provided to Ontario with respect to the establishment of its VOR Arrangements and its Ontario Agreements was solely for the benefit of Ontario to take into account Ontario's specific legal and other concerns, and may not be applicable to or appropriate for, and may not address any of your concerns or the concerns of any other third party. Legal counsel for Ontario recommends that you obtain independent legal representation and receive independent legal advice, as well as other required independent professional advice, prior to executing any document or entering into any contract or agreement with, or acquiring any products or services from, a Vendor.

- o Ontario makes no representation, assurance, warranty, or guarantee: (i) that a Vendor will enter into a Provincially Funded Organization Agreement with you; or (ii) of the quality, value or volume of products or services that may or will be sold, if any, to you.
- o Ontario will not: (i) be or be deemed to be a party to, or a guarantor of any obligations or liability of any party under, any Provincially Funded Organization Agreement or any resulting or related relationship or agreement between you and any Vendor; or (ii) be responsible or liable to you for, and nothing in any agreement between you and any Vendor will have the effect of imposing or resulting in the imposition of, any costs, obligation, liability or covenant on Ontario for any matter arising under or in connection with: the VOR Arrangement; any Deliverable; the Ontario Agreement or any related documentation; any access to the VOR Arrangement or the Ontario Agreement or related documentation; any Provincially Funded Organization Agreement; any act, error or omission of the Vendor (including the provision or non-provision of any Deliverables or other products or services by the Vendor); or this Notice.
- o You will not, in relation to or under any Provincially Funded Organization Agreement or under any resulting or related relationship or agreement between you and any Vendor, bring any cause of action, action, claim, demand or lawsuit against Ontario or any of its personnel as a result of: (i) any act, error or omission of the parties to any Provincially Funded Organization Agreement; or (ii) any act, error or omission of Ontario or any of its personnel.
- o Any obligations, costs or liability arising under or in connection with any Provincially Funded Organization Agreement or any resulting or related relationships or agreements between you and the Vendor will remain with you and the Vendor.
- o You are solely responsible for your own contract administration with the Vendor and will not direct any issues that may arise with the Vendor to Ontario.

- o For the purposes of any Provincially Funded Organization Agreement, you have no power or authority to bind Ontario or to assume or create any obligation or responsibility, express or implied, on behalf of Ontario.
5. Data and Documentation. You will provide to Ontario, at Ontario's request, any data and documentation about your acquisition of products and services from the Vendor.
6. Access to VOR Arrangements, Vendor/Ontario Agreements and Deliverables. It is Ontario's intention that, if you choose to access any VOR Arrangement, you will do so only to acquire products or services for your operational needs. Ontario, in its sole discretion, may delay, restrict or choose to not renew access by you to information regarding any VOR Arrangement, any Ontario Agreement and any products and services provided by the suppliers to Ontario on any VOR Arrangement.
7. Restrictions to Becoming a Vendor to Ontario. If you choose to access the Ministry of Government Services' enterprise-wide VOR Arrangements, you are advised that, in some circumstances, you may be restricted or ineligible to submit a bid to become a supplier to Ontario under future procurement opportunities.
8. Confidentiality. You acknowledge that information of a confidential nature to Ontario or the Vendor, regardless of whether it is identified as confidential or not ("**Confidential Information**") may come into your knowledge, possession or control. You will: (a) keep all Confidential Information confidential and secure; (b) limit the disclosure of Confidential Information to only those of your directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors who have a need to know it for the purpose of acquiring or considering the acquisition of products and services from a Vendor (the "**Purpose**") and who have been specifically authorized to have such disclosure; (c) not directly or indirectly disclose, destroy, exploit or use any Confidential Information (except for the Purpose, or except if required by order of a court or tribunal), without first obtaining: (i) the written consent of the Ministry of Government Services ("**MGS**"); and (ii) in respect of any Confidential Information about the Vendor or any other third-party, the written consent of the Vendor and any such other third-party; and (d) return all Confidential Information to MGS on demand, with no copy or portion kept by you. You will not copy any Confidential Information, in whole or in part, unless copying is essential for the Purpose. On each copy made by you, you will reproduce all notices which appear on the original.

**SCHEDULE F TO MASTER AGREEMENT –
SUBCONTRACTORS**

Dealers

[*Instructions: Insert list of approved dealers here before the Master Agreement is signed.]

Other Subcontractors

[*Instructions: Insert list of any other approved Subcontractors, if any, or state “None”, here before the Master Agreement is signed.]

**SCHEDULE G TO MASTER AGREEMENT –
PCI DSS COMPLIANCE VALIDATION REQUIREMENTS**

Level	Validation Action	Validated By
1	Annual On-Site PCI Data Security Assessment Quarterly Network Scan	Qualified Security Assessor Approved Scanning Vendor
2	Annual PCI Self-Assessment Questionnaire Quarterly Network Scan	Service Provider Approved Scanning Vendor

**ATTACHMENT 1 TO MASTER AGREEMENT
REQUEST FOR PROPOSALS**

[*Instructions: The Request for Proposals must be inserted in this Attachment 1 before the Master Agreement is signed.]

**ATTACHMENT 2 TO MASTER AGREEMENT
PROPOSAL DOCUMENT SUBMITTED BY THE VENDOR**

[*Instructions: The proposal document submitted by the Vendor will be described here.]