

Report to Corporate Services Committee

To: Chair and Members
Corporate Services Committee

From: Anna Lisa Barbon, Deputy City Manager, Finance Supports

Subject: KPMG Clara File Sharing Tool

Date: March 28, 2022

Recommendation

That, on the recommendation of the Deputy City Manager, Finance Supports, the attached proposed by-law (Appendix 'A') BE INTRODUCED at the Municipal Council meeting on April 12, 2022, for the Mayor and City Clerk to execute the KPMG Clara Exhibit to member Firm Engagement Letter / Terms.

Executive Summary

As the city undertakes the 2021 external audit, to assist in the audit process, an updated tool has been introduced to assist in the co-ordination and sample gathering that would assist both KPMG, boards and commissions and City staff to conduct year end audit processes.

Linkage to the Corporate Strategic Plan

Council's 2019-2023 Strategic Plan for the City of London identifies 'Leading in Public Services' as a strategic area of focus. The use of the CLARA tool identified in this report assists in planning, conducting, and supporting annual external audits.

Analysis

1.0 Background Information

1.1 Background

As part of the annual audit process, co-ordination, along with the flow of audit documentation (transaction samples and audit evidence) back and forth between the City staff and its auditor is a key component of the City's audit. Over the years, increased use of technology for file sharing and collaboration has been critical to increase the efficiency and effectiveness of the audit, which has been amplified recently given COVID-19 and the restrictions that have been in place.

1.2 Previous Reports Related to this Matter

- Audit Committee, February 9, 2022, Item 4.1, Audit Planning Report for the Year Ending December 31, 2021

2.0 Discussion and Considerations

In preparation for the 2021 City of London Audit, an update to a collaboration tool used by KPMG was brought forward. KPMG Clara for clients is a tool used that allows users to access a virtual repository for the purposes of sharing information and engaging in online collaboration. Consistent with any new application introduced at the City of London, in accordance with the City's "Administrative Use of Technology Procedure", the KPMG Clara tool undertook an information security assessment through the City's Information Technology Services Division where it was concluded that there were no concerns for its usage.

To make use of this tool, the City would need to acknowledge the terms, as set out by KPMG LLP.

3.0 Key Issues and Considerations

3.1 Terms and Conditions Risk Assessment

The Agreement has been reviewed by the City Solicitor's Office, Financial Services and Risk Management. Civic Administration notes there is a requirement on the City to provide an indemnification. In consultation with Risk Management, it was concluded this provision should not prevent the City from entering in the Agreement as the benefits outweigh the associated risk from the indemnity provision. The City will mitigate risks associated with the Agreement by using the optimum level of oversight and control, enabling both risk management and meeting objectives of the agreement. The indemnification provision is as follows:

9. If Company breaches any of its obligations under these Terms and any claim is made or threatened against either KPMG or any of the KPMG Network Entities (individually and collectively "the **KPMG Party**") by a third party (including claims concerning the posting by Company of Prohibited Content), Company shall compensate the KPMG Party, hold the KPMG Party harmless and reimburse the KPMG Party for and protect the KPMG Party against, any loss, damage, expense or liability incurred by the KPMG Party which results from or arises from or is connected with any such breach and any such claim. If any payment is made by Company under this clause, Company shall not seek recovery of that payment from the KPMG Party at any time. In this clause "Company" includes all Authorized Users and "the KPMG Party" includes each and all partners, members, directors, employees, agents of the KPMG Party together with any entity controlled by or associated with the KPMG Party.

Civic Administration also notes KPMG has limited its liability for any damages and remedies whether direct, indirect or consequential or for any loss of profit, revenue, contracts, data, goodwill or other similar losses arising from KPMG Clara.

Conclusion

The City's external audit is a six-month process which commences in January with planning and preparation work. From the months of April to mid June, the audit field work commences which includes, but not limited to, a number of electronic file sharing requirements between the City and its auditors. To assist in the process, a tool entitled KPMG Clara was recently introduced thereby requiring a terms and conditions agreement to be entered into for its use. Based on audit processes to be undertaken, the use of this co-ordination tool would be extremely beneficial and efficient for City staff, and the City's auditors, KPMG.

Prepared and submitted by: **Ian Collins, CPA, CMA, Director, Financial Services**

Recommended by: **Anna Lisa Barbon, CPA, CGA, Deputy City Manager, Finance Supports**

Appendix 'A'

Bill No.
2022

A by-law to approve the KPMG Clara Exhibit to Member Firm Engagement Letter/ Terms; and to authorize the Mayor and City Clerk to execute the Agreement

WHEREAS subsection 5(3) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 9 of the *Municipal Act, 2001*, as amended, 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 subsection 10(1) of the *Municipal Act, 2001* provides that a municipality may provide any service or thing that the municipality considers necessary or desirable for the public;

AND WHEREAS subsection 10(2) of the *Municipal Act, 2001* provides that a municipality may pass by-laws respecting, among other things: (i) financial management of the municipality and its local boards.

