

Bill No. 452
2012

By-law No. A- _____

A By-law to approve an Agreement with RBB Innovations Ltd.; and to authorize the Mayor and the City Clerk to execute the Agreement.

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 section 10 of the *Municipal Act, 2001* provides that the City may provide any service or thing that the City considers necessary or desirable for the public, and may pass by-laws respecting same, and respecting economic, social and environmental well-being of the City, and the health, safety and well-being of persons;

AND WHEREAS the *Day Nurseries Act*, R.S.O. 1990, c. D.2 provides that the council of a municipality may pass by-laws granting aid to day nurseries; and may pass by-laws granting aid to any person providing private-home day care; and that the Minister may enter into agreements with municipalities or delivery agents respecting the provision of day nursery services by a day nursery and the provision of private-home day care by a private-home day care agency;

AND WHEREAS pursuant to the *Day Nurseries Act*, the City of London is the Delivery Agent for the geographic area of the City of London and County of Middlesex;

AND WHEREAS the City has entered into an agreement with Her Majesty the Queen in right of Ontario as represented by the Minister of Education, effective as of January 1, 2012, wherein the Ministry agrees to pay the City for admissible expenditures incurred pursuant to the agreement;

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

1. The Agreement attached as Schedule "A" to this by-law between RBB Innovations Ltd. and The Corporation of the City of London for a web based solution to support a centralized childcare information and wait list system, is hereby authorized and approved.
2. The Mayor and City Clerk are authorized to execute the agreement authorized and approved under section 1 of this by-law.
3. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council on November 20, 2012.

Joe Fontana
Mayor

Catharine Saunders
City Clerk

First reading - November 20, 2012
Second reading – November 20, 2012
Third reading – November 20, 2012

THIS AGREEMENT made in triplicate this _____ day of _____, 201__.

B E T W E E N:

RBB INNOVATIONS LTD.
Hereinafter referred to as the "Supplier"

OF THE FIRST PART

- and -

THE CORPORATION OF THE CITY OF LONDON
Hereinafter referred to as the "City"

OF THE SECOND PART

WHEREAS the City has received a quote, for the purchase of a web based solution to support a Centralized Childcare Information and Wait List System;

AND WHEREAS the Supplier has submitted a Proposal of Service to license to the City the centralized childcare waiting list management system known as ONEHSN CHILDCARE (formally ONELIST) which shall have the product functionality described in Schedule "B" annexed hereto;

AND WHEREAS the City has accepted the Proposal from RBB Innovations Ltd., specified in Schedule "A", subject to a contract being entered into between the parties hereto;

AND WHEREAS the Supplier is prepared to undertake such implementation under the terms and conditions specified in this Agreement and for the charges specified in Schedule "C";

AND WHEREAS the City and the Supplier have agreed that the Supplier will provide services to the City in accordance with the terms and conditions of this Agreement;

NOW THEREFORE, that in consideration of the covenants contained herein, the City and the Supplier mutually agree as follows;

1. DEFINITIONS

The following words and terms shall have the following meanings when used herein and such definitions shall apply to both the singular and plural forms of any such words and terms:

- 1.1 "Acceptance Date" means the date on which the Software has passed all acceptance tests in accordance with the provisions of clause 5 or has otherwise been accepted by the City under clause 5.
- 1.2 "Agreement" means this agreement including all schedules.
- 1.3 "Business Day" means each of Monday, Tuesday, Wednesday, Thursday and Friday except where any such day occurs on any federal or provincial statutory holiday observed in the Province of Ontario.
- 1.4 "Charges" means the **ONEHSN CHILDCARE Workshops & Training Fee, ONEHSN CHILDCARE Software License and Annual Maintenance** to be paid by the City to the Supplier as set out in Schedule "C" plus any and all applicable federal, provincial and municipal taxes presently or hereafter imposed upon any and all such amounts.
- 1.5 "Commencement Date" means the date of execution of this Agreement by the Parties.
- 1.6 "Detailed Specifications" (if solution customization is requested), has the meaning given in User Requirements Document containing solution functionality, data requirements, reporting requirements, security requirements, administration capabilities, and training requirements.
- 1.7 "Functional Specifications" means those capabilities and functions to be met by the Software and which are described in Schedule "B".
- 1.8 "Hardware" means an infrastructure designed and continually managed by RBB Innovations Ltd. to provide the maximum level of security with consideration to reliability and performance. This

same infrastructure has been hosting personal health information and has completed Threat Risk Assessments and Penetration Testing by third party consultants to minimize security breaches and which is to be utilized by Customer for operation of the Software.

- 1.9 "Implementation Schedule" means the schedule of events leading to the implementation of the Software upon the Hardware to be completed upon signing of this Agreement.
- 1.10 "Licensed Materials" means the Detailed Specifications, the Software and the System Documentation.
- 1.11 "Licensed Service Providers" means day nurseries and private-home day care agencies as defined by the Day Nurseries Act in the Province of Ontario and authorized by the City to use the Licensed Software.
- 1.12 "Licensed Software" means those software programs conforming to the Functional Specifications to be provided or developed by the Supplier and licensed to the City pursuant to the terms and conditions of this Agreement.
- 1.13 "System Documentation" means all documents, flowcharts, printout specifications, file specifications, test data, screen layouts, data dictionaries, report layouts and all manuals which collectively contain a complete description and definition of all operating conditions of the Licensed Software.
- 1.14 "Confidential Material of the City" means:
- 1.14.1 any information of a proprietary or confidential nature, including but not limited to financial and business information relating to the City which is communicated to the Supplier at any time;
 - 1.14.2 any business systems, methodologies or computer programs of the City of which the Supplier may acquire knowledge in connection with or while performing its obligations under this Agreement, and
 - 1.14.3 any other information or data received by the Supplier from the City (or a parent user ONELIST) or the Licensed Service Provider that is personal information, or is identified as proprietary or confidential, in particular that which contains personal information such as child birthdates and family contact information or personal health information requiring extremely tight controls as defined by a separate statute, Personal Health Information Protection Act, 2004, S.O. 2004, c. 3, Sched. A.
- 1.15 "Confidential Material of Supplier" means the Detailed Specification, the Licensed Software and the System Documentation.

2. CONTRACT COMMENCEMENT

- 2.1 On the Commencement Date, the Supplier will commence preparation of a detailed Implementation Schedule, which will document the timeline for Licensed Software implementation and acceptance criteria as per the FUNCTIONAL SPECIFICATIONS. The City agrees to pay to the Supplier according to fees set out in Schedule 'C' hereto, as consideration for the services and deliverables as further set out herein.

3. DEVELOPMENT OF DETAILED SPECIFICATIONS (applicable only if customization is requested)

- 3.1 Should the City request the Supplier to customize the centralized childcare waiting list management system, Detailed Specifications and associated development costs shall be prepared in accordance with and shall be consistent with the Functional Specifications after the Supplier presents the existing Software functionality to the City for detailed review.
- 3.2 Detailed Specifications shall be presented to the City for approval. Upon completion of the Detailed Specifications presentation to the City, the City shall have fifteen (15) Business Days to approve the Detailed Specifications, to reject that portion of the Detailed Specifications dealing with acceptance test criteria, to reject the Detailed Specifications as a whole (specifying in reasonable detail the manner in which the Detailed Specifications are not in accordance with the Functional Specifications or the requirements of this Agreement), or to request specific clarifications, additions or modifications to the Detailed Specifications. Such approval, disapproval or request shall be given in writing within the time period aforesaid. In the event of an unexpected interruption in the availability of resources, the City and the

Supplier will establish a reasonable timeframe to respond.

- 3.3 If the Detailed Specifications are rejected in whole or in part by the City, or if the City requests specific clarification, additions or modifications to the Detailed Specifications, then the Supplier shall have a further period of twenty 20 Business Days, or such longer period of time as the Parties may in writing agree upon, in which to deliver to the City amended Detailed Specifications, for approval. Upon delivery of such amended Detailed Specifications to the City, the City shall have ten (10) Business Days to approve the Detailed Specifications, to reject that portion of the Detailed Specifications dealing with acceptance test criteria or to reject the Detailed Specifications as a whole, specifying in reasonable detail the manner in which the Detailed Specifications are not in accordance with the Functional Specifications or the requirements of this Agreement. Such approval or disapproval shall be given in writing within the time period aforesaid. In the event of an unexpected interruption in the availability of resources, the City and the Supplier will establish a reasonable timeframe to respond.
- 3.4 If the City accepts or is deemed to have accepted the Detailed Specifications, or if the City has rejected only that portion of the amended Detailed Specifications which deals with acceptance test criteria, then the Detailed Specifications (other than such rejected part) shall be deemed to be incorporated into and shall form a part of the Functional Specifications. If there is a conflict between the Detailed Specifications as incorporated and the Functional Specifications prior to such incorporation, then the Detailed Specifications shall govern.
- 3.5 If the City rejects that portion of the amended Detailed Specifications dealing with acceptance test criteria, then the City shall be solely responsible at its own expense for developing Licensed Software acceptance test criteria for use as provided in clause 5. Notwithstanding the foregoing, the City shall ensure that the acceptance test criteria it develops shall be of a nature capable of rendering an accurate test result on the basis of the Detailed Specifications as agreed with the Supplier.
- 3.6 If the City rejects the amended Detailed Specifications as a whole, or if the City fails to deliver the Detailed Specifications to the Supplier within twenty (20) Business Days of the presentation of Software functionality, or the Supplier fails to deliver the amended Detailed Specifications to the City as provided in clause 3.3, then the City may terminate its obligations under this Agreement, in accordance with the provisions of clause 7.

