

Schedule 1

CO-LOCATION Sub-licence AGREEMENT

This Agreement made as of the _____ day of _____, 2012

BETWEEN:

London Hydro Inc.
("Hydro")

- and -

The Corporation of the City of London
(the "City")

WHEREAS the City has a licence agreement with Museum London, owner of the building known as Museum London located at 421 Ridout St. North in the City of London, to use a portion of the Museum London building to house the City's data centre ("City Data Centre");

AND WHEREAS Hydro has a data centre located at 111 Horton St. in the City of London (Hydro Data Centre");

AND WHEREAS the parties wish to place their own servers in the other party's existing data centre, for back-up purposes;

AND WHEREAS the parties wish to share the other party's network assets for the purpose of improving disaster recovery, business continuity, network redundancy and network diversity;

AND WHEREAS it is anticipated that by leveraging the existing assets of each party, both parties can reduce or eliminate their dependency on multiple third parties to provide data centre floor space, recovery sites and network connectivity;

AND WHEREAS the agreement is not intended to include the sharing of each other's staff, servers, storage, networking or data of the other party;

NOW THEREFORE in consideration of the premises, the mutual covenants contained herein and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties agree as follows:

Definitions:

In this Agreement, the following term has the following meaning:

"Organizational Contact" means the individual or individuals designated by each party from time to time as that party's organizational contact with respect to the administration of this Agreement. Each party shall confirm to the other in writing the identity of its Organizational Contact, including the name, job title, work e-mail address and work phone number, and any delegates.

1. Infrastructure

(a) Hydro shall provide 12 strands of single mode fiber at no cost to the City between the Hydro Data Centre and the City Data Centre, being:

- i. Four (4) strands of single mode fiber for sole use by the City to connect to its assets in the Hydro Data Centre (the City shall not allow any other party to use this fiber)
- ii. Four (4) strands of single mode fiber for use by Hydro to connect to its assets in the City Data Centre (Hydro shall not allow any other party to use this fiber)
- iii. Four (4) strands of single mode fiber for future use to be determined by Hydro (which use is subject to the prior written consent of the City and the London Regional Art and Historical Museum).

(b) Cost of installation of the fiber between the two data centres shall be shared equally between the parties.

(c) Hydro shall provide the City in the Hydro Data Centre with floor space, cooling, power, power distribution, uninterruptable power supply, generator backup for 3 racks of City equipment, consisting of, but not restricted to:

- i. data centre racks
- ii. 1 full rack of servers (blade or rack mounted)
- iii. 1 full rack of storage
- iv. ½ rack of networking
- v. ½ rack for future use

(d) The City will provide at no cost to Hydro the following for Hydro's future use for network diversity and redundancy within 3 years of executing this agreement and Hydro becoming a member of LARG*Net, with membership into LARG*Net at the sole cost of Hydro :

- i. Four (4) strands of single mode fiber from the City's data centre to LARG*Net point-of-presence (POP) located at the CitiBank Plaza (Galleria)
- ii. Four (4) strands of single mode fiber from the corner of Wellington and Horton back to the LARG*Net point of presence (POP) located at the CitiBank Plaza (Galleria) or alternate LARG*Net POP located at 1393 Western Road

(e) The City will provide Hydro in the City Data Centre with floor space, cooling, power, power distribution, uninterruptable power supply, generator backup for 2 racks of Hydro equipment, consisting of, but not restricted to:

- i. data centre racks
- ii. ½ full rack of servers (blade or rack mounted)
- iii. ½ full rack of storage
- iv. ½ rack of networking
- v. ½ rack for future use

2. Charges for ongoing operational and maintenance services

(a) There shall be no charges for either party for services associated with the use of each other's data centres, network assets or personnel for normal daily tape handling operations.

(b) Any costs associated with any work including maintenance work under this agreement shall be agreed and approved by both parties before work can proceed.

(c) Neither party shall charge the other party for its costs associated with maintaining the infrastructure connecting the City of London data centre and Hydro data centre, provided that costs remain relatively equal between the parties. In the event that costs associated with maintaining the infrastructure connecting the data centres are not relatively equal, the parties agree to equally pay for such costs where such costs are reasonable and where such costs had received prior approval by the other party.