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

1. The KPMG Clara Exhibit to Member Firm Engagement Letter/ Terms ("Agreement") attached hereto as Schedule "1" to this bylaw, is hereby authorized and approved.
2. The Mayor and City Clerk are authorized to execute the Agreement approved under section 1 of this by-law.

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

Ed Holder
Mayor

Michael Schulthess
City Clerk

First Reading –
Second Reading –
Third Reading –



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KPMG CLARA EXHIBIT TO MEMBER FIRM ENGAGEMENT LETTER / TERMS

KPMG Clara for clients (“**KPMG Clara**”) is a service coordination tool provided by **KPMG LLP** to your company (the “**Company**”) that allows a group of users to access a virtual repository for the purposes of sharing information and engaging in online discussions and using KPMGI Content (as defined below). These Terms (the “**Terms**”) are between the Company and KPMG and shall govern the Company’s use of KPMG Clara and the KPMGI Content. If Company is comprised of itself and other legal entities, the Company agrees that (a) it has the authority to bind all of the entities, in which case the terms “Company” shall refer to such entities, and (b) these Terms shall govern Company and such entities use of KPMG Clara and the KPMGI Content. In the event of any conflict or inconsistency between Sections 1 through 7 of these Terms and the contract(s) between KPMG and Company (the “**Contract**”), these Terms shall govern with respect to Company’s use of KPMG Clara. In addition, in the event of any conflict or inconsistency between the terms of the Contract and Sections 8 through 10 of these Terms, the terms of the Contract shall prevail. “**KPMGI Content**” shall mean any content posted on KPMG Clara by or on behalf of KPMG International Services Limited, KPMG International Limited, or KPMG International Cooperative (collectively, the “**KPMG Network Entities**”).

1. All client and KPMG documents uploaded onto KPMG Clara will be stored on servers in **Canada**. A limited amount of anonymized system information (such as contact details and metadata) required for the establishment and administration of the KPMG Clara site that will be created for your engagement will be processed and stored in the EU by KPMG International Services Limited and third parties providing technical or administrative support services. KPMG may use third party companies and such companies’ personnel, such as employees, contractors, etc. (individually and collectively “**third party companies**”) for services operating at KPMG Party’s (as defined below) direction, including outsourced third party companies located inside and outside of the area noted above for data hosting and related services. The third party companies may be provided with access to your information, including personal data, in order to provide services in connection with KPMG Clara. Such access will be limited to the maximum extent possible and will be under KPMG Parties’ control.
2. Company and its Authorized Users (as defined below) may access and use KPMG Clara solely in furtherance of the Company’s relationship with KPMG. Any other use is not permissible. *Because Company is an audit client or affiliate of an audit client of KPMG, KPMG may not provide hosting services to Company. KPMG Clara is not intended for use as a document retention system and should not be regarded as a system of record. Access to the data and other content stored in KPMG Clara will be removed or become*

unavailable to Company within a reasonable time once the engagement is completed. For a recurring annual service, the completion of a deliverable for a particular year represents the completion of the engagement for that year. Prior to termination of access, Company should download from KPMG Clara any deliverables and other records it wishes to retain for Company's own records. An **"Authorized User"** shall mean any of Company's employees and other personnel authorized by Company and approved by KPMG to access and use KPMG Clara. Company shall ensure that all Authorized Users who access and use KPMG Clara or the KPMGI Content, comply with this Exhibit and usage notices presented to Authorized Users (**"Terms of Use"**). Company agrees to comply with all KPMG policies relating to the use of KPMG Clara. If Company does not wish to do so at any point, then Company shall immediately terminate Company's use of KPMG Clara.

Company shall promptly notify KPMG about any Authorized User who should no longer have access to KPMG Clara or other improper access to the password of an Authorized User.