4. DEVELOPMENT OF LICENSED SOFTWARE (applicable only if customization is requested)

- 4.1 Following acceptance by the City of the Detailed Specifications, the Supplier shall proceed with the coding and debugging of the Licensed Software and the development of the System Documentation, all in accordance with the Implementation Schedule. In connection therewith, the Supplier shall provide the services of such personnel as may be necessary in order to efficiently complete the foregoing.
- 4.2 The Licensed Software will be coded using such techniques, standards and conventions as have been developed by the Supplier. If there is a conflict between such techniques, standards and conventions and the Functional Specifications, the Functional Specifications will prevail.

5. DEVELOPMENT OF TEST DATA AND ACCEPTANCE TESTING

- 5.1 Following the Commencement Date, the City, in consultation with the Supplier, shall complete a comprehensive set of test data (the "Test Data") for the purpose of testing the Licensed Software. The supplier will provide the necessary templates and tools needed to perform this task. It is the responsibility of the City to ensure that the Test Data is sufficient for the Supplier to determine that the Licensed Software performs correctly, when executed on the Hardware. Following delivery of the Licensed Software, the Licensed Software shall be subject to a series of acceptance tests, using the Test Data and the acceptance test criteria accepted by the City. The Licensed Software shall be deemed to have passed such series of tests if and when, for such period of operational use time as set out in the Implementation Schedule, the Licensed Software has demonstrated proper and substantially error-free execution on the

Hardware of the functions outlined in the Functional Specifications.

- 5.2 The acceptance tests referred to in clause 5.1 shall be deemed to have been successfully completed if the City does not notify the Supplier in writing of any failure under such tests within such period of operational use time as set out in the Implementation Schedule. If the City does so notify the Supplier, the Supplier shall forthwith correct the Licensed Software and the related System Documentation, at no charge to the City, and such acceptance test shall be commenced again and continued, subject to clause 7.2, until the test is successfully passed. Upon successful completion of all acceptance tests, the City shall so notify the Supplier in writing.
- 5.3 The Acceptance Date under clause 5.2 shall be deemed to have occurred on the date upon which the City provides written notice to the Supplier of successful completion of all acceptance tests.
- 5.4 The City shall at its sole expense be responsible for providing the necessary Hardware (desktop, monitor, keyboard, mouse and internet connectivity) required to complete the acceptance testing procedures.

6. IMPLEMENTATION SCHEDULE

- 6.1 The City and the Supplier shall report to each other at meetings held at regular intervals to be set by the City as to the progress being made by each of them in relation to the various events set forth in the Implementation Schedule, and the delays encountered, excluding delays caused beyond the control of either the Supplier or the City, and the action being taken to recover from such delays. In connection therewith the City and Supplier shall each designate one trained and competent person to act as its liaison contact, with one alternate if desired. No liaison person shall be changed without the prior written consent of the other Party.
- 6.2 If requested, the development of the Detailed Specifications and the System Documentation, and the coding, debugging and acceptance testing of the Licensed Software shall be done in accordance with the timing set forth in the Implementation Schedule.

In the event of any delay caused beyond the control of either the City or Supplier, the parties shall cooperate together to establish actions to be taken to recover from such delays.
- 6.3 The City and Supplier will work together to produce a preliminary Implementation plan that will outline the tasks, resources and schedule timeline to implement the project.

7. TERMINATION

- 7.1 If detailed specifications were requested by the City, and the Supplier does not deliver the Detailed Specifications to the City within the time periods set out in clause 3.2 or clause 3.3, as the case may be, or if the City rejects as a whole the amended Detailed Specifications, then the obligations of the Supplier under this Agreement may, at the option of the City, be terminated on twenty (20) Business Days with prior written notice to the Supplier. If the City gives notice of termination, then the City shall reimburse the Supplier for its reasonable costs incurred hereunder to the date of termination. Upon receiving such payment, the Supplier shall provide to the City an exported data file in either comma delimited format or Microsoft Excel with any data and material as belonging to the City. Under the Software-as-a-Service pricing offered under this Agreement, there is no software product deliverable to the City upon termination.
- 7.2 If the Licensed Software has not passed all acceptance tests under clause 5 within ten (10) Business Days after acceptance of the Functional or Detailed Specifications, as a result of causes solely attributable to the Supplier or to the functionality of the Licensed Software, then the City may by written notice to the Supplier do one of the following:
 - 7.2.1 accept the Licensed Software at its then level of performance, without recourse to any other remedy whatsoever; or
 - 7.2.2 permit acceptance testing of the Licensed Software to be continued for such period as the City may designate in the notice. During such period of time, the Supplier shall, at no cost to the City, correct the Licensed Software, following which the Licensed Software shall again be subjected to the applicable acceptance tests or any portion thereof not previously completed; or

- 7.2.3 If acceptance testing cannot be completed successfully within the period set forth in the City's written notice, then the City may permit the Supplier to avail itself of 7.2.2 of this clause; or
- 7.2.4 If acceptance testing cannot be completed successfully with the period set forth in the City's written notice, even after the provisions of 7.2.2 have been engaged, then the Licensed Software provider will provide a written statement detailing remedial undertakings to be completed along with timelines and a \$520.00 will be imposed for every week of delay experienced in the project; or
- 7.2.5 terminate the agreement without penalty to the City.

8. SOFTWARE LICENSE

- 8.1 Subject to the *Municipal Freedom of Information and Protection of Privacy Act*, the Supplier hereby grants a non-exclusive and non-transferable license to the City and Licensed Service Providers for the Licensed Materials.
- 8.2 This license authorizes the City and Licensed Service Providers in the normal course of business operations and for its own internal utilization.
- 8.3 The City agrees that it may not use the Licensed Software to perform service bureau or timeshare functions, and that the City may not sublicense the Licensed Software.

9. PROPRIETARY AND TRADE SECRET INFORMATION

- 9.1 The City acknowledges and agrees to protect the confidential nature of the Licensed Materials and any other material provided to the City or obtained by the Supplier as a result of this Agreement.
- 9.2 The City acknowledges that the Licensed Materials are the exclusive property of the Supplier, as the case may be, and that they contain proprietary and confidential information and trade secrets of the City, as the case may be. The City agrees that its rights to use the Licensed Materials are only as set out in this Agreement. The City shall not copy, assign, lend, sell, lease or otherwise dispose of or transfer to any third party the Licensed Materials without the prior written approval of the Supplier.
- 9.3 The City agrees to keep the Licensed Materials in a secure manner and location.
- 9.4 The City further acknowledges that in the event of a breach of any of the provisions of this section, damages will not be an adequate remedy, and that the Supplier, as applicable, shall be entitled to equitable relief including an injunction.
- 9.5 The obligations of the City under this section shall survive termination or expiration of this Agreement.

10. TRAINING

- 10.1 The Supplier shall provide to the City, classroom and on-site instruction in respect of the use and support of the Licensed Software. The City may designate up to two (2) personnel from each Licensed Service Provider to attend such training. Training materials will be developed and delivered through training sessions for Licensed Service Providers and the City's Neighbourhood, Children and Fire Services administrators. The City's Neighbourhood, Children and Fire Services administrators will learn how to oversee the system, assist parents applying for childcare, report on childcare utilization. Licensed Service Providers will learn how to maintain their respective profiles of their service offerings and the information related to wait lists. Those sessions at which training is to be provided shall be scheduled at times mutually agreed upon by the Supplier and the City and shall be conducted at a location of the City's choosing. The City shall ensure that all persons designated by it for training are available at the times scheduled for training sessions. The Supplier shall ensure that any parts of the System Documentation required for proper training of the City's personnel is delivered to the City at least ten (10) Business Days prior to commencement of training.

11. SOFTWARE SUPPORT AND MAINTENANCE

- 11.1 The Supplier agrees to provide to the City ongoing support and maintenance of the Licensed Software, System Documentation and Hardware, including updates and access to future versions of the software, for each year an Annual Maintenance Fee is paid.
- 11.2 Support and maintenance for the Licensed Software includes:
- 11.2.1 ongoing problem identification, resolution services, and correction of programming errors, so that the Licensed Software will at all times conform to the System Documentation, and if required, correction of the System Documentation.
- 11.2.2 Client support will begin at the end of training. Support will be available by the Supplier 8:30am to 4:30pm, Monday to Friday, with the exception of statutory holidays. Client support (will be by telephone or email request. Technical user support will be available for the Licensed Service Providers, parents and the public via email. User support is support or assistance as it pertains to how to use the system. Technical support relates to issues or problems that are technical in nature, i.e. broken links, login or access problems etc.
- 11.2.3 such other Software maintenance and support services as the City may reasonably require.
- 11.2.4 Purchased customizations, regular hardware maintenance including, but not limited to, firmware updates and operating system patches or updates as

recommended by the respective manufacturer.

11.2.5 Public support services (Level 1 Support Services), if required, are excluded under this Agreement.

11.3 In consideration of the provision of support services by the Supplier as aforesaid, the City agrees to pay to the Supplier an annual support service fee as defined in the Charges, payable upon Commencement Date and then on the anniversary of the Initial Public Launch Date each calendar year. The software license agreement shall automatically renew for additional periods equal to the term of one year, unless either party gives the other notice of non-renewal at least 30 days before the end of the relevant subscription term.. The per-unit pricing during any such renewal term shall be the same as that during the prior term unless the Supplier has given written notice of a pricing increase at least 90 days before the end of such prior term, in which case the pricing increase shall be effective upon renewal and thereafter. Any such pricing increase shall not exceed 4% of the pricing for the relevant Services in the immediately prior subscription term.

11.4 Termination of Contract

11.4.1 A party may terminate this Agreement for cause: (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

11.4.2 Upon any termination for cause by the Supplier, the Supplier shall refund the City any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. Upon any termination for cause by the City, the City shall pay any unpaid fees covering the remainder of the term of the license agreement after the effective date of termination.

11.4.3 The City may terminate the agreement during any renewal period at any time upon written notice to the Supplier. Upon such notice, the Supplier shall forthwith remove access to the Software by parents or by Licensed Service Providers. Except as set out in S 11.4.2, the City shall pay any unpaid fees covering the remainder of the renewal period.

11.4.4 Within 30 days after the effective date of termination of a software license agreement subscription, the Supplier will make available to the City for download a file of the City's data in a commonly accessible file format e.g. comma separated value (.csv) format along with attachments in their native format. After the data has been successfully transferred to the City, the Supplier will delete all of the City data in the system or otherwise in the Supplier's possession or control.

12. HOSTING

12.1 The servers hosting the Licensed Software are required to be under Canadian legal jurisdiction and that the data in their possession is collected and will be managed and stored in accordance with all the applicable Canadian privacy protection legislations.

12.2 The Supplier will ensure there are daily, offsite backups performed each day. The Supplier will, as a minimum on a monthly basis, ensure the backups are sufficient and can restore/regenerate the system in the event of a server failure.

12.3 The Licensed Software is engineered to be available 24 hours a day, 7 days a week, 52 weeks a year. Due to various factors, users may experience system unavailability (unscheduled downtime). In the event that unscheduled downtime exceeds 4 hours a month, during normal business operation hours of 8:30AM to 5:00PM EST Monday to Friday, holidays excepted, or

unscheduled downtime exceeds 8 hours outside normal business hours of 8:30AM to 5:00PM EST Monday to Friday, holidays included, Supplier will provide the Client with a remediation plan. Three consecutive months of greater than 4 hours of downtime, during normal business operation hours of 8:30AM to 5:00PM EST Monday to Friday, holidays excepted, or 8 hours outside of normal business hours, will be grounds for immediate contract termination. Unscheduled downtime instances will be reported to the Client on demand and quarterly.

- 12.4 The Supplier will work with the City to prepare a document outlining the procedures and communication protocols that will be put in place in the event of scheduled and unscheduled downtime. A contingency plan for downtime procedure will also be included in this document.
- 12.5 The system will provide a responsive user experience; responsive being defined as sub-two second response to user actions. Any degradation in responsiveness due to client-side or Internet related delays and issues will not apply. Vendor will be given the opportunity to rectify poor performance as per a priority P2 severity call

13. **CALL PRIORITIES & SEVERITY DEFINITIONS AND SERVICE ESCALATION PROTOCOL**

- 13.1 A system of service call priorities defined by the call priorities below can be set by the City when reporting a fault. However, the default used is as follows:

When placing the service call, the City will be asked if there is a major system impact. If the answer is YES, a P1 will be allocated. If the answer is NO, a default P2 will be allocated, or if more appropriate, a P3 or P4 as defined below:

- 13.2 **PRIORITY P1 (CRITICAL)**

A Priority ONE call is used for system faults where there is a major impact on normal operation of the system. Supplier will immediately begin work on a P1 call, with the immediate goal of restoring normal operation to the system via a fault correction or a satisfactory work-around. Misuse of this priority affects the ability of Supplier to respond to genuine P1 calls.

- 13.3 **PRIORITY P2 (URGENT)**

Priority TWO calls are used for system faults where normal system operation is affected to some degree and a satisfactory work-around is not available. Supplier will use best endeavors to respond to the call in the times stated in Response Times section of this document. In most cases, it is normal for the Supplier to respond in faster times than those stated.

- 13.4 **PRIORITY P3 (STANDARD)**

Priority THREE calls are used for system faults where a fault was detected, but normal operation is not affected. This priority of call is the default for all service calls which do not involve a hardware related fault. For software related issues, this priority allows for work to be scheduled as part of a planned maintenance update.

- 13.5 **PRIORITY P4 (ENHANCEMENT REQUESTS)**

Priority FOUR calls are used when an enhancement request is made for potential modifications to System Software.

- 13.6 **RESPONSE TIMES**

The priority of the call will, to some degree, dictate the most appropriate action for any given fault call, ensuring the minimum of disruption to the user and providing the early involvement of Supplier's management where problems are of a more serious nature.

- 13.7 **RESPONSE DEFINITIONS**

Supplier will use its best endeavors to achieve the target resolution times shown in the table below. Note that resolutions may involve a "workaround" to an issue that will allow continued use of the affected component.

The software responses are for the Supplier Support Services group to return a call to the City's support contact to start diagnosis of the problem. Status communication intervals are defined as the intervals for the Supplier Support Services to provide status updates regarding the problem.

13.8 RESPONSE TARGETS

Priority	Response	Resolution	Status Communication Intervals	Who Receives Status Updates
P1	1/2 Hour	2 Hours	Every hour	The City
P2	4 Hours	8 Hours	Begin and end of every workday	The City
P3	8 Hours	Issue dependent	When scheduled maintenance is communicated that contains resolution	The City
P4	72 Hours	Issue dependent		

14. WARRANTIES, EXCLUSIONS, LIMITATIONS AND INSURANCE

14.1 Warranties of the Supplier - Supplier warrants to the City as follows:

14.1.1 Compliance with Functional Specifications - The Licensed Software will operate and perform in accordance with the Functional Specifications.

14.1.2 Limited Product Warranty - For a period of one year from the Acceptance Date, the Licensed Software will be substantially free of programming errors, logic errors and other defects in workmanship, provided that no modifications are made to the Licensed Software by persons other than the Supplier, its employees or persons approved by the Supplier. If any such defect occurs within the warranty period, the Supplier will promptly correct such defect without cost or expense to the City.

14.2 Disclaimer of Warranties — THE EXPRESS WARRANTIES GRANTED UNDER THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES OR CONDITIONS EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND THOSE ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USE OF TRADE. CERTAIN JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO THE CITY.

14.3 Limitation of Liability - EXCEPT AS SET OUT IN S. 14 REGARDING INDEMNITY FOR BREACHES OF INTELLECTUAL PROPERTY RIGHTS, SUPPLIER AND THE CITY AGREE THAT FOR ANY BREACH OR DEFAULT BY SUPPLIER IN CONNECTION WITH THIS AGREEMENT, EVEN FOR A BREACH OF CONDITION OR FUNDAMENTAL TERM OR FOR A FUNDAMENTAL BREACH OF BREACHES, CITY'S EXCLUSIVE REMEDY SHALL BE PAYMENT BY SUPPLIER OF THE CITY'S DIRECT DAMAGES TO A MAXIMUM AMOUNT EQUAL TO THE MONETARY LIMIT OF THE INSURANCE THE SUPPLIER AGREES TO CARRY AS BELOW UNDER THIS AGREEMENT.

14.4 IN NO EVENT SHALL SUPPLIER BE LIABLE FOR ANY SPECIAL INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, FAILURE TO REALIZE EXPECTED SAVINGS AND ANY OTHER COMMERCIAL OR ECONOMIC LOSS OF ANY KIND EVEN IF THE CITY HAS BEEN ADVISED OF THE POSSIBILITY OF ANY OF THESE DAMAGES. CERTAIN JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR CONSEQUENTIAL DAMAGES. THE ABOVE LIMITATION MAY NOT APPLY TO THE SUPPLIER.

14.5 Supplier's Insurance - The Supplier agrees to take out and maintain for the term of this Agreement

a) Commercial General Liability in the amount of not less than Ten Million (\$10,000,000.00)

Dollars and Motor Vehicle Liability Insurance Coverage in an amount of not less than Two Million (\$2,000,000.00) Dollars per policy, per occurrence. The Commercial General Liability shall also be extended to include personal injury, broad form property damage, contractual liability, owners' and contractor's protective products and completed operations, contingent employers' liability, cross liability and severability of interest clauses. The City shall be included as an additional insured on the Commercial General Liability policy, and the Supplier shall submit on an annual basis, in advance of expiry, a completed Insurance Certificate (Form #0788), and shall provide the City with a minimum of thirty days' notice in advance of cancellation of such insurance.

b) The Supplier shall at its own expense obtain and maintain until the termination of this Agreement and provide the City with satisfactory evidence of professional liability insurance to the satisfaction of the Chief Administrative Officer covering the work and services described in this Agreement for an amount not less than Ten Million (\$10,000,000.) dollars and such insurance shall continue for twelve (12) months following completion of work; this insurance will not be cancelled or permitted to lapse unless the insurer notifies the City in writing at least thirty (30) days prior to the effective date of cancellation or expiry.

C) The Supplier agrees that the City reserves the right to request such higher limits of insurance or other types of insurance as it may reasonable require from time to time; failure to procure and maintain said insurance shall constitute a default under this agreement. Under such a request, Supplier may increase the annual Software License fee appropriately and pro-rated from the effective date of said insurance.

- 14.6 The Supplier shall indemnify and save the City harmless from and against all claims, losses, damages, costs, expenses, including investigatory and legal expenses, and other actions caused by or attributable to any willful or negligent act, omission, delay, or allegations thereof on the part of the Supplier or its employees, subSuppliers or agents, related in any way to the services provided by the Supplier pursuant to this Agreement, and this provision shall survive the termination of this Agreement.
- 14.7 The Supplier shall protect its employees under the Workplace Safety Insurance Board and a Certificate of Clearance must be provided before commencement of any work in relation to this project.
- 14.8 The Supplier must ensure that its employees are properly instructed and trained and work safely and are in full compliance with the Occupational Health and Safety Act and safety standards established by industry, where applicable.
- 14.9 Any condoning, excusing or overlooking by the City of any default, breach or non-observance by the Supplier of any covenant, proviso or condition herein contained does not operate as a waiver of the City's rights hereunder in respect of subsequent defaults, breaches or non-observances and does not defeat or affect in any way the rights of the City herein in respect of any subsequent defaults or breaches.
- 14.10 Intellectual Property Rights & Indemnity - Supplier shall indemnify City against any direct liability, loss or damage which City may incur as a result of any claim or action brought against City by a 3rd party alleging that City's authorized and proper use of the Licensed Software supplied by Supplier under this Agreement infringes the intellectual property rights of a 3rd party. If that happens, City must take reasonable steps to mitigate any losses which City may suffer or incur.

If in Supplier's reasonable opinion the Licensed Software is likely to become or does become the subject of a claim of infringement of a 3rd party's intellectual property rights, Supplier may elect to either (i) obtain the right for City to continue using the Licensed Software in the manner permitted under this Agreement; or (ii) modify or replace the infringing part of the Licensed Software so as to avoid the infringement or alleged infringement, without materially reducing the functionality or performance of the Licensed Software.

This indemnity shall not apply to any claim which arises from (i) any development, modification, implementation, configuration or integration of the Licensed Software or services other than by Supplier or approved by Supplier in writing; or (ii) which arises as a result of use of the Licensed Software other than as permitted by this Agreement; or (iii) which arises as a result of City's use of the Licensed Software together with any 3rd party services or applications.

The provisions of this clause set out City's exclusive remedy in connection with any claim or threatened claim in relation to the intellectual property rights of a 3rd party by the use of the Licensed Software.

Ownership

All intellectual property rights in the Supplier's Licensed Software are the property of Supplier. The supply of the Licensed Software does not imply any transfer of intellectual property rights.

15. CONFIDENTIALITY OBLIGATIONS

15.1 The City acknowledges that the Confidential Material of the Supplier is confidential and constitutes a valuable asset of the Supplier. Supplier acknowledges that the Confidential Material of the City is confidential, constitutes a valuable asset of the City, and may be subject to privacy legislation. Unless otherwise provided under this Agreement, the City and Supplier shall:

15.1.1 treat the Confidential Material of the other as confidential;

15.1.2 exercise at least the same degree of care and discretion with respect to the Confidential Material of the other as it exercises in protecting its own Confidential Material;

15.1.3 take all necessary steps including but not limited to instruction of employees and agents of the Supplier and the City to ensure that the confidentiality of the Confidential Material of the other is maintained;

15.1.4 not disclose, publish, display or otherwise make available to other persons any of the Confidential Material of the other, or copies thereof;

15.1.5 except to the extent authorized under clause 8 in respect of the Licensed Software not duplicate, copy or reproduce any of the Confidential Material of the other without the prior written consent of the other; and

15.2 This Clause does not apply to:

15.2.1 information that is in the public domain or enters the public domain through no breach of confidence by the City or by the Supplier;

15.2.2 information that is available to one Party from some source other than the other Party without a breach of confidence with the other Party;

15.2.3 general computer technology, ideas, concepts or tools; if or becomes a part of the public domain through no act or omission of the other Party,

15.2.4 was in the other Party's lawful possession prior to the disclosure and had not been obtained by the other Party either directly or indirectly from the disclosing Party;

15.2.5 is lawfully disclosed to the other party by a third party without restriction on disclosure; or

15.2.6 any disclosure as may be required to be made by a court of competent jurisdiction.

15.3 Further and additional to all of the above, the Supplier acknowledges that the City, as a level of Ontario municipal government, is governed by freedom of information and protection of privacy legislation including the Municipal Freedom of Information and Protection of Privacy Act ("MFIPPA") and the Personal Health Information Protection Act ("PHIPA"); the Supplier agrees to abide by the tenets and requirements of such legislation as an agent of the City when performing any and all services under this Agreement for the City.

16. The Supplier shall provide the services as an independent Supplier and shall not be deemed to be an employee of the City for any purpose.

17. NOTICES

Any notice, request, demand, consent, approval, correspondence, report or other communication required pursuant to or permitted under this Agreement must be in writing and must be given by personal delivery, or transmitted by fax, email or other electronic medium that provides a hard copy, or be sent by first class mail, postage or charges prepaid, and addressed to the party to whom it is intended at its address as set out below:

To the City: City Clerk
City of London

300 Dufferin Avenue
London, ON N6A 4L9

To the Supplier: Darryl Buck
RBB Innovations Ltd.
73 Brock Street
Sault Ste. Marie, ON P6A 3B4

Any such notice shall be deemed to be received, if personally delivered or sent by fax, email or other electronic medium, on the day it is sent and if such notice is sent by first class mail it shall be deemed to have been received on the date that is five (5) days after the date of mailing.

- 18.** No amendment to the Agreement shall be binding unless it is incorporated into the Agreement by written amendment executed by the authorized representatives of the City and of the Supplier.
- 19.** The Agreement constitutes the entire and sole Agreement between the parties with respect to the subject matter of the Agreement and supersedes all previous negotiations, communications and other agreements, whether written or oral, relating to it, unless they are incorporated by reference in the Agreement. There are no terms, covenants, representations, statements or conditions binding on the parties other than those contained in the Agreement.
- 20.** This Agreement shall be construed and governed in accordance with the laws of the Province of Ontario.
- 21.** This Agreement shall be binding upon and enure to the benefit of the parties and their respective successors and assigns.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and affixed their seals under the hands of their duly authorized signing officers in that behalf.

SIGNED, SEALED & DELIVERED
in the presence of

) **RBB INNOVATIONS LTD.**
) Per:
) _____
) Darryl
Buck
) President

We have the authority to
bind the Corporation

) **THE CORPORATION OF THE CITY**
) **OF LONDON**
) Per:
) _____
) Joe Fontana, Mayor)
) _____
) Catharine Saunders, City Clerk

