

TO:	CHAIR AND MEMBERS CORPORATE SERVICES COMMITTEE MEETING ON SEPTEMBER 26, 2017
FROM:	ANNA LISA BARBON, MANAGING DIRECTOR, CORPORATE SERVICES AND CITY TREASURER, CHIEF FINANCIAL OFFICER AND MAT DALEY, DIRECTOR, INFORMATION TECHNOLOGY SERVICES
SUBJECT:	VENDOR OF RECORD (VOR) OSS_00456717 TELEPHONY EQUIPMENT, MAINTENANCE AND SUPPORT 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 Telephony Equipment, Maintenance and Support Services:

- a) That approval hereby **BE GIVEN** to enter into the Vendor of Record, Province of Ontario Agreement (Appendix A) available to the Broader Public Sector (BPS) for a one (1) year contract (2017-2018) with an optional one (1) additional, one (1) year extension for Telephony Equipment, Maintenance and Support Services (VOR OSS-00456717);
- b) The attached proposed By-law (Appendix B) **BE INTRODUCED** at the Municipal Council meeting of Tuesday, October 3, 2017:
 - i. **TO APPROVE** the agreement with Eclipse Technology Solutions Inc. (the "Supplier") and The Corporation of the City of London (the "Buyer") for the "Publicly Funded Organization Agreement" for Telephony Equipment, Maintenance and Support Services (Schedule A), it being noted that the estimated cost of this project is \$1,250,000; 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 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) The financing for this project be **BE APPROVED** as set out in the attached Source of Financing Report (Appendix C).

PREVIOUS REPORTS PERTINENT TO THIS MATTER
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None.

BACKGROUND

The City of London's current Avaya voice network has been in place for twelve (12) years (2005) and consists of approximately 1800 desk phones, associated voice mailboxes, all corporate customer service lines with phone menus, nine (9) PBX phone switches and all call center server technology.

The three (3) main technology challenges related to our current voice network infrastructure are equipment age, supply and geographic redundancy:

- i) The majority of the voice network infrastructure is twelve (12) years old. This increases the probability of risk and potential failures;
- ii) Over 50% of our equipment is categorized as end of life and therefore we are experiencing supply issues with manufacturers; and
- iii) Our current voicemail and call center environment has limited geographic redundancy.

Information Technology Services (ITS) is seeking to undertake the *Voice Modernization Project* to address these three (3) challenges. This project will replace all current voice network Avaya devices with modern Cisco devices. This upgrade will further improve integration between our voice and data networks allowing for simplified management and administration across both systems. It will also integrate standardized security across platforms and the Cisco Server environment at the City of London Data Centre.

The proposed solution will be designed and built with redundancy across multiple geographic locations. This redundancy allows for technology at one location to undertake the tasks normally performed by equipment at a different location; minimizing potential downtime and user impact.

It is important to note that the *Voice Modernization Project* will provide the City of London with improved reliability, support and an enhanced end user experience. Improved reliability and support will be realized through the purchase of modern equipment and the associated support for the lifecycle of the assets. Unified Communications will be further introduced to improve the end user experience associated with integration among Skype for Business, audio/video conferencing and web based collaboration tools.

This system will fully support the Council direction of July 25, 2017 to implement and maintain a 311 single access number.

DISCUSSION

Strategic Connection:

Leveraging the Ontario VOR OSS-00456717 for Telephony Equipment, Maintenance and Support Services will support the delivery of the identified elements of the *2015-2019 Strategic Plan for the City of London*:

Leading in Public Service – 5. Excellent Service Delivery	
What are we doing?	How are we doing it?
Deliver great customer experiences to residents, businesses, and visitors: <ul style="list-style-type: none"> • Improved access through web, phone, and in-person 	IT Strategic Plan

Information Technology Services conducted a review of the City of London's voice network environment to investigate and determine the best approach and methodology for the sourcing of new and modern voice network assets.

Based on the City of London's voice network requirements, this review concluded that the most advantageous approach would be to leverage the Ontario Ministry of Government and Consumer Services RFP. The following is an excerpt from the RFP issued by the Ministry:

"This RFP solicitation also provides the flexibility for Telephony Equipment, Maintenance and Support Services to be obtained by the Broader Public Sector (BPS) clients with similar requirements. Otherwise known as Provincially Funded Organization, BPS clients may request deliverables under the agreement, during the term, however, the supplier may only provide such services by entering into a separate contract."

Through the Ontario Ministry of Government and Consumer Services RFP process, Eclipse Technology Solutions Inc. was selected as the vendor of record for the Ontario Master Agreement VOR OSS-00456717. Entering into this Publicly Funded Organization (PFO) Agreement allows the City of London to leverage the Province of Ontario Master Agreement VOR (OSS-00456717 – Telephony Equipment, Maintenance and Support Services) with Eclipse Technology Solutions Inc. Under the PFO agreement, the City of London and vendor agree to be bound by the provisions of the agreement.

Currently more than 30 Publicly Funded Organizations (Governments, Health Care Institutions, School Boards, Colleges, Universities and Municipalities) leverage the Ontario Ministry of Government and Consumer Services RFP for Telephony Equipment, Maintenance and Support Services.

Financial Impact

The Voice Modernization Project was approved as part of the 2017 Capital Budget and the Source of Financing is attached as Appendix C.

Operating costs associated with the support and maintenance of this hardware and software will be accommodated within the existing ITS operating budget.

Lastly, there is an opportunity to reduce costs through the reduction of desk phones in favour of one number routing to any corporate issued voice device. ITS has created processes associated with education, outreach and employee surveys to best balance user preferences with cost containment.

Purchasing Process

The Ontario Master Agreement from VOR OSS – 00456717 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

The City of London's current Avaya voice network with has been in place for twelve (12) years and consists of approximately 1800 desk phones, nine (9) PBX phone switches, multiple phone servers and other associated phone system technologies. ITS is seeking to undertake the *Voice Modernization* project to replace all aforementioned equipment with modern Cisco equipment.

Following a review of the City of London's voice network environment, ITS concluded the most advantageous approach for the sourcing of modern Cisco voice network assets is to leverage the Province of Ontario Master agreement VOR OSS-00456717.

Acknowledgements

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

PREPARED AND SUBMITTED BY:	PREPARED AND SUBMITTED BY:
JON-PAUL MCGONIGLE MANAGER II, DIVISIONAL SUPPORT INFORMATION TECHNOLOGY SERVICES	PAUL GARDNER MANAGER III, NETWORK SERVICES INFORMATION TECHNOLOGY SERVICES
RECOMMENDED BY:	RECOMMENDED BY:
MAT DALEY DIRECTOR, INFORMATION TECHNOLOGY SERVICES	ANNA LISA BARBON MANAGING DIRECTOR, CORPORATE SERVICES AND CITY TREASURER, CHIEF FINANCIAL OFFICER

cc: John Freeman, CSCMP, Manager of Purchasing and Supply
Chris Ginty, CPPB, Procurement Officer
Tom Travers, London Public Library
John Nolan, Manager, Service London

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THIS AGREEMENT for Telephony Equipment Maintenance and Support Services is made as of the ___ day of _____, 2014.

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO,
as represented by the Minister of Government and Consumer Services

(hereinafter called “the Ministry”)

AND:

(hereinafter called the “Supplier”)

NOW THEREFORE, in consideration of the mutual promises and obligations contained in this Agreement, the Ministry and the Supplier covenant and agree as follows:

ARTICLE 1 – DEFINITIONS, INTERPRETATION AND SCHEDULES

1.01 **Definitions** – In this Agreement, the following words and terms shall have the following meanings, and the meanings shall apply to both singular and plural forms of the words and terms:

“**Acceptance Testing**” has the meaning set out in Section 5.01.

“**Acceptance Test Plan**” has the meaning set out in Section 5.02.

“**Agency**” means any advisory, adjudicative, regulatory (including those with governing boards), and operational service agency of Ontario.

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

“**Business Day**” means any working day, Monday to Friday inclusive, 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.

“**Change**” has the meaning set out in **Section 9.01**.

“**Change Order**” has the meaning set out in **Section 9.05**.

“**Change Proposal**” has the meaning set out in **Section 9.02**.

“Change Request” has the meaning set out in **Section 9.01**.

“Claims” means all liability, claims, demands, losses, costs, damages (including incidental, indirect, consequential and special damages or any loss of use, revenue or profit, by any person, entity or organisation), expenses (including legal, expert and consultant fees), actions, causes of action, suits, or other proceedings by whoever made, sustained, brought or prosecuted. Without limitation, Claims may arise from a breach of any obligation under the Contract, including a breach of Intellectual Property Rights, a breach of confidentiality or privacy or from third party bodily injury (including death), personal injury or property damage, relating to the provision of the Deliverables or otherwise relating to the Contract.

“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.

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

- (a) in relation to the RFP process, the Supplier 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 the 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; 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 Supplier’s other commitments, relationships or financial interests.

“Contract” means the aggregate of:

- (a) this Agreement for Telephony Equipment Maintenance and Services;
- (b) the Schedules to this Agreement;
- (c) the RFP, including any addenda;
- (d) the Proposal; and
- (e) any amendments executed in accordance with the terms of this Agreement.

“Deficiency” means any isolated or recurring defect, error, failure or bug in the Deliverables which prevents the Deliverables from performing in accordance with the Acceptance Criteria or other applicable specifications, or makes it difficult or impossible for the Ministry to access or use the Deliverables.

“Deliverables” means all goods and services described in **Schedule A (Deliverables and Supplementary Provisions)** or provided by the Supplier pursuant to the Contract.

“Designated Personnel” has the meaning set out in **Section 8.03**.

“Dispute” means any dispute or disagreement between the Supplier and the Ministry in connection with the interpretation or operation of the Contract, or any breach thereof, whether actual, alleged or anticipated.

“Documentation” means all documents, whether in printed or electronic form, such as but not limited to installation guides, instructional materials, layouts, maintenance materials, manuals, system documentation, training materials, user guides, and includes all developments and modifications to the above.

“Driver’s Record Check” has the meaning set out in **Schedule A(Deliverables and Supplementary Provisions)**.

“Effective Date” means **[Insert appropriate date]**.

“Equipment” means any equipment provided by the Supplier to the Ministry pursuant to this Agreement, and includes without limitation all applicable Documentation.

“Executive Sponsors” has the meaning set out in **Section 23.03**.

“Expiry Date” means **[Insert appropriate date]**.

“FIPPA” means the Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c.F.31, as may be amended from time to time.

“General Level Security Screening Check” has the meaning set out in **Schedule A (Deliverables and Supplementary Provisions)**.

“GO ITS” means the Government of Ontario Information Technology Standards which are the Information Technology Infrastructure Library industry standards adopted by the Government of Ontario for the implementation of information technology services, as more particularly described in **Schedule A (Deliverables and Supplementary Provisions)**, and subject to change at the discretion of the Ministry from time to time.

“Government Technology” means any and all creations, discoveries, improvements, modifications, developments, enhancements and adaptations of any technology, systems, hardware, software, designs, methods, trade secrets, techniques, materials, documentation, information and other products or property owned by the Ministry or to which the Ministry has been granted any rights or which are conceived, developed or produced for the Ministry by the Supplier in the course of providing the Deliverables under this Agreement.

“Indemnified Parties” means Her Majesty the Queen in right of Ontario, Her Ministers, appointees and employees.

“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 the Contract 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 include the Supplier’s 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.

“Intellectual Property Rights” means any intellectual or industrial property rights protected or capable of protection 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); and at any time in the future, with respect to any licence to exercise Intellectual Property Rights, includes any intellectual or industrial property rights protected or capable of protection at such time under the laws of Canada, any foreign country, or any political subdivision of any country.

“Materials” means any computer programs, prototypes, tapes, data, work in progress, technology, research, working papers, inventions, listings, disks, reports, graphics, Documentation and all other materials, whether in printed, electronic or other form, which are to be produced or which arise from or pursuant to this Agreement, and without limiting the foregoing, includes any of the Documentation.

“Ministry Representative” has the meaning set out in **Section 22.02**.

“Moral Rights” has the same meaning as in the *Copyright Act*, R.S.C. 1985, c. C-42, as amended, and includes comparable rights in applicable jurisdictions;

“Ontario” means Her Majesty the Queen in Right 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.

“Ontario Public Service” (or “OPS”) means the ministries and other administrative units of the Government of Ontario over which ministers of the Crown preside, and for the purposes of the Contract includes the Agencies.

“OPS Confidential Information” means all information of the Ontario Public Service that is of a proprietary or confidential nature, including Personal Information, regardless of whether it is identified as proprietary or confidential or not, and whether recorded or not, and however fixed, stored, expressed or embodied, which comes into the knowledge, possession or control of the Supplier in connection with the Agreement. OPS Confidential Information includes but is not limited to:

- (a) all new information derived at any time from any such information whether created by the OPS, the Supplier or any third-party; and
- (b) all information that the OPS is obliged, or has the discretion, not to disclose under provincial or federal legislation.

OPS Confidential Information shall not include information that:

- (c) is or becomes generally available to the public without fault or breach on the part of the Supplier, including without limitation without breach of any duty of confidentiality owed by the Supplier to the OPS or to any third-party, but only after that information becomes generally available to the public;

- (d) the Supplier can demonstrate to have been rightfully obtained by the Supplier, without any obligation of confidence of any kind, from a third-party who had the right to transfer or disclose it to the Supplier free of any obligation of confidence;
- (e) the Supplier can demonstrate to have been rightfully known to or in the possession of the Supplier at the time of disclosure free of any obligation of confidence; or
- (f) is independently developed by the Supplier without the use of any OPS Confidential Information.

“OPS Entity” means an entity within the OPS, and any other entity designated by the Ministry as being an OPS Entity, as such designation may be amended from time to time at the sole discretion of the Ministry.

“Party” means either the Ministry or the Supplier as the context requires, and **“Parties”** means both the Ministry and the Supplier.

“Person”, if the context allows, includes any persons, firms, partnerships or corporations or any combination thereof.

“Personal Information” has the same definition as in subsection 2(1) of FIPPA, and means personal information recorded in printed form, on film, by electronic means or otherwise and disclosed to the Supplier pursuant to this Agreement. The definition of “personal information” in subsection 2(1) of FIPPA includes the name, address, age, date of birth, sex and religion of all individuals.

“Personnel” means collectively, in the case of each Party, individuals who provide services to such Party or any of its Subcontractors in connection with this Agreement, whether as employees or independent contractors.

“Privacy Provisions” means, collectively, **Article 16** (Privacy Provisions) and any other FIPPA related provisions in this Agreement.

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

“Proposal” means the documentation submitted by the Supplier in response to the RFP and which has been accepted by the Ministry.

“Project Manager” has the meaning set out in **Section 22.05**.

“Provincially Funded Organization” means

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

but excludes (iii) 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 (iv) OPS Entities.

“Provincially Funded Organization Notice” has the meaning set out in **Section 4.01**.

“Provincially Funded Organization Agreement” means an agreement between the Supplier and a Provincially Funded Organization as defined in **Section 4.01**.

“Rates” means the applicable price, in Canadian funds, to be charged for the applicable Deliverables, as set out in **Schedule B (Rates and Pricing)**, representing the full amount chargeable by the Supplier for the provision or performance of the Deliverables, including but not limited to:

- (a) all applicable duties and taxes, excluding the Harmonized Sales Tax;
- (b) all labour and material costs;
- (c) all insurance costs;
- (d) all travel, carriage and delivery costs; and
- (e) all other overhead including any fees or other charges required by law.

“Record” means, for the purposes of the Contract, any recorded information, including any Personal Information, in any form:

- (a) provided by the Ministry to the Supplier, or provided by the Supplier to the Ministry, for the purposes of the Contract; or
- (b) created by the Supplier in the performance of the Contract

unless the information is specifically exempted by the Ministry in the Schedules.

“Repair Service” has the meaning set out in **Schedule A (Deliverables and Supplementary Provisions)**

“Request” means a written or electronic request by the Ministry duly submitted to the Supplier pursuant to, and in accordance with, this Agreement, for any of the Deliverables, or for a material addition, deletion or other change to the Deliverables requested pursuant to a previous Request.

“Requirements of Law” means all applicable requirements, laws, statutes, codes, acts, ordinances, orders, decrees, injunctions, by-laws, rules, regulations, permits, licenses, authorizations, directions, and agreements with all Authorities, now or at any time hereafter may be applicable to the Supplier, the Contract or the Deliverables or any part thereof.

“RFP” means the Request for Proposals dated [REDACTED] for Telephony Equipment Maintenance and Support Services, reference number OSS_00456717 issued by the Ministry and any addenda to it.

“Schedule(s)” means any one or more of Schedules A to C listed in **Section 1.03** and forming an integral part of the Contract as of the Effective Date, whether or not attached hereto, together with other schedules and documents incorporated by agreement of the Parties after the Effective Date.

“Service” means any or all of the services to be provided by the Supplier to the Ministry pursuant to Requests issued under this Agreement, and for avoidance of doubt includes the Full Maintenance and Support Services, Best Efforts maintenance and Support Services, Provisioning Services and Supplementary Services and Service Management, all as more particularly described in **Schedule A (Deliverables and Supplementary Provisions)**.

“Service Address” means the offices or other location or locations of the Clients where Deliverables are to be provided, as specified in a Request.

“Service Levels” means the minimum service levels for the provision and performance of the Deliverables, as set out in **Schedule A (Deliverables and Supplementary Provisions)**.

“Software” means all or any of the computer software (in object code or, if source code is to be supplied to the Ministry in order for the Supplier to perform its obligations pursuant to this Agreement, in source code), including any tools, utilities, libraries, routines and software components of Appliances, and any related Documentation, to be provided by the Supplier to the Ministry in conjunction with the Services, including but not limited to all enhancements to such Software.

“Specifications” means (a) the published specifications for the Deliverables; (b) the specifications for the Deliverables set out in, or incorporated by reference into, the Contract, including without limitation the requirements and specifications set out in **Schedule A (Deliverables and Supplementary Provisions)**, the RFP and the Proposal; and (c) the specifications for the Deliverables developed pursuant to the Contract, provided that they have been agreed to by the Parties. For avoidance of doubt, Specifications may include detailed technical design specifications, functional specifications, performance specifications, interface specifications, drawings, samples and models.

“Subcontractor” means any person having a contract with the Supplier for the supply of any of the Deliverables, or any portions thereof, and shall include, subject to any contrary intention expressed or implied in this Agreement, the Subcontractor’s officers, directors, employees, agents, contractors and representatives.

“Supplier Confidential Information” means all information of the Supplier that is of a proprietary or confidential nature and is identified as proprietary or confidential, whether recorded or not, and however fixed, stored, expressed or embodied, which comes into the knowledge, possession or control of the Ministry in connection with the Contract. Supplier Confidential Information includes but is not limited to, all new information derived at any time from any such proprietary or confidential information whether created by the Supplier, the Ministry or any third-party.

Supplier Confidential Information shall not include information that:

- (a) is or becomes generally available to the public without fault or breach on the part of the Ministry, including without limitation without breach of any duty of confidentiality owed by the Ministry to the Supplier or to any third-party, but only after that information becomes generally available to the public;
- (b) the Ministry can demonstrate to have been rightfully obtained by the Ministry, without any obligation of confidence of any kind, from a third-party who had the right to transfer or disclose it to the Ministry free of any obligation of confidence;
- (c) the Ministry can demonstrate to have been rightfully known to or in the possession of the Supplier at the time of disclosure free of any obligation of confidence; or
- (d) is independently developed by the Ministry without the use of any Supplier Confidential Information.

“Supplier Technology” means any and all concepts, inventions, systems, processes, techniques, methodologies, know-how, data, tools, technology (including software in object code and source code versions), Documentation and any other information or Materials, and the Intellectual Property Rights therein, (a) developed by, owned by, or licensed to, the Supplier prior to the provision of the Deliverables pursuant to a Request, and (b) all improvements, enhancements or derivatives thereto developed by the Supplier, provided that such improvements, enhancements or derivatives shall not include any Government Technology.

“Term” has the meaning set out in **Section 25.02**.

- 1.02 In this 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.
- 1.03 **Schedules** – The following Schedules attached to this Agreement form part of the Contract:
- (a) Schedule A - Deliverables and Supplementary Provisions
 - (b) Schedule B - Rates and Pricing
 - (c) Schedule C - Provincially Funded Organization Notice
- 1.04 **No Indemnities from Ministry** - Notwithstanding anything else in the Contract, any express or implied reference to the Ministry providing an indemnity or any other form of indebtedness or contingent liability that would directly or indirectly increase the indebtedness or contingent liabilities of the Ministry, whether at the time of execution of this Agreement or at any time during the Term, shall be void and of no legal effect.
- 1.05 **Entire Agreement** - The Contract and each Request embodies the entire agreement between the Parties with regard to the provision of Deliverables and supersedes any prior understanding or agreement, collateral, oral or otherwise with respect to the provision of the Deliverables, existing between the Parties at the date of execution of this Agreement. Furthermore, the Parties agree that all language, whether oral or written, including without limitation language contained in any billing statement, documentation, web site, click-wrap licence, shrink-wrap licence or any other licence delivered with, embedded in, attached or applied to or presented upon any of the Deliverables, shall be of no force or effect in connection with the Contract or any Request.
- 1.06 **Amendments to the Contract** - Any changes to the Contract shall only be made by written amendment signed by the authorized signing authorities of the Ministry and the Supplier. No changes shall be effective or shall be carried out in the absence of such an amendment. Each such amendment shall be effective from its effective date and is not intended to be retroactive, unless expressly stated otherwise in such amendment. Each such amendment applies to every Request that has a commencement date equal to or later than the effective date of such amendment, unless expressly stated otherwise in such amendment.
- 1.07 **Severability** - If any term or condition of the Contract, or the application thereof to the Parties or to any Persons or circumstances, is to any extent invalid or unenforceable, the remainder of the Contract, and the application of such term or condition to the Parties, Persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby.
- 1.08 **Interpretive Value of Agreement Documents** - In the event of a conflict or inconsistency in any provisions in the Contract: (a) the main body of this Agreement shall govern over the Schedules to the Agreement and (b) the Agreement (including the Schedules) shall govern over the RFP and the Proposal; and (c) the RFP shall govern over the Proposal.
- 1.09 **Interpretive Value of Headings** - The headings in the Agreement are for convenience of reference only and in no manner modify, interpret or construe the Agreement.
- 1.10 **Reference to Sections etc.** – – For avoidance of uncertainty, any reference in this Agreement to a specific part, section or appendix of a Schedule shall be deemed to include any other relevant part, section or appendix of the Schedule. No such specific reference shall relieve the Supplier from compliance with any other provisions or requirements of the Schedule. Unless otherwise stated, in the main body of this Agreement all references to Articles, Sections and Subsections are to the articles, sections and subsections contained in the main body of this Agreement.
- 1.11 **No Waiver** - No provision of the Contract or in any Request shall be deemed waived, amended, or modified by either Party unless such waiver, amendment, or modification is in writing and signed by the Party against whom it is sought to enforce the waiver, amendment, or modification.

- 1.12 **Remedies** - The rights and remedies of the Supplier and the Ministry under the Contract and each Purchase Order are cumulative, and are in addition to and not in substitution for any rights or remedies provided by law and shall not merge upon termination of the Contract. Any waiver by either Party of the strict observance, performance or compliance with any term, covenant, condition, or agreement herein contained, or indulgence granted shall not be deemed to be a waiver of any subsequent default or breach of the terms of the Contract.
- 1.13 **Force Majeure –**
- (a) Subject to the requirements of **Article 24**, neither Party shall be liable for damages caused by delay or failure to perform its obligations under the Contract where such delay or failure is caused by an event beyond its reasonable control. Without limiting the generality of the foregoing, 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 Deliverables.
 - (b) The Parties agree that an event shall not be considered beyond a Party's reasonable control if a reasonable business Person applying due diligence in the same or similar circumstances under the same or similar obligations as those contained in the Agreement would have put in place contingency plans either to materially mitigate or to negate the effects of such event.
 - (c) If a Party seeks to excuse itself from its obligations under this Agreement due to a force majeure event, that Party shall immediately notify the other Party of the delay or non-performance, the reason for such delay or non-performance and the anticipated period of delay or non-performance.
 - (d) If the anticipated or actual delay or non-performance by the Supplier exceeds fifteen (15) Business Days, the Ministry may immediately terminate this Agreement by giving notice of termination and such termination shall be in addition to the other rights and remedies of the Ministry under this Agreement, at law or in equity.
- 1.14 **Governing Law –** The Contract shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein. The Parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals from them. The Parties agree that the United Nations Convention on contracts for the International Sale of goods does not apply to this Agreement and is strictly excluded.
- 1.15 **Reference to Laws –** Any reference in the Contract to a statute, regulation, by-law or rule of any governmental or other regulatory body shall be interpreted as meaning a law or rule as amended or re-enacted from time to time. In addition, where any laws, codes or regulations conflict, the more stringent shall govern.
- 1.16 **References to Days –** All references to “days” in the Contract are references to “calendar days” unless stated otherwise.
- 1.17 **No Drafting Presumption –** No presumption shall operate in favour of or against any Party hereto as a result of any responsibility that the Party may have had for drafting the Contract or any portion thereof.
- 1.18 **Survival -** The provisions of **Sections 1.04, 1.11, 1.12, 1.14, 2.04, 2.07, 3.02, 10.03, 10.05, 10.07, 10.08 and 10.09** and of **Articles 11, 12, 13, 14, 16, 17, 18, 23, 27 and 28** shall survive the termination or expiry of this Agreement.

1.19 **Currency** - All references to currency in this Agreement shall be in Canadian dollars.

ARTICLE 2 – NATURE OF RELATIONSHIP BETWEEN MINISTRY AND SUPPLIER

2.01 **Supplier's Power to Contract** - The Supplier represents and warrants that it has the full right and power to enter into the Contract and there is no agreement with any other Person, which would in any way interfere with the rights of the Ministry under the Contract.

2.02 **Representatives May Bind the Parties** - The Parties represent that their respective representatives have the authority to legally bind them to the extent permissible by the Requirements of Law.

2.03 **Supplier Not a Partner, Agent or Employee** - The Supplier shall have no power or authority to bind the Ministry or to assume or create any obligation or responsibility, express or implied, on behalf of the Ministry. The Supplier shall not hold itself out as an agent, partner or employee of the Ministry. Nothing in the Contract shall have the effect of creating an employment, partnership or agency relationship between the Ministry and the Supplier (or any of the Supplier's directors, officers, employees, agents, partners, affiliates, volunteers or Subcontractors) or constitute an appointment under the *Public Service Act*, R.S.O. 1990, c. P.47, as amended.

2.04 **Responsibility of Supplier** - The Supplier agrees that it is liable for the acts and omissions of its directors, officers, employees, agents, partners, affiliates, volunteers and Subcontractors. This **Section 2.04** is in addition to any and all of the Supplier's liabilities under the Contract and under the general application of law. The Supplier shall advise these individuals and entities of their obligations under the Contract and shall ensure their compliance with the applicable terms of the Contract. In addition to any other liabilities of the Supplier pursuant to the Contract or otherwise at law or in equity, the Supplier shall be liable for all damages, costs, expenses, losses, claims or actions arising from any breach of the Contract resulting from the actions of the above mentioned individuals and entities.

2.05 **No Subcontracting or Assignment** - The Supplier shall not subcontract or assign the whole or any part of the Contract or any monies due under it without the prior written consent of the Ministry. Such consent shall be in the sole discretion of the Ministry and subject to the terms and conditions that may be imposed by the Ministry. Without limiting the generality of the conditions which the Ministry may require prior to consenting to the Supplier's use of a Subcontractor, the Subcontractor must be properly certified by all relevant Equipment manufacturers in accordance with Section ___ of **Schedule A(Deliverables and Supplementary Provisions)**; the Contractor must receive Security Clearance to the extent required under **Article 20 (Security Clearance Checks)**; and every contract entered into by the Supplier with a Subcontractor shall adopt all of the terms and conditions of this Contract as far as applicable to those parts of the Deliverables provided by the Subcontractor. Nothing contained in the Contract shall create a contractual relationship between any Subcontractor or its directors, officers, employees, agents, partners, affiliates or volunteers and the Ministry.

2.06 **Duty to Disclose Change of Control** - In the event that the Supplier undergoes a change in control the Supplier shall immediately disclose such change in control to the Ministry and shall comply with any terms and conditions subsequently prescribed by the Ministry resulting from the disclosure.

2.07 **Conflict of Interest** - The Supplier shall:

- (a) avoid any Conflict of Interest in the performance of its contractual obligations;
- (b) disclose to the Ministry without delay any actual or potential Conflict of Interest that arises during the performance of its contractual obligations; and

- (c) comply with any requirements prescribed by the Ministry to resolve any Conflict of Interest.

In addition to all other contractual rights or rights available at law or in equity, the Ministry may immediately terminate the Contract upon giving notice to the Supplier where:

- (d) the Supplier fails to disclose an actual or potential Conflict of Interest;
- (e) the Supplier fails to comply with any requirements prescribed by the Ministry to resolve a Conflict of Interest; or
- (f) the Supplier's Conflict of Interest cannot be resolved.

2.08 **Contract Binding** - The Contract shall ensure to the benefit of and be binding upon the Parties and their successors, executors, administrators and their permitted assigns.

ARTICLE 3 – SUPPLIER PROVISION AND PERFORMANCE OF THE DELIVERABLES

3.01 **Request for Deliverables** – The Ministry may order Deliverables from the Supplier by submitting a Request. Each such Request shall include all of the terms and conditions of the Contract by reference. No term or condition set out in a Request shall have any effect upon any other Request. A Request shall not change the terms or conditions of the Contract. The Ministry is not, despite the execution of the Contract, under any obligation to submit any Request to the Supplier.

3.02 **Delay in Deliverables** - The Supplier shall immediately notify the Ministry in advance of any event that is reasonably expected to adversely affect the schedule for the provision or performance of any of the Deliverables. In the event of a delay, the Ministry may, at its discretion:

- (a) invoke such remedies as are specified in **Schedule A (Deliverables and Supplementary Provisions)** or the RFP for failure of the Supplier to comply with the Service Levels;
- (b) invoke such other remedies as are specified in the Contract or at law, including the remedies set out in **Article 27** (Termination by the Ministry);
- (c) elect to excuse the delay, provided such election shall not restrict the rights of the Ministry in the event of any subsequent delay.

3.03 **Service Enhancements** -

- (a) If the Supplier at any time develops or makes available significant enhancements to the Services, the Supplier shall forthwith notify the Ministry, setting forth the following:
 - (i) the purpose behind the development of the enhancements;
 - (ii) the result to be achieved by implementing the enhancements;
 - (iii) the parts of the service that will be added to, changed or removed in the course of implementing the enhancements;
 - (iv) the resources required by Supplier and the Ministry and/ or Clients and the schedule of activities if the Ministry decides to implement the enhancements; and
 - (v) the names and addresses of other customers of the Supplier which have implemented the enhancements.

- (b) The Supplier shall provide the enhancements at no additional charge to the Ministry or the Clients, with the exception of a reconfiguration charge, if applicable, during the Term.
- 3.04 **Notification by Supplier to Ministry** - During the Term, the Supplier shall advise the Ministry promptly of: (a) any contradictions, discrepancies or errors found or noted in the Contract; (b) supplementary details, instructions or directions that do not correspond with those contained in the Contract; and (c) any omissions or other faults that become evident and should be corrected in order to provide the Deliverables in accordance with the Contract and Requirements of Law.
- 3.05 **Non-Exclusive Contract, Work Volumes** - The Supplier acknowledges that it is providing the Deliverables to the Ministry on a non-exclusive basis. The Ministry makes no representation regarding the volume of goods and Deliverables required under the Contract. The Ministry reserves the right to contract with other Parties for the same or similar goods and Deliverables as those provided by the Supplier and reserves the right to obtain the same or similar goods and Deliverables internally.

ARTICLE 4. PROVINCIALY FUNDED ORGANIZATIONS

- 4.01 **Provincially Funded Organization Agreements** - If the Supplier wishes to provide products and services to Provincially Funded Organizations, the Supplier may only do so under a separate agreement with a Provincially Funded Organization. If the Supplier 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, the Supplier 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 C (“Provincially Funded Organization Notice”)**; and (b) subject to the Supplier’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 (“Provincially Funded Organization Agreement”) based on the same or similar terms (including price and the length of the term) of this Agreement.

The Supplier agrees that the Supplier 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 Supplier and the Provincially Funded Organization) of the Provincially Funded Organization Agreement and for any resulting or related relationships and agreements between the Supplier and the Provincially Funded Organization.

- 4.02 **Status of Provincially Funded Organizations** - Provincially Funded Organizations cannot enter into any subordinate agreement to this Agreement to acquire any Deliverables or any other products and services under this Agreement.
- 4.03 **The Ministry Not Liable for Supplier’s Relationship with Provincially Funded Organizations** - The Supplier acknowledges and agrees as follows:
- (a) The Ministry does not endorse, recommend or approve the suitability of: (i) any Provincially Funded Organization as a customer of the Supplier; and (ii) the terms and conditions of this Agreement (or any subordinate agreement under this 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 Supplier and any Provincially Funded Organization. The Supplier is solely responsible for conducting its own independent assessment (including obtaining its own professional advice as may be necessary and appropriate in the Supplier’s specific circumstances) to determine the suitability of the above.

- (b) The Ministry 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 Supplier; 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) The Ministry will not, in respect of any Provincially Funded Organization Agreement or any resulting or related relationships or agreements between the Supplier 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 Supplier or any third party for any costs, obligations, liabilities or covenants of the Provincially Funded Organization, and nothing in any agreement between the Supplier and any Provincially Funded Organization shall have the effect of imposing or resulting in the imposition of any costs, obligations, liabilities or covenants on the Ministry.
- (d) The Supplier shall not, in relation to or under any Provincially Funded Organization Agreement or under any resulting or related relationships or agreements between the Supplier and any Provincially Funded Organization, bring any Proceedings against the Ministry 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 the Ministry or any of its Personnel.
- (e) The Supplier 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 the Ministry.
- (f) For the purposes of any Provincially Funded Organization Agreement, the Supplier 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 the Ministry.
- (g) Despite any provision in this Agreement to the contrary, the Supplier shall be responsible for any and all liability, losses, costs, damages, expenses (reasonable legal, expert and consultant fees) suffered by any Indemnified Party arising out of or in connection with any Provincially Funded Organization Agreement or any breach by the Supplier of this **Article 4 (Provincially Funded Organizations)**.

4.04 Disclosure of Information

- (a) The Ministry may, from time to time and at its sole discretion, inform any or all Provincially Funded Organizations of: (i) the Supplier's status as a supplier to the Ministry; (ii) the products and services of the Supplier that are available to the Ministry under this Agreement; and (iii) the Supplier's obligation under this **Section 4.04** and under **Section 4.01**. In addition, the Ministry and any OPS Entity may disclose, and the Supplier consents to the disclosure, to Provincially Funded Organizations of this Agreement or any part of it (including pricing), as amended. For the purposes of the disclosure under this **Section 4.04**, the Supplier agrees that neither this Agreement or any part of it is considered Supplier Confidential Information and no notice to or further consent of the Supplier is required prior to disclosure to any Provincially Funded Organization.
- (b) If the Supplier is requested by a Provincially Funded Organization to do so, the Supplier 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 Supplier's Proposal in response to the RFP, but only to the extent that it does not include OPS Confidential Information.

- (c) The Supplier agrees to provide to the Ministry, at the Ministry's request, data and information regarding Provincially Funded Organization access to and acquisition of products and services from the Supplier.
- (d) The Supplier consents to the Ministry 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 Supplier.

ARTICLE 5 – ACCEPTANCE TESTING

5.01 Prior to the Ministry's acceptance of all or part of the Deliverables, the Ministry at its discretion may conduct acceptance testing ("Acceptance Testing"). In the event of Acceptance Testing, the provisions of this **Article 5** shall apply.

5.02 **Preliminary Acceptance Test Plan** - Acting reasonably and prior to any part of the Deliverables being ready for Acceptance Testing, the Supplier and the Ministry will together develop a mutually agreeable plan for Acceptance Testing of the Deliverables ("Acceptance Test Plan").

Each Acceptance Test Plan shall be set out in writing and include:

- (a) the duration of the Acceptance Testing period in Business Days;
- (b) the name(s) or title of the person(s) who will conduct the Acceptance Test;
- (c) a description of how the Acceptance Test and the results will be documented;
- (d) a list of success criteria; and
- (e) who will be responsible for developing appropriate test data (which test data will be subject to the reasonable approval of the other Party).

The Supplier shall give the Ministry written notice when any part of the Deliverables is ready for the Acceptance Test.

5.03 **Acceptance Test Plan Review** - Upon the Ministry's receipt of a notice that any part of the Deliverables is ready for the Acceptance Testing, the Supplier will if requested by the Ministry, review the Acceptance Test Plan with the Ministry. The Acceptance Test Plan shall apply unless the Parties agree to amend it.

The Ministry and the Supplier will set a mutually agreeable time and place for performing the Acceptance Testing.

5.04 **Conduct of Acceptance Tests** - A Ministry nominated Acceptance Testing representative must be present for every Acceptance Test, unless the Ministry indicates to the Supplier in writing that it does not require the Ministry nominated Acceptance Testing representative to be present. The Ministry may use external users as testers during any Acceptance Testing. The Supplier shall perform any Ministry specified tasks that are consistent with the Acceptance Test Plan during Acceptance Testing as promptly as possible.

5.05 **Certification of Acceptance, and Notices of Deficiencies** - As soon as practicable after completion of an Acceptance Testing period the Ministry shall either:

- (a) certify to the Supplier in writing that the applicable Acceptance Testing has been successfully completed, or

- (b) notify the Supplier of all Deficiencies in the Deliverables made apparent to the Ministry by the Acceptance Testing.

Acceptance of all or any part of the Deliverables will only occur when the Ministry certifies to the Supplier in writing that the applicable Acceptance Testing has been successfully completed.

5.06 **Conditional Acceptance** - A part of the Deliverables may be a component of any other part of the Deliverables or must interface with one or more other parts of the Deliverables. In that case, upon the successful completion of Acceptance Testing with respect to that part of the Deliverables, the Ministry will provide a conditional acceptance of that part of the Deliverables. The Ministry's final acceptance of that part of the Deliverables remains dependent upon the Ministry's acceptance of the other part of the Deliverables into which that part of the Deliverables is to be integrated or the system of Deliverables within which that part of the Deliverables must function.

5.07 **Corrections** - As promptly as possible, but not later than twenty (20) Business Days following the date of receipt by the Supplier of any such notice of Deficiencies, the Supplier shall correct the Deficiencies identified in such notice at the Supplier's expense and notify the Ministry in writing that such corrections have been completed.

Upon receipt of such notice by the Ministry, the Acceptance Testing shall be repeated in accordance with the Acceptance Test Plan and so on from time to time until either the Acceptance Testing is successfully completed or the Ministry gives written notice to the Supplier of the Ministry's exercise of its options under **Section 5.08** (Unacceptable Deliverables).

5.08 **Unacceptable Deliverables** - If all or any part of the Deliverables are not accepted by the Ministry after the second or any subsequent Acceptance Testing, the Ministry may, at its option, exercisable by written notice to the Supplier within thirty (30) Business Days of the end of Acceptance Testing period:

- (a) continue with the test procedures as contemplated above for another Acceptance Testing period of equal duration;
- (b) accept all or any part of the Deliverables (although of diminished value) as the case may be, at a revised cost acceptable to both the Ministry and the Supplier;
- (c) Cancel the Request or terminate the Contract in whole or in part by notice in writing to the Supplier; or
- (d) permit the Supplier to replace the Deliverables with a substitute that, in the Ministry's sole opinion, is functionally equivalent or superior to the replaced Deliverables.

If the Ministry opts for (a), then after that additional Acceptance Testing period the Ministry may, at its option, exercisable by written notice to the Supplier within thirty (30) Business Days of the end of additional Acceptance Testing period, opt for any of the other three options above.

ARTICLE 6 – EQUIPMENT

6.01 **Title to Purchased Equipment** - The Ministry shall have the immediate and unrestricted right to use any Equipment purchased from the Supplier upon acceptance of the Equipment by the Ministry, whereupon the Supplier shall transfer good and marketable title of the Equipment to the Ministry, or as it may direct, without any Encumbrance. The Ministry shall have the unrestricted right to use and copy any Documentation provided as part of the Equipment and may include any extracts therefrom in any documentation prepared by or for the Ministry. The

Ministry will make reasonable efforts to include any copyright notices relating to any such documentation.

- 6.02 **Risk of Loss and Delivery** - All risk of loss or damage to any Equipment prior to acceptance by the Ministry will be the responsibility of the Supplier.
- 6.03 **Purchase Price** – For avoidance of uncertainty, the Rate for the purchase of any Equipment shall be inclusive of the following:
- (a) any Operating System Software;
 - (b) any standard original manufacturer's warranty, or other warranty requirements specified in **Schedule A (Deliverables and Supplementary Provisions)**;
 - (c) any Documentation to be provided with the Equipment; and
 - (d) transportation and delivery costs to the relevant OPS site.
- 6.04 **Inspection** - The Supplier shall furnish the Ministry with every reasonable access to and assistance in inspecting at any time any Equipment component provided under the Contract for the purpose of ascertaining that such Equipment components are in accordance with the provisions and requirements of the Contract.
- 6.05 **Inspection Not Waiver** –
- (a) The inspection of any Equipment components by the Ministry shall not constitute acceptance of such Equipment, nor shall such inspection relieve the Supplier of any of its obligations to fulfil or comply with the terms of the Contract. No breach by the Supplier will be waived or deemed to have been waived by any inspection by the Ministry hereunder.
 - (b) Failure by the Ministry to inspect any Equipment components or any part thereof shall not constitute a waiver of any of the rights of the Ministry hereunder. Inspection not followed by notice of breach shall not constitute a waiver of any breach nor shall it constitute an acknowledgement that there has been or will be compliance with the Contract.

ARTICLE 7 – TRANSITION

- 7.01 The Supplier shall cooperate with the Ministry, as may be required, to complete a safe, effective and efficient transition of the Deliverables to the Supplier at the commencement of the Term, and to a new service provider or the Ministry at the expiration or termination of the Term, so as not to disrupt continuity of the Ministry's business. Such transition shall be consistent with the Supplier's transition plan created in accordance with **Schedule A (Deliverables and Supplementary Provisions)**.
- 7.02 Without limitation to **Section 7.01**:
- (a) no later than thirty (30) days following the Effective Date, the Supplier shall provide to the Ministry, for review and approval, a detailed transition plan, and upon Ministry approval of such plan, shall diligently commence implementation of such plan, all in accordance with the Transition of Services provisions of **Schedule A (Deliverables and Supplementary Provisions)**.

- (b) up to twelve (12) months prior to the expiry of the Term or earlier termination of this Agreement, upon the written request of the Ministry, the Supplier shall transfer (i) its relevant knowledge and skills pertaining to the Deliverables and (ii) the Equipment and other property of the Ministry in the Supplier's care and control to the Ministry or a new service provider selected by the Ministry, as the case may be. The Supplier agrees to work co-operatively with the Ministry and any new service provider during any transition period, including in the formulation of a transition plan. The Supplier, however, shall remain fully responsible for the provision or performance of the Deliverables while this Agreement remains in effect, or the termination becomes effective, as the case may be.

ARTICLE 8– PERSONNEL

- 8.01 **Level and Quality of Staffing** - The Supplier shall provide and dedicate the level and quality of staffing, management and physical and Personnel resources necessary to ensure the successful and timely completion of the Deliverables. The Supplier shall assign Personnel of appropriate qualifications and experience to perform and fulfill its obligations under the Contract. Without limitation to the foregoing, only Personnel with appropriate certification from the applicable manufacturer will service the Equipment
- 8.02 **Required Replacement of Personnel** - The Supplier shall replace, without unreasonable delay and at no cost to the Ministry, any member of the Personnel whom the Ministry, acting reasonably, considers lacking the necessary competence or with whom the Ministry, acting reasonably, finds it manifestly difficult to collaborate. The Supplier shall replace any of its Personnel who commits any breach involving any human rights legislation, or breaches any of the Ministry's written policies.
- 8.03 **Performance by Designated Personnel** - The Supplier agrees that to the extent that Personnel are named in the Proposal, or otherwise designated by the Supplier, as being responsible for specific duties and responsibilities in the provision of the Deliverables ("Designated Personnel"), only those individuals shall perform those duties and responsibilities under the Contract. The Supplier shall not replace or substitute any of the Designated Personnel without the prior written approval of the Ministry, which may not arbitrarily or unreasonably be withheld. Should the Supplier require the substitution or replacement of any of the Designated Personnel, it is understood and agreed that any proposed replacement must possess similar or greater qualifications than the individual named in the Contract. The Supplier shall not claim fees for any replacement individual greater than the Rates established under the Contract.
- 8.04 **Minimization of Changes to Personnel** – The Supplier shall use all reasonable endeavours to minimize the possibility of changes in the Personnel assigned to perform the Supplier's obligations under the Contract, and in particular the Designated Personnel.
- 8.05 **OPS Workplace and Discrimination and Harassment Policy** – The Supplier shall provide training on the provisions of the OPS Workplace Discrimination and Harassment Policy to any of the Supplier's Personnel who work on OPS premises, and shall ensure their compliance with the Policy.

ARTICLE 9– CHANGE PROCESS

- 9.01 **Change Requests** - The Ministry may initiate any changes to the Deliverables ("Change") not otherwise contemplated in the Contract by delivering to the Supplier a request for Change (a "Change Request") requiring the Supplier to prepare a written response containing the information set out in **Section 9.02** (a "Change Proposal").

9.02 **Change Proposals** - The Supplier shall, at its own cost, deliver to the Ministry the Change Proposal as soon as reasonable practicable, but no later than fifteen (15) days after the date of delivery of the Change Request. The Change Proposal shall specify the effect on any provision of the Contract, and where the Change will increase the price of any Deliverable(s), the Change Proposal shall include:

- (a) a list and description of each item comprising the Change,
- (b) the estimated cost of each item;
- (c) the Personnel required and a detailed explanation as to why such Personnel is required;
- (d) the total time required for each Personnel to complete the Change ;
- (e) the applicable Rate and/or cost for each Personnel;
- (f) the total time required to complete the Change; and
- (g) the total cost to the Ministry.

Where the Change will reduce the price of any of the Deliverables, the Proposal shall itemize such the reduction. The Change Proposal shall remain valid for a period of sixty (60) days from the date of receipt by the Ministry. If the Supplier is unable to comply with the Change Request, it shall provide reasons for such non-compliance in the Change Proposal.

9.03 **Compliance with Change Request** - The Supplier shall comply with any Change Request, provided the Change is:

- (a) within the general scope of the Deliverables and does not constitute unrelated work; and
- (b) technically practicable, taking into account the state of the Deliverables and the technical compatibility of the Change envisaged with the nature of the Deliverables.

9.04 **Pricing for Requested Changes** – Where the Rates in effect at the time of the Change Request:

- (a) include pricing for the particular type of goods or services contemplated in the Change Request, the Supplier shall provide those goods or services at prices consistent with those Rates; or
- (b) are silent to the applicable price for the particular goods or services contemplated in the change request, the price shall be subject to negotiation between the Ministry and the Supplier within a reasonable period of time.

9.05 **Change Orders – Acceptance of a Change Proposal –**

- (a) If the Ministry agrees to a Change Proposal, it shall issue a written order to the Supplier (a “Change Order”) and the Supplier shall immediately proceed to effect the Changes required by the Change Order.
- (b) Performance of the Change Order shall be in accordance with the terms and conditions of the Contract. The Change shall be completed within the time limits approved by the Ministry and the total cost to the Ministry for any approved Change shall not exceed the total cost approved by the Ministry.
- (c) At any time prior to the issuance of a Change Order, the Ministry may reject the Change Proposal, and the Supplier shall not be entitled to any costs, expenses or damages

incurred by it in the preparation of the Change Proposal or the discussions with the Ministry about the Change Proposal.

- (d) Notwithstanding any other provision of this **Article 7**, no Change shall be effective or shall be carried out by the Supplier in the absence of a Change Order.

ARTICLE 10 - PAYMENT

10.01 **Payment According to Contract Rates** - The Ministry shall, subject to the Supplier's compliance with the provisions of the Contract, pay the Supplier for the Deliverables provided at the Rates set out in **Schedule B (Rates and Pricing)** and calculated in accordance with the pricing and credit provisions set out in **Schedule A (Deliverables and Supplementary Provisions)** .

10.02 **Billing and Payment Process** - The following billing and payment process shall govern:

- (a) No later than five (5) days after the beginning of each calendar month, the Supplier shall submit to the Ministry an itemized monthly billing statement with respect to the Deliverables provided during the previous calendar month, along with supporting documentation, as required, for approval and processing.
- (b) The monthly billing statement shall be in a protected PDF format, and in CSV or equivalent electronic file format, using file and field definitions established during the Transition of Services referenced in **Section 7.02** and described in **Schedule A (Deliverables and Supplementary Provisions)**. At a minimum, each monthly billing statement shall contain the information specified in **Schedule A**. The Ministry, at its discretion, may require that the Supplier include additional information in its billing statements, upon notice to the Supplier;
- (c) The Ministry shall approve or reject the billing statement within fifteen (15) Business Days of receipt of the statement. In the event that the Ministry rejects the billing statement, it shall so advise the Supplier promptly in writing and the Supplier shall provide additional information as required by the Ministry to substantiate the billing statement; and
- (d) Payment for any billing statement shall be conditional upon the approval of the billing statement by the Ministry. Payment shall be made within thirty (30) Business Days following such approval.

10.03 **Billing Errors and Disputes** – The Supplier shall keep detailed, accurate and complete records for every billable Service from the time the Service is used by a Client. Any errors identified by the Ministry, a Client or the Supplier shall be reported as an Incident in the Supplier's Incident tracking system. In case of error or dispute:

- (a) where a payment has not been made, the Ministry may withhold payment on the relevant component of the billing statement in accordance with **Section 10.06** below until the error or dispute has been resolved.
- (b) Where payment has been made, the Supplier shall provide a refund for any billing errors which shall be included in the following billing statement.

10.04 **Service Credits** – Where the Supplier has failed to meet a Service level so that the Ministry is entitled to a service credit as calculated in accordance with the provisions of **Schedule A (Deliverables and Supplementary Provisions)**, such service credit shall be included in the billing statement immediately following the month or date on which the failure occurred. Upon termination or expiry of the Contract, any outstanding service credits shall immediately be paid to the Ministry.

- 10.05 **Hold Back** - The Ministry may hold back payment if, in the opinion of the Ministry acting reasonably, the Supplier has failed to comply with any requirements of the Contract.
- 10.06 **No Expenses or Additional Charges** - There shall be no other charges payable by the Ministry under the Contract to the Supplier other than the Rates established under the Contract.
- 10.07 **Payment and Collection of Taxes and Duties** – The Supplier shall pay or charge and remit, as required, all applicable taxes, including excise taxes incurred by or on the supplier's behalf with respect to the Contract.
- 10.08 **Withholding Tax** - The Ministry shall withhold any applicable withholding tax from amounts due and owing to the Supplier under the Agreement and shall remit it to the appropriate government in accordance with applicable tax laws.
- 1009 **Interest on Late Payment** - If a payment is in arrears through no fault of the Supplier, the interest charged by the Supplier, if any, for any late payment shall not exceed the pre-judgment interest rate established under section 127(2) of the *Courts of Justice Act*, R.S.O. 1990, c. C45, in effect on the date that the payment went into arrears.
- 10.10 **Document Retention and Audit** - For seven (7) years after the Expiry Date or any date of termination of the Contract, the Supplier shall maintain all necessary records to substantiate (a) all charges and payments under the Contract and (b) that the Deliverables were provided in accordance with the Contract and with Requirements of Law. During the Term, and for seven (7) years after the Term, the Supplier shall permit and assist the Ministry in conducting audits of the operations of the Supplier to verify (a) and (b) above. the Ministry shall provide the Supplier with at least ten (10) Business Days prior notice of its requirement for such audit.

ARTICLE 11 – INTELLECTUAL PROPERTY

- 11.01 **Rights Owned By The Supplier** – All proprietary right, title and interest in and to the Supplier Technology, including all Intellectual Property Rights therein, but excluding any rights relating to the visual identity of the OPS, the security provisions of the OPS, and any OPS Confidential Information and Personal Information, shall be owned exclusively by the Supplier or its licensors or both of them.
- 11.02 **Proprietary Materials of the Supplier and Third Parties** - The Supplier will not include in any Deliverables required to be provided to the Ministry at any time during the Term of the Contract, any third party proprietary materials or third party confidential Information, except as expressly identified in the Supplier's Proposal or in a Request, or as otherwise approved in writing by the Ministry. As a condition of including any proprietary materials or Confidential Information of the Supplier or any third party, the Supplier shall grant, or shall cause the third party supplier to grant, to the Ministry, the rights and licenses as may be reasonably required by the Ministry so as to permit the Ministry to use the materials for purposes relating to the Request and consistent with the Contract.
- 11.03 **Copyright Notice** - The Supplier shall place a copyright notice on all recorded Deliverables it provides to the Ministry under the Agreement in the following form:
“© Queen's Printer for Ontario, 2010”.
- 11.04 **Rights Owned by Ontario Government** – All proprietary right, title and interest in and to the Government Technology, including all Intellectual Property Rights therein, shall be owned exclusively by the Ministry or its licensors, and to effect that purpose, the Supplier hereby assigns to the Ministry all Intellectual Property Rights in the Government Technology, including all rights, if any, of any Subcontractor, employee and agent of the Supplier, subject only to any limits imposed by law, and to the rights of any third party under any agreement made between

the third party and the Ministry. Ownership vests from the time the Government Technology is obtained or prepared.

- 11.05 **Rights of Supplier to Ideas, Concepts and Know-how** – The Ministry acknowledges that despite the foregoing provisions of this **Article 11**, the Supplier shall be entitled to use in its business, and for purposes of developing and incorporating into other works and licensing the works to others, any ideas, concepts or know-how, whether patented or not and whether patentable or not, that are developed or created by the Supplier in the course of providing the Deliverables under the Contract, and that are not retained by the Supplier in any written or electronic form, provided, however, that the rights of the Supplier under this **Section 11.05** do not include the right to obtain a patent in respect of any ideas, concepts or know-how, or to take any other action that would limit or restrict the rights of the Ministry in or to any Deliverables as set out in the Contract, or that would result in the Supplier being in breach of the Privacy Provisions or **Article 17** (OPS Confidential Information). For greater certainty, the Supplier shall not be entitled under the provisions of this **Section 11.05** to use any OPS Materials or OPS Confidential Information in any form.
- 11.06 **Record of Government Technology** – The Supplier shall maintain and deliver to the Ministry, prior to the expiration or other termination of the Contract, a complete record of all Government Technology and the source code, if any, thereof, and the record and source code shall be and remain the sole property of the Ministry.
- 11.07 **No Use of Ontario Government Insignia** – The Supplier shall not use any trade-mark, official mark, insignia or logo of Her Majesty the Queen in right of Ontario except where required to provide the Deliverables, and only if it has received the prior written permission of the Ministry to do so.
- 11.08 **Additional Steps** – Upon the request of the Ministry, at any time during the Term of the Contract and thereafter, the Supplier shall take all steps and execute all documents required to permit the Ministry to obtain and exercise, to the extent permitted by law, the sole and exclusive rights throughout the world and in perpetuity to all of the Government Technology.

ARTICLE 12 – REPRESENTATIONS & WARRANTIES – GENERAL

- 12.01 The Supplier represents and warrants, and acknowledges that the Ministry will be relying upon such representations and warranties, that:
- (a) the Supplier has the full right, power and authority to enter into and carry out the Contract and each Request and has been and is on the Effective Date duly authorized by all necessary and appropriate corporate or other action to execute the Contract; and there is no agreement with any other person which would in any way interfere with the rights of the Ministry under the Contract or any Request;
 - (b) in the provision of the Deliverables the Supplier shall comply with the Requirements of Law;
 - (c) it has all the rights necessary to freely provide the Deliverables to the Ministry, and for the Ministry to use and enjoy the same without interference, and the consent of no other person, firm or corporation is required;
 - (d) all Services shall be performed fully and diligently in a professional and competent manner by Persons qualified and skilled in their occupations in accordance with (i) all

applicable Specifications and Documentation; (ii) the Service Levels; and (iii) Industry Standards to the extent such standards are not inconsistent with the provisions of the Contract; and

- (e) the Deliverables shall be provided in accordance with, (i) all applicable Specifications and Documentation, and (ii) Industry Standards to the extent such standards are not inconsistent with the provisions of the Contract; and shall be free from any and all Deficiencies.
- (f) in the event of a Deficiency in the Deliverables, the Supplier shall (i) without additional cost to the Ministry, immediately or within such time specified in **Schedule A (Deliverables and Supplementary Provisions)**, remedy the Deficiency or (ii) compensate the Ministry within thirty (30) days for the damages incurred due to the untimely remedy of the Deficiency. In addition, at the option of the Ministry, the Ministry may decline to accept the Deliverables, and the Supplier shall refund to the Ministry all amounts paid with respect to such Deliverables for which acceptance has been declined.

ARTICLE 13 – REPRESENTATIONS & WARRANTIES – INTELLECTUAL PROPERTY

- 13.01 The Supplier represents, warrants and covenants, and acknowledges that the Ministry will be relying upon such representations and warranties, that to the best of the Supplier's knowledge:
- (a) the Deliverables do not infringe, or induce the infringement of, any third-party Intellectual Property Rights; and
 - (b) the Supplier has the right to grant to the Ministry the rights set out in the Contract.
- 13.02 The Supplier shall indemnify and hold the Indemnified Parties harmless from and against any and all Proceedings, demands, liabilities, losses, damages, costs and expenses (including, without limitation, reasonable legal fees) of whatever kind and nature, relating to or arising out of the infringement or inducement of infringement of any third-party Intellectual Property Right contrary to **Section 13.01**.
- 13.03 At its expense, the Supplier shall defend all Proceedings against the Indemnified Parties charging that all or any part of the Deliverables provided by the Supplier to the Ministry or induce the infringement of any third-party Intellectual Property Right, provided that the Supplier is notified in writing within twenty (20) Business Days of the Ministry being notified in writing or served with any Proceeding and that the Supplier is given authority, information and assistance (at the Supplier's expense) to permit the Supplier to defend the same and the Supplier shall pay all damages and costs awarded against the Crown in right of Ontario in any Proceeding and all reasonable legal fees of the Ministry, its employees and agents but the Supplier shall not be responsible for any costs, expense or compromise incurred or made by the Ministry, its employees or agents without the Supplier's prior written consent.
- 13.04 Each Party agrees to co-operate and assist the other to the fullest extent possible in any Proceeding. For reasons of practicality, the Supplier may make further arrangements with other parties to conduct the aforesaid defence.
- 13.05 If any component of the Deliverables is determined to constitute an infringement of the rights of a third party, whether in a Proceeding or otherwise, the Supplier shall forthwith and at its own expense
- (a) lawfully secure for the Ministry the right to use that component; or
 - (b) replace the infringing component with functionally equivalent non-infringing material; or

(c) modify the infringing component so that it no longer infringes.

13.06 If none of the foregoing alternatives is reasonably available to the Supplier and practicable for the Ministry, then the Ministry may terminate the Contract or the Request with respect to the affected Deliverable(s) and the Supplier will refund to the Ministry all amounts paid with respect to the terminated Deliverable(s). The Supplier agrees that the Ministry has the right to seek damages and any other remedy available under the Contract or otherwise available at law or in equity by reason of the termination.

14.0 INDEMNIFICATION

14.01 **Supplier Indemnity** – Subject to **Section 14.03**, the Supplier hereby agrees at all times to defend, indemnify and hold harmless the Indemnified Parties from and against any and all Claims in any way based upon, occasioned by or attributable to anything done or omitted to be done by the Supplier or the Supplier's Subcontractors, or their respective directors, officers, agents, employees, partners, affiliates, volunteers or independent contractors in the course of performance of the Supplier's obligations under, or otherwise in connection with, the Contract. The Supplier further agrees, for those Claims listed in **Subsection 14.03 (c)**, to indemnify and hold harmless the Indemnified Parties for any incidental, indirect, special or consequential damages, or any loss of use, revenue or profit, by any person, entity or organisation, including, without limitation, the Ministry, claimed or resulting from such Claims.

14.02 **Supplier Participation in Proceedings** - The Supplier shall, at its expense, to the extent requested by the Ministry, participate in or conduct the defence of any Proceeding against any Indemnified Parties referred to in this **Article 14** and any negotiations for their settlement. The Ministry may elect to participate in or conduct the defence of any such Proceeding by notifying the Supplier in writing of such election without prejudice to any other rights or remedies of the Ministry under the Contract, at law or in equity. Each Party participating in the defence shall do so by actively participating with the other's counsel. The Supplier shall enter into no settlement unless it has obtained the prior written approval of the Ministry. If the Supplier is requested by the Ministry to participate in or conduct the defence of any such Proceeding, the Ministry agrees to co-operate with and assist the Supplier to the fullest extent possible in the Proceedings and any related settlement negotiations. If the Ministry conducts the defence of any such Proceedings, the Supplier agrees to co-operate with and assist the Ministry to the fullest extent possible in the Proceedings and any related settlement negotiations.

14.03 Limitation of Liability -

(a) Subject to **Subsection 14.03 (c)**, neither Party shall be liable for any consequential, indirect, incidental or special damages, including lost profits or lost opportunity costs, suffered by the other Party with respect to any Claims arising out of, or in connection with, the Agreement, but this shall not limit liability for Direct Damages.

(b) Subject to **Subsection 14.03 (c)**, liability under the Agreement for all Claims, whether for Direct Damages or otherwise, shall not exceed the greater of Two Million (\$2,000,000.00) Dollars or the total of the amounts payable to the Supplier under the Agreement.

(c) The limitations contained in this **Section 14.03** shall not apply to restrict or limit liability for the following:

(i) Claims arising from infringement or inducement of infringement of Intellectual Property Rights

- (ii) Encumbrances resulting from Claims against the Supplier upon or in respect of any Deliverables furnished to the Ministry;
 - (iii) Claims applicable to any breach of the Privacy Provisions or the confidentiality provisions set out in **Articles 15** and **16**; and
 - (iv) Claims for (1) personal injury (including death) or (2) physical harm to tangible personal property and real property, to the extent caused by breach of contract, negligence or wilful misconduct or other tortuous acts or omissions.
- (d) The Supplier agrees that the Indemnified Parties shall not be liable for any property damage, bodily injury (including death) or personal injury to the Supplier or for any Proceeding by any third party against the Supplier arising in the course of the performance of the Supplier's obligations under the Agreement or arising otherwise in connection with the Agreement, except to the extent the damage or injury is caused by the negligence or wilful misconduct or any of the Indemnified Parties.

ARTICLE 15 – INSURANCE

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

- (a) commercial general liability insurance on an occurrence basis for third party bodily injury, personal injury and property damage, to an inclusive limit of not less than Two Million Dollars (\$2,000,000.00) per occurrence, Two Million Dollars (\$2,000,000.00) products and completed operations aggregate. The policy is to include the following:
 - the Indemnified Parties as additional insureds with respect to liability arising in the course of performance of the Supplier's obligations under, or otherwise in connection with, the Contract
 - contractual liability coverage endorsement
 - cross-liability clause
 - employers liability coverage endorsement if the Supplier is not subject to the WSIA
 - 30 day written notice of cancellation, termination or material change
 - non-owned automobile coverage with blanket contractual endorsement,
- (b) errors & omissions liability insurance, insuring liability for errors and omissions in the performance or failure to perform the services contemplated in the Contract, in the amount of not less than Two Million Dollars (\$2,000,000.00) per claim and in the annual aggregate.

15.02 **Proof of Insurance** - The Supplier shall provide the Ministry with proof of the insurance required by the Contract in the form of valid certificates of insurance that reference the Contract and confirm the required coverage. The certificates shall be provided prior to the execution of the Agreement by the Ministry, and renewal replacements shall be provided on or before the expiry of any such insurance. Upon the request of the Ministry, a copy of each insurance policy shall be made available to the Ministry. The Supplier shall ensure that each of its Subcontractors obtains all the necessary and appropriate insurance that a prudent person in the business of the Subcontractor would maintain and that the Indemnified Parties are named as additional insured's 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.

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

ARTICLE 16 – PRIVACY PROVISIONS

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

- (a) to keep Records secure;
- (b) to provide Records to the Ministry within seven (7) calendar days of being directed to do so by the Ministry for any reason including an access request or privacy issue;
- (c) not to access any Personal Information unless the Ministry determines, in its sole discretion, that access is permitted under FIPPA, as the case may be, and is necessary in order to provide the Deliverables;
- (d) not to directly or indirectly use, collect, disclose or destroy any Personal Information for any purposes that are not authorized by the Ministry;
- (e) to ensure the security and integrity of Personal Information and keep it in a physically secure and separate location safe from loss, alteration, destruction or intermingling with other records and databases and to implement, use and maintain the most appropriate products, tools, measures and procedures to do so;
- (f) to restrict access to Personal Information to those of its Personnel who have a need to know it for the purpose of providing the Deliverables and who have been specifically authorized by the Ministry Representative to have such access for the purpose of providing the Deliverables;
- (g) to implement other specific security measures that in the reasonable opinion of the Ministry would improve the adequacy and effectiveness of the Supplier's measures to ensure the security and integrity of Personal Information and Records generally; and
- (h) that any confidential information supplied to the Ministry may be disclosed by the Ministry where it is obligated to do so under FIPPA, by an order of a court or tribunal or pursuant to a legal proceeding;

- 16.02 **Prevalence over other Provisions** - The provisions of this **Article 16** shall prevail over any inconsistent provisions in the Contract.

ARTICLE 17 – OPS CONFIDENTIAL INFORMATON

- 17.01 **Promotion Restrictions** - Any publicity or publications related to the Contract shall be at the sole discretion of the Ministry. The Ministry may, in its sole discretion, acknowledge the Deliverables provided by the Supplier in any such publicity or publication. The Supplier shall not use of any insignia or logo of Her Majesty the Queen in right of Ontario, nor shall the Supplier make use of its association with the Ministry, except where required to provide the Deliverables and only if the Supplier has received the prior written consent of the Ministry. Without limiting the generality of this **Section 15.01**, the Supplier shall not, among other things, at any time directly or indirectly communicate with the media in relation to the Contract unless it has first obtained the express written authorization to do so by the Ministry.
- 17.02 **Confidentiality** - During and following the Term, the Supplier shall keep all OPS Confidential Information confidential. The Supplier shall keep all OPS Confidential Information secure and shall provide OPS Confidential Information to the Ministry on demand and, in any event, shall return all OPS Confidential Information to the Ministry before the termination or expiry of the Contract, with no copy or portion kept by the Supplier. The Supplier shall limit the disclosure of OPS Confidential Information to only those of its advisors, agents, Personnel and Subcontractors who have a need to know it in order to provide or perform the Deliverables under the Contract and who have been specifically authorized to have such disclosure. The Supplier agrees that the Supplier, its advisors, agents, Personnel and Subcontractors shall not directly or indirectly disclose, destroy, exploit or use any OPS Confidential Information (except in order to provide or perform the Deliverables, or except if required by order of a court or tribunal), without first obtaining:
- (a) the written consent of the Ministry, and
 - (b) in respect of any OPS Confidential Information about any third party, the written consent of such third party.
- 17.03 **Restrictions on Copying** - The Supplier shall not copy any OPS Confidential Information, in whole or in part, unless necessary or materially advantageous for the performance of the Deliverables. On each copy made by the Supplier, the Supplier must reproduce all notices which appear on the original.
- 17.04 **Injunctive and Other Relief** - The Supplier acknowledges that breach of any provisions of this **Article 15** may cause irreparable harm to the Ministry or to any third party to whom the Ministry owes a duty of confidence, and that the injury to the Ministry or to any third party may be difficult to calculate and inadequately compensable in damages. The Supplier agrees that the Ministry is entitled to obtain injunctive relief (without proving any damage sustained by it or by any third party) or any other remedy against any actual or potential breach of the provisions of this **Article 17**.
- 17.05 **Notice and Protective Order** - If the Supplier or any of its advisors, agents, directors, officers, Personnel, representatives or Subcontractors become legally compelled to disclose any OPS Confidential Information, the Supplier will provide the Ministry with prompt notice to that effect to allow the Ministry to seek one or more protective orders or other appropriate remedies to prevent or limit such disclosure, and it shall co-operate with the Ministry and its legal counsel to the fullest extent. If such protective orders or other remedies are not obtained, the Supplier will disclose only that portion of OPS Confidential Information which the Supplier is legally compelled to disclose, only to such person or persons to which the Supplier is legally compelled to disclose, and the Supplier shall provide notice to each such recipient - in co-operation with legal counsel for the Ministry - that such OPS Confidential Information is confidential and subject to non-disclosure on terms and conditions substantially similar to and not materially less protective than those in the Contract and, if possible, shall obtain each recipient's written agreement to receive and use such OPS Confidential Information subject to those terms and conditions.

- 17.06 **Supplier's Advisors, Agents, Personnel and Subcontractors** - The Supplier shall advise its advisors, agents, Personnel and Subcontractors of the requirements of this **Article 17** and take appropriate action to ensure their compliance with its terms. In addition to any other liabilities of the Supplier pursuant to the Contract or otherwise at law or in equity, the Supplier shall be liable for any and all liability, losses, costs, damages, expenses (including all reasonable legal, expert and consultant fees), causes of action, and Proceedings arising from any non-compliance with this **Article 15** by the Supplier's advisors, agents, Personnel and Subcontractors. .
- 17.07 **Conflict with Privacy Provisions** - If a conflict or inconsistency arises between any provision in this **Article 15** and the Privacy Provisions, the Privacy Provisions shall govern.

ARTICLE 18 – SUPPLIER CONFIDENTIAL INFORMATION

- 18.01 **Confidentiality** - During and following the Term, the Ministry shall keep all Supplier Confidential Information confidential, subject to the Privacy Provisions and any right of the Ministry under the Contract to disclose. The Ministry shall limit the disclosure of Supplier Confidential Information to only those of its advisors, agents, Personnel and Subcontractors, and only those members of the Executive Council of Ontario and their advisors and staff, who have a need to know it and who have been specifically authorized to have such disclosure. The Ministry agrees that the Ministry, its advisors, agents, Personnel and Subcontractors, and those members of the Executive Council of Ontario and their advisors and staff, shall not directly or indirectly disclose, destroy, exploit or use any Supplier Confidential Information (except to enable the Ministry to exercise its rights under the Contract, or except if required by order of a court or tribunal), without first obtaining:
- (a) the written consent of the Supplier, and
 - (b) in respect of any Supplier Confidential Information about any third party, the written consent of such third party.
- 18.02 **Restrictions on Copying** - The Ministry shall not copy any Supplier Confidential Information, in whole or in part, unless necessary or materially advantageous to enable the Ministry to exercise its rights under the Contract. On each copy made by the Ministry, the Ministry must reproduce all notices which appear on the original.
- 18.03 **Declaratory Order and Other Relief** - The Ministry acknowledges that breach of any provisions of this **Article 16** may cause irreparable harm to the Supplier or to any third party to whom the Supplier owes a duty of confidence, and that the injury to the Supplier or to any third party may be difficult to calculate and inadequately compensable in damages. The Ministry agrees that the Supplier is entitled to obtain an order declaratory of the rights of the Parties (without proving any damage sustained by it or by any third party) or any other remedy available at law against any actual or potential breach of the provisions of this **Article 18**.
- 18.04 **Conflict with the Privacy Provisions** - If a conflict or inconsistency arises between any provision in this **Article 18** and the Privacy Provisions, the Privacy Provisions shall govern.

ARTICLE 19 – SECURITY

- 19.01 **General** – The Supplier, at its own cost and expense, shall comply with Ministry and OPS policies, directives, standards and guidelines with respect to security, including without limitation those set out in GO ITS. The Supplier acknowledges that such policies, directives, standards and guidelines are subject to change from time to time. The Ministry shall be responsible for ensuring that the Supplier has access to the requirements of such policies, directives, standards and guidelines.

- 19.02 **Access to OPS Premises** – Subject to **Article 20** (Security Clearance Checks) and to the security requirements and operating procedures of the Ministry, the Ministry will, at its sole and absolute discretion:
- (a) grant such access to the Supplier and its Personnel to the Service Address as is reasonably required in order for the Supplier to meet its obligations under the Agreement; and
 - (b) provide the Supplier with all necessary badges and access codes as the Ministry deems necessary to effect the efficient movement of the Supplier's Personnel at the Service Address.
- 19.03 **Access of Supplier's Personnel to OPS Premises etc.** – The Supplier shall ensure that all of its Personnel who enter OPS premises:
- (a) are informed of, and are bound by, the requirements of this **Article 19** as well as the confidentiality obligations set out in the Privacy Provisions and **Article 17** (OPS Confidential Information);
 - (b) comply with all rules, regulations, directives, procedures and policies established from time to time by the Ministry; and
 - (c) in the case of OPS premises carry out their work so as not to disrupt the normal operating procedures of the Ministry.
- 19.04 **Identification** – Suitable identification of the Supplier's vehicles and Personnel shall be required for access to any OPS premises or to any Supplier premises at which OPS Data may be accessed, located or stored. Each of the Supplier's Personnel shall carry an identification card showing a picture of the individual. The identification card shall be in view at all times.
- 19.05 **Access to OPS Systems** – Subject to this **Article 19** and **Article 20** (Security Clearance Checks) and to the security requirements and operating procedures of the Ministry, the Ministry will, at its sole and absolute discretion grant access to the Supplier and its Personnel to such OPS equipment and systems as is reasonably required in order for the Supplier to meet its obligations under the Contract.
- 19.06 **Restriction on Access** – The Supplier acknowledges and agrees that OPS equipment and systems are highly valuable and material to the interests, business and affairs of Her Majesty the Queen in right of Ontario and that disclosure or improper use thereof would be detrimental to the interests, business, affairs and obligations of the Her Majesty. The Supplier agrees not to permit access to any OPS equipment and systems to any Persons for any reason whatsoever, other than to those of the Supplier's Personnel who actually need to have access to that equipment or systems for the purpose of enabling the Supplier to perform its obligations in accordance with the Contract.
- 19.07 **No Access for Other Purposes** - The Supplier shall ensure that any access by its Personnel to any OPS equipment and systems is used only for the purpose of performing the obligations of the Supplier under the provisions of the Contract and that the OPS equipment and systems are not used for any other purpose, including for personal use or for any illegal or unacceptable activity as described in the Ministry's directives, policies, standards or procedures, or used in any manner that would be detrimental to the commercial, financial, operational, security or legal interests of the Ministry.
- 19.08 **Access of Supplier's Personnel to OPS equipment and systems** - Without limitation to **Section 17.07**, the Supplier shall ensure that all of its Personnel who access OPS equipment or systems:

- (a) are informed of, and are bound by, the requirements of this **Article 19** as well as the confidentiality obligations set out in the Privacy provisions and **Article 17** (OPS Confidential Information);
 - (b) comply with all rules, regulations, directives, procedures and policies established from time to time by the Ministry; and
 - (c) carry out their work so as not to disrupt the normal operating procedures of the Ministry.
- 19.09 **Supplier Responsibility** - The Supplier shall be responsible to the Ministry for any breach of this **Article 17**, including without limitation, any unauthorized access to, and use of, OPS premises or OPS equipment or systems by any of the Supplier's Personnel. Upon the request of the Ministry, the Supplier shall provide the Ministry with a current list of the Supplier's Personnel to whom any access to Ministry premises or OPS equipment or systems has been granted.
- 19.10 **Property of Supplier and its Personnel** – The Supplier and the Supplier's Personnel shall be responsible for the security of their own property, including without limitation any tools, materials and equipment, while on OPS premises. The Ministry assumes no responsibility with respect to such property.
- 19.11 **Additional Security Requirements** – The Ministry reserves the right at any time during the Term:
- (a) to conduct threat risk assessments and privacy impact assessments with respect to the performance or provision of the Deliverables by the Supplier. The Supplier, at its own, expense, shall co-operate with the Ministry and its authorized representatives in the successful completion of such assessments; and
 - (b) to require the Supplier to implement additional security requirements, procedures and standards in the performance or provision of the Deliverables. In addition, Supplier shall review its security procedures at least annually to ensure that the security procedures take into account recent developments in security as well as lessons learned from security problems

ARTICLE 20 – SECURITY CLEARANCE CHECKS

20.01 Definitions

In this **Article 20**:

“**ERD, MGCS**” means the Employee Relations Division of the Ministry.

“**CIPC**” means the Canadian Police Information Centre.

“**Company Level Check**” is a security screening check, which at the discretion of the Ministry may require checks to be conducted on all directors, officers, partners and shareholders of a company which is providing goods or services to the Ministry, regardless of whether such individuals will have direct involvement in the provision of such goods or services. In order to be issued a Security Clearance at a company level, all such individuals and the Company Security Officer must consent to security screening and obtain Security Clearances. Company Level Checks are conducted only where a security risk assessment conducted by the Ministry indicates the necessity of such checks.

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

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

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

“Security Clearance” means a decision made by the Ministry, following receipt of the relevant Security Screening Check documents, to permit a specified Person to engage in the performance of Services.

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

- (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; and
- (b) A Criminal Record Check.

20.02 **Security Screening Check**

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

20.03 **Changes**

- (a) During the Term of this Agreement, the Supplier shall report to the ERD, MGCS, within five (5) business days thereof, any change to:
 - (i) any information provided as part of a Security Screening Check process;
 - (ii) employees, agents and subcontractors who are or will be engaged in providing the security screening documents or engaged in the performance of the Services, and where a Company Level Check is required directors and officers.
- (b) The ERD, MGCS shall assess the above information and may instruct the Supplier to comply with any instructions arising which may include requests for provision of information to amend existing Security Clearances or provide for new Security Clearances.

20.04 **Default under Agreement** - During the Term of this Agreement, the Supplier shall be in default under the Agreement if the Supplier fails to comply with the requirements of this **Article 20**.

ARTICLE 21– INSPECTION, REVIEW AND AUDIT

- 21.01 **Inspection, Review and Audit** - The Ministry and its authorized representatives, including third party auditors retained by the Ministry, shall have the right at any time to inspect, review and audit the provision of the Deliverables, including access upon five (5) Business Days prior notice, to any records and documents of the Supplier pertaining to the Deliverables. The Ministry shall have the right to make copies of any of such records and documents. For avoidance of doubt, the right of audit and inspection shall include the premises, procedures and conduct of the Supplier to ensure compliance with the security obligations set out in **Article 19** and the Privacy Provisions. The Supplier shall co-operate fully and provide any assistance requested by the Ministry with respect to any inspection, review or audit conducted by the Ministry in accordance with this **Section 21.01**, and the resolution of any issues identified by the Ministry.
- 21.02 **Correction of Deficiencies** – Should an inspection, review or audit determine that the Supplier is not in compliance with its contractual obligations with Deliverables, the Supplier shall, at its sole cost, correct any Deficiencies identified by the Ministry within five (5) Business Days of receiving notification of such Deficiencies, and shall notify the Ministry in writing upon the Deficiencies being corrected.
- 21.03 **Follow-Up Review** – The Ministry may conduct a follow-up compliance review, as prescribed by the Ministry, to confirm that all of the Deficiencies have been corrected.
- 21.04 **Without Prejudice to Other Rights** – Any monitoring or verification carried out by the Ministry shall be without prejudice to any other rights of the Ministry under the Contract and shall not relieve the Supplier from any of its obligations under the Contract, nor shall such verification be used by the Supplier as evidence of effective control of quality.

ARTICLE 22 – CONTRACT AND SERVICE MANAGEMENT

- 22.01 **Supplier Responsibilities** – The Supplier shall:
 - (a) subject to the provisions of **Article 8** of this Agreement, appoint an Account Executive, Account Manager and Service Manager who shall carry out their duties and responsibilities as described in **Schedule A (Deliverables and Supplementary Provisions)**; and

- (b) comply with the GO ITS standards, including without limitation the GOITS standards and procedures of the GO ITS documents listed in **Schedule A (Deliverables and Supplementary Provisions)**.
- 22.02 **Ministry Representative** – The Ministry, by notice to the Supplier, shall appoint a representative of the Ministry (the “Ministry Representative”) who shall administer the Contract on behalf of the Ministry, and oversee the Ministry’s relationship with the Supplier.
- 22.03 **Meetings** – The Supplier shall ensure that the appropriate Personnel of the Supplier attend the meetings specified in **Schedule A (Deliverables and Supplementary Provisions)**. Unless otherwise agreed by the Ministry, all meetings shall be in person and held at Ministry Service Addresses.
- 22.04 **Reports** - The Supplier shall provide to the Ministry the reports set out in **Schedule A (Deliverables and Supplementary Provisions)**. The reports shall be provided in accordance with the form, content, format and time periods specified in **Schedule A (Deliverables and Supplementary Provisions)** unless otherwise directed by the Ministry.
- 22.05 **Service Implementation** – During the transition of Services as described in **Article 7 (Transition)** and **Schedule A (Deliverables and Supplementary Provisions)**,
- a) Each of the Supplier and the Ministry shall designate a responsible individual with adequate authority and competence to serve as a project leader and to communicate with the other (a “Project Manager”). The individuals shall be identified within thirty (30) days of the Effective Date and shall each be acceptable to the other party, acting reasonably.
 - b) The Ministry Project Manager shall be responsible for providing or coordinating the provision of such information as the Clients and the Supplier may reasonably request in order successfully to implement the Services.
 - c) In addition other duties relating to the transition of Services, the Supplier Project Manager shall be responsible for providing, or coordinating the provision of, information about the Services as the Ministry may reasonably request for the successful implementation of the Services.
 - d) Progress review meetings shall be held as and when considered necessary by the Ministry, at a time and place to be designated by the Ministry.

ARTICLE 23 – RESOLUTION OF DISPUTES

- 23.01 **First Instance.** In the event of any Dispute hereunder, the personnel of the Parties dealing directly with the subject matter of the Dispute shall attempt to resolve the Dispute between themselves.
- 23.02 **Referral to Representatives.** Any Dispute referred to in **Section 23.01** that is not resolved within five (5) Business Days shall be referred to the Ministry Representative and the Account Executive or Account Manager of the Supplier for resolution. In the event that the Dispute is not resolved within fourteen (14) Business Days (or five (5) Business Days if either Party has notified the other that the matter must be dealt with on an urgent basis) following such referral, the matter shall be referred to the executive sponsors named by the Ministry and of the Supplier, respectively (the “Executive Sponsors”).
- 23.03 **Referral to Executive Sponsors.** Upon the Dispute being referred to the executive Sponsors, the two Executive Sponsors 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 Executive Sponsors shall negotiate in good faith in an effort to resolve the Dispute without the necessity of any formal proceeding related thereto. During the course of such 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 the Contract shall be honoured. The specific format for such negotiations shall be within the discretion of the Executive Sponsors, but may include the preparation of agreed-upon statements of fact or written statements of position furnished to the other Party.

- 23.04 **Resort To Arbitration.** If the Parties have not resolved the Dispute within ten (10) Business Days following its referral to senior management (or three (3) Business Days if either Party has notified the other that the matter must be dealt with on an urgent basis), then each Party may, with the agreement of the other Party, refer the matter to arbitration in accordance with the *Arbitration Act, 1991*, as amended.
- 23.05 **Performance Notwithstanding Dispute.** Except where otherwise directed by the Ministry, the Supplier shall continue to perform the Services in accordance with the Contract while the Dispute is being resolved or arbitrated unless and until such obligations are terminated or expire in accordance with the provisions hereof.

ARTICLE 24 – EMERGENCY MANAGEMENT

- 24.01 **Business Continuity Plans** – The Supplier shall have Business Continuity Plans in place from the Effective Date and periodically updated to ensure the Supplier's own continuity of operations and ability to provide the Deliverables to the OPS during the Term of the Agreement, including during an event of Force Majeure or other emergency, disaster or disruption. Each Business Continuity Plan and any updates thereto must be to the reasonable satisfaction of the Ministry. At any time and from time to time, the Ministry may request, and the Supplier shall provide to the Ministry within five (5) Business Days after such request, a copy of the Supplier's Business Continuity Plan for review by the Ministry.
- 24.02 **Contents** – Business Continuity Plans shall:
- (a) specifically address, among other things, the absence or reduction of staff, facilities and information technology and how these will be managed so as to ensure the Supplier's supply chain is not disrupted in a manner that will prevent or impair the provision of the Deliverables to the OPS in accordance with the Agreement; and
 - (b) include a methodology by which the Business Continuity Plans will be continuously monitored and updated by the Supplier during the Term of the Agreement.

ARTICLE 25 - TERM

- 25.01 **Term** - Subject to the provisions of this **Article 25**, the initial term of the Contract shall commence on the Effective Date and shall expire on the Expiry Date.
- 25.02 **Extension** - Notwithstanding **Section 25.01**, the Ministry at its option may extend the initial term of the Contract for up to two (2) additional terms of up to one (1) year each, such extension(s) to be upon the same terms (including the Rates in effect at the time of extension), conditions and covenants contained in the Contract, excepting the option to extend. The option shall be exercisable by the Ministry giving notice to the Supplier not less than thirty (30) days prior to the original Expiry Date or not less than thirty (30) days prior to the first anniversary of the original

Expiry Date, as the case may be. The notice shall set forth the precise duration of the extension. The initial term, and any extension(s) thereof, are together referred to as the "Term".

ARTICLE 26 – TERMINATION OF A REQUEST BY THE SUPPLIER

- 26.01 **Termination** – If the Ministry is in material breach of a Request, the Supplier shall notify the Ministry of the breach and shall have the right to terminate the Request without further obligation or liability to the Ministry if the Ministry fails to remedy, or diligently to take steps to remedy, such breach within thirty (30) calendar days after receipt of written notice of the breach.
- 26.02 **Charges** – In the event of termination pursuant to **Section 26.01**, the Ministry shall be obligated to pay all charges payable for such Deliverables rendered to the date of termination in accordance with the Request.

ARTICLE 27 – TERMINATION BY THE MINISTRY

27.01 Termination of a Request –

- (a) The Ministry shall have the right to terminate a Request if the Supplier is otherwise in material breach of the Request, and has failed to remedy, or diligently take steps to remedy, the breach within seven (7) calendar days after receipt of written notice by the Ministry of the breach.
- (b) The right of termination under this **Section 27.01** may be exercised by the Ministry without further notice and without obligation or liability to the Supplier on the part of the Ministry

27.03 Termination of Contract on Prior Notice –

- (a) the Ministry reserves the right to terminate the Contract upon giving seven (7) calendar days prior written notice to the Supplier if the Supplier:
- (i) neglects or fails to provide any Deliverables in accordance with the Contract,; or
 - (ii) fails to observe any of its obligations required by the Contract, in addition to the provision of any Deliverables,
- where the Supplier fails to remedy such neglect or failure by the expiry of the seven (7) calendar day notice period.
- (b) The right of termination under this **Section 27.03** may be exercised by the Ministry shall be without further notice and without obligation or liability to the Supplier on the part of the Ministry

27.04 Termination of Contract without Prior Notice - The Ministry shall have the right to terminate the Contract or any or all Requests immediately without further obligation or liability to the Supplier on the part of the Ministry if:

- (a) the Supplier is adjudged bankrupt or makes a general assignment for the benefit of its creditors or a receiver is appointed on account of the Supplier's insolvency;
- (b) the Supplier breaches any of the Privacy Provisions or the confidentiality provisions of **Article 15** (OPS Confidential Information);

- (c) the Supplier breaches the Conflict of Interest provisions in **Section 2.07**;
- (d) the Supplier is in default of **Article 20** (Security Clearance Checks);
- (e) the Supplier has made a material misrepresentation or has provided materially inaccurate information in its Proposal, which the Ministry learns about during the Term.

27.05 **Termination for Non-Appropriation** - If the Contract or Request extends into a Ministry fiscal year subsequent to its execution, continuation of the Contract or Request is conditional upon an appropriation of moneys by the Legislature of Ontario (the "Legislature") sufficient to satisfy payments due under the Contract or Request. In the event that such moneys are not available as a result of:

- (a) non-appropriation by the Legislature for the Ministry fiscal year in which payment becomes due; and
- (b) the payment being neither charged nor chargeable to an appropriation of the Legislature for a previous Ministry fiscal year,

the Ministry may terminate the Contract, or Request, upon giving notice to the Supplier. Termination shall become effective on the date of the beginning of the first Ministry fiscal year for which funds have not been appropriated.

27.06 **Termination Without Cause** – The Ministry reserves the right to terminate the Contract without cause and without penalty, at any time, upon giving no less than sixty (60) days prior written notice to the Supplier. Upon termination of the Contract under this **Section 27.06**, the Ministry shall be liable to the Supplier for payment of the following amounts:

- (a) all fees payable for Deliverables accepted by the Ministry to the date of the termination;
- (b) all fees payable for work-in-progress with respect to the Services, on a 'time and materials' basis, at the per diem rates of the Supplier Personnel; and,
- (c) other costs of the Supplier, demonstrated to the reasonable satisfaction of the Ministry, to be directly related to the orderly termination of the Agreement.

ARTICLE 28 – EFFECT OF TERMINATION AND OTHER RIGHTS

28.01 The Ministry shall not, by virtue of any termination of the Contract pursuant to **Article 27**, waive or prejudice any rights or remedies it may have in the Contract or otherwise at law arising out of the termination, all of which remedies shall survive any termination of the Contract and remain in full force and effect thereafter.

28.02 The Ministry shall only be responsible for the payment for Deliverables provided in connection with a specific Request up to and including the effective date of any termination by the Ministry hereunder.

28.03 Termination shall not relieve the Supplier from liability for the Supplier's representations, warranties and other promises and responsibilities relating to the Deliverables, or any money paid by the Ministry hereunder, up to and including the effective date of termination.

28.04 At the request of the Ministry following the expiry or termination of the Contract, the Supplier shall:

- (a) disclose to the Ministry the current state of the Deliverables being provided to the Ministry by the Supplier as of the date of termination, and provide a report of, and all the material reflecting, the current state of the Deliverables;
- (b) execute any documentation as may be required by the Ministry to give full effect to the termination of the Contract; and
- (c) promptly return to the Ministry all OPS Confidential Information and other documentation and other property in the Supplier's possession in connection with the Contract;
- (d) co-operate with the Ministry to the extent necessary to effect the timely and orderly termination of the Contract, and to permit the non-disrupted business operation of the Ministry and the migration by the Ministry to new equipment and software with the least amount of inconvenience and disruption as is reasonable in the circumstances.

28.05 **Right to Utilize Third Parties** – Should the Supplier fail to provide or perform any of the Deliverables, the Ministry shall have the right, either utilizing its own resources or those of a third party, to obtain or perform such Deliverables. Any additional costs or expenses incurred by the Ministry in performing or obtaining such Deliverables shall be reimbursed by the Supplier upon presentation of the applicable invoice. For avoidance of uncertainty, the provisions of this **Section 28.05** shall be in addition to, and shall not limit, any other rights and remedies available to the Ministry, or any other obligations of the Supplier under the Contract or at law or in equity.

28.06 **Termination in Addition to Other Rights** - The express rights of termination in the Agreement are in addition to and shall in no way limit any rights or remedies of the Ministry under the Contract, at law or in equity.

ARTICLE 29 - NOTICE

29.01 **Notices by Prescribed Means** - Notices shall be in writing and shall be delivered by postage-prepaid envelope, personal delivery, email or facsimile and shall be addressed to, respectively, the Ministry at the following address:

Ministry of Government and Consumer Services
Infrastructure Technology Services
222 Jarvis St, 6th Floor
Toronto, ON

Attention:

Facsimile Number:

Email:

And to the Supplier at the following address:

Attention:

Facsimile Number:

Email:

29.02 **Receipt** - Notices shall be deemed to have been received:

- (a) in the case of postage-prepaid envelope, five (5) Business Days after such notice is mailed; or
- (b) in the case of personal delivery, email or facsimile one (1) Business Day after such notice is received by the other Party.

29.03 **Postal Disruption** - In the event of a postal disruption, notices must be given by personal delivery, email or by facsimile.

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

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as
represented by the Minister of Government Services**

Per: _____

Name: _____

Title: _____

Date of Signature: _____

[Insert full corporate name of the Supplier]

Per: _____

Name: _____

Title: _____

Date of Signature: _____

I have authority to bind the Corporation.

**SCHEDULE A
DELIVERABLES AND SUPPLEMENTARY PROVISIONS**

(To be completed, based on Parts 1 and 2 of the RFP, upon selection of the Supplier.)

**SCHEDULE B
RATES AND PRICING**

(To be completed, based on the Supplier's Rate Bid Form.)

SCHEDULE C

PROVINCIALY FUNDED ORGANIZATION NOTICE

[INSTRUCTION TO SUPPLIER: PRIOR TO responding to requests from a Provincially Funded Organization, forward a copy of this document to the Provincially Funded Organization. Aside from inserting the information in the applicable fields below, this Provincially Funded Organization Notice may not be amended.]

PROVINCIALY FUNDED ORGANIZATION NOTICE

BACKGROUND INFORMATION:

- Ontario has established various vendor arrangements (each an “**Arrangement**”) for selected vendors (each a “**Vendor**”) to supply certain products or services, or both, (the “**Deliverables**”) to Ontario.
- Vendors under certain Arrangements are required, subject to the terms of their agreement with Ontario under the applicable 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 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 under certain 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.
 - 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 Arrangement as meeting the procurement rules, regulations, obligations and processes to which you are subject; (iii) the ordering process established for any 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 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 Arrangement; any Deliverables; the Ontario Agreement or any related documentation; any access to the 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 Arrangements, Vendor/Ontario Agreements and Deliverables. It is Ontario's intention that, if you choose to access any 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 Arrangement, any Ontario Agreement and any products and services provided by the suppliers to Ontario on any Arrangement.

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 and Consumer Services ("**MGCS**"); 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 MGCS 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.

APPENDIX B

Bill No.
2017

By-law No.

A By-law to approve the “Master Agreement Adoption Agreement” with with Eclipse Technology Solutions Inc. for Vendor of Record Telephony Equipment Maintenance and Support Services; and to authorize the Mayor and the City Clerk to execute the Agreement; and to approve Eclipse Technology Solutions Inc. as a Vendor of Record for Telephony Equipment Maintenance and Support 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, Her Majesty the Queen in right of Ontario has entered into an agreement with Eclipse Technology Solutions Inc. (“Eclipse”) for Telephony Equipment Maintenance and Support Services Contract No.: OSS_00456717 (“Master Agreement”);

AND WHEREAS the Province’s agreement with Eclipse provides an opportunity for Provincially Funded Organizations (PFO) (which includes municipalities) to enter into agreements with Eclipse for Telephony Equipment Maintenance and Support Services under substantially the same terms, subject to the PFO entering into a Master Agreement Adoption Agreement with Eclipse;

AND WHEREAS Municipal Council of The Corporation of the City of London approves Eclipse as a Vendor of Record for Telephony Equipment Maintenance and Support Services;

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

1. The Master Agreement Adoption Agreement for Telephony Equipment Maintenance and Support Services (in which the City can place orders and receive the products and services on the same or similar terms, including price and length of the term, as the agreement between Her Majesty the Queen in right of Canada and Eclipse under VOR # OSS-00456717), to be entered into between The Corporation of the City of London and Eclipse, substantially in the form attached as Schedule A to this by-law, is approved.
2. Eclipse is approved as a Vendor of Record for Telephony Equipment Maintenance and Support Services.
3. The Mayor and the City Clerk shall execute the agreement approved under section 1 above.

4. (a) The Director of Information Technology Services is delegated the power to authorize, approve and execute such further and other documents that may be required in furtherance of the agreement approved in section 1 above, that are consistent with the requirements contained in that agreement, and that do not require additional funding or are provided for in the City's current budget, and that do not increase the indebtedness or contingent liabilities of The Corporation of the City of London. This power shall include the power to exercise the City's option to extend the term of the contract to October 31, 2019.
- (b) The Director of Information Technology Services is delegated the power to act as or appoint members of the Civic Administration to act as: administrator per section 22.02 of the Master Agreement; project manager per section 22.05 of the Master Agreement.
- (c) The Director of Information Technology Services is delegated the power to act as or appoint a member of the Civic Administration to act as the Executive Sponsor for dispute resolution per section 23.02 and 23.03 of the Master Agreement.
- (d) The City Manager is delegated the powers in subsections (a), (b) and (c) above in the absence of the Director of Information Technology Services.
5. 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 –

Master Agreement Adoption Agreement

This Master Agreement Adoption Agreement is made as of **October 12, 2017** between **Eclipse Technology Solutions 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 President of the Treasury Board**, have entered into a Master Agreement for **Telephone Equipment Maintenance and Support Services** made as of **November 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) For greater certainty only, where the context requires, reference to "Ministry", "Ontario Public Service", "OPS", "Ontario", "ERD", "TBS" shall be a reference to the Buyer;

(ii) For greater certainty only, the definition of "Client" in s. 1.01 is amended by inserting a new subsection (c):

(c) the Buyers' service areas, and any agencies, boards or

commissions that the Buyer advises the Vendor of in writing.

- (iii) The “Effective Date” in s. 1.01 is the date this agreement is made;
- (iv) The Term shall be the same as set out in s. 25.01 of the Ontario Master Agreement, with the “Expiry Date” being **October 31, 2018**, unless this agreement or the Ontario Master Agreement is terminated earlier in accordance with the terms of the applicable Agreement. If the Ontario Master Agreement is extended for a further year as set out in s. 25.02, the Buyer Master Agreement may be extended at the Buyer’s option for a further term with an Expiry Date of **October 31, 2019**.
- (v) The definition of “FIPPA” in s. 1.01 is amended by inserting the phrase “, and the Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M.56, as may be amended from time to time” after the phrase “from time to time”;
- (vi) For greater certainty only, and except for section 4.03, the definition of “Indemnified Parties” in s. 1.01 is amended by inserting the phrase “, and The Corporation of the City of London, its councillors, officers, agents, appointees and employees” after the phrase “appointees and employees”;
- (vii) s. 2.08 is amended by replacing the word “ensure” with the term “enure”;
- (viii) ss. 3.02(a) is amended by replacing the word “our” with the term “are”;
- (ix) For greater certainty only, s. 11.07 is amended by inserting the phrase “or the Buyer” after the phrase “Her Majesty the Queen in right of Ontario” and after the phrase “the Ministry”;
- (x) For greater certainty only, s. 18.01 is amended by inserting the phrase “and Municipal Council” after the phrase “Executive Council of Ontario” wherever it appears;
- (xi) s. 20.01 is amended by replacing the defined term “CIPC” with the term “CPIC”;
- (xii) For greater certainty only, s. 27.05 is amended by replacing the phrase and words “Legislature of Ontario” and “Legislature” with the phrase “Municipal Council of the City of London”;
- (xiii) In section 29.01, 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, ON
N6A 4L9
Facsimile: 519-661-4892
Email: csaunder@london.ca

(xiv) The System Inventory Information shall not be as set out in Schedule A-1, but shall instead be as provided by the Buyer to the Vendor in writing from time to time.

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

Buyer:

**The Corporation of the City of
London**

Per:

Vendor:

**Eclipse Technology Solutions
Inc.**

Per:

Signature:

Name:

Title:

I have authority to bind the Buyer.

Signature:

Name:

Title:

I have authority to bind the Vendor.

Signature:

Name:

Title:

I have authority to bind the Buyer.

APPENDIX 'C'

#17175

Chair and Members
Corporate Services Committee

September 26, 2017
(Award Contract)

**RE: Vendor of Record (VOR) OSS_00456717 Telephony Equipment,
Maintenance and Support Services
(Subledger CP170016)
Capital Project GGMOD1702 - Network Modernization
Eclipse Technology Solutions Inc. - \$1,250,000**

FINANCE & CORPORATE SERVICES REPORT ON THE SOURCES OF FINANCING:

Finance & Corporate Services confirms that the cost of this project can be accommodated within the financing available for it in the Capital Works Budget and that, subject to the adoption of the recommendations of the Managing Director, Corporate Services and City Treasurer, Chief Financial Officer and the Director, Information Technology Services, the detailed source of financing for this project is:

<u>ESTIMATED EXPENDITURES</u>	<u>Approved Budget</u>	<u>This Submission</u>
Computer Equipment	\$1,250,000	\$1,250,000
NET ESTIMATED EXPENDITURES	<u>\$1,250,000</u>	<u>\$1,250,000</u>
<u>SOURCE OF FINANCING:</u>		
Drawdown from Technology Reserve Fund	\$1,250,000	\$1,250,000
TOTAL FINANCING	<u>\$1,250,000</u>	<u>\$1,250,000</u>

NOTES:

- 1) Operating costs associated with the support and maintenance of this hardware and software will be accommodated within the existing ITS operating budget.

JG



Jason Senese
Manager of Financial Planning & Policy