3. Annual Review

(a) This agreement shall be reviewed and approved at least once every 12 months by the Official Representatives of the parties.

(b) Changes and additions to workloads shall be agreed to as part of the annual review to allow sufficient time to accommodate data centre environmental system changes (power, cooling, power distribution, etc.)

4. Mutual Obligations

(a) Each party shall remain solely responsible for the day to day operations of their own assets, services, applications and service level commitments to their respective organizations. Without limitation, each party shall:

- i. maintain ownership of their hardware and software assets
- ii. maintain ownership and responsibility of their hardware and software maintenance agreements
- iii. be responsible for the daily operation and management of their devices in each data centre
- iv. house assets in secured cabinets that are dedicated to their specific use
- v. provide access to their own data centre to the other party's pre-designated staff and vendors maintenance engineers
- vi. participate in joint change control procedures including a joint monthly infrastructure Change Advisory Board (CAB)
- vii. share data centre and networking assets for the purpose of disaster recovery and business continuity at no additional charge
- viii. be responsible for monitoring and planning for incremental capacity. Planned capacity increases shall be communicated to the other party at least 3 months in advance to allow for each hosting site to assess data centre environmental impacts that result in

budgetary impacts. Changes in capacity that require additional investments in data centre capabilities need to be addressed on at least an annual basis

- ix. not share or make accessible to its employees, vendors, consultants or any other person for whom it is at law responsible, the other party's data
- x. maintain ownership and be responsible for maintaining in good working order, at their expense, their respective fiber assets
- xi. accept the other party's data centre in an "as is" condition.

5. City's License Agreement with London Regional Art and Historical Museum

5.1 Hydro Covenants

Hydro covenants not to do or omit to be done any act or thing upon the City Data Centre that would cause a breach of any of the City's obligations as Licensee under its agreement with The London Regional Art and Historical Museum made in 2009 and any amendments thereto ("Museum London Agreement").

5.2 Application of Museum London Agreement

Hydro acknowledges and agrees that this agreement is subject to and subordinate to the terms of the Museum London Agreement.

5.3 Hydro Issues

Hydro shall address any concerns it has with the City's Data Centre through the City and not through The London Regional Art and Historical Museum.

6. Ownership of property

- (a) All fiber, server, storage, networking and cabinet assets remain the property of the party owning, leasing or licensing the asset.
- (b) Hardware and software maintenance agreements remain the responsibility of the respective parties to the agreements.
- (c) All software and software licensing agreements will be maintained by the owner or licenseholder of the asset.

7. Insurance and Indemnification

- (a) Each party shall obtain and maintain insurance policies suitable for a corporation of its size covering the assets located in the other's data centre under the corporate insurance policies of the party owning the assets.
- (b) Each party shall prepare and maintain an itemized list of assets, and shall clearly label the assets, that are located in the other party's data centre for the purposes of ownership, maintenance and insurance coverage. Estimated replacement value at the effective date of this Agreement is:
 - o Hydro assets is \$500,000.00, and
 - o City assets is \$1,000,000.00 .
- (c) Each party hereby further agrees to obtain and maintain at its own expense:
 - 1. general liability insurance in a limit not less than \$10,000,000.00, and
 - 2. errors and omissions liability insurance in an amount not less than \$10,000,000.00.
- (d) The City reserves the right to request such higher limits of insurance or other types of policies appropriate to this agreement as the City may reasonably require from time to time. Each party hereby waives all rights against the other for damage caused to the assets by any peril howsoever caused . It is further agreed that all insurance policies covering the respective assets shall permit and recognize such waivers of subrogation.
- (e) Each party hereby waives all rights against the other for damage caused to the assets by any peril howsoever caused . It is further agreed that all insurance policies covering the respective assets shall permit and recognize such waivers of subrogation. Each party hereby further agrees to obtain and maintain at its own expense:
 - 1. general liability insurance in a limit not less than \$10,000,000.00, and
 - 2. errors and omissions liability insurance in an amount not less than \$10,000,000.00.
- (f) Each party shall indemnify, defend and hold harmless the other from and against any and all third party claims, demands, lawsuits, causes of action, losses, damages, liabilities, costs and expenses, including reasonable attorney's fees, related to or arising out of the Agreement.
- (g) Each party agrees to promptly notify the other of any such third party claims, and to reasonably cooperate with the defense and settlement of any such claim.

8. Physical security and access

- (a) Each party at its own data centre shall be responsible for its own security, safety and reliability of assets & facilities which shall be extended to co-located assets.
- (b) Each party shall select the appropriate securing features for the cabinets housing their assets.
- (c) The parties shall provide processes to allow authorized service personnel to access its assets at the respective colocation site. Access processes shall be designed to facilitate access reasonably required by the party owning the assets while being compatible with the data centre's current security policies.
- (d) No access shall be granted to the other party's staff or designate unless expressly given in writing by the other party's Organizational Contact.
- (e) Each party's network assets shall be maintained separately and isolated from the other party's networks.
- (f) Each party has the right to perform an annual system review to prepare audit reports.
- (g) Each party has the right to perform an annual health and safety audit.

9. Sub-Contractors

- (a) Subject to section 5.0, each party agrees to allow reasonable access to the subcontractors who perform regular maintenance and servicing of the IT infrastructure. The following contracted service providers are pre-approved for access to both data centres:
 - 1. Hewlett-Packard for hardware and software maintenance.
 - 2. Command Services for tape handling and offsite vaulting.
- (b) Others may be added to the pre-approved list by mutual agreement in writing of the Organizational Contacts.
- (c) For project related activities, the parties shall provide a mechanism to authorize entry in advance.

10. Service Level Agreements ("SLA")

Each party is responsible for maintaining and delivering on their SLA with their end customers. In the event there is a problem with the data centres, networking devices, or fiber assets, restoration shall be commercially reasonable efforts.

11. Disaster Recovery and Business Continuity

Each party shall be responsible for the development, maintenance and execution of their respective disaster recovery and business continuity plans.

12. Backup and Recovery

- (a) Each party shall be responsible for the backup and recovery of their owned systems.
- (b) Tape handling and offsite services remain the responsibility of each party. Each party shall provide the operational support to deal with daily tape handling operations for the other's assets within each data centre.

13. Change Management

- (a) Common infrastructure component management shall be governed by a joint weekly IT Change Advisory Board (CAB) conference call scheduled and hosted by either party either party as mutually agreed.
- (b) Implementing of new services will be treated as projects and be coordinated between the two parties and their appropriate project management teams. Funding is to come from the existing capital and operating budgets and pre-approved by the Organizational Contact of the parties for approval.

14. Incident and Problem Management

Each party will use their existing incident and problem management process and tools.

15. Human Resources

No transfer of staff or responsibilities is implied by this agreement.

Each party shall be solely responsible for its own employees, agents and contractors for all statutory obligations related to the payment of CPP, WSIB, and taxes.

The parties hereto are each independent of the other and this Agreement shall not operate to create a partnership, joint venture, employment arrangement, master servant relationship or any other similar relationship between the City and Hydro or between the City and any employees, agents or contractors of Hydro.

16. Governance

Services and the relationship shall be managed by the Organizational Contacts. Communications, meeting schedules and frequency will be defined at a later time.

17. Escalation

All issues that require the addition of financial resources, changes in scope, personnel issues, gaps in responsibilities or too many overlapping responsibilities shall be escalated to the Chief Information Officer ("CIO") (or where that person is not available, the Chief Administrative Officer) / Chief Technology Officer ("CTO") (or where that person is not available, the City Treasurer) of the respective parties.

18. Term and Termination

- (a) This agreement shall be for a term commencing on the date first written above and ending December 31, 2018, unless terminated earlier.
- (b) Either party may terminate the agreement at any time for any reason without liability by giving at least 12 months' written notice to the other.
- (c) Either party may terminate this agreement without liability if the other party is in breach of its material obligations hereunder, which being capable of cure, has not been cured within thirty (30) days after receipt of written notice of such breach from the party seeking to terminate the agreement.
- (d) Either party may terminate this agreement immediately without liability if either party:
 - (i) is in breach of its material obligations hereunder, which breach is incapable of cure;
 - (ii) becomes insolvent;
 - (iii) executes an assignment for the benefit of creditors;
 - (iv) files or has filed against it a petition under any applicable bankruptcy law;
 - (v) applies for or has applied for on its behalf a receiver;
 - (vi) has a receiver appointed for it by a creditor; or
 - (vii) ceases to carry on business.
- (e) The City may terminate this agreement immediately without liability if the City is no longer authorized to provide access or space to Hydro at 421 Ridout St. N..
- (f) Upon the termination of this agreement, for any reason, each party shall remove its assets at its own expense from the other party's data centre within five business days of the date of termination.

19. Force Majeure

Neither party shall be liable for an omission or delay in the execution of its obligations hereunder caused by an event beyond the reasonable control of either party including fire, war, abnormal weather conditions, act of god, governmental regulation, governmental request or requisition for national defence. The time for the performance of the obligation which is so delayed shall be extended by a reasonable time beyond the cessation of the cause of the delay, provided that the party subject to such force majeure immediately notifies the other party of the commencement and nature of such cause and uses reasonable efforts to render performance in a timely manner.

20. Dispute Resolution

In the event of a dispute that cannot be resolved by the party's CIO/CTO, either party may escalate the dispute to their respective senior management team or City Treasurer.

21. Assignment

Hydro shall have the right to assign this Agreement or any rights hereunder with the prior written consent of the City in the event of a merger, sale of assets or business, or other transfer of control by operation of law or otherwise, provided that the assignee shall assume all obligations and rights hereunder. Such consent may be unreasonably withheld.

22. Binding Nature

This Agreement is binding and enures to the benefit of the parties, their successors and permitted assigns.

23. Waiver

Waiver of any default or breach of this Agreement by either party shall not be construed as a waiver of either a subsequent or continuing default.

24. Complete Agreement

This Agreement contains the complete and exclusive statement of the agreement between the parties and supersedes all prior and contemporaneous agreements, understandings, proposals, negotiations, representations or warranties of any kind whether written or oral. No oral or written representation that is not expressly contained in this Agreement is binding on either party. This Agreement cannot be amended or modified, other than by a change made in writing, dated and executed by the parties.

25. Time of the Essence

Time shall be of the essence in this Agreement.

26. Governing Law

This agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

27. Severability

All sections, terms and provisions of this Agreement are severable, and the unenforceability or invalidity of any of these parts of this Agreement shall not affect the validity or enforceability of any other part of this Agreement. If any court or arbitrator of competent jurisdiction determines that any provision in this Agreement is invalid or unenforceable, it is the intention of the parties that the court or arbitrator either partially enforce such provision to the extent enforceable or modify such provision so as to render it valid or enforceable.

28. Independent Contractors

The City and Hydro are independent contractors, each in full control of its own operations. This Agreement does not establish a joint venture or partnership between the City and Hydro. Neither party is the agent of the other and neither has the authority to bind the other in respect of any third party. Neither party shall under any circumstances hold itself out to be a partner, employee, franchisee, legal representative, servant or agent of the other.

29. Notices

All required notices, or notices which may be provided in accordance with this Agreement, shall be in writing and shall be duly provided for if the notice is remitted to its addressee by courier, registered mail, or facsimile, to the address below:

- (a) For Hydro: Chief Information Officer
Address: 111 Horton St, P.O. Box 2700
London Ontario N6A 4H6
Facsimile: 226.661.4760

- (b) For the City: City Clerk
Address: 300 Dufferin Avenue
London Ontario N6A 4L9
Facsimile: 519.661.5985

or such other address as the party which is to receive the notice indicates to the party providing the notice, in the manner provided for in this section. Every notice delivered in the manner provided for herein shall be deemed to have been received: when delivered or by facsimile the first business day after the date received; or the fifth business day following the date of mailing, if sent by mail .

30. Further Assurances

The parties agree to sign other instruments, and to do and perform all other acts which may be necessary and desirable in order to give full effect to this Agreement.

IN WITNESS WHEREOF this Agreement has been executed by the parties as of the date first set forth above.

SIGNED, SEALED and DELIVERED

London Hydro Inc.

Per: _____
Authorized Signing Officer

I have the authority to bind the Corporation.

The Corporation of the City of London

Per: _____
Joe Fontana, Mayor

Per: _____
Catharine Saunders, City Clerk

CONSENT – Museum London

Museum London here by consents to the terms of this Co-location Sub-licence agreement, pursuant to the license Agreement between Museum London and The Corporation of the City of London of 2009.

Per: _____

Authorized Signing Officer
Museum London

Print Name and Title