3. Company may not:
 - a) copy, translate, modify, adapt or create derivative works from KPMG Clara, or KPMGI Content,
 - b) rent, lease, lend, pledge, or directly or indirectly transfer or distribute KPMG Clara or KPMGI Content to any third party, and
 - c) use KPMG Clara to upload, store, post, email, transmit or otherwise make available any content that infringes any intellectual property rights or data protection, privacy or other rights of any other person, is defamatory or in breach of any contractual duty or any obligation of confidence, is obscene, sexually explicit, threatening, inciteful of violence or hatred, blasphemous, discriminatory (on any ground), or that does not comply with all applicable laws and regulations (**"Prohibited Content"**), and shall not permit any Authorized User or other third party to do any of the foregoing.
4. Technical factors such as bandwidth, network configurations, and computer browser settings can affect KPMG Clara's speed and accessibility. KPMG does not guarantee the continuous, uninterrupted or error-free operability of KPMG Clara, or compatibility with Company's computer browser or any other part of its computing systems. Company acknowledges that access to KPMG Clara may be suspended or limited at any time and that content posted on KPMG Clara may not be recoverable. Company is responsible for ensuring that its Authorized Users retain copies of all content posted by them. KPMG has no responsibility for recovering or providing to Company any content posted on KPMG Clara.
5. If KPMG's relationship with Company terminates for any reason, all further access to and use of KPMG Clara by Company and its Authorized Users must immediately cease and KPMG may deactivate or delete related user accounts, unless otherwise required by applicable law or professional standards to maintain such accounts. KPMG reserves the right to terminate Company's access to KPMG Clara for any reason.

6. Company acknowledges that, except for the license granted herein to Company, Company acquires no right or interest of any kind in or to KPMG Clara or any KPMGI Content. [To the extent permitted by applicable law, KPMG disclaims for itself and its suppliers, all warranties and liability for any damages and remedies whether direct, indirect or consequential, or for any loss of profit, revenue, contracts, data, goodwill or other similar losses arising from KPMG Clara. Nothing in these Terms limit or exclude KPMG's liability for death or property damage caused by its negligence or for fraudulent misrepresentation or any other liability that may not, under applicable law, be limited or excluded. Company is solely responsible for all use it makes of KPMG Clara and of the content posted on KPMG Clara. Except as expressly set out in these Terms, no implied conditions, warranties or other terms apply to KPMG Clara or any KPMGI Content.] Any support provided for KPMG Clara will be provided by KPMG (or one of its subcontractors or suppliers).
7. Company acknowledges that KPMG may disclose any and all content on KPMG Clara to the extent required to do so by applicable laws, legal process or regulatory authority or pursuant to professional obligations. Company understands that its personal data and/or confidential information may be subject to disclosure in accordance with the laws applicable in the jurisdiction in which the data is processed or stored, which laws may not provide the same level of protection as do the laws of the territory in which Company or Authorized Users are located.
8. Company acknowledges that, whilst KPMG has designed KPMG Clara with information security in mind and has taken steps to safeguard the security of KPMG Clara by way of the measures described in its online privacy statement available at <https://policies.kpmg/kpmg-global-policies/kpmg-clara-privacy-statement.html>, KPMG cannot guarantee that KPMG Clara is invulnerable to hacking or other unauthorized access by third parties. Company also acknowledges that transmission of information over the Internet is not entirely secure and there is always the possibility of unauthorized interception by third parties. KPMG does not guarantee that any content posted on KPMG Clara will be free from viruses and/or other code that may have contaminating or destructive elements. It is Company's responsibility to implement appropriate IT security safeguards (including anti-virus and other security checks) to satisfy its particular requirements as to the safety and reliability of content it provides and accesses through KPMG Clara. KPMG accepts no responsibility for the content of any third-party websites, hyperlinks to which may be featured on KPMG Clara.
9. If Company breaches any of its obligations under these Terms and any claim is made or threatened against either KPMG or any of the KPMG Network Entities (individually and collectively "the **KPMG Party**") by a third party (including claims concerning the posting by Company of Prohibited Content), Company shall compensate the KPMG Party, hold the KPMG Party harmless and reimburse the KPMG Party for and protect the KPMG Party against, any loss, damage, expense or liability incurred by the KPMG Party which results from or arises from or is connected with any such breach and any such claim. If any payment is made by Company under this clause Company shall not seek recovery of that payment from the KPMG Party at any time. In this clause "Company" includes all Authorized Users and "the KPMG Party" includes each and all partners, members, directors, employees, agents of the KPMG Party together with any entity controlled by or associated with the KPMG Party.

10. *Company acknowledges that KPMG may update these Terms by emailing Company notice of such changes or otherwise updating these Terms online at any time, and, to the extent permitted by applicable law, such modifications will be effective immediately. Company agrees to the updated Terms or modified online Terms by continuing to use KPMG Clara.*

Please sign and return these Terms and Conditions to acknowledge your agreement to the use of KPMG Clara for clients as described above. You acknowledge that you are an authorized signatory on behalf of **The Corporation of the City of London**.

We look forward to using KPMG Clara for clients with you. Please feel free to contact me with any questions.

Very truly yours,

Handwritten signature of KPMG LLP in black ink, with a horizontal line underneath.

Katie denBok
on behalf of
KPMG LLP

ACCEPTED:

The Corporation of the City of London

Name of Signing Authority:

Dated on: _____

Signature: _____

Title: