

Report to Corporate Services Committee

To: Chair and Members
Corporate Services Committee
From: Mat Daley, Director, Information Technology Services
Subject: SS22-284 Single Source Personal Computing and Services
Date: February 21, 2023

Recommendation

That, on the recommendation of the Director, Information Technology Services and with the concurrence of the City Manager, the following actions be taken, with respect to desktop computing and related technologies:

- a) That approval hereby **BE GIVEN** to enter into a three (3) year Single Source contract with an optional two (2) additional, one (1) year extensions for Personal Computing Devices and Services from CompuCom Canada Co., 1830 Matheson Boulevard, Unit 1, Mississauga, ON, Canada L4W 0B3 at a planned cost of \$991,841.64 in 2023, \$1,368,025.42 in 2024 and \$1,091, 680.00 in 2025;
- b) the financing for this project **BE APPROVED** as set out in the “Sources of Financing Report” attached, hereto, as Appendix A;
- c) the attached proposed By-law (Appendix A) **BE INTRODUCED** at the Municipal Council meeting to be held on Tuesday, March 7th, 2023 to:
 - i. approve the Master Agreement Adoption Agreement between CompuCom Canada Co. (the “Supplier”) and The Corporation of the City of London (the “Buyer”) for the “RFB Agreement #14952” for Personal Computing Devices and Services, forming a part of the By-law and attached as Appendix B; and
 - ii. authorize the Mayor and City Clerk to execute the Agreement
- d) the Civic Administration **BE AUTHORIZED** to undertake all the administrative acts that are necessary in connection with this matter;
- e) the approval hereby given **BE CONDITIONAL** upon the Corporation negotiating the maintaining of satisfactory prices, terms and conditions with CompuCom Canada Co. to the satisfaction of the Director, Information Technology Services and the City Solicitor’s Office and subject to future budget approval;
- f) the 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.

Executive Summary

The City of London currently purchases Personal Desktops, All-In-One Desktops, Mini Desktops, Workstations, Laptops, Docking Stations, and Monitors through CompuCom Canada Co. This service supports procurement and lifecycle management of IT hardware equipment for all City of London Service Areas and many Boards and Commissions.

ITS is seeking authorization to enter into an agreement to acquire technology assets under the Vendor of Record, Province of Ontario Agreement #14952 (Schedule B) for a three (3) year agreement with an optional two (2) additional, one (1) year extensions for Personal Computing Devices and Service from CompuCom Canada Co., 1830 Matheson Boulevard, Unit, Mississauga, ON, Canada L4W 0B3 until March 7, 2026.

Linkage to the Corporate Strategic Plan

This project supports the City of London's "Leading in Public Service" strategic area of focus. This undertaking supports the following specific strategies outlined in the 2019-2023 Strategic Plan:

- Increase the use of technology to improve service delivery: continue to maintain, build and enhance a high-performing and secure computing environment,
- Enhance the ability to respond to new and emerging technologies and best practices: deliver and maintain innovative digital solutions to increase efficiency and effectiveness across the Corporation, and,
- Maintain London's finances in a transparent and well-planned manner to balance equity and affordability over the long

Analysis

1.0 Background Information

1.1 Previous Reports Related to this Matter

- Corporate Services Committee, April 12, 2016, SS16-11 Single Source Corporate Technology Assets
- Corporate Services Committee, May 25, 2020, SS20-07 Single Source Corporate Technology Assets
- Corporate Services Committee, September 20, 2021, SS21-34 Single Source Corporate Technology

2.0 Discussion and Considerations

2.1 Procurement Approach

In 2022, through an open and competitive bid process the Ontario Ministry of Government and Consumer Services awarded an updated agreement for personal computing devices and services.

By leveraging the agreement between the Ontario Ministry of Government and Consumer Services and CompuCom Canada Co., the City of London benefits from the buying power associated with the broader Provincial agreement as well as significantly reduces the labour costs associated with a formal bid process. Under the agreement, the City of London and CompuCom Canada Co. agree to be bound by the provisions of the Master Agreement and the form of this agreement is attached as (Schedule B).

More than 500 Publicly Funded Organizations (Governments, Health Care Institutions, School Boards, Colleges, Universities and Municipalities) leverage the Ontario Ministry of Government and Consumer Services Vendor of Record for personal computing devices and services. Municipal examples include City of Windsor, City of Ottawa and the City of Mississauga.

Purchasing Process

In collaboration with partners in Legal Services and Purchasing and Supply Operations, the Ontario Ministry of Government and Consumer Services Request for Bids (RFB) Agreement #14952 agreement with CompuCom Canada Co. is in compliance with our Procurement of Goods and Services Policy per section 14.4 Single Source item g) 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.

3.0 Financial Impact/Considerations

3.1 Financial Impact

Through analysis of the pricing available to the City of London from the Ontario Ministry of Government and Consumer Services Request for Bids (RFB) Agreement #14952 agreement with CompuCom Canada Co. it has been determined that this is the most cost-effective solution for purchases of corporate technology assets (Personal Desktops, All-In-One Desktops, Mini Desktops, Workstations, Laptops, Docking Stations, and Monitors). The funding associated with this agreement has been included in the 2020-2023 Multi-Year Capital Budget. This contract seeks to commit funding from capital project IT3012 across multiple years – 2023 which is included in the approved capital budget and reflected on the source of financing attached as Appendix A, and 2024 and 2025 which are included in the capital forecast but only approved in principal until the 2024 to 2027 Multi-Year Budget is approved. Finance confirms that the funding for this contract will be available, subject to future Council budget approvals, via capital project IT3012.

There are no additional current or future operating costs associated with this procurement contract.

Conclusion

Leveraging the Ontario Ministry of Government and Consumer Services Request for Bids (RFB) Agreement #14952 agreement with CompuCom Canada Co. is the most cost-effective approach to delivering modern and reliable Personal Desktops, All-In-One Desktops, Mini Desktops, Workstations, Laptops, Docking Stations, and Monitors for the City of London.

Prepared by:	Steve Spring, Manager, Hardware Services
Submitted by:	Dan Dobson, Senior Manager, Infrastructure and Data Services
Recommended by:	Mat Daley, Director, Information Technology Services
Concurred by:	Lynne Livingstone, City Manager

Appendix "A"

#23028

February 21, 2023
(Award Contract)

Chair and Members
Corporate Services Committee

RE: SS22-284 Single Source Personal Computing and Services
Capital Project IT3012 - End User Devices and Productivity Tools
CompuCom Canada Co. - \$991,841.64 (excluding HST)

Finance Supports Report on the Sources of Financing:

Finance Supports confirms that the cost of this project can be accommodated within the financing available for it in the Capital Budget and that, subject to the approval of the recommendation of the Director, Information Technology Services, the detailed source of financing is:

Estimated Expenditures	Approved Budget	Committed To This Date	This Submission	Balance for Future Work
Computer Equipment	9,877,249	6,628,957	1,009,298	2,238,994
Total Expenditures	9,877,249	6,628,957	1,009,298	2,238,994

Sources of Financing

Capital Levy	100,000	100,000	0	0
Drawdown from Technology Renewal Reserve Fund	9,491,037	6,528,957	723,086	2,238,994
Drawdown from Operating EEE Reserve	286,212	0	286,212	0
Total Financing	\$9,877,249	\$6,628,957	\$1,009,298	\$2,238,994

Financial Note:

	IT3012A	IT3012B	Total
Contract Price	\$183,447	\$808,395	\$991,842
Add: HST @13%	23,848	105,091	128,939
Total Contract Price Including Taxes	207,295	913,486	1,120,781
Less: HST Rebate	-20,619	-90,864	-111,483
Net Contract Price	\$186,676	\$822,622	\$1,009,298

Note 1: The 2024 and 2025 funding for this contract will be available subject to future Council budget approvals via capital project IT3012.

Jason Davies
Manager of Financial Planning & Policy

lp

APPENDIX B

Bill No.

By-law No.

A By-law to approve the Master Agreement Adoption Agreement to the Master Agreement between The Corporation of the City of London and CompuCom Canada Co.; and to authorize the Mayor and City Clerk to execute the Master Agreement Adoption 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* 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 bid process completed by the Minister of Government and Consumer Services in May 2022, Her Majesty the Queen (now His Majesty the King) in right of Ontario has entered into an agreement with CompuCom Canada Co. for Personal Devices and Services (Agreement No.14952) ["Master Agreement"];

AND WHEREAS The Corporation of the City of London and CompuCom Canada Co. wish to adopt and amend the Master Agreement;

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

1. The Master Agreement Adoption Agreement entered into between The Corporation of the City of London and CompuCom Canada Co., attached as Schedule "A" to this by-law, is authorized and approved.
2. The Mayor and the City Clerk are authorized to execute the Master Agreement Adoption 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 [insert date].

Josh Morgan
Mayor

Michael Schulthess
City Clerk

First reading -
Second reading -
Third reading -

Schedule A

Master Agreement Adoption Agreement

This Master Agreement Adoption Agreement is made as of March 7, 2023

between

CompuCom Canada Co. (the "Vendor")

and

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

WHEREAS:

The Vendor and HER MAJESTY THE QUEEN (now His Majesty the King) in right of Ontario as represented by THE MINISTER OF GOVERNMENT AND CONSUMER SERVICES, have entered into a Master Agreement for Personal Computing Devices and Services made as of May 16, 2022 (the "Master Agreement").

AND WHEREAS 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 Master Agreement, as amended herein.

NOW THEREFORE this Master Agreement Adoption Agreement witnesses that 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 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 certainty, HER MAJESTY THE QUEEN (now HIS MAJESTY THE KING) in right of Ontario as represented by THE MINISTER OF GOVERNMENT AND CONSUMER SERVICES is not a party to or a guarantor under the Master Agreement Adoption Agreement.

b) Amendments:

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

- i. The definition of FIPPA in Schedule 2 of the Master Agreement is amended by inserting the phrase “, and the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56” before the phrase “as amended”;
- ii. Where the context requires, reference in the Master Agreement to “OPS” or the “Ministry” or “Her Majesty the Queen in right of Ontario” (now “His Majesty the King in right of Ontario” or “Ontario” shall be a reference to the Buyer, with the exception of Article 9 of the Master Agreement;
- iii. Section 1.8 Notices by Prescribed Means is hereby deleted and replaced with:

Section 1.8 Notices by Prescribed Means

Any notice given by the Vendor to the Buyer under this Master Agreement Adoption Agreement shall be served personally, or by sending same by regular letter mail or email to:

The Corporation of the City of London
Attn: Steve Spring
Manager, Hardware Services
Address: 201 Queens Ave, Suite 300
City: London, ON N6A 1J1
Email: sspring@london.ca

or such other address as the Buyer may from time to time designate by written notice to the Vendor.

Any notice given by the Buyer to the Vendor under this Agreement, or any other document as prepared by the Buyer for the Vendor shall be served personally or by sending same by regular letter mail or email to:

CompuCom
Canada Co.
1830 Matheson
Blvd., Unit 1,
Toronto ON.
M5W 4E1
Attn: Christine Evitt
Email: christine.evitt@compucom.com

or such other address as the Vendor may from time to time designate by written notice to the Buyer.

Any notice given under this Agreement shall be deemed to have been served, in the case of personal service or email, on the day it was served, and in the case of service via regular letter mail, five (5) business days after the date on which it was posted.

- vi. Section 6.9 Copyright notice – has been deleted
- vii. With respect to Section 11.5 (a) Escalation Process, the Ministry's positions shall be updated to the following positions:

Initial Step: Operations Level
City of London: Supervisor Hardware Services

Second Step: Management Level
City of London: Manager – Hardware Services

Third Step: Executive Level
City of London: Senior Manager – Infrastructure and Data Services

Forth Step: Senior Executive Level
Director of Information Technology Services

- Viii 12.2 c) Arbitration – the place of Arbitration shall be the City of London, Ontario, Canada.
- iv. Definition of “Expiry Date” shall be updated to reflect signing date of Master Agreement Adoption Agreement plus three (3) years.

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

The Corporation of the City of London

CompuCom Canada Co.

Per:	Per:
------	------

Name: Josh Morgan

Name:

Title: Mayor – City of London

Title:

Date:

Date:

I have authority to bind the Corporation

The Corporation of the City of London

Per:

Name: Michael Schulthess

Title: City Clerk, City of London

Date:



AGREEMENT

Between

HER MAJESTY THE QUEEN in right of Ontario

as represented by

THE MINISTER OF GOVERNMENT AND CONSUMER SERVICES

AND

COMPUCOM CANADA CO.

FOR

PERSONAL COMPUTING DEVICES & SERVICES

Effective Date: May 16, 2022

Agreement No.: 14952



TABLE OF CONTENTS

ARTICLE 1 – INTERPRETATION AND GENERAL PROVISIONS.....	8
1.1 Defined Terms.....	8
1.2 No Indemnities from Ministry.....	8
1.3 Entire Agreement.....	8
1.4 Severability.....	9
1.5 Interpretive Value of Documents.....	9
1.6 Interpretation.....	9
1.7 Force Majeure.....	10
1.8 Notices by Prescribed Means.....	10
1.9 Governing Law.....	10
1.10 Approval of Documents.....	11
1.11 Amendments to Agreement.....	11
1.12 Accessibility Requirements.....	11
1.13 Notification by Supplier to Ministry	11
1.14 OPS Rights and Remedies and Supplier Obligations Not Limited to Agreement.....	11
1.15 Condonation Not a Wavier.....	11
1.16 Wavier.....	12
1.17 Delay.....	12
ARTICLE 2 – NATURE OF RELATIONSHIP BETWEEN MINISTRY AND SUPPLIER.....	12
2.1 Representatives May Bind the Parties.....	12
2.2 Ministry Sole Representative for OPS.....	12
2.3 Supplier Not a Partner, Agent or Employee.....	12
2.4 Responsibilities of Supplier.....	13
2.5 No Subcontracting or Assignment.....	14
2.6 Change of Control.....	15
2.7 Conflict of Interest.....	15
2.8 Agreement Binding.....	16
2.9 Assignment by the Ministry.....	16



ARTICLE 3 – PERFORMANCE BY SUPPLIER.....16

3.1 Transition-In.....16

3.2 Supply of Deliverables.....16

3.3 Ordering Deliverables.....18

3.4 Products.....19

3.5 Services.....20

3.6 Delivery, Risk of Loss, Title and Inspection.....21

3.7 Service Levels and Performance Measures.....23

3.8 Business Continuity.....23

3.9 Use and Access Restrictions.....24

3.10 Supplier to Comply With Reasonable Change Requests.....25

3.11 Pricing for Requested Changes.....25

3.12 Product Adjustment and Substitution25

3.13 Performance by Specified Individuals Only.....26

3.14 Security Clearance.....27

3.15 Data Protection.....28

3.16 Location of Data.....29

3.17 Continuous Improvement.....29

3.18 OPS Assets.....34

ARTICLE 4 – PAYMENT FOR PERFORMANCE AND AUDIT.....34

4.1 Rates.....34

4.2 Invoices.....35

4.3 Default Billing and Payment Process.....35

4.4 Hold Back or Set Off.....36

4.5 No Expenses or Additional Charges.....36

4.6 Payment of Taxes and Duties.....36

4.7 Withholding Tax.....36

4.8 Interest on Overdue Amounts.....37

4.9 Document Retention and Audit.....37

4.10 Market Competitive Pricing.....38

4.11 Travel, Meal and Accommodation Expenses.....38

4.12 Product and Service Matrix.....38



ARTICLE 5 – CONFIDENTIALITY AND FIPPA.....38

5.1 Definitions.....38

5.2 Receiving Party’s Obligations.....39

5.3 Exception.....40

5.4 FIPPA Records and Compliance40

5.5 Prevalence over other Provisions.....41

5.6 Confidentiality and Promotion Restrictions.....41

5.7 Injunctive and Other Relief.....41

5.8 Survival.....42

ARTICLE 6 – INTELLECTUAL PROPERTY.....42

6.1 OPS Assets.....42

6.2 No Use of Ontario Government Insignia.....42

6.3 Ownership of Newly Created Intellectual Property.....42

6.4 Presumption Governing Ownership.....43

6.5 Ownership of Supplier’s Pre-existing Intellectual Property.....43

6.6 Supplier’s Grant of Licence.....43

6.7 No Restrictive Material in Deliverables.....45

6.8 Assurances Regarding Moral Rights.....45

6.9 Copyright Notice.....45

6.10 Further Assurances Regarding Copyright.....45

6.11 Ministry May Prescribe Further Compliance.....45

6.12 Survival.....45

ARTICLE 7 – INDEMNITY, LIMITATION OF LIABILITY AND INSURANCE.....46

7.1 Intellectual Property Rights Indemnity.....46

7.2 Confidentiality Indemnity.....47

7.3 Intentionally left blank.....47

7.4 General Indemnity.....47

7.5 Limitation of Liability.....47

7.6 Supplier’s Insurance.....49

7.7 Proof of Insurance.....50



7.8 Proof of W.S.I.A. Coverage.....50

7.9 Supplier’s Participation in Proceedings.....50

7.10 Liabilities of the Supplier.....51

7.11 Survival.....51

ARTICLE 8 – TERMINATION, EXPIRY AND EXTENSION.....51

8.1 Immediate Termination of Agreement and Orders.....51

8.2 Dispute Resolution by Rectification Notice.....52

8.3 Termination on Notice.....52

8.4 Termination for Non-Appropriation.....52

8.5 Supplier’s Obligations on Termination (including Expiry) of an Order.....53

8.6 Supplier’s Obligation Upon Termination (including Expiry) of the Agreement.....53

8.7 Payment Upon Termination.....54

8.8 Termination in Addition to Other Rights.....54

8.9 Expiry and Extension of Agreement and Survival of Orders.....54

ARTICLE 9 – NON – OPS ENTITIES.....55

9.1 Non-OPS Entity Agreements.....55

9.2 Ontario Not Liable for Supplier’s Relationship with Non-OPS Entities.....55

9.3 Disclosure of Information.....56

ARTICLE 10 – REPRESENTATIONS AND WARRANTIES.....57

10.1 Representations and Warranties of the Supplier.....57

10.2 Specific Warranties.....61

ARTICLE 11 – GOVERNANCE.....62

11.1 Governance Structure.....62

11.2 Business and Management Processes and Risk Mitigation Strategies.....62

11.3 Desktop Supplier Management Office.....62

11.4 Committees.....62

11.5 Escalation Process for Dispute Resolution.....64

11.6 Continued Provision of Deliverables.....65



ARTICLE 12 – ARBITRATION.....66

12.1 Jurisdiction and Scope.....66

12.2 Applicable Law, Language and Place of Arbitration.....67

12.3 Appointment of Arbitral Tribunal.....68

12.4 Meetings and Hearings.....68

12.5 Miscellaneous.....68

ARTICLE 13 – OPEN DATA.....69

13.1 Publication of Data.....69

ARTICLE 14 – OCCUPATIONAL HEALTH AND SAFETY ACT.....69

Schedule 1 – Schedule of Deliverables, Rates and Supplementary Provisions.....71

Part 1 - RFB, including any Addenda:

RFB Main:

Part 1 – The Deliverables

Part 2 – Terms and Conditions

Attachments:

#2 – Form of Agreement (FOA)

[#3 – Placeholder only - No attachment]

[#4 – Placeholder only - No attachment]

#5 – Rated Requirements

#6 – Rate Bid Form

Personal Computing Devices & Services

6 of 100

RFB Agreement #14952

Page



#7 – Reporting Requirements

#8 – Ministry Sites

#9 – Service Requirements

#10 – Service Management

#11 – Minimum Product Specifications

#12 – Manufacturer’s Undertaking

#13 – Performance Measures and Remedies

#14 Placeholder only – No Attachment

[#15 Placeholder only – No attachment]

#16 – ITSM Solution Demonstration

#17 – ITSM Self-Assessment Form

Part 2 - Bid

Schedule 2 – Definitions.....	72
Schedule 3 – Assignment of Copyright.....	99.....
Schedule 4 – Waiver of Moral Rights.....	100



PAGE INTENTIONALLY LEFT BLANK



AGREEMENT

THIS AGREEMENT (the "Agreement"), made in quadruplicate is effective as of the 16th day of May, 2022 (the "Effective Date")

BETWEEN:

HER MAJESTY THE QUEEN in right of Ontario

as represented by

THE MINISTER OF GOVERNMENT AND CONSUMER SERVICES

(referred to as the "Ministry" or "MGCS")

AND:

COMPUCOM CANADA CO.

(referred to as the "Supplier")

In consideration of their respective agreements set out below, the Parties covenant and agree as follows:

INTERPRETATION AND GENERAL PROVISIONS

1.1 Defined Terms

Unless otherwise specified, capitalized words and phrases have the meaning set out in **Schedule 2**.

1.2 No Indemnities from Ministry

Notwithstanding anything else in the Agreement, any express or implied reference to the Ministry or any Customer providing an indemnity or any other form of indebtedness or contingent liability that would directly or indirectly increase the indebtedness or contingent liabilities of Ontario, whether as of the Effective Date of the Agreement or at any time during the Term, shall be void and of no legal effect.

This Section shall survive the termination or expiry of the Agreement.

1.3 Entire Agreement

(a) This Agreement, including the Schedules attached hereto together with any Orders and such other documents that are contemplated in this Agreement and as are agreed to between the Parties from time to time, constitute the entire agreement between the Parties pertaining to the subject matter set out in the Agreement, and supersede all prior agreements or understandings, whether oral or written, of the Parties.

(b) Without limiting the generality of **Section 1.3(a)** above, Ontario will not be bound by any terms and conditions with respect to the provision of the Deliverables, including the terms and conditions contained in or on any website, or in or on any click-wrap, browse wrap, web wrap, shrink-wrap or standard form licence or other licence or agreement

Personal Computing Devices & Services

Page

9 of 100

RFB Agreement #14952



delivered with or contained in or on the Deliverables, or contained in any invoice or purchase order, regardless of any action taken or not taken by the Ministry or its users to indicate acceptance of those terms, except as otherwise set out in **Section 6.6** or are, pursuant to an amendment in accordance with **Section 1.12** below, incorporated in and form part of the Agreement.

1.4 Severability

If any term or condition of the Agreement, or the application thereof to the Parties or to any Persons or circumstances, is to any extent invalid or unenforceable, the remainder of the Agreement, 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.

1.5 Interpretive Value of Documents

In the event of conflicts or inconsistencies between or among any of the provisions of the Agreement, the provisions shall govern in the following order of precedence with each taking precedence over those listed subsequently:

- (a) the Articles of the Agreement;
- (b) in **Schedule 1**,
 - (i) the RFB and any Addenda issued by the Ministry;
 - (ii) the Bid;
- (c) Orders except that the Rates set out therein may be lower than the Rates set out in **Schedule 1**, and except to the extent that the Agreement specifically provides that a Statement of Work may vary the terms of the Articles of or a Schedule to the Agreement.

1.6 Interpretation

In the Agreement:

- (a) Headings are for convenience of reference and are not to be used to interpret the Agreement.
- (b) Any reference in the main body of this Agreement, a Schedule or a SOW to an Article, Section, Subsection or Paragraph shall mean a reference to an Article, Section, Subsection or Paragraph of the main body of this Agreement, Schedule or a SOW, respectively, unless otherwise indicated.
- (c) Words in the singular include the plural and vice versa.
- (d) Reference to a statute means the statute and any regulations as amended, re-enacted or remade or as changed in the exercise of a statutory power to make non-substantive changes.
- (e) All dollar amounts are expressed in Canadian Dollars.



(f) The words “including” and “includes” are not intended to be limiting and shall mean “including without limitation” or “includes without limitation” as the case may be.

1.7 Force Majeure

Subject to the Supplier’s obligations for Business Continuity in **Section 3.8** of the Agreement, neither Party shall be liable for damages caused by delay or failure to perform its obligations under the Agreement where such delay or failure is caused by an event beyond its reasonable control. The parties agree that force majeure events shall include natural disasters and acts of war, insurrection and terrorism but shall not include shortages or delays relating to supplies or services. The event shall not be considered beyond the Supplier’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 to either materially mitigate or negate the effects of such event. Without limiting the generality of the foregoing, the Parties agree that force majeure events shall not include shortages or delays relating to supplies of Products or Services. In the case of Ontario, force majeure shall include any partial or complete disruption or slowdown affecting the OPS’ operations due to strikes, labour stoppages or lockouts or other labour-related events. If a Party seeks to excuse itself from its applicable obligations under the Agreement due to an event beyond its reasonable control, 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. The Supplier shall formulate and implement a Business Continuity Plan that includes such contingency measures and disaster recovery plans as are necessary to provide the Deliverables without delay, disruption or deterioration in the performance of the Supplier’s obligations in connection with the Agreement. If the anticipated or actual delay or non-performance by the Supplier exceeds fifteen (15) Business Days, the Ministry may immediately terminate the Agreement by giving notice of termination and such termination shall be in addition to the other rights and remedies available to the Ministry under the Agreement, at law or in equity.

1.8 Notices by Prescribed Means

Notices shall be in writing and shall be delivered by postage-prepaid envelope, personal delivery, electronic mail (email) or facsimile and shall be addressed to, respectively, the Ministry Address to the attention of the Ministry Representative and to the Supplier Address to the attention of the Supplier Representative. Notices shall be deemed to have been given: (a) in the case of postage-prepaid envelope, five (5) Business Days after such notice is mailed; or (b) in the case of personal delivery, email or facsimile one (1) Business Day after such notice is received by the other Party. In the event of a postal disruption, notices must be given by personal delivery, email or by facsimile. Unless the Parties expressly agree in writing to additional methods of notice, notices may only be provided by the methods contemplated in this Section.



1.9 Governing Law

The Agreement 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 agree that the *United Nations Convention on Contracts for the International Sale of Goods* does not apply to the Agreement.

This Section shall survive the termination or expiry of the Agreement.

1.10 Approval of Documents

Any approval required under the Agreement shall be in writing. Subject to the other provisions hereof, wherever in the Agreement approval is required with respect to any document, following such approval, such document shall not be amended, supplemented, or changed in any material manner whatsoever, without obtaining a further approval.

1.11 Amendments to Agreement

Any amendment of the main body of the Agreement, its Schedules, or any SOW, shall not be binding unless it is in writing and executed by the duly authorized representatives of the Ministry and the Supplier. No change shall be effective or shall be carried out in the absence of such an amendment.

1.12 Accessibility Requirements

The Supplier's delivery of the Deliverables shall comply with all applicable requirements, specifications and standards for accessibility established in accordance with the Ontario Human Rights Code (HRC) R.S.O. 1990, Chapter H.19, the Ontarians with Disabilities Act, S.O. 2001, Chapter 32 and the Accessibility for Ontarians with Disabilities Act, 2005, S.O. 2005, Chapter 11, regulations made thereto and any direction from the Ministry

1.13 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 Agreement; (b) supplementary details, instructions or directions that do not correspond with those contained in the Agreement; and (c) any omissions or other faults that become evident and should be corrected in order to provide the Deliverables in accordance with the Agreement and Requirements of Law.

1.14 OPS Rights and Remedies and Supplier Obligations Not Limited to Agreement

The express rights and remedies of the OPS and obligations of the Supplier set out in the Agreement are in addition to and shall not limit any other rights and remedies available to the OPS or any other obligations of the Supplier at law or in equity.

This Section shall survive the termination or expiry of the Agreement.

1.15 Condonation Not a Waiver

Any failure by the Ministry to insist in one or more instances upon strict performance by the Supplier of any of the terms or conditions of the Agreement shall not be construed as a waiver by the Ministry of its right to require strict performance of any such terms or

conditions, and the obligations of the Supplier with respect to such performance shall continue in full force and effect.

1.16 Waiver

No waiver by the Ministry of any rights under the Agreement shall be effective unless in writing, duly executed by an authorised representative of the Ministry. A waiver of any breach of any provision of the Agreement by the Supplier shall not be construed as a continuing waiver of other breaches of the same provision or waiver of any other provision of the Agreement.

1.17 Delay

For delay that is demonstrated by the Supplier to be caused solely by the Ministry, the Ministry will provide equivalent additional time to the Supplier to comply with Service Level Metrics. No additional compensation, fees, costs, or charges shall be paid by the Ministry.

ARTICLE 2 - NATURE OF RELATIONSHIP BETWEEN MINISTRY AND SUPPLIER

2.1 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.

2.2 Ministry Sole Representative for OPS

(a) The Supplier acknowledges that the Ministry is entering into this Agreement for its benefit and for the benefit of Customers. The Ministry is also deemed a Customer for the purpose of acquiring Products and Services for its End Users.

(b) The Ministry shall be the sole and exclusive representative for the OPS for all matters relating to the Agreement. The Supplier shall not contact, solicit business or take instructions from any other part of the OPS unless otherwise expressly permitted in writing by the Ministry. Without limiting the generality of **Section 3.3**, no Order will be binding under the Agreement unless it is issued by an authorized representative of the Ministry and no invoice of the Supplier will be payable under the Agreement unless it is pursuant to an Order issued by an authorized representative of the Ministry.

(c) The Ministry will provide notice in writing to the Supplier setting out the authorized representatives of the Ministry and the scope of authority of such representatives, as such list may be amended from time to time by the Ministry in its sole discretion.

2.3 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 Agreement shall have the effect of creating an employment, partnership or agency relationship between the Ministry and the Supplier or the Supplier's Personnel or constitute an appointment under the *Public Service of Ontario Act, 2006*, S.O. 2006, Chapter 35, as amended. The Supplier shall be solely liable for all moneys payable by it on account of statutory and contractual obligations arising from payments received by it pursuant to the Agreement.

This Section shall survive the termination or expiry of the Agreement.

2.4 Responsibilities of Supplier

- (a) The Supplier agrees that it is liable for its acts and omissions and the acts and omissions of the Supplier's Personnel in the same manner as if the acts or omissions of the Supplier's Personnel were those of the Supplier. This Section is in addition to any and all of the Supplier's liabilities under the Agreement and under the general application of law. The Supplier shall advise the Supplier's Personnel of their obligations under the Agreement and shall ensure their compliance with all the applicable terms of the Agreement. In addition to any other liabilities of the Supplier pursuant to the Agreement or otherwise at law or in equity, the Supplier shall be liable for all Losses and Proceedings resulting from its actions or omissions and the actions or omissions of the Supplier's Personnel in connection with the Agreement.
- (b) The Supplier shall not be relieved of any obligation or liability under the Agreement as a result of the use by the Supplier of any Supplier's Personnel, nor shall Ontario be liable to any of the Supplier's Personnel and the Supplier shall not make any representation or enter into any agreement with the Supplier's Personnel to the contrary.
- (c) The Supplier shall be responsible for including applicable terms and conditions into contracts that the Supplier has with the Supplier's Personnel or otherwise taking all necessary steps to cause the Supplier's Personnel (including Subcontractors) to comply with all applicable provisions of this Agreement.
- (d) Each Manufacturer of a Product available for ordering by the Ministry under the Agreement shall be deemed to be a Subcontractor of the Supplier under the Agreement. The Supplier shall require each Manufacturer to enter into a Manufacturer's Undertaking in the form attached hereto as Attachment 12 for the Product Categories identified by the Ministry. In addition, the Supplier shall require the Manufacturer of any new Products supplied under the Agreement who has not signed a Manufacturer's Undertaking to sign the Manufacturer's Undertaking in the form attached hereto as Attachment 12. The Rates provided by each Manufacturer to the Supplier as of the Effective Date shall be ceiling prices that shall not increase during the Term.



This Section shall survive the termination or expiry of the Agreement.

2.5 No Subcontracting or Assignment

The Supplier shall not subcontract or assign the whole or any part of the Agreement 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 foregoing, the Ministry shall be entitled to withhold its consent to any proposed subcontracting or assignment of the Agreement if any of the following conditions are not met:

- (a) the Ministry shall be given prior written notice of the proposed subcontracting or assignment and shall be provided with such information as it may request with respect to the proposed Subcontractor or assignee;
- (b) the Ministry shall be provided with complete, accurate information on the proposed Subcontractor or assignee including information regarding: its corporate structure and governance; its relationships with other entities; any affiliations with foreign entities; and the place or jurisdiction where it carries on or will carry on business;
- (c) the Ministry is satisfied that the subcontracting or assignment will not violate or be contrary to any OPS policy;
- (d) Any contract between the Supplier and the Subcontractor or between the Supplier and the assignee must specify that: (i) the Subcontractor or assignee is and will be able and willing to comply with all of the applicable terms and conditions of the Agreement including the Supplier's obligations and covenants under the Agreement.; and (i) this clause (d) of **Section 2.5** shall survive the expiry or termination of the Agreement and any contract between the Supplier and the Subcontractor or between the Supplier and the assignee;
- (e) The subcontracting or assignment does not impose and shall not result in the imposition of any additional cost, obligation, liability or covenant on Ontario; and
- (f) Any subcontracting or assignment of the Agreement in whole or in part shall not relieve the Supplier of its performance or any responsibility, obligation, covenant or liability under the Agreement.

Without limiting the generality of the conditions which the Ministry may require prior to consenting to the use of a Subcontractor by the Supplier, every contract entered into by the Supplier with a Subcontractor shall include such provisions as are reasonably necessary to cause the Subcontractor to comply with any applicable provisions of the Agreement. Except for the Manufacturer's Undertaking, nothing contained in the Agreement shall create a contractual relationship between the Supplier's Personnel and the Ministry

In the event that the Ministry does not consent to the subcontracting or assignment of the Agreement, in whole or in part, any subcontracting or assignment by the Supplier in such



a situation will be deemed to be grounds for termination pursuant to **Section 8.1**.

The Supplier shall ensure that its contracts with its Subcontractors and suppliers are assignable to the Ministry if the Agreement is terminated in whole or in part in accordance with Article 8 and the Ministry elects, in its sole discretion, to assume any of the contracts. As an alternative to assuming any contract made with any such Subcontractor or supplier, as set forth above, the Ministry shall be entitled at its option to negotiate directly and to enter into any agreements with the Subcontractors and suppliers with respect to the provision of any Products or Services. The Supplier shall ensure that its contracts with the Subcontractors and suppliers permit the assignment of such agreements, as described in this **Section 2.5**, at no additional cost to the Ministry. Additionally, no such contract shall prohibit any Subcontractor or supplier from entering into negotiations and new agreements with the Ministry.

The Supplier acknowledges and agrees that the Ministry may, during the course of the Agreement, require direct communication with a Subcontractor regarding matters within the scope of the Subcontractor's responsibilities subcontracted to it by the Supplier. The Supplier shall facilitate such direct communication if requested by the Ministry. The Supplier agrees that nothing in the Agreement or any other document permitted under the Agreement such as an Order shall prohibit or limit the ability of the Ministry, if the Ministry so elects, to directly communicate with the Supplier's Subcontractors regarding matters within the scope of the Subcontractor's responsibilities. Such communication shall not be construed as a waiver by the Ministry of the Supplier's responsibilities or obligations under the Agreement nor will such communication relieve the Supplier of any of its responsibilities or obligations under the Agreement.

This Section shall survive the termination or expiry of the Agreement.

2.6 Change of Control

For purposes of the Agreement, any reorganization or restructuring of the Supplier that results in a new entity assuming all or part of the business and operations of the Supplier, or any sale or disposition that results in a change of control of the Supplier shall be deemed to be an assignment of the Agreement by the Supplier and shall be subject to the provisions of **Section 2.5** above.

2.7 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 Agreement upon giving notice to the Supplier where: (i) the Supplier fails to disclose an actual or potential Conflict of Interest; (ii) the Supplier fails to comply with any requirements prescribed by the Ministry to resolve a Conflict of Interest;



or (iii) the Supplier's Conflict of Interest cannot be resolved.

This Section shall survive the termination or expiry of the Agreement.

2.8 Agreement Binding

The Agreement is for the benefit of and is binding upon the Parties and their respective successors and permitted assigns.

This Section shall survive the termination or expiry of the Agreement.

2.9 Assignment by the Ministry

- (a) Upon prior written notice to the Supplier, the Ministry may assign the Agreement, in whole or in part, including any or all Orders, or may assign or sublicense any right or interest granted to the Ministry to any Person, without the prior written consent of the Supplier; and
- (b) Without limiting the provisions of **Section 2.9(a)** above, the Supplier acknowledges that the Ministry and Clients have the right to determine from time to time which End Users are granted possession or the right to use any Product or Services that are intended for use by End Users, and the Ministry may re-assign or transfer all such items and rights of use as between the Ministry, any Client and End Users. The Supplier shall continue to perform all obligations set out in the Agreement with respect to any warranties or support services to be provided for any Deliverables notwithstanding any such re-assignment or transfer of any rights with respect to any of the Deliverables.

PERFORMANCE BY SUPPLIER

3.1 Transition-In

Immediately upon finalization of the Transition-In Plan by the Supplier and approval of the Transition-In Plan by the Ministry, the Supplier shall perform the obligations, including the tasks and activities, necessary to implement and complete the Transition-In Plan in accordance with the Agreement.

3.2 Supply of Deliverables

- (a) Non-Exclusive Agreement; Work Volumes

The Supplier acknowledges that it is providing the Deliverables to the Ministry on a non-exclusive basis. The Ministry makes no representation, assurance, warranty or guarantee regarding the value or volume of Deliverables that will be acquired under the Agreement, or regarding the accuracy, completeness or non-occurrence of changes in information provided by or on behalf of the OPS. The Ministry will, in its sole discretion, determine when, how much, for which location and for what period it will acquire the Deliverables from the Supplier. The Ministry, or any Customer, reserves the right, at any time, to obtain from any other Person,



including, without limitation, , from third parties or internally, the same or similar Deliverables including any Product Type, as those provided by the Supplier.

(b) Authorized Reseller

The Supplier shall be authorized during the Term to sell and rent the Products supplied and provide the related Services under the Agreement. The Supplier or the Supplier's Personnel shall be authorized and certified in respect of:

- (i) the Products supplied under the Agreement; and
- (ii) the Services provided in relation to the Products.

At any time and from time to time, the Ministry has the right to request that the Supplier provide, and the Supplier shall provide within five (5) Business Days of the request, written confirmation from the Manufacturer of the Products that the Supplier has Authorized Reseller status and is authorized to sell the Manufacturer's Products and is a certified service provider of that Manufacturer.

(c) Supplier Unable or Unwilling to Provide Product or Services

If the Supplier is unable or unwilling for any reason including, but not limited to, financial difficulties, to provide the Products or perform the related Services, then,

- (i) the Supplier shall require the Manufacturer of the Product Category to comply with the provisions of the Agreement including the terms of the Manufacturer's Undertaking such as but not limited to:
 - (1) the sale and rental of the Manufacturer's Products and Warranty Services directly to Customers at the Rates set out or calculated in accordance with the Agreement at no additional cost (such as any administrative or other costs), obligation or liability to Ontario or any Customer; and
 - (2) in respect of the new Products purchased or rented in accordance with this Section, perform the services described in the Manufacturer's Undertaking itself or through a third party subcontractor approved by the Ministry, in accordance with the Service Levels set out in the Agreement, at the Rates set out or calculated in accordance with the Agreement and at no additional cost (such as any administrative or other costs), obligation or liability to Ontario or any Customer.

For certainty, the Ministry shall have the right to choose, in its sole discretion, whether to acquire Products and Services at the current Rates established in accordance with the Agreement from a reseller designated by the Manufacturer



for a period determined by the Ministry.

This Section shall survive the termination or expiration of the Agreement.

3.3 Ordering Deliverables

The Agreement contemplates: (i) the issuance of Orders by the Ministry from time to time during the Term and all such Orders shall be issued subject to and in accordance with the Agreement; (ii) the execution by the Ministry and the Supplier of one or more Statements of Work for Ad Hoc Services from time to time subject to and in accordance with the Agreement.

(a) Orders

The Supplier shall accept the Order(s) submitted by the Ministry in accordance with this Agreement and shall provide the ordered Deliverables to the Customer location in the Province of Ontario set out in the applicable Order. For certainty, the Supplier is not required to supply Products under the Agreement until September 7th, 2022, except as expressly required by the Ministry.

During the Term of the Agreement, the Ministry may issue a written request to the Supplier for Ad Hoc Services to be provided pursuant to a Statement of Work. The written request issued by the Ministry will set out a brief description of the requested Deliverables, the timeframes for receipt, and any other requirements of the Ministry. The Supplier shall not unreasonably deny any request for Ad Hoc Services pursuant to a Statement of Work.

(b) Ordering Entity

Only the Ministry as defined under the Agreement may order Deliverables for Customers on the terms and conditions provided for in the Agreement, and only pursuant to an Order executed by a duly authorized representative of the Ministry. The Supplier shall only provide Deliverables pursuant to an Order and in accordance with the Agreement and the applicable Order. The Supplier shall not sell or offer to sell any Deliverables under this Agreement to any entity or organization other than the Ministry as defined in this Agreement.

(c) Ordering Terms

Each Order shall refer to this Agreement by setting out the date set out on the first page of this Agreement and the RFB number, and shall at minimum also include, as applicable: (i) the name or description of each Deliverable, along with the related Rates payable and delivery dates; (ii) the quantity of Deliverables; (iii) delivery location; (iv) whether the Deliverables are being acquired by purchase or provided pursuant to Rental Services; (v) the name and contact information for the Ministry and Supplier for the purposes of the particular Order. Where applicable, an Order may include additional terms and conditions in accordance with the Agreement, including the following: Timeframes for the Supplier to provide the Deliverables;

- Supplier's responsibilities;
- For Rental Services, the term of the rental arrangement;
- Reporting requirements.

Each Statement of Work shall refer to this Agreement and shall at minimum also include (i) the name or description of each Deliverable, along with the related Rates payable; (ii) the term and commencement date, the delivery dates or project milestone dates and project description, and, where applicable, the name and contact information for the Client and Supplier; (iii) the Rates for Ad Hoc Services shall not exceed the applicable Rates set out in **Schedule 1** and, if applicable, a maximum ceiling price for each SOW, (iv) the SOW may, if agreed upon by the Parties, vary the terms and conditions of the Agreement governing the Service Levels to be achieved (the Agreement sets out minimum Service Levels), benchmark performance criteria and standards expected of the Supplier and measurement methods to monitor and report on the Supplier's performance; and (v) any other terms and conditions agreed upon by the Parties in accordance with the Agreement.

(d) Separate Terms

The terms and conditions set out in an Order shall have no effect on any other Order and shall only apply to the provision of Deliverables under that particular Order.

(e) Conflict between an Order and the Agreement

(i) In the event of a conflict between an Order and the Agreement, the main body of the Agreement and the Schedules shall govern except as otherwise specifically set out in the Agreement and except that the Rates set out in or attached to and forming part of any Order shall prevail over the Rates set out in Schedule 1 of the Agreement, but only to the extent that the Rates in the Order are lower than the Rates set out in **Schedule 1** of the Agreement.

(ii) Except as otherwise set out in **Section 3.3(e)(i)** above, no terms and conditions set forth in any Order that are inconsistent with the terms and conditions of the Agreement will be binding on the Ministry or a Client unless set forth in a written amendment to the Agreement that is executed by the Ministry and the Supplier.

(f) Electronic Ordering and Payment

If the Ministry chooses to order Deliverables or pay for them electronically, the Supplier shall ensure that its systems and processes accommodate the Ministry's requirements.

3.4 Products

(a) Product Specifications

Personal Computing Devices & Services

20 of 100

RFB Agreement #14952

Page



The Products supplied by the Supplier shall meet or exceed the Specifications and all other requirements as set out in the Agreement.

(b) Within Scope Products

The Supplier shall supply in accordance with the terms of the Agreement any products that the Ministry may require that are within the scope of the Products supplied under the Agreement.

(c) Third Party Warranties

Without limiting the representations, warranties and covenants provided by the Supplier under **Article 10**, in respect of any Deliverable where warranties are additionally provided by a Subcontractor or third party, such as by the Manufacturer of Products or licensor of software, the Supplier shall assign to the Ministry, without reservation, all of the Supplier's rights, but none of the Supplier's obligations, under all warranties provided by the third party. The Ministry shall have the right to take any action it deems appropriate to enforce such warranties. In the event that the Ministry is precluded from enforcing any such warranty in its name or the Supplier cannot assign such warranty to the Ministry, the Supplier shall, upon the Ministry's request, take such steps to enforce such warranty as the Ministry may request. The Ministry's rights under this Section are in addition and without limitation to its rights and remedies under any other applicable service or warranty agreement with any other Person, under the Agreement, at law or in equity.

This Section shall survive the termination or expiry of the Agreement.

3.5 Services

(a) Provision of Services

The Supplier shall commence the provision of the Services, except for optional Services, upon receipt of written notice from the Ministry. With respect to Services that are optional to acquire, the Supplier shall provide such Services only pursuant to an Order issued by the Ministry.

(b) Configuration Centre

The Supplier shall, as of the Effective Date, operate and perform the obligations specified for the Configuration Centre as set out in **Schedule 1**.

(c) Warranty Service

(i) Warranty Services Provided by Manufacturer

The Supplier shall require all work under any Warranty Service to be performed by the Manufacturer itself or by the Supplier provided the Supplier has Authorized Reseller status.

(ii) Term of Warranty Service

Without limiting the generality of **Section 8.9** below, the term of any Warranty Service ordered by the Ministry that exceeds the Term of the Agreement, will not expire or terminate on the Expiry Date or termination date of the Agreement, but shall continue for the term of the Warranty Service.

This **Section 3.5(c)** shall survive the termination or expiry of the Agreement.

(d) Reporting

The Supplier shall provide the reports specified in **Schedule 1**

For the monthly operational meetings and as set out in Attachment 7, Reporting Requirements, the Supplier shall provide Service Level reports that include improvement plans setting out the actions to be taken by the Supplier to improve service delivery.

On or before the end of each Contract Year, the Supplier shall provide the Ministry with a written report setting out a review of the Supplier's performance, including a review of the Supplier's compliance with the Service Levels, during the previous twelve (12) month period.

The Supplier shall be responsible for reporting its performance with respect to all Service Levels, and such reports shall include all evidence to support each claim that a Service Level has been met. The Supplier shall provide such reports to the Ministry on a monthly basis, unless otherwise specified. The Supplier will also provide the Ministry with quarterly and yearly summary reports relating to the Supplier's performance including an analysis of any trends. All reports shall be provided as required under the Agreement, on time, complete and accurate. Any report that is not complete or accurate shall be deemed not to have been provided by the Supplier. Any additional, specific reporting requirements with respect to any Service Level shall be set out in the applicable Order. All reports shall be provided to the Ministry at no charge.

The Supplier is responsible for monitoring the Service Levels, including but not limited to detection of any failure to meet a Service Level.

3.6 Delivery, Risk of Loss, Title and Inspection

(a) Delivery

1. Location of Delivery

The Supplier shall deliver the Deliverables at or to the location specified in the applicable Order. Provided the Ministry requests, in writing, a change to the delivery location set out in an Order no later than three (3) Business Days before the scheduled delivery date, the Supplier



shall, at no additional cost, deliver the Deliverables to the new location.

2. Delivery Dates

The Supplier shall deliver the Deliverables in accordance with the schedule specified in the applicable Order or Renewal schedule. Provided the Ministry requests, in writing, a change to the delivery date set out in the applicable Order or Renewal Schedule no later than three (3) Business Days before the scheduled delivery date, the Supplier shall, at no additional cost, comply with the new delivery date.

3. Completed Delivery

a. Product

Delivery is deemed to be complete when all components of the Product have been received by the Customer at the location specified in the Order, as evidenced by the initial or signature of a Customer representative acknowledging receipt of the Products. A Product shall be deemed to be incomplete and undelivered if any component of the Product is missing or does not comply with the requirements for the Product set out in the Order and the Agreement. The Supplier shall not ship any Product until the Supplier has confirmed that the Product is operating in conformance with the applicable Specifications.

b. Service

A Service shall be deemed to be incomplete and undelivered if not provided in accordance with the requirements for the Services as set out in the applicable Order and the Agreement.

4. Failure to Complete Delivery

If the Supplier does not deliver the complete Product or complete the provision of Services in accordance with the applicable Order and the Agreement, the Ministry may, at its option, terminate the applicable Order without incurring any cost, liability, obligation or penalty and without prejudice to any of its other rights or remedies under the applicable Order or the Agreement, at law or in equity.

5. Risk of Loss or Damage (Products)

All risk of loss or damage to any Products will be the responsibility of the Supplier until delivery has been completed in accordance with subsection 3.6.3 above.

6. Acceptance and Title

(a) Products are deemed accepted by the Ministry when delivery is



completed in accordance with subsection 3.6.3 (Completed Delivery) above.

(b) In respect of the purchase a Product by the Ministry pursuant to an Order, upon complete delivery of the Product as set out in subsection 3.6.3 above, the Supplier shall assign, transfer and convey all right, title and interest in and to the Product to the Ministry free of any encumbrances. All of the foregoing Products shall be deemed to form part of the OPS Assets. Notwithstanding the foregoing, the respective rights and interests of the Parties with respect to any Software forming part of the Products shall be governed by the applicable provisions of Article 6.

(c) In respect of Product that is provided by the Supplier to the Ministry pursuant to an Order for Rental Services, the Product shall remain the sole and exclusive property of the Supplier. Service Levels and Performance Measures

3.7 Service Levels and Performance Measures

(a) Service Levels

The Supplier shall provide the Deliverables in accordance with the Service Levels specified in the Agreement including as set out in **Attachment 9** and the Performance Measures set out in **Attachment 13**.

(b) Failure to Meet Performance Measures

If any of the Performance Measures are not met, the Ministry shall be entitled to exercise the rights and remedies specified in the Agreement, including, without limitation, the Service Credits set out in **Attachment 13**.

3.8 Business Continuity

The Supplier shall have Business Continuity Plans in place as of the Effective Date and shall periodically update them to the reasonable satisfaction of the Ministry 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.

The 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. The Ministry reserves the right to review the Supplier's Business Continuity Plans.

The Supplier's Business Continuity Plans shall provide for contingency management. The Supplier should document the use of disaster recovery planning within its own organization as part of its Business Continuity Plan, including the use of:

1. Emergency response teams with the assignment of responsibilities and duties among the team members;
2. General locations (e.g. city, region) for alternate operating facilities and the inclusion of permanent backup or alternate power sources, the expected time to restore services and minimum duration before refuelling is required;
3. Supply chain management processes in place, in relation to the identification and provisioning (for example, stocking of equipment, arrangements for a priority delivery of equipment) of those critical supplies that are deemed necessary to maintain service continuity to Customers;
4. Communications plans, and, in particular, provision for Customer relationship management and incident management and a description of the roles of the Supplier's representatives responsible for these functions and for informing Customers.

Upon a request from the Ministry, the Supplier shall provide a copy of the Supplier's Business Continuity Plan to the Ministry for the Ministry's review.

3.9 Use and Access Restrictions

(a) The Supplier acknowledges that unless it obtains specific written preauthorization from the Ministry, any access to or use of OPS property, technology or information that is not necessary for the performance of its contractual obligations with the Ministry is strictly prohibited. The Supplier further acknowledges that the Ministry may monitor the Supplier to ensure compliance with this Section. This Section is in addition to and shall not limit any other obligation or restriction placed upon the Supplier.

(b) Subject to compliance by the Supplier (including the Supplier's Personnel) of all applicable provisions of this Agreement, including the Security Clearance requirements, Customers will provide the Supplier's Personnel with access to its premises, systems or networks to the extent required to enable the Supplier to fulfil its obligations under the Agreement.

(c) All of the Supplier's Personnel (including all individuals who are retained or otherwise used by the Supplier's Personnel) who are involved in any manner in the provision of any of the Deliverables shall:

- (i) be informed of and be bound by all provisions of this Agreement relating to privacy, confidentiality and security; and

(ii) while at any Site or while accessing or using any of the OPS Assets (including any of the OPS Data), comply with all rules, regulations, procedures and policies established from time to time by Ontario (collectively, the “**Ontario Rules**”): (i) that are communicated in writing by the Ministry or a Customer to the Supplier; or (ii) that can be accessed from any publicly available sources; in each case, that are applicable to any of the Deliverables, and the Supplier shall be responsible for communicating the Ontario Rules to the Supplier’s Personnel.

(d) The Supplier acknowledges that unless it obtains specific written pre-authorization from the Ministry, any access to or use of any of the Sites, or to the OPS Assets (including the OPS Data), that is not necessary for the performance by the Supplier of its obligations under the Agreement is strictly prohibited. The Supplier further acknowledges that the Ministry may monitor performance of any obligations by the Supplier to ensure compliance with this **Section 3.9**. Ontario reserves the right to deny physical or electronic access to the Sites and the OPS Assets (including the OPS Data) to the Supplier or any of the Supplier’s Personnel who do not comply with any applicable provisions of the Ontario Rules; and

(e) All of the Supplier’s Personnel shall present and wear in a visible manner any OPS-provided identification for access to any Site.

3.10 Supplier to Comply With Reasonable Change Requests

The Ministry may, in writing, request changes to the Agreement, which may include altering, adding to, or deleting any of the Deliverables. The Supplier shall comply with all reasonable Ministry change requests and the performance of such request shall be in accordance with the terms and conditions of the Agreement. If the Supplier is unable to comply with the change request, it shall promptly notify the Ministry and provide reasons for such non-compliance. In any event, any such change request shall not be effective until a written amendment reflecting the change has been executed by the Parties. This Section shall also apply to any change requests made by the Ministry pursuant to an Order.

3.11 Pricing for Requested Changes

Where a Ministry change request includes an increase in the scope of the previously contemplated Deliverables, the Ministry shall set out, in its change request, the proposed prices for the contemplated changes. Where the Rates in effect at the time of the change request:

- (a) include pricing for the particular type of Products or Services contemplated in the change request, the Supplier shall not unreasonably refuse to provide those Products or Services at prices consistent with those Rates; or
- (b) are silent to the applicable price for the particular products or services contemplated in the change request, the price shall be negotiated between the



Ministry and the Supplier within ten (10) Business Days;

and in any event, such change request shall not become effective until a written amendment reflecting the change has been executed by the Parties.

3.12 Product Adjustment and Substitution

(a) The Supplier shall not alter the Products or substitute other products for the Products specified in **Schedule 1**, except with the approval of the Ministry in accordance with the provisions of the Agreement. Substitution by the Supplier without such approval shall constitute a failure of compliance under **Section 8.1** of this Agreement.

(b) The Supplier shall provide written notice to the Ministry setting out any new functionality and new products in accordance with **Section 3** of **Attachment 9**. If the Ministry agrees to the addition of new functionality or products, the list of Products in **Schedule 1** shall be amended accordingly, and the provision of the new functionality and Products shall commence on the date chosen by the Ministry in accordance with the annual review process described in the Agreement and be subject to the terms and conditions of the Agreement, including the Rates specified in **Schedule 1**.

(c) If any of the Products specified in Schedule 1 will be discontinued during the Term, at least ninety (90) calendar days prior to such discontinuance, the Supplier shall (i) provide written notice to the Ministry and (ii) shall identify a proposed replacement product ("**Replacement Product**") for approval by the Ministry. In addition, the Supplier shall immediately provide to the Ministry all information relating to the proposed Replacement Product as the Ministry may request.

(d) Without limitation to paragraph (a), approval by the Ministry of a proposed Replacement Product under paragraph (c) shall be conditional upon the following:

- (i) the proposed Replacement Product must meet or exceed the base specification(s) of the Deliverable that it is being replaced;
- (ii) the proposed Replacement Product must be compatible with the OPS IT environment;
- (iii) if required by the Ministry, the proposed Replacement Product must successfully complete acceptance testing in accordance with **Schedule 1**;
- (iv) provision of the proposed Replacement Product shall be subject to the terms and conditions of the Agreement; and
- (iv) the Rate (total amount to be charged by the Supplier to the Ministry) for the proposed Replacement Product must be equal to or lower than the Rate for the Product it is intended to replace as specified in **Schedule 1**.

(e) Acceptance or rejection of a proposed Replacement Product shall be at the sole discretion of the Ministry. If the Ministry rejects the proposed Replacement Product, the Supplier shall continue to provide the Product specified in **Schedule 1** until such time as



an alternate Replacement Product has been approved by the Ministry.

3.13 Performance by Specified Individuals Only

(a) The Supplier agrees that to the extent that specific individuals are named in the Agreement, including an Order, as being responsible for the provision of the Deliverables, only those individuals shall provide the Deliverables under the Agreement or Order. The Supplier shall not replace or substitute any of the individuals named in the Agreement or an Order without the prior written approval of the Ministry or, if applicable, the Client. Should the Supplier require the substitution or replacement of any of the individuals named in an Order or the Agreement, it is understood and agreed that any proposed replacement must possess similar or greater qualifications than the individual named in the Order or the Agreement. The Supplier shall not claim fees for any replacement individual greater than the Rates established under the Order or the Agreement.

(b) If a Client, in its sole discretion, deems any of the Supplier's Personnel to be inappropriate for the work, the Client may require the Supplier to replace such Personnel. The Supplier shall immediately, upon receipt of the Client's request, initiate the replacement and removal of the individual(s). The Supplier shall submit to the Client the name and resume of a suitable replacement for each of the Supplier's Personnel deemed inappropriate by the Client. The Supplier shall provide the Client with the opportunity to interview the proposed Supplier's Personnel, at no cost to the Client. The Supplier agrees that any proposed replacement Supplier's Personnel must be qualified in the same position and must possess similar or greater qualifications than the individual being replaced, and that the Client's approval may, at the Client's discretion, be subject to **Section 3.13** below (Security Clearance). The Supplier shall not charge the Client more than: (a) the Rate for the role performed by the individual being replaced; and (b) if applicable, the ceiling price originally specified in the Order for the Services being provided; even if the replacement Personnel holds a more senior position or has more experience or qualifications than the individual(s) being replaced. If the Supplier fails to propose any replacement Supplier's Personnel within three (3) Business Days, or proposes replacement Supplier's Personnel who the Client deems, in its sole discretion, to be inappropriate or not available in a timely manner, the Ministry or the Client may immediately terminate the applicable Order, in whole or in part, by giving notice of termination and such termination shall be in addition to the other rights and remedies of the Ministry or Client under the Agreement, at law or in equity. The Indemnified Parties shall have no liability or obligation to the Supplier or any of the Supplier's Personnel arising out of or in connection with such termination of an Order or any replacement or request for replacement of any Supplier's Personnel.

3.14 Security Clearance

(a) The Supplier shall, upon request from the Ministry, require those Persons providing services under the Agreement to submit to security checks and the Supplier may be

required to obtain and pay for security clearance. Where such security checks are required the Ministry will provide information on how the Supplier can obtain them.

- (b) The Supplier shall provide to the Ministry, upon request, the names, addresses, dates of birth and consents of its Persons for whom security checks are required. The Supplier shall designate a chief security officer as the contact for this purpose. Any Person who is unable to obtain security clearance, or who refuses to consent to such security checks, shall not be permitted to perform services under the Agreement.
- (c) Security clearance may be suspended or revoked if any Person fails to maintain security clearance or security standards required pursuant to the Agreement. The Supplier shall notify the Ministry of any personnel changes, behaviours, or circumstances for which security clearance may require reconsideration.
- (d) Security clearance is not awarded in perpetuity. The Ministry may perform, or re-perform, security checks against any Person providing services under the Agreement at any time and will notify the Supplier of this requirement.
- (e) The Supplier shall be considered in default of the Agreement if it fails to comply with the requirements of this section or if any security clearance results received by the Ministry are found, in the sole discretion of the Ministry, to be incompatible with the proper and impartial provision of the Deliverables in accordance with the terms and conditions of the Agreement.

3.15 Data Protection

- (a) The Supplier shall, commencing on the Effective Date, establish, keep current and maintain complete segregation of OPS Data in its databases and servers throughout the Term, with full, unrestricted access to the Ministry as specified in the Agreement including the ability to retrieve any or all OPS Data at any time during the Term.
- (b) Without limiting any other obligation of the Supplier under the Agreement, the Supplier shall not, under any circumstances, without the prior express written consent of the Ministry:
 - (i) alter, delete, destroy, or withhold OPS Data from the Ministry;
 - (ii) change the location of any OPS Data;
 - (iii) engage in data mining;
 - (iv) access or use OPS Data for any purpose other than as specifically authorized by this Agreement;



- (v) engage in any excess data collection; or
 - (vi) disclose OPS Data to any third party.
- (c) The Supplier shall give access to OPS Data only to authorized individuals of the Supplier and the Supplier's Personnel that have completed security clearance checks in accordance with the Agreement.
- (d) The Supplier shall:
- (i) where the Supplier receives a request for OPS Data, resist the disclosure of information and provide the Ministry with immediate notice of such access to data requests, where permitted by law;
 - (ii) cooperate, as requested by the Ministry, in any privacy investigation or regulatory investigation;
 - (iii) provide regular reports at a frequency and in form and content determined by the Ministry for OPS Data, including reports on the disclosure of any OPS Data;
 - (iv) provide adequate backup of data to protect against any loss and shall establish and maintain processes that ensure: the authenticity and integrity of data; preservation and the probative value of the data; documentary holds can be instituted to preserve the metadata of original documents; prevention of over-writing of back-up files.
- (e) Despite any other provision or any dispute that may arise under the Agreement, the Supplier shall provide OPS Data and any and all derivatives to the Ministry on demand and in any event on expiry or termination of the Agreement in form and format usable by the Ministry. The data and derivatives shall be provided periodically as required by the Ministry and a full and complete dump of all data and derivatives shall be provided upon termination or expiry of the Agreement.

3.16 Location of Data

- (a) The Supplier shall identify the location where the OPS Data and back up are stored and shall not change the location of the OPS Data during the Term except with the prior written consent of the Ministry. In exceptional circumstances that fall within the provisions of force majeure and are approved by the Ministry, the Ministry's consent may be oral.

- (b) Any activities conducted with respect to the OPS Data including storage, conversion, recovery or processing shall be done in a location that allows the Ministry to comply with all applicable statutory obligations.

3.17 Continuous Improvement

3.17.1 The Supplier shall have an on-going obligation throughout the Term to identify new or potential improvements and report to the Ministry once every six months, except as otherwise set out below, on:

- (a) the emergence of new and evolving relevant technologies which could improve the Products and Services and the technological advances potentially available including, new or potential improvements to the Products and Services including quality enhancements, improved Service Level metrics, responsiveness, performance enhancements, customer services and improved Product specification based on OPS business requirements;
- (b) changes in business processes and ways of working that would enable the Products and Services to be delivered at costs lower than the Rates, higher Service Levels and increased benefits to the OPS.

3.17.2 The Supplier shall ensure that the information that it provides to the Ministry shall be in the form of a written accurate and complete proposal specifying in detail, the nature of the proposed improvements, any increase in operational, financial or other benefits to Ontario, reduction of risk to Ontario, any proposed changes in the compensation to be paid to the Supplier, the proposed time period for the implementation of the change, applicable Service Level metrics by which the Supplier's performance is to be measured and applicable Service Credits. The Supplier shall provide any further relevant information that the Ministry reasonably requests.

3.17.3 The provisions of the Supplier's proposal shall be consistent with the terms of the Agreement. The Ministry may, in its sole discretion, accept the proposal in whole or in part, with or without conditions, request modifications or reject it as the Ministry deems appropriate. The Ministry reserves the right, at any time, not to proceed with the subject matter of any proposal or Change Request. Any changes that are outside the scope of the RFB will be rejected

3.17.4 If the Ministry wishes to incorporate any improvement identified by the Supplier, the Ministry will initiate a Change Request and the Supplier shall:



- i) develop and submit for the approval of the Ministry, a plan for the implementation of the improvement within ten (10) Business days of the Ministry's Change Request;
- ii) implement and test the improvement in accordance with the provisions of an implementation plan approved by the Ministry; and
- iii) conduct testing in accordance with the acceptance testing provisions set out in the Agreement.

3.17.5 In addition to the general areas for continuous improvement set out above, the Supplier shall comply with the requirements set out below.

(a) Service Levels

- (i) For the monthly operational meetings, the Supplier shall provide Service Level reports that include improvement plans setting out the actions to be taken by the Supplier to improve service delivery.
- (ii) On or before the end of each Contract Year, the Supplier shall provide the Ministry with a written report setting out a review of the Supplier's performance, including a review of the Supplier's compliance with the Service Levels, during the previous twelve (12) month period.

(b) Incident Management

- (i) The Supplier shall ensure that standardized methods and procedures prescribed by the Ministry are used to respond to Incidents promptly and efficiently, and to provide consistent analysis and documentation to the Ministry.
- (ii) The Supplier shall align Incident Management activities and priorities with those of the Ministry.
- (iii) The Supplier shall provide a plan to the Ministry indicating the measures that the Supplier shall take to improve the resolution time of Incidents by:
 - o Identifying opportunities to improve the number and percentage of Incidents that can be resolved remotely; and
 - o Identifying opportunities to increase the percentage of Incidents closed by the service desk or via self-service without requiring additional levels of support.



(c) Problem Management

- (i) The Supplier shall provide a plan to the Ministry identifying ways to reduce the number of recurring Problems.
- (ii) The Supplier shall include in the plan measures that the Supplier shall implement for overall quality improvement to reduce the number of Problems.

(d) Change Management

- (i) The Supplier shall increase the accuracy and completeness of the Supplier's assessment of the impact of a Change on timing, quality, cost, risks, resources and the impact on the provision of Products and Services or specific Customers.
- (ii) The Supplier shall minimize the number of outstanding Change Requests.
- (iii) The Supplier shall improve its overall Change Management process by:
 - o Reducing the number of disruptions to Services, defects and re-work caused by or in connection with inaccurate specifications, or a poor or incomplete impact assessment
 - o Reducing the number of Changes where remediation is invoked
 - o Reducing the number of failed Changes

(e) CMDB

- (i) The Supplier shall establish and maintain an accurate and complete CMDB to:
 - o Improve audit compliance
 - o Increase quality and accuracy of CI information
- (ii) The Supplier shall provide accurate and complete data and validation of all data required to be provided to the Ministry under the Agreement.

(f) Availability Management

- (i) The Supplier shall identify how techniques such as component failure impact analysis, fault tree analysis, service failure analysis, technical observation and expanded incident lifecycle can be used to improve Availability management.



- (g) Capacity Management:
 - (i) The Supplier shall identify improvement opportunities in the implementation of capacity-related changes.
 - (ii) The Supplier shall identify quality and operations improvements to:
 - o Decrease the amount of unused capacity expenditures
 - o Decrease the cost of unplanned capacity expenditures
 - o Increase the accuracy of capacity forecasts
 - o Decrease the number of inaccurate business forecast inputs
 - o Decrease the number of Incidents related to capacity/performance issues
 - o Decrease the number of Service Level metrics missed due to capacity
- (h) Service Continuity Management:
 - (i) The Supplier shall identify improvement opportunities for its Business Continuity Plans, disaster recovery and provide a risk assessment and mitigation as part of the Supplier's plan.
- (i) Knowledge Management/Training
 - (i) The Supplier shall assist in increasing the percentage of Incidents closed by the OPS service desk by providing proper knowledge records and appropriate technical resources.
 - (ii) The Supplier shall decrease the routing of tickets to the incorrect workgroup in order to decrease any outage time.
 - (iii) The Supplier shall make improvements to knowledge records and the Supplier's training plans in support of areas identified in Service Improvement Plans.
- (j) Security Management
 - (i) The Supplier shall monitor for security threats, and proactively implement security improvements, including mitigation, where required to comply with the provisions of the Agreement or the Ministry deems necessary.
 - (ii) The Supplier shall identify and implement improvement measures for managing the confidentiality, integrity and availability of the information and data relating to the provisions of Products and Services to the OPS.



- (iii) The Supplier shall conduct periodic audits, at minimum intervals of twelve months, of its own security practices to continually improve overall security functions and controls and provide the audit reports to the Ministry within thirty (30) days of the completion of the audit.
- (k) Financial Management:
 - (i) The Supplier shall on an annual basis or as directed by ITS identify improvements to the Supplier's billing process.
 - (ii) The Supplier shall on an annual basis or as directed by ITS identify improvements to increase the accuracy and efficiency of charges without increasing the cost of the Products or Services.
 - (iii) The Supplier shall on an annual basis or as directed by ITS perform audits of its own financial information to ensure accuracy and identify processes or procedural improvements that improve accuracy and completeness.

3.18 OPS Assets

The Supplier agrees that any and all OPS Assets to which the Supplier has any right to access or use at any time during the Term of the Agreement (including any Deliverables which are to be provided by the Supplier and that are to form part of the OPS Assets) shall be used by the Supplier only for the performance of its obligations under this Agreement, and to the extent that any of the OPS Assets are in possession of the Supplier, shall be returned or provided to the Ministry free of all encumbrances upon demand, and in any event, upon termination for any reason of the Agreement.

MENT FOR PERFORMANCE AND AUDIT

4.1 Rates

(a) Payment According to Rates

The Ministry shall, subject to the Supplier's compliance with the provisions of the Agreement, pay the Supplier for the Deliverables ordered and accepted by the Ministry at no more than the Rates established under the Agreement. The minimum discount specified in the Supplier's Bid shall be the minimum discount applicable during the Term, unless otherwise amended in accordance with the Agreement. The minimum discounts specified in the Bid that are applicable to Products (or components of Products) shall be applicable to new technology or replacement Products (or components of Products) as they are made available by the Supplier and ordered by the Ministry during the Term. The Rates for Products and Services specified in the Bid shall be the maximum Rates for the Products and Services, unless otherwise amended in accordance with the terms of the



Agreement, and such Rates shall also be applicable to Services related to the new technology or replacement Products (or components of Products).

(b) Rate Adjustment

(i) Products

The Rates for Products specified by the Supplier in its Bid shall be the maximum price for the Products during the Term, unless: (i) Section 4.10 (Market Competitive Pricing) applies, in which case the Supplier shall offer the applicable Product at the lower price for the remainder of the Term; or (ii) the Supplier offers a Product to any Customer at a lower Rate at any time during the Term, in which case the lower Rate shall become the maximum Rate for such Product for the remainder of the Term.

The minimum discounts for Products may be increased during the Term in accordance with the pricing methodology set out in the RFB. For certainty, any amendment to the minimum discount shall be to provide an increased discount to the Ministry and not to decrease the minimum discount.

(ii) Services

The price for Services specified by the Supplier in its Bid shall be the maximum price for the Services during the Term.

The minimum discounts for Services may be increased during the Term in accordance with the pricing methodology set out in the RFB. For certainty, any amendment to the minimum discount shall be to provide an increased discount to Customers and not to decrease the minimum discount.

(c) Overpayment

If the Ministry determines that the Ministry has paid the Supplier for Products or Services at prices and fees that are higher than the Rates, the amount of the overpayment shall be deemed to be an amount owing by the Supplier to the Ministry and, in addition to any other remedy available to the Ministry, the Ministry may, at its discretion, exercise its right of set-off under **Section 4.4** (Hold Back or Set Off) in respect of the overpayment.

4.2 Invoices

Each invoice issued by the Supplier for any Deliverables shall be: itemized; supported by all applicable substantiating documents; and detailed with respect to the Deliverables for which the invoice is provided with all applicable information. Harmonized Sales Tax (HST) shall be shown separately on each invoice. The Supplier shall provide complete, accurate invoices with all substantiating documentation. The Ministry may dispute invoices if insufficient billing details or insufficient substantiating documentation are provided by the Supplier and payments by the Ministry under such invoices are not due and owing until the Supplier has provided the necessary corrective action and the invoices are approved by the Ministry. The Supplier shall not invoice the Ministry for any Products or Services delivered in any previous OPS fiscal year and the Ministry shall not be responsible to pay

for any Products or Services received but not billed in any previous fiscal year. The only exception will be those charges for Products or Services due to Orders submitted between March 19th and March 31st may be billed in the following OPS fiscal year if so requested by the Ministry.

4.3 Default Billing and Payment Process

Unless the Parties expressly set out an alternative billing and payment process in a SOW, the following process shall govern:

- (a) the Supplier shall provide the Ministry with a monthly billing statement no later than ten (10) Business Days after the end of each month and that billing statement shall include at minimum: (i) the reference number assigned to the Agreement by the Ministry; (ii) a description of the Deliverables provided for the relevant month; and (iii) HST should be identified separately;
- (b) the Ministry will approve or reject the billing statement within fifteen (15) Business Days of receipt of the statement and in the event that the Ministry rejects the billing statement, it will so advise the Supplier promptly in writing and the Supplier shall provide additional information as required by the Ministry to substantiate the billing statement;
- (c) each billing statement is subject to the approval of the Ministry before any payment is released and payment will be made within sixty (60) calendar days of such approval except where the Ministry disputes its obligation to pay in which case payment will be deferred until the dispute is resolved; and
- (d) the Ministry may make payments under the Agreement by way of Direct Deposit and the Supplier shall accept and process any such payments in accordance with the Direct Deposit Protocols or a Procurement Card and the Supplier shall accept and process any such payments in accordance with Procurement Card Protocols;

and any clause set out above that is not expressly replaced in **Schedule 1** or a SOW with an alternative provision shall remain in full force and effect.

4.4 Hold Back or Set Off

Upon prior notice, the Ministry will be entitled to set-off any amounts that may be owing to the Ministry by the Supplier from time to time (including any amounts for which the Supplier may be required to compensate the Ministry under any provision of this Agreement and any amounts for which the Supplier is required to provide the Ministry or with any Service Credits) against any amounts owing to the Supplier by the Ministry pursuant to the Agreement. The Ministry will be entitled to deduct from the monthly payment, any amounts on account of Service Credits to which the Ministry is entitled, and which have accrued for the previous monthly period in accordance with the provisions of the Agreement. The Ministry may hold back payment of any amount owed to the Supplier by the Ministry if, in the opinion of the Ministry, acting reasonably, the Supplier has failed to comply with any



requirements of the Agreement.

4.5 No Expenses or Additional Charges

There shall be no other charges payable by the Ministry under the Agreement to the Supplier other than the Rates established under the Agreement.

4.6 Payment of Taxes and Duties

Unless otherwise stated, the Supplier shall pay all applicable taxes, including the HST and excise taxes incurred by or on the Supplier's behalf with respect to the Agreement.

This Section shall survive the termination or expiry of the Agreement.

4.7 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.

This Section shall survive the termination or expiry of the Agreement.

4.8 Interest on Overdue Amounts

If a payment is in arrears through no fault of the Supplier or the Supplier's Personnel, the interest charged by the Supplier, if any, for any late payment is subject to required approvals under the *Financial Administration Act*, R.S.O. 1990, CHAPTER F.12 and shall not exceed the pre-judgement interest rate established under Section 127(2) of the *Courts of Justices Act*, R.S.O. 1990, c. C43, in effect on the date that the payment went into arrears.

4.9 Document Retention and Audit

- (a) For seven (7) years after the Expiry Date or any date of termination of the Agreement, the Supplier shall maintain all necessary records to substantiate (i) all charges and payments under the Agreement and (ii) that the Deliverables were provided in accordance with the Agreement and with the Requirements of Law.
- (b) 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 (i) and (ii) above. The Ministry shall provide the Supplier with at least five (5) Business Days prior notice of its requirement for such audit. The Ministry may retain or appoint an internal or external auditor to conduct the audit. The audit rights set out in this Section shall not in any manner restrict the exercise of the authority of the Office of the Auditor General of Ontario or Corporate Security Branch of the Ministry to conduct an audit at any time. Other authorities of Ontario, pursuant to Requirements of Law, may exercise their responsibilities including the right to audit at any time. In each case, the Ministry or other authorities of Ontario shall be entitled, at the Supplier's cost, to obtain and to make copies of any records and to take extracts from the records for the purpose of carrying out the audit. The Supplier shall co-operate and shall cause the Supplier's Personnel to co-operate



with and extend all necessary support and information to facilitate the audit. The Supplier consents to the release of information including any confidential or proprietary information to the auditor or to any Person for purposes of verifying compliance by the Supplier with the Agreement including Orders.

- (c) Without limiting any other rights of the Ministry under the Agreement, the Ministry shall have the right to review or audit the contents of the Product Matrix at any time during the Term without notice. The Ministry may, at any time, review prices offered by the Supplier for Products and Services to ensure the Supplier's compliance with the Agreement and the Supplier shall provide any information requested by the Ministry in connection with such review. The Ministry may disclose pricing and other information of the Supplier whether or not confidential or proprietary, to third parties for purposes of audit, financing or to determine whether or not Ontario is receiving favorable pricing from the Supplier. The Ministry may engage third parties and use third party tools to verify compliance by the Supplier with the applicable Service request, Rental Agreement or Order and the Agreement.

This Section shall survive the termination or expiry of the Agreement.

4.10 Market Competitive Pricing

- (a) The Supplier represents and warrants to, and covenants with, the Ministry that for the Term of this Agreement, the Ministry shall receive Rates equal to the best prices available on the market for the Deliverables taking into account the status of the Ministry as a major customer providing a considerable volume of business to the Supplier (the "**Best Pricing**"). The Supplier shall review Best Pricing with the Ministry on an annual basis.
- (b) The Supplier shall comply with the pricing provisions in the Agreement.

4.11 Travel, Meal and Accommodation Expenses

The Ministry is not responsible or liable for any travel, meal or accommodation expenses incurred by the Supplier or the Supplier's Personnel in the provision of any Deliverables.

4.12 Product and Service Matrix

The Supplier shall supply a Product and Service Matrix at the times and in the form specified in **Schedule 1**.

FIDELITY AND FIPPA

5.1 Definitions

In the Agreement, the following terms shall have the following meanings:

"Confidential Information" of Ontario:

- (a) Includes, subject to paragraph (b) below of this definition, all or part of the following information: i) information of the OPS that is of a confidential nature, regardless of

Personal Computing Devices & Services

Page

39 of 100

RFB Agreement #14952



whether it is identified as confidential or not, and whether recorded or not, however fixed, stored, expressed or embodied, which comes to the knowledge, possession or control of the Supplier or the Supplier's Personnel, including OPS Data, all information to be transmitted, converted, recovered, stored or processed in relation to or on any network or computer system; (ii) any information of the OPS which is designated by Ontario from time to time, or which a reasonable person, having regard to the circumstances, would regard, as sensitive; (iii) information of third parties that the OPS is required to keep confidential; and (iv) Supplemental Confidential Information of Ontario.

(b) Does not include: (i) Confidential Information of the Supplier; (ii) information that has been published or that has otherwise entered the public domain without a breach of the Agreement or any agreement with respect to confidentiality between the Supplier and a third party; (iii) information that has been received in good faith by the Supplier from a third party having legitimate possession of the information disclosed and the right to make the disclosure; (iv) information that was already in the Supplier's possession or was known to the Supplier before its disclosure by Ontario, or before it was otherwise obtained by the Supplier in connection with the Agreement without any obligation of confidentiality attached; (v) information that has been disclosed by the Supplier with the prior written consent of the OPS without any obligation of confidentiality attached; and (vi) information that is independently developed by the Supplier without a breach of confidentiality under the Agreement or any other agreement.

"Confidential Information" of the Supplier:

Includes, subject to paragraph (b) below of this definition, all or any part of any information of the Supplier in connection with the Agreement which is of a confidential nature and which is designated by the Supplier in writing as confidential, any Supplemental Confidential Information of the Supplier and any information of third parties that the Supplier is required to keep confidential.

Does not include: (i) Confidential Information of Ontario; (ii) information that has been published or that has otherwise entered the public domain without a breach of the Agreement, or any agreement with respect to confidentiality between Ontario and a third party; (iii) information that has been received in good faith by Ontario from a third party having legitimate possession of the information disclosed and the right to make the disclosure; (iv) information that was already in the possession of the Ministry or a Client or was known to the Ministry or a Client before its disclosure by the Supplier, or before it was otherwise obtained by the Ministry or a Client in connection with the Agreement without any obligation of confidentiality attached; (v) information that has been disclosed by the Ministry or a Client with the prior written consent of the Supplier without any obligation of confidentiality attached; and (iv) information that is independently developed by the Ministry or a Client without a breach of confidentiality under the Agreement or any other agreement.

"Permitted Use" means the use by one Party (the using Party) of the Confidential Information of the other Party in connection with the using Party's rights, duties and obligations under the Agreement and where applicable, the rights, duties and obligations that continue after expiry or termination of the Agreement.



“Supplemental Confidential Information” means any information in writing or electronic form received from or belonging to a Party which is marked or identified as confidential or proprietary, or any other oral or visual information identified as confidential at the time of disclosure which is summarised in writing by a Party and provided to the other Party in written form promptly after the oral or visual disclosure.

5.2 Receiving Party’s Obligations

The Party receiving Confidential Information (the “Receiving Party”) undertakes and agrees with the Party disclosing the Confidential Information (the “Disclosing Party”):

- (a) To use the Disclosing Party’s Confidential Information only for the Permitted Use and not to copy or disclose the same to third parties except for the Permitted Use during the Term and where applicable, following termination of the Agreement or the applicable Order, as authorised by the Disclosing Party or as required by law. For clarity, the Supplier agrees that the Ministry is entitled to disclose any Confidential Information of the Supplier to members of the Executive Council, offices and officers of the Legislative Assembly or of the Ontario Legislature, and to their advisors, staff or personnel who have a need to know it and who are specifically authorized by the Ministry to receive such disclosure.
- (b) To maintain the secrecy of the Disclosing Party’s Confidential Information using the same means that it uses, or would reasonably be expected to use, to protect its own confidential information of a similar nature as the Disclosing Party’s Confidential Information;
- (c) Not to disclose any of the Disclosing Party’s Confidential Information to a third party (except as permitted under the Agreement) without the prior written consent of the Disclosing Party;
- (d) Not to disclose the Disclosing Party’s Confidential Information to the Receiving Party’s third-party consultants or vendors unless:
 - (i) the Receiving Party’s third-party consultants or vendors have a need to know the information for the purpose of providing services to the Receiving Party; and
 - (ii) the Receiving Party’s third party consultants or vendors have entered into a written agreement with the receiving Party pursuant to which the vendor or consultant has agreed in writing to maintain the confidentiality of and restrict the use of the Confidential Information pursuant to obligations at least as protective as those set out in this **Article 5**; and



- (e) To immediately notify and cause the Receiving Party's Personnel to immediately notify the Disclosing Party's Representative in the event of any breach or potential breach of the provisions of this **Article 5**.

5.3 Exception

The Parties agree that the Disclosing Party is entitled to disclose any Confidential Information that is required to be disclosed by law, or by an order of a court or tribunal, so long as the Receiving Party provides the Disclosing Party with reasonable prior notice of the requirement in order to permit the Disclosing Party to interpose an objection or seek an appropriate order to prevent or limit the disclosure.

5.4 FIPPA Records and Compliance

- (a) The Supplier acknowledges and agrees that FIPPA applies to and governs all Records and may require the disclosure of such Records to third parties.
- (b) The Supplier agrees:
 - (i) to keep Records secure;
 - (ii) 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;
 - (iii) 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;
 - (iv) not to directly or indirectly use, collect, disclose or destroy any Personal Information for any purposes that are not authorized by the Ministry;
 - (v) 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;
 - (vi) to restrict access to Personal Information to those of its directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors who have a need to know it for the purpose of providing the Deliverables and who have been specifically authorized by the Ministry to have such access for the purpose of providing the Deliverables;
 - (vii) to implement other specific security measures that in the discretion 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



- (viii) that any confidential information supplied to the Ministry may be disclosed by the Ministry or where it is obligated to do so under FIPPA, by an order of a court or tribunal or pursuant to a legal proceeding;

5.5 Prevalence over other Provisions

The provisions of **Section 5.04** shall prevail over any inconsistent provisions in the Agreement.

5.6 Confidentiality and Promotion Restrictions

Any publicity or publication related to the Agreement 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 make use of its association with the Ministry without the prior written consent of the Ministry. Without limiting the generality of this Section, the Supplier shall not, among other things, at any time directly or indirectly communicate with the media or the public in relation to the Agreement unless it has first obtained the express written authorization to do so from the Ministry.

5.7 Injunctive and Other Relief

The Supplier acknowledges that breach of any provisions of this Article 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.

5.8 Survival

This **Article 5** shall survive the termination or expiry of the Agreement.

INTELLECTUAL PROPERTY

6.1 OPS Assets

Subject to **Section 6.5**, the Parties acknowledge that as between Ontario and the Supplier, Ontario is the sole owner of all right, title and interest (including all Intellectual Property Rights) in and to all OPS Assets. To the extent, if any, that the Supplier is granted any right to access or use any of the OPS Assets pursuant to the Agreement, such right will be for the sole purpose of enabling the Supplier to perform any obligations under this Agreement and shall be subject to all provisions of the Agreement.

6.2 No Use of Ontario Government Insignia

The Supplier shall not use any trademark, official mark, insignia or logo 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.



6.3 Ownership of Newly Created Intellectual Property

The Ministry shall be the sole owner of any Newly Created Intellectual Property including, but not limited to, materials in written hard copy or electronic form such as any study, log, analysis, report, proposal, statement of work, record or other document provided or arising in connection with any consulting, professional or expert services provided by the Supplier or the Supplier's Personnel pursuant to this Agreement. For certainty and without limiting the generality of the preceding sentence, any Deliverables arising from or in connection with the Image Development, Management and Maintenance Services provided by the Supplier or the Supplier's Personnel (including any image management design, specifications, base image, image master, associated guides, patch management, test patch media, automated packages, all processes and packages developed as part of the Services and all build, design, installation and quality assurance documentation) shall be Newly Created Intellectual Property for which the Ministry shall be the sole owner. The Supplier irrevocably assigns to and in favour of the Ministry and the Ministry accepts every right, title and interest in and to all Newly Created Intellectual Property in the Deliverables, immediately following the creation thereof, for all time and irrevocably waives in favour of the Ministry all Moral Rights including rights of integrity and to all Newly Created Intellectual Property in the Deliverables, immediately following the creation thereof, for all time. To the extent that any of the Deliverables include, in whole or in part, the Supplier's Pre-existing Intellectual Property, the Supplier grants to the Ministry, including each Customer, a licence to use that Supplier's Pre-existing Intellectual Property in the manner contemplated in this Article, the total consideration for which shall be payment of the Rates to the Supplier by the Ministry.

6.4 Presumption Governing Ownership

The presumption governing the Agreement shall be that the Ministry shall be the sole owner of any Intellectual Property Rights in any form contained in any of the Newly Created Intellectual Property.

6.5 Ownership of Supplier's Pre-existing Intellectual Property

The Ministry agrees that the Intellectual Property Rights in the Supplier's Pre-Existing Intellectual Property shall, as between the Ministry and the Supplier, be owned by the Supplier and its licensors.

6.6 Supplier's Grant of Licence

(a) For those parts of the Deliverables that include any of the Supplier's Pre-existing Intellectual Property, other than the Software, the Supplier grants to the Ministry, including each Customer, a perpetual, world-wide, non-exclusive, irrevocable, transferable, royalty free, fully paid up right and licence: (a) to use, modify, reproduce and distribute, in any form, the Supplier's Pre-Existing Intellectual Property; and (b) to authorize other Persons, including agents, contractors or sub-contractors, to do any of the former on behalf of the Ministry or a Customer.



(b) For the Operating System software provided with a Product, the Supplier shall procure, as part of the fee paid for the Product, a perpetual, non-exclusive license to use the Operating System software under the terms of licence of the applicable vendor. All such licences for the Operating System software shall be for the benefit of the Ministry, including each Customer, and shall ensure that the Ministry, including each Customer, is licensed to use the Operating System software. During the Transition-in period, the Supplier shall provide the Ministry with a copy of the applicable vendor's licence terms for each type of Operating System software set out in Schedule 1 for review and approval by the Ministry. If the Ministry does not provide approval, the Ministry may choose not to submit an Order for any or all of the affected Product(s).

(c) If an Order includes the provision of Software, other than Operating System software, the Supplier shall install the Software on the Product(s), prior to delivery to the Customer, and grant to the Ministry, including each Customer, a non-exclusive, irrevocable, transferable, royalty-free, fully paid-up right and licence for an annual term, or three year term, as set out in the applicable Order, to: use and copy (on storage units or media for backup or other contingency purposes) the Software, together with all associated Documentation; and (ii) configure the Software in any manner in accordance with the requirements of the Ministry or a Customer in order to optimize the use of such Software, and to permit the exercise of any such rights by any other Person, including agents, advisors, consultants, contractors and subcontractors providing any products or services, from time to time, to the OPS. The Ministry's licence to use the Software includes the right to permit third parties to gain access to, use, operate, maintain and support, the Software.

(d) The rights of the Ministry pursuant to **Paragraph (c)** above are subject to the following conditions or restrictions:

- (i) the Ministry shall include on any copies of the Software all copyright notices, restricted rights legends, proprietary markings and the like substantially as they appear on the copy delivered by the Supplier to the Ministry;
- (ii) the Ministry shall not rent, lease, sell, sub-license or assign the Software, except as otherwise provided for in this Agreement;
- (iii) the Ministry shall not claim any property rights in the Software, including any related copyright, trademark, and patent rights therein, save and except for the right and licence specifically granted to the Ministry;
- (iv) the Ministry shall not copy, modify or merge copies of the Software except as provided for in this Agreement; and
- (v) the Ministry shall not reverse engineer, de-compile or disassemble the Software.

(e) Without limiting the generality of the foregoing, if the Ministry is licensed to use any parts of the Deliverables that are the Supplier's Pre-Existing Intellectual Property in



conjunction with any operating system, the licence shall include the right of the Ministry, including each Customer, to use such Supplier's Pre-Existing Intellectual Property in conjunction with any other operating system without any fee or other charge being due to the Supplier regardless of whether the operating system was in existence or not in existence at the time the Supplier's Pre-Existing Intellectual Property was originally licensed to the Ministry.

(f) The applicable standard licensing terms of the Software set out in **Paragraph (c)** above shall apply to the installation, configuration, reproduction and use of the Software by the Ministry, including each Customer, provided such terms and conditions are not inconsistent with the provisions of this Agreement and do not impose additional costs or liability upon the Ministry. To the extent such terms and conditions are inconsistent with the provisions of this Agreement or impose additional costs or liability upon the Ministry ("Inconsistent Provisions"), then the Ministry will not be bound by the Inconsistent Provisions, regardless of whether they are contained in or on any web site, click-wrap licence or agreement, browse wrap licence or agreement, web wrap licence or agreement, shrink-wrap licence or agreement, standard form licence or agreement or any other licence or agreement delivered with or contained in or on any Software or other Deliverables, or any other software licence or agreement, express or implied, and regardless of any notification to the contrary and regardless of any action taken or not taken by the Ministry to indicate its acceptance of the Inconsistent Provisions as required under that web site, click-wrap licence or agreement, browse wrap licence or agreement, web wrap licence or agreement, shrink-wrap licence or agreement, standard form licence or agreement or any licence or agreement delivered with or contained in or on any Software or other Deliverables, or any other software licence or agreement.

6.7 No Restrictive Material in Deliverables

The Supplier shall not incorporate into any Deliverables anything that would inhibit the use of the Deliverables as required or permitted under the Agreement or that would prevent the Ministry from entering into any contract with any contractor other than the Supplier for the modification, further development of or other use of the Deliverables as required or permitted under the Agreement.

6.8 Assurances Regarding Moral Rights

At the request of the Ministry, at any time or from time to time, the Supplier shall execute and agrees to cause the Supplier's Personnel to execute an irrevocable written waiver of any Moral Rights or other rights of integrity in the applicable Deliverable(s) in favour of the Ministry and which waiver may be invoked without restriction by any person authorized by the Ministry to use the Deliverables. The Supplier shall deliver such written waiver(s) to the Ministry within ten (10) Business Days of the receipt of the request from the Ministry.



6.9 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, 2022”

6.10 Further Assurances Regarding Copyright

At the request of the Ministry, at any time or from time to time, the Supplier shall execute and agrees to cause the Supplier’s Personnel to execute a written assignment of copyright in the applicable Deliverable(s) to the Ministry. The Supplier shall deliver such written assignment(s) to the Ministry within ten (10) Business Days of the receipt of the request from the Ministry. The Supplier shall assist the Ministry in preparing any Canadian copyright registration that the Ministry considers appropriate. The Supplier will obtain or execute any other document reasonably required by the Ministry to protect the Intellectual Property Rights of the Ministry.

6.11 Ministry May Prescribe Further Compliance

The Ministry reserves the right to prescribe the specific manner in which the Supplier shall perform its obligations relating to this Article.

6.12 Survival

This **Article 6**, including all rights and licenses granted to the Ministry prior to the termination or expiration of this Agreement, shall continue in full force and effect and shall survive the termination or expiry of the Agreement.

WARRANTY, LIMITATION OF LIABILITY AND INSURANCE

7.1 Intellectual Property Rights Indemnity

Despite **Section 7.5** (Limitation of Liability), the Supplier shall indemnify and hold harmless the Indemnified Parties from and against all Losses and Proceedings, by whomever made, sustained, incurred, brought or prosecuted, for any actual or possible infringement, inducement of infringement, misappropriation or violation of any Intellectual Property Rights or infringement of any Moral Rights arising out of or in connection with:

- (a) the Deliverables (including the provision, use or disposal of the Deliverables) or the performance of the Services;
- (b) the failure of the Supplier or the Supplier’s Personnel to perform the Supplier’s obligations pursuant to Moral Rights waivers; or
- (c) the exercise of any rights, licences or permissions under the Agreement by any Indemnified Parties or by any persons authorized in or under the Agreement to exercise any such rights, licences or permissions.

If anything in subsection (a) or (c) above or resulting from the failure described in



subsection (b) above is held, or is likely, in the reasonable opinion of the Ministry, to be held to constitute an infringement, inducement of infringement, misappropriation or violation of any Intellectual Property Rights or an infringement of any Moral Rights, or anything in subsection (a) or (c) above or resulting from the failure described in subsection (b) above is enjoined or threatened to be enjoined or held or threatened to be held improper by way of declaration, then without prejudice to any other rights and remedies as may be available to any of the Indemnified Parties under the Agreement, or at law or in equity, the Supplier shall also, at its expense, either:

- (i) obtain the rights, licences, permissions and waivers as are necessary so that such Deliverables, Services or exercise of rights, licences or permissions becomes non-infringing; or
- (ii) replace or modify the Deliverables or the Services so that the infringing portion no longer infringes (without any loss of quality or functionality) to the satisfaction of Ontario,

and shall make every reasonable effort to correct the situation with minimal effect upon the operations of the OPS. If neither of paragraphs (i) or (ii) above is reasonably available, the Ministry may terminate all or any part of the Agreement (including any or all Orders) and without prejudice to any other rights and remedies as may be available to any of the Indemnified Parties under the Agreement, or at law or in equity, the Supplier shall refund to the Ministry all amounts paid with respect to the Deliverables or anything supplied that infringes.

7.2 Confidentiality Indemnity

Despite **Section 7.5** (Limitation of Liability), the Supplier shall indemnify and hold harmless the Indemnified Parties from and against all Losses and Proceedings, by whomever made, sustained, incurred, brought or prosecuted arising out of or in connection with a breach by the Supplier of its obligations under **Article 5** (Confidentiality and FIPPA).

7.3 [Intentionally Left Blank]

7.4 General Indemnity

In addition to **Section 7.1** (Intellectual Property Rights Indemnity) and **Section 7.2** (Confidentiality Indemnity) but subject to **Section 7.5** (Limitation of Liability), the Supplier shall indemnify and hold harmless the Indemnified Parties from and against all Losses and Proceedings, by whomever made, sustained, incurred, brought or prosecuted, arising out of, or in connection with anything done or omitted to be done by the Supplier, or the Supplier's Personnel, in the course of the performance of the Supplier's obligations under the Agreement or otherwise in connection with the Agreement.

7.5 Limitation of Liability

The provisions of this Section shall apply regardless of the basis on which one Party is

entitled to claim damages from the other Party, including but not limited to: breach of contract or tort, including but not limited to, negligence.

Either Party shall be entitled to seek relief by way of an order (including an order for injunctive relief or specific performance) or declaration.

- (a) Circumstances may arise where Ontario is entitled to claim damages from the Supplier for the heads of claim listed below in clauses (i) to (vii) of this Section.
 - (i) All damages arising from any Losses and Proceedings in connection with Intellectual Property Rights infringement and a breach of the Representations and Warranties provided by the Supplier in **Section 10.1(m), (n), (o) and (p)**;
 - (ii) All damages arising from any Losses and Proceedings in connection with third party bodily injury (including death), personal injury, property damage;
 - (iii) All damages arising from any Losses and Proceedings in connection with breach of confidentiality as set out in **Article 5** (Confidentiality and FIPPA);
 - (iv) All amounts paid to the Supplier under the Agreement for Deliverables for which the Supplier is in default or the use or operation of which is impaired or otherwise affected by the default;
 - (v) Reasonable costs of the OPS to obtain any products or services in replacement of any Deliverables for which the Supplier is in default or the use or operation of which is impaired or otherwise affected by the default;
 - (vi) Reasonable costs of the OPS to continue operations until any replacement products or services required to be provided under clause (v) above are available for use;
 - (vii) All damages arising from any default or breach of the Agreement by the Supplier not covered by clauses (i) to (vi) above of this Section or as a result of any other cause of action that may be asserted by Ontario against the Supplier.
- (b) Circumstances may arise where the Supplier is entitled to claim damages from Ontario. In each such instance, if Ontario is found liable, Ontario will be responsible only for direct damages arising from any default or breach of the Agreement subject to the provisions of **Section 7.5(c)(ii)** below.
- (c) Limitation of Liability

Notwithstanding any other provision of this Section, the amount of damages for



which either Party is liable to the other Party for any claim arising out of or in connection with the Agreement shall not exceed:

- (i) in the case of a claim by Ontario against the Supplier, other than a claim referred to in clauses (i) and (iii) of **Section 7.5(a)** above, a total aggregate of fifty million dollars (**\$50,000,000.00**) over the Term of the Agreement or thereafter in connection with claims under the Agreement. Subject to the aggregate limit of liability set out above, there shall be no limit on the number of claims that Ontario may bring against the Supplier; and
- (ii) in the case of any claim brought by the Supplier (on its own behalf or on behalf of the Supplier's Personnel including any Subcontractor or supplier) against Ontario, a total aggregate of fifty million dollars (**\$50,000,000.00**) over the Term of the Agreement or thereafter in connection with claims under the Agreement. Subject to the aggregate limit of liability set out above, there shall be no limit on the number of claims that the Supplier may bring on its own behalf or on behalf of the Supplier's Personnel including any Subcontractor or supplier against Ontario.

For greater certainty,

- (I) there shall be no limit on the amount of damages for which the Supplier may be liable to Ontario under clauses (i) and (iii) of **Section 7.5(a)** above;
- (II) the limits of liability set out herein are the maximum amounts that Ontario is entitled to claim against the Supplier and the Supplier's Personnel collectively, and the maximum amounts that the Supplier is entitled to claim on its own behalf and on behalf of all of the Supplier's Personnel collectively from Ontario and any Customer that obtains Deliverables pursuant to the Agreement; and
- (III) Neither Party is liable to the other for any consequential, indirect, incidental, or special damages, including lost profits or lost opportunity costs arising out of or in connection with the Agreement, but this exclusion shall not apply to damages arising in connection with all Losses and Proceedings referred to in clauses (i), (ii) and (iii) above of this **Section 7.5(a)**.

7.6 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:

Personal Computing Devices & Services

Page

50 of 100

RFB Agreement #14952



- (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 five million dollars (\$5,000,000.00) per occurrence, not less than five million dollars (\$5,000,000.00) 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 Agreement;
 - contractual liability coverage;
 - cross-liability clause;
 - employers liability coverage (or compliance with the paragraph below entitled "Proof of W.S.I.A. Coverage" is required);
 - 30 day written notice of cancellation, termination or material change;
 - tenants legal liability coverage (if applicable and with applicable sub-limits);
 - non-owned automobile coverage with blanket contractual coverage for hired automobiles.
- (b) errors and omissions liability insurance, insuring liability for errors and omissions in the performance or failure to perform the Services contemplated in the Agreement, in the amount of not less than five million dollars (\$5,000,000.00) per claim and in the annual aggregate.

7.7 Proof of Insurance

The Supplier shall provide the Ministry with proof of the insurance required by the Agreement in the form of valid certificates of insurance that reference the Agreement and confirm the required coverage, before the Effective Date of the Agreement by the Ministry, and renewal replacements on or before the expiry of any such insurance. A copy of each insurance policy shall be provided 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 insureds with respect to any liability arising in the course of performance of the Subcontractor's obligations under the subcontract for the provision of the Deliverables.

7.8 Proof of W.S.I.A. Coverage

If the Supplier is subject to the Workplace Safety and Insurance, incomplete Act ("WSIA"),



it shall submit a valid clearance certificate of WSIA coverage to the Ministry prior to the Effective Date 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 and 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 Agreement 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 Agreement together with all costs incurred by the Ministry in connection therewith.

7.9 Supplier's 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 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 Agreement, Agreement, 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 Proceeding and any related settlement negotiations. If the Ministry conducts the defence of any such Proceeding, the Supplier agrees to co-operate with and assist the Ministry to the fullest extent possible in the Proceeding and any related settlement negotiations.

7.10 Liabilities of the Supplier

The liabilities and obligations of the Supplier under the Agreement shall not be restricted to any amounts set forth in **Section 7.6** and such insurance amounts provided for therein shall not be construed so as to relieve or limit the liability of the Supplier in excess of such coverage and shall not preclude the Indemnified Parties from taking such other actions as are available under any provision of the Agreement or otherwise at law or in equity.

7.11 Survival

This **Article 7** shall survive the termination or expiry of the Agreement.

TERMINATION, EXPIRY AND EXTENSION

8.1 Immediate Termination of Agreement and Orders

The following events constitute material and substantive breach of the Agreement and are cause for termination. The Ministry may immediately terminate the Agreement, in whole or in part, including any or all Orders upon giving notice to the Supplier where:

- (a) the Supplier is adjudged bankrupt, 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 provision in **Article 5** (Confidentiality and FIPPA) of the Agreement;
- (c) the Supplier breaches the Conflict of Interest Section in **Article 2** (Nature of Relationship Between Ministry and Supplier) of the Agreement;
- (d) the Supplier, prior to or after executing the Agreement, makes a misrepresentation or omission or provides inaccurate or incomplete information to the Ministry;
- (e) if any of the representations and warranties of the Supplier as set out in the Agreement are inaccurate or untrue;
- (f) the Supplier undergoes a change in control which adversely affects the Supplier's ability to satisfy some or all of its obligations and covenants under the Agreement;
- (g) the Supplier subcontracts or assigns part or all of the Deliverables or assigns the Agreement without first obtaining the written approval of the Ministry;
- (h) the Supplier has failed to meet five or more Performance Measures within any one month or has repeatedly failed to meet the same Performance Measure for five consecutive months; or
- (i) the Supplier's acts or omissions constitute a failure to perform any obligation or a default of any provision of the Agreement which failure or default does not come within the provisions of clauses (a) – (h) of this **Section 8.1**;

and the above rights of termination are in addition to all other rights of termination available at law, or events of termination by operation of law.

8.2 Dispute Resolution by Rectification Notice

Notwithstanding **Section 8.1**, where the Supplier fails to comply with any of its obligations under the Agreement, the Ministry may issue a rectification notice to the Supplier setting out the manner and time frame for rectification. Within seven (7) Business Days of receipt of that notice, the Supplier shall either: (a) comply with that rectification notice; or (b) provide a rectification plan satisfactory to the Ministry. If the Supplier fails to either comply with that rectification notice or provide a satisfactory rectification plan, the Ministry may



immediately terminate the Agreement, in whole or in part, including any or all Orders. Where the Supplier has been given a prior rectification notice, the second subsequent non-compliance by the Supplier with the same obligation shall allow the Ministry in its sole discretion to immediately terminate the Agreement, in whole or in part, including any or all Orders. Where the Supplier has been given two (2) or in the sole discretion of the Ministry, more notices under this **Section 8.2**, the Ministry, upon giving a third or subsequent such notice, whether such notices relate to the same default or to separate occurrences may, at its option, elect for the notice of termination to be effective immediately or at such other time as the Ministry may, in its discretion, specify.

8.3 Termination on Notice

The Ministry reserves the right to terminate the Agreement, in whole or in part, including any or all Orders, without cause, and without any cost, penalty, obligation or liability upon thirty (30) days prior written notice to the Supplier.

8.4 Termination for Non-Appropriation

If the Agreement or any Order extends into a Fiscal Year subsequent to its Effective Date, continuation of the Agreement or Order is conditional upon an appropriation of moneys by the Legislature of Ontario (the "Legislature") sufficient to satisfy payments due under the Agreement or Order. In the event that such moneys are not available as a result of: (i) non-appropriation by the Legislature for the Fiscal Year in which payment becomes due; and (ii) the payment being neither charged nor chargeable to an appropriation of the Legislature for a previous Fiscal Year, the Ministry may terminate the Agreement, including any or all Orders, upon giving notice to the Supplier. Termination shall become effective on the date of the beginning of the first Fiscal Year for which funds have not been appropriated.

8.5 Supplier's Obligations on Termination (including Expiry) of an Order

On termination (including expiry) of an Order, the Supplier shall, in addition to its other obligations under the Order and the Agreement and at law:

- (a) at the request of the Ministry, provide the Ministry with any completed or partially completed Deliverables under the Order;
- (b) provide the Ministry with a report detailing: (i) the current state of the provision of Deliverables by the Supplier at the date of termination of the Order; and (ii) any other information requested by the Ministry pertaining to the provision of the Deliverables;
- (c) as may be required by the Ministry, either (i) immediately refund any pre-paid amounts paid by the Ministry prorated to the effective date of termination or, (ii) continue to provide any pre-paid warranty and other pre-paid Services in accordance with the provisions of the Agreement for such period as determined by



the Ministry in which case, all applicable provisions of the Agreement shall survive and continue to apply in accordance with the Agreement;

- (d) execute such documentation as may be required by the Ministry to give effect to the termination of the Order;
- (e) comply with any other instructions provided by the Ministry, including but not limited to instructions for facilitating the transfer of its obligations to another Person; and
- (f) comply with all obligations in connection with Warranty and other applicable Services that survive termination of the Order.

This Section shall survive the termination or expiry of the Agreement.

8.6 Supplier's Obligation Upon Termination (including Expiry) of the Agreement

Commencing upon any notice of termination of the Agreement or within one month of the Expiry Date, the Supplier shall, upon request by the Ministry, provide the Transition Out Services. In addition to its other obligations under the Agreement and at law, on termination (including expiry) of the Agreement, the Supplier shall:

- (a) at the request of the Ministry, provide the Ministry with any completed or partially completed Deliverables under the Agreement;
- (b) provide the Ministry with a report detailing: (i) the current state of the provision of Deliverables by the Supplier under each Order at the date of termination; and (ii) any other information requested by the Ministry pertaining to the provision of the Deliverables and performance of the Agreement;
- (c) at the request of the Ministry, immediately refund any pre-paid amounts paid by the Ministry prorated to the effective date of termination;
- (d) execute such documentation as may be required by the Ministry to give effect to the termination of the Agreement and each Order;
- (e) comply with any other instructions provided by the Ministry, including but not limited to instructions for facilitating the transfer of its obligations to another Person; and
- (f) comply with all obligations in connection with Warranty and other applicable Services that survive termination of the Agreement for the duration of the outstanding warranty period.

This Section shall survive the termination or expiry of the Agreement.



8.7 Payment Upon Termination

On termination of an Order or the Agreement, the Ministry shall only be responsible for the payment of the Deliverables provided in accordance with the Order or Agreement up to and including the effective date of any termination. Termination shall not relieve the Supplier of its warranties and other responsibilities relating to the Deliverables performed or money paid. In addition to its other rights of hold back or set off, the Ministry may hold back payment or set off against any payments owed if the Supplier fails to comply with its obligations on termination.

8.8 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 Agreement, at law or in equity. The termination rights under this **Article 8** may be exercised (a) by the Ministry for the purposes of terminating one or more Orders; or (b) by the Ministry for the purposes of terminating the Agreement, which shall have the effect of terminating any one or more Orders as determined by the Ministry.

8.9 Expiry and Extension of Agreement and Survival of Orders

- (a) Agreement: The Agreement shall expire on the original Expiry Date, unless the Ministry exercises its option to extend the Agreement by up to two (2) extensions of up to one (1) year each, such extension to be upon the same terms, conditions and covenants contained in the Agreement, including the Rates unless the Supplier offers lower Rates for the Products and Services. The option to renew may be exercised by the Ministry based on the lower Rates for Products and Services offered by the Supplier in year three (3) of the Term for the first extension and year four (4) for the second extension. The option shall be exercisable by the Ministry giving written notice to the Supplier not less than thirty (30) days prior to the original Expiry Date or end of the first extension. The notice shall set forth the precise duration of the extension.
- (b) Orders: The term of any Order issued or executed prior to the end of the Term of the Agreement may continue beyond the Term of the Agreement, for the term specified in the particular Order. For certainty, if any Warranty Service for a Product continues beyond the Term of the Agreement, the Order under which the Warranty Service was ordered shall be deemed to extend beyond the Term of the Agreement for the term of the Warranty Service. The provisions of the Agreement shall survive the expiry of the Term of the Agreement for the purposes of any such Orders. Any provision of the Agreement that survives the expiry or termination of the Agreement shall continue to apply and survive the expiry or termination of each Order.

ARTICLE 9 – NON-OPS ENTITIES

9.1 Non-OPS Entity Agreements

Personal Computing Devices & Services

56 of 100

RFB Agreement #14952

Page



The Ministry is entering into this Agreement solely for the benefit of the OPS. Any Person that is not part of the OPS (including any Non-OPS Entities) that wish to procure any products or services that are the same as or similar to the Deliverables will be required to enter into their own agreements with the Supplier. The form of that separate agreement between a Non-OPS Entity and the Supplier is solely at the discretion of the Supplier and Non-OPS Entity. The Ministry makes no representation or warranty that any other Person (including any Non-OPS Entity) will enter into any such agreement, and the Ministry will have no obligation or liability to the Supplier under any such agreement.

9.2 Ontario Not Liable for Supplier's Relationship with Non-OPS Entities

The Supplier acknowledges and agrees as follows:

- (a) Where the Supplier receives a request from any Non-OPS Entity to supply products and/or services that are the same or similar as the Deliverables, the Supplier shall use commercially reasonable efforts to negotiate the Supplier/Non-OPS Agreement based on the same or similar terms (including price and the length of the term) as this Agreement;
- (b) Ontario does not endorse, recommend or approve the suitability of: (i) any Non-OPS Entity as a customer of the Supplier; and (ii) the terms and conditions of this Agreement (or any Order under this Agreement) as a basis for, in whole or in part, any Non-OPS Entity Agreement or any other resulting or related relationships or agreements between the Supplier and any Non-OPS Entity. 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;
- (c) Ontario makes no representation, assurance, warranty, or guarantee: (i) that any Non-OPS Entities 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 Non-OPS Entities;
- (d) Ontario will not, in respect of any Supplier/Non-OPS Agreement or any resulting or related relationships or agreements between the Supplier and any Non-OPS Entity: (i) be or be deemed to be a party to, or a guarantor of any obligations or liability of any party under, any Supplier/Non-OPS 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 Non-OPS Entity, and nothing in any agreement between the Supplier and any Non-OPS Entity shall have the effect of imposing or resulting in the imposition of any costs, obligations, liabilities or covenants on Ontario;
- (e) The Supplier shall not, in relation to or under any Supplier/Non-OPS Entity Agreement or under any resulting or related relationships or agreements between



the Supplier and any Non-OPS Entity , bring any Proceedings against Ontario or any of its Personnel or any Indemnified Party as a result of: (i) any act, error or omission of the parties to the Supplier/Non-OPS Entity Agreement; or (ii) any act, error or omission of Ontario or any of its Personnel;

- (f) The Supplier is solely responsible for its own contract administration with each Non-OPS Entity and shall not direct any issues that may arise with any Non-OPS Entity to Ontario;
- (g) For the purposes of any Supplier/Non-OPS Entity Agreement, the Supplier acknowledges that Non-OPS Entities have no power or authority to bind Ontario or to assume or create any obligation or responsibility, express or implied, on behalf of Ontario; and,
- (h) Despite any provision in this Agreement to the contrary, the Supplier shall be responsible for any and all Losses suffered by any Indemnified Party arising out of or in connection with any Supplier/Non-OPS Entity Agreement or any breach by the Supplier of this Article entitled "Non-OPS Entities".

9.3 Disclosure of Information

- (a) The Ministry may, from time to time and at its sole discretion, inform any or all Non-OPS Entities of: (i) the Supplier's status as a Supplier of record; (ii) the Products and Services of the Supplier that are available to Ontario under this Agreement; and (iii) the Supplier's obligation under this **Article 9**. In addition, the Ministry and any OPS Entity may disclose, and the Supplier consents to the disclosure, to Non-OPS Entities of this Agreement or any part of it (including pricing), as amended. For the purposes of the disclosure under this Section, the Supplier agrees that neither this Agreement or any part of it is considered Confidential Information of the Supplier and no notice to or further consent of the Supplier is required prior to disclosure to any Non-OPS Entity.
- (b) If the Supplier is requested by a Non-OPS Entity to do so, the Supplier shall provide to that Non-OPS Entity the following documents and information: (i) the RFB and other related procurement documents that were publicly issued; and (ii) the Supplier's Bid in response to the RFB, but only to the extent that it does not include Confidential Information of Ontario.
- (c) The Supplier agrees to provide to the Ministry, at the Ministry's request, data and information regarding Non-OPS Entity access to and acquisition of products and services that are the same as or similar to the Deliverables set out under this Agreement from the Supplier pursuant to a Supplier/Non-OPS Entity Agreement.
- (d) The Supplier consents to the Ministry receiving data and information from a Non-OPS Entity of such Non-OPS Entity's request for access to and acquisition of products and services from the Supplier.

ARTICLE 10 - REPRESENTATIONS AND WARRANTIES

The Supplier makes the following representations, warranties and covenants as of the commencement of the Term and continuing thereafter and acknowledges that Ontario is relying upon such representations, warranties and covenants.

10.1 Representations and Warranties of the Supplier

- (a) It is a corporation duly incorporated or a partnership or sole proprietorship duly registered and validly existing under the laws of its jurisdiction of incorporation or registration and has all necessary corporate power and authority to carry on its business
- (b) It has full power, legal right and authority to authorize the creation, execution, delivery and performance of the Agreement. It has or will, prior to the commencement of the Term, obtain, maintain, and, as applicable, renew all necessary permits, licenses and approvals necessary in connection with the Agreement.
- (c) It shall include in any agreements made with the Supplier's Personnel (including the Supplier's Subcontractors) such terms and conditions that are reasonably necessary to cause such Personnel to comply with any obligations under this Agreement applicable to such Personnel, and the Ministry will not be a party to such agreements or be bound by any obligations to the Supplier's Personnel under such agreements;
- (d) The Supplier is a resident of Canada within the meaning of the Income Tax Act (Canada). If the Supplier is not a resident of Canada within the meaning of the Income Tax Act (Canada), the Supplier shall clearly indicate in its invoices that it is not a resident of Canada within the meaning of the Income Tax Act (Canada) and that it may be subject to withholding tax.
- (e) There are no Proceedings that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets, or the condition, financial or otherwise, of the Supplier or in any impairment of the Supplier's ability to perform its obligations and covenants under the Agreement.
- (f) All statements, promises and representations set out in the Bid or in the Agreement are accurate and complete and the Supplier is not aware of any facts or circumstances that would render any such statement, promise or representation inaccurate or incomplete.
- (g) The Supplier will be responsible, accountable and liable for all acts and omissions of the Supplier's Personnel in connection with the Agreement as if such acts and omissions were those of the Supplier.



- (h) The Supplier hereby represents and warrants that it shall fulfil its obligations and covenants and that the Deliverables shall be provided fully, diligently and expeditiously in a professional, competent, safe, prudent and timely manner by persons qualified and skilled in their occupations and furthermore that all Deliverables will be provided in accordance with: (a) the Agreement; (b) Requirements of Law; and (c) Industry Standards provided the Industry Standards are not inconsistent with (a) and (b). If any of the Deliverables, in the opinion of the Ministry, are inadequately provided or require corrections, the Supplier shall forthwith make the necessary corrections at its own expense as specified by the Ministry in a rectification notice. The Supplier shall ensure that at all times there shall be a sufficient number of persons (including all relevant grades of supervisory staff) with the requisite level of skill and experience engaged in the performance of the obligations and provision of Deliverables in accordance with the Agreement.
- (i) The Supplier shall ensure that any of the Supplier's Personnel who are granted access to OPS premises or OPS Assets, including any OPS systems, databases or networks will not exercise such access for any purpose other than and only to the extent necessary for compliance by the Supplier with its obligations under the Agreement. Further, the Supplier shall ensure that the Supplier and the Supplier's Personnel, at their cost, comply with all security requirements, including any identification that the OPS may stipulate during the Term of the Agreement.
- (j) The Supplier or the Supplier's Personnel have not taken and will not take any action in collusion or collaboration with any Person including any Person that has submitted or participated in submitting a Bid in response to the RFB that could be reasonably expected to result in any increase in the price payable by the Ministry or a Customer for any Deliverables or that would otherwise be reasonably expected to adversely affect the rights or interests of the Indemnified Parties in connection with the Agreement.
- (k) The Supplier shall not disrupt or interfere with the OPS' day-to-day operations and business in the course of providing the Deliverables under the Agreement. The Supplier shall develop and implement a Business Continuity Plan that includes such contingency measures and disaster recovery plans as are necessary to provide the Deliverables without delay, disruption or deterioration in the performance of its obligations in connection with the Agreement. The Business Continuity Plan shall include the immediate implementation of measures acceptable to the Ministry to remedy any breach, failure or delay with respect to any Deliverables to be provided by or on behalf of the Supplier hereunder, and where necessary, provide additional or alternative Products or Services that meet or exceed the requirements set out in the Agreement but at no additional cost and without adversely impacting the rights, licences and privileges of the Ministry and Customers under the Agreement.



- (l) The Supplier agrees to warrant and assume responsibility for each Product that it sells or rents to the Customer under this Agreement. The Supplier is responsible for the warranty and maintenance of all Products furnished through this Agreement, including providing warranty and maintenance call numbers; accept, process, and respond to those calls; and be liable for and pay for all warranty and maintenance activities. In general, the Supplier warrants that:
1. Each Product shall conform to the specific technical information published in the Manufacturer's product manuals or data sheets.
 2. Each Product will operate according to and meet the relevant Specifications and the requirements of the Agreement, including the mandatory specifications provided in the RFB.
 3. Each Product has been properly designed, manufactured and suitable for its intended use.
 4. Each Product is free of defects in material and workmanship, problems or failures.
 5. Warranty documents for Products shall be delivered to the Ministry with the Products. If the warranty for any Product is breached, the Supplier will remedy such warranty breach in accordance with the applicable Warranty Service ordered for or included with that Product.
- (m) The Supplier has obtained or will obtain all necessary rights and authority to convey good and marketable title and to grant any rights, licences and permissions (including rights, licences and permissions to all the Supplier's Pre-existing Intellectual Property) as specified in the Agreement, free and clear of any encumbrances. The signing of the Agreement by the Supplier, the provision of the Deliverables and the use of the Deliverable as contemplated in the RFB, the Agreement and Order shall not infringe or induce the infringement or misappropriation of the Intellectual Property Rights of any third party nor breach, infringe, violate or contravene any third party rights or licences in the course of the performance by the Supplier of any of its covenants and obligations under the Agreement. The Supplier further represents and warrants that it has all of the necessary rights and permission to license directly to the Ministry, including Customers, the Supplier's Pre-existing Intellectual Property on the terms set out in the Agreement, and that it has obtained assurances with respect to all the Supplier's Pre-existing Intellectual Property that any Moral Rights including rights of integrity associated therewith have been waived.



- (n) The Supplier has not entered into, or is bound by, any arrangement which would in any way restrict the Ministry's or a Customer's ability to exercise the Intellectual Property Rights, licences or permissions granted under the Agreement.
- (o) All Software and software media when provided to the Ministry or a Customer as part of any Deliverables, or when used by the Supplier in the provision of any Services, shall be free of any Malicious Code or defect which would limit or restrict the use of any Deliverable by the Ministry or a Customer, impair the quality and timely delivery of any Deliverable by the Supplier or restrict or prevent the Ministry or a Customer from obtaining replacement Deliverables from any Person.
- (p) All the features and functions of the Deliverables provided hereunder shall be maintained and supported to the Specifications set out in the Agreement, during the Warranty Period.
- (q) The Supplier shall make available for purchase or rental by the Ministry and Customers the most current version of a Product (including the most recent releases and applicable service packs of any software included in the definition of Hardware) generally available at the time of the purchase based on the Rates established under the Agreement.
- (r) The Documentation supplied with the Products shall contain a complete and accurate description thereof, and is a complete and accurate guide to the operation of the Products, and shall be updated from time to time during the Warranty Period and during the period the Ministry or Customer is obtaining maintenance and support Services, so as to remain complete and accurate and reflect all changes made to the Products during that period.
- (s) Notwithstanding any agreement or arrangement between the Supplier and any third party prohibiting or limiting the Supplier from providing the representations and warranties and indemnities set out in the Agreement with respect to the Deliverables provided by the Supplier to the OPS, the Supplier shall continue to be bound by all of the representations and warranties and indemnities set out in the Agreement.
- (t) The Supplier will perform its covenants and obligations under the Agreement in accordance with all Requirements of Law, including the *Freedom of Information and Protection of Privacy Act* and the *Ontarians with Disabilities Act, 2001*.

This Section shall survive the termination or expiry of the Agreement.

10.2 Specific Warranties

The following warranties apply to the Deliverables (including any Software and technology included in the Deliverables), that contain any open source software or technology



licensed under an open source licence:

- (i) That the applicable items of open source software or technology and the applicable open source licences are fully disclosed to the Ministry in a list to be provided to the Ministry; but in any event, any open source software provided as part of the Deliverables shall be at the Supplier's risk.
- (ii) That any use by Ontario of the open source components of the Deliverables will not adversely impact the rights and interests in Ontario's proprietary technology (for example, loss of ownership rights due to the viral nature of the open source software license requirements);
- (iii) That the use of any open source software provided with, or embedded in, the Deliverables by the Supplier shall not create, or purport to create, obligations on Ontario to grant license or usage rights with respect to any source code or object code belonging to Ontario outside of this Agreement;
- (iv) That any open source software used in the Deliverables or in the provision of any of the Services will not subject Ontario to all or part of the license obligations relating to any open source software;
- (v) That the Supplier has or will have the right to license, sub-license, distribute, support and issue any new releases of any open source software or other technology that is a component of, or embedded within the Deliverables or used by the Supplier or to provide the Services;
- (vi) Where the Deliverables include any open source software, a warranty that the scope of the licence(s) for the identified open source software or technology is no less than the scope of the license for the Deliverable being delivered to Ontario, in which the open source software or technology (or any components thereof) have been incorporated;
- (viii) Where the Deliverables include any open source software, a warranty that there are no additional or more onerous restrictions included in the licence(s) for the open source software than the restrictions included in the license for any remaining components of the Deliverable in which the open source software (or any components thereof) have been incorporated.

This Section shall survive the termination or expiry of the Agreement.

VERNANCE

11.1 Governance Structure

The Ministry intends, as at the Effective Date, to establish, but is not obligated under the Agreement to establish, a governance structure comprised of the following:

1. Desktop Supplier Management Office constituted by representatives of the Ministry from within ITS;

Personal Computing Devices & Services

Page

63 of 100

RFB Agreement #14952



2. Governance Committee; and
3. committees internal to the OPS to address issues related to, among other things: architecture, security, operations and/or transition, service level metrics and dispute resolution.

The Supplier agrees that, if the Ministry chooses not to implement a governance structure or not to establish the Desktop Supplier Management Office or any committee or committees, the Ministry's decision shall not reduce, affect or otherwise act as a waiver by the Ministry of any of the obligations of the Supplier under the Agreement, nor shall it be considered a breach by the Ministry of the Agreement.

11.2 Business and Management Processes and Risk Mitigation Strategies

The Supplier agrees that the Ministry has the sole right to determine, establish and require the implementation of all business and management processes and risk mitigation strategies applicable to or related to the Agreement. These processes and strategies include processes and strategies designed to ensure the supply of Deliverables to Customers in accordance with the terms of the Agreement.

11.3 Desktop Supplier Management Office

The Ministry, in its sole discretion, may at any time establish an internal Desktop Supplier Management Office to, among other things: (a) manage Supplier performance; (b) administer the Agreement; and (c) provide support to the Governance Committee and such other committees as it, in its sole discretion, determines necessary.

11.4 Committees

(a) Establishment of Committees

The Ministry, in its sole discretion, may at any time and from time to time establish a committee or committees in relation to any matter under or in relation to the Agreement. These committees may or may not include representatives of the Supplier and third parties. All committees will be chaired by a Chair appointed by the Ministry. The committees may include the Governance Committee.

The Governance Committee will provide executive direction, approvals and oversight. The Governance Committee will also review issues relating to scope such as the introduction of new Services and new Products. The Governance Committee will be chaired by the Corporate Chief Information Officer or his or her designate and at the discretion of the Chair, the participants may include:

1. selected executive representatives from the business/program areas of the OPS;
2. an ex-officio representative of the industry or applicable Manufacturer;
3. not more than two ex-officio representatives of the Supplier under the Agreement;

4. financial, technical or legal representatives, as required; and
5. such other participants as the Chair or designate may determine necessary or desirable.

(b) Committee Processes and Procedures

The Chair of a committee may, at its discretion, vary the representation of participants at any time (including the number of Supplier representatives and the seniority and experience of these representatives), determine frequency of meetings, quorum, agendas and such administrative matters as may arise.

(c) Supplier Participation in Committees

(i) Assignment of Supplier Representatives

The Supplier will assign representative(s) to participate at the required level in all committees where Supplier representation is requested by the Ministry. The Supplier shall supply representatives to attend and participate at committee meetings at no charge to the Ministry. The Supplier's representative must have the appropriate knowledge, skills and expertise necessary to participate in and to meet the objectives of the committee and the authority to bind the Supplier to any decision or commitment made by that representative.

(ii) Confidentiality

Without limiting the provisions set out in **Article 5** (Confidentiality and FIPPA), the Supplier agrees that the Supplier and its representative(s) will maintain as confidential all matters and information disclosed arising out of or in connection with the Supplier's participation in a committee.

(iii) Ex-Officio

The Supplier's representative(s) on a committee shall participate in the capacity of an ex-officio member. For certainty, an ex-officio member will have no voting powers and may be excluded from all or part of any meeting by the Chair or his or her designate.

11.5 Escalation Process for Dispute Resolution

(a) Escalation Process

The Supplier shall institute and maintain internal to its organization and require the Supplier's Personnel to institute and maintain internal to each of their respective organizations, an escalation process such that any default by the Supplier or the Supplier's Personnel including failure to meet a Service Level is brought to the attention of the Supplier's senior management and such other individuals in the Supplier's organization as is necessary to provide appropriate reports to the Ministry Representative as required in the Agreement.



Subject to **subsection 11.5(b)**, in the event of any Dispute, the Parties shall attempt to resolve the Dispute promptly by negotiation in the manner set out in this Section 11.5 by notifying the other party in writing of the Dispute.

1. Initial Step: Operations Level

If a Party provides written notice to the other Party of a Dispute, the following representatives will attempt to resolve the Dispute, and will initially meet (in person or by telephone) for that purpose within ten (10) Business Days of the written notice:

Ministry: Sr. Manager, Desktop Services Branch

Supplier: Account Executive

2. Second Step: Management Level

If the Parties are unable to resolve the Dispute within ten (10) Business Days after the first meeting described in paragraph 1 above (or such longer period as may be mutually agreed upon), the representatives set out in paragraph 1 above will refer the matter to the following executive-level representatives, who will initially meet (in person or by telephone) to attempt to resolve the dispute or disagreement within twenty (20) Business Days after the initial meeting described in paragraph 1 above:

Ministry: Director, Desktop Services Branch

Supplier: Director of Sales, Public Sector

3. Third Step: Executive Level

If the Parties are unable to resolve the Dispute within twenty (20) Business Days after the first meeting described in paragraph 1 above (or such longer period as may be mutually agreed upon), the representatives set out in paragraph 1 above will refer the matter to the following executive-level representatives, who will initially meet (in person or by telephone) to attempt to resolve the dispute or disagreement within thirty (30) Business Days after the initial meeting described in paragraph 1 above:

Ministry: Chief Information Officer, Infrastructure Technology Services

Supplier: Vice President and General Manager

4. Fourth Step: Senior Executive Level

If the Parties are unable to resolve a Dispute within thirty (30) Business Days after the first meeting described in paragraph 2 above (or such longer period as may be mutually agreed upon), the representatives set out in paragraph 2 above will refer the matter to the following senior executive-level representatives, who will initially meet (in person or by telephone) to attempt



to resolve the dispute or disagreement within forty (40) Business Days after the initial meeting described in paragraph 1 above:

Ministry: Corporate Chief Information Officer, Ministry of Government and Consumer Services

Supplier: President and CEO

If the senior executive-level representatives of the Parties are unable to resolve the Dispute within forty (40) Business Days after their initial meeting (or such longer time as may be agreed), the provisions of **Article 12** (Arbitration) shall apply.

- (b) Exclusions to Escalation Process - Despite the escalation process described in subsection (a) above:
 - (i) the Ministry shall have the right, at its sole discretion, to have a Dispute escalated at any time to any level described in **subsection 11.5(a)** above; and
 - (ii) the Parties are not obligated to follow the escalation procedure set out in **subsection 11.5(a)** and may pursue its legal rights immediately where a Dispute is in respect of: (1) any claim involving third parties; or (2) intellectual property and breach of confidentiality claims, whether initiated by third parties or by the Parties to the Agreement.

11.6 Continued Provision of Deliverables

Subject to the terms of the Agreement, unless requested or otherwise agreed by the Ministry to do so in writing, the Supplier shall not under any circumstances stop or suspend its performance under the Agreement pending the resolution of any Dispute. At any time prior to the resolution of a Dispute hereunder, the Ministry may provide a written direction to the Supplier as to the manner in which to proceed while the resolution of the Dispute is pending and the Supplier shall proceed as directed.

ARBITRATION

12.1 Jurisdiction and Scope

- (a) If a Dispute cannot be resolved in accordance with the terms set out in **Article 11**, a Dispute shall be submitted to arbitration ("Arbitration"). The rules governing Arbitration are set out below.
- (b) The Arbitration shall be governed by the **Arbitration Act, 1991** (Ontario).
- (c) Each of the Parties expressly acknowledges and agrees that:

- (i) it shall not apply to the courts of Ontario or any other jurisdiction to attempt to enjoin, delay, impede or otherwise interfere with or limit the scope of the Arbitration or the powers of the arbitral tribunal;
- (ii) the award of the arbitral tribunal shall be final and binding on the Parties and there shall be no appeal therefrom of whatsoever nature or kind to any court, tribunal or other authority, except as set out below; and
- (iii) the award of the arbitral tribunal may be entered and enforced by any court in any jurisdiction having jurisdiction over the Parties and/or the subject matter of the award and/or the properties or assets of either of the Parties as set out in the *Arbitration Act, 1991* (Ontario);

provided, however, that the foregoing shall not prevent either Party from applying to the courts of Ontario for a determination with respect to any matter or challenge provided for in the ***Arbitration Act, 1991*** (Ontario).

- (d) The arbitral tribunal has the jurisdiction to deal with all matters arising out of or relating to this Agreement, or the breach, termination or validity thereof including, without limitation, the jurisdiction:
 - (i) to determine any question of law, including equity arising in the Arbitration;
 - (ii) to determine any question of fact including questions of good faith, dishonesty or fraud arising in the Arbitration;
 - (iii) to order any Party to furnish such further details of that Party's case, as to fact or law, as it may require;
 - (iv) to require or permit the Parties to give evidence under oath or solemn affirmation;
 - (v) to order the Parties or either of them to make interim payments towards the costs of the Arbitration; and
 - (vi) to award interest on any sum and to any date at such rates as it determines to be appropriate.
- (e) Unless the Parties shall at any time otherwise agree in writing, the arbitral tribunal shall have the power, on the application of either of the Parties or of its own motion (but in either case only after hearing or receiving any representations from the Parties concerned which it determines in its discretion to be appropriate):
 - (i) to allow other parties to be joined in the Arbitration with their express consent, and make a single final award determining all disputes between them;
 - (ii) to allow any Party, upon such terms (as to costs and otherwise) as it shall determine, to amend its Claim, Defence, Reply, Counter-Claim or Defence to Counter-Claim;

- (iii) to extend or abbreviate any time limits;
- (iv) to direct the Parties to exchange written statements, whether or not verified by oath or affirmation, of the evidence of witnesses, and direct which of the makers of such statements are to attend before it for oral examinations;
- (v) to determine what witnesses (if any) are to attend before it, and the order and manner (including cross-examination, as recognised under the laws of Ontario) in which, and by whom, they are to be orally examined;
- (vi) to conduct such further or other inquiries as may appear to it to be necessary or expedient;
- (vii) to order the Parties to make any property or thing available for its inspection or inspection by the other Party and inspect it in their presence;
- (viii) to order the Parties to produce to it, and to each other for inspection, and to supply copies of, any documents or classes of documents in their respective possession, control or power which it determines to be relevant;
- (ix) to order the preservation, storage or other disposal of any documents, devices, equipment or thing under the control of any of the Parties relevant to the Dispute before it; and
- (x) to make interim orders for security for costs for any Party's own costs, and to secure all or part of any amount in dispute in the Arbitration.

12.2 Applicable Law, Language and Place of Arbitration

- (a) The law governing the Arbitration shall be the laws of the Province of Ontario and the applicable laws of Canada.
- (b) The language of the Arbitration shall be English.
- (c) The place of the Arbitration shall be the City of Toronto, Ontario, Canada.

12.3 Appointment of Arbitral Tribunal

- (a) The arbitral tribunal shall be composed of one arbitrator.
- (b) Arbitration commences when a Party (the "Applicant") serves a notice on the other Party (the "Respondent") demanding arbitration, identifying the Dispute and nominating an arbitrator.
- (c) Within fifteen (15) days of the receipt by Respondent of the notice, the Respondent may, by notice to the Applicant, concur in the appointment of the proposed arbitrator or may disagree with the nomination of the proposed arbitrator, and failing the delivery of such notice by the Respondent, the Respondent shall be



deemed to have concurred in the appointment of the proposed arbitrator nominated by the Applicant.

- (d) If the Respondent disagrees with the nomination of the proposed arbitrator pursuant to paragraph (c) above, then, within fifteen (15) days of delivery of the Respondent's notice to that effect, the Respondent and the Applicant shall agree on the individual to be appointed as the arbitrator, failing which the arbitrator may be appointed by a Judge of the Superior Court of Justice on the application of either the Applicant or the Respondent, on notice to the other. Upon such appointment, such individual shall act as the sole Arbitrator and shall constitute the arbitral tribunal.
- (e) Any decision of the arbitral tribunal shall be rendered in writing and shall contain a recital of the facts upon which the decision is made and the reasons thereof. Otherwise, the decision including the award shall conform with the requirements set out in the *Arbitration Act*, 1991 (Ontario).
- (f) The arbitral tribunal will determine the procedure to be followed in the arbitration, in accordance with the *Arbitration Act*, 1991.

12.4 Meetings and Hearings

- (a) The arbitral tribunal shall appoint the time, date and place of meetings and the Hearing in the Arbitration and will give all the parties adequate notice of these. The place of all proceedings in the Arbitration shall be as set out in **Section 12.2** and all proceedings shall take place there.
- (b) All proceedings and the rendering of the award will be in private and the parties shall ensure that the conduct of the arbitration, the information disclosed by the parties in the course of the arbitration and the terms of the award shall be kept confidential, subject to an order of a court or tribunal or the Requirements of Law.

12.5 Miscellaneous

- (a) All written statements and responses thereto and other notices, requests and demands, required or permitted hereunder, shall be in writing.
- (b) The Arbitrator shall be paid his or her normal professional fees for his or her time and attendance in dealing with a Dispute, which fees, unless otherwise directed by the Arbitral Tribunal, shall be paid equally by the Applicant and the Respondent.
- (c) Unless the Parties otherwise permit, time is of the essence of the Arbitration.

Article 13 – OPEN DATA

13.1 Publication of Data



It is Ontario's intention, in accordance with the Open Data Directive and as part of its commitment to open data, to publish and allow the public to use:

- (i) procurement contract data, including the name of the Supplier and total contract value; and,
- (ii) data created or collected as an output of a contract, except where Ontario chooses not to publish the data in accordance with the Open Data Directive, such as for privacy, confidentiality, security, legal or commercially sensitive reasons.

ARTICLE 14 - OCCUPATIONAL HEALTH AND SAFETY ACT

- (a) The Supplier must ensure that any subcontractor hired by the Supplier works in accordance with the Occupational Health and Safety Act R.S.O. 1990, CHAPTER O.1 (OHSA) and its regulations and any applicable Ontario Public Service (OPS) and site-specific health and safety requirements. The Supplier acknowledges that it is the Employer of the subcontractor. The Supplier shall include in any of its agreements with its subcontractors, the ability to terminate the subcontractor for non-compliance with OHSA or its regulations, with the rules and policies of the Supplier or for failing to protect the safety of its workers.
- (b) The Ministry may stop the work where the Supplier fails to comply with OHSA or its regulations and an immediate danger to worker health and safety is observed. Failure or refusal by the Supplier to correct the observed violation, or willful or repeated non-compliance may, subject to **Article 8** – Termination, Expiry and Extension, result in termination of the Contract.

SIGNATURE PAGE TO FOLLOW



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

Her Majesty the Queen in right of Ontario, as represented by the **Minister of Government and Consumer Services**

Signature: _____

Name: Mohammad Qureshi

Title: Corporate Chief Information Officer

Date of Signature: May 4, 2022

COMPUCOM CANADA CO.

Signature:  _____
C+8DB0+CD2D2403...

Name: John M. Slattery

Title: CEO

Date of Signature: April 22, 2022

I have authority to bind the Supplier



Schedule 1 - Schedule of Deliverables, Rates and Supplementary Provisions

The Request for Bids, including any Addenda issued by the Ministry and the Bid shall form part of this Schedule 1.

(The RFB, including all addenda, is hereby attached to and forms part of Schedule 1 – see attached)



RFB
Tender_14952.zip

RATES AND PRICES

(The Supplier's Rate Bid Form
is hereby attached to and forms part of Schedule 1)



CompuCom%20Atta
chment%206%20-%2



Schedule 2 – Definitions

Unless the context otherwise specifies or requires, for the purposes of this Agreement, including the Schedules hereto, the following terms shall have the meanings set forth below. For clarity, unless otherwise indicated in this Schedule 2, a reference to any Article or Section means the Article or Section of the main body of the Agreement. In addition, all references to a particular Section or Schedule, or to any Part or Attachment of the RFB, shall be deemed to mean a reference to that Section, Schedule, Part or Attachment, as the case may be, as amended from time to time in accordance with the Agreement.

“Accessibility” is a general term which is used to describe the degree of ease that something (e.g., device, service, and environment) can be used and enjoyed by persons with a disability. The term implies conscious planning, design and/or effort to ensure it is barrier-free to persons with a disability, and by extension, usable and practical for the general population as well.

“Accessible” means that which can be easily reached or obtained; a facility that can be easily entered; posing no obstacles to persons with a disability.

“Accessory” has the same meaning as “Peripheral”.

“Activation Date” means the commencement date for placing orders for Products and Services by Customers with the Supplier following the completion of Transition-In in accordance with the requirements of the Agreement.

“Active Directory (AD)” is a Microsoft product that consists of several software services that run on Windows Server to manage permissions and access to networked resources. The main service in Active Directory is Domain Services (AD DS), which stores directory information and handles the interaction of the user with the domain.

“Ad-Hoc Services” has the meaning set out in Section 13 – Ad-Hoc Services of Attachment 9 – Service Requirements.

“Advanced Exchange Warranty” has the meaning set out in Section 8 – Warranty Services of Attachment 9 – Service Requirements.

“Agreement” means the aggregate of: (a) the main body of the Agreement; (b) Schedule 1, Schedule of Deliverables, Rates and Supplementary Provisions including Part 1 - the RFB and all of its Attachments and Part 2 -the Bid, including any clarifications provided by the Supplier and accepted by the Ministry; (c) Schedule 2 (Definitions), and any other schedule attached as of the Effective Date; (d) any Orders issued by the Ministry and any Statements of Work entered into between the Ministry and the Supplier; and (e) all amendments made in accordance with the Agreement.

Personal Computing Devices & Services

Page

74 of 100

RFB Agreement #14952



“Alternate Work Location” means a location within the Province of Ontario that is not an OPS Site and includes home/residential addresses.

“API” or “Application Program Interface” is a set of subroutine definitions, protocols, and tools for building application software. In general terms, it is a set of clearly defined methods of communication between various software components.

“Applicant” means the Party that commences the Arbitration.

“Arbitral Tribunal” means the Sole Arbitrator.

“Arbitration” means the process for dispute resolution as described in **Article 12** (Arbitration).

“Arbitration Act, 1991 (Ontario)” means the Arbitration Act, 1991, S.O. 1991, Chapter 17, as amended.

“Asset Management” means the set of Supplier’s business practices that combines financial, inventory and contractual functions to optimize spending and support lifecycle management and strategic decision-making within the IT environment.

“Asset Tag” means a durable adhesive sticker/label that meets the Ministry requirements, which identifies the asset information, to be affixed to all of the Products listed in the Product Categories or any Non-Standard Products ordered by the Ministry and it must be affixed by the Supplier prior to shipment.

“Assistive Technologies” refers to any product, piece of equipment, or product system, that is used to increase, maintain, or improve functional capabilities of individuals with injuries or disabilities.

“Authority” means any government authority, agency, body or department, whether federal, provincial or municipal, having or claiming jurisdiction over the Agreement; and “Authorities” mean all such authorities, agencies, bodies and departments.

“Authorized Reseller” means any Person that on or after the Effective Date is authorized by a Manufacturer or any of its affiliates to market, advertise, sell, lease, rent, service, distribute or otherwise offer licensed Products.

“B2B” or “Business to Business” refers to a situation where one business makes a commercial transaction with another. This typically occurs when a business is sourcing materials for their production process.

“Best Practices” means strategies, processes or techniques that have been shown through application, experience, practice or knowledge to deliver consistent, high-quality results or Personal Computing Devices & Services

superior performance, and includes the continuous improvement and innovation that sustain these practices and contribute to best value to the OPS.

“Bidder” means the legal entity that submits a Bid in response to this RFB.

“Bid” means all documentation submitted by a Bidder in response to the RFB.

“BIOS” means Basic Input/Output System.

“Break/Fix Replacement Service” has the meaning set out in Section 10 – Break/Fix Replacement Service of Attachment 9 – Service Requirements.

“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, but excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day which the Ministry has elected to be closed for business. A day, unless otherwise specified as a Business Day, means a calendar day.

“Business Hours” mean Monday to Friday 8:00 a.m. to 6:00 p.m. local time to the Site.

“Capacity Management” means processes aimed at providing the necessary systems capacity to deliver the Services in accordance with the agreed Service Level Metrics and the other provisions of this Agreement.

“Chair” means the Ministry representative that chairs a committee established by the Ministry under **Section 11.4**.

“Change” means a modification to a CI in the Production environment including:

- a) Hardware and software Components;
- b) Production support documentation; and
- c) Configuration management data relating to any of (a) and (b) above.

“Change Coordinator” means individual who has the roles and responsibilities set out in GO-ITS 35.0 Enterprise Change Management Standard.



“Change Management” means processes associated with the management of Changes, as further described in Attachment 10.

“Change Manager” means the individual who has the roles and responsibilities set out in GO-ITS 35.0 Enterprise Change Management Standard.

“Change Freeze” means a Change Restriction but does not include an exemption process for allowable activities for the specified period of time to resolve high priority Incidents.

“Change Restriction” means the restriction to changes to the information technology infrastructure environment, both technology and/or support components for a specified period of time, which includes an exemption process to implement changes during the restriction period.

“Claim” means an Applicant’s written statement concerning a Dispute setting forth, with particularity, its position with respect to the Dispute and the material facts upon which it intends to rely.

“Class B” refers to [unintentional radiators](#) - devices for which the purpose is not to produce radio waves, but which do anyway, such as [computers](#). Class B is a subpart to Federal Communications Commission (FCC) regulation title 47 and refers to any device that is marketed for use in the home, office, or a residential area by the customer. Class B devices can require either verification, certification, or self-declaration depending on the type of Product.

“Client” has the same meaning as “OPS Entity”.

“Cluster” means one of the organizational entities that may be revised from time to time by the Ministry in its sole discretion for managing Information & Information Technology (“I&IT”) across the business programs of the OPS. There are currently eight (8) Clusters, and a Cluster may include a number of ministries, related agencies and officers of the Legislative Assembly and their respective offices.

“Cluster Change Advisory Board” or “CAB” means a Cluster committee whose duties include approving Changes affecting the Cluster.

“CMOS” refers to memory on a computer motherboard that stores the Basic Input/Output System (BIOS) settings.

“Commercial Envelope” means Section 3 of the RFB, as set out on the Ontario Tenders Portal eTendering System.

“Commercial Response” means all quoted pricing for the Deliverables as found in the Bidder’s response to the Commercial Envelope and any related attachments.



“Company Level Check” is a security screening check, which requires checks to be conducted on all Directors and Officers of the company, regardless of whether they will have direct involvement in the work associated with the procurement which was deemed to require security screening. In order to be issued a company level clearance, all Directors and Officers of the company and the Company Security Officer (CSO) must consent to security screening and obtain clearances. Company-level screening checks are conducted only where the security risk assessment indicates the necessity.

“Company Security Officer” is a person who holds that standing in the Contractor Security Screening Program. A Company Security Officer (or CSO) 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 Contractor Security Screening (CSS), Supply Chain Ontario (SCO), Ministry of Government and Consumer Services (MGCS) prior to performing that role. The CSO is responsible for the verification of identity for workers requiring screening for contracted work, where required.

“Components” means the integral physical parts that, when connected to a computing device, make up the Product and, in the case of a computer, includes the memory, motherboard, and power supply.

“Confidential Information” of Ontario has the meaning set out in Section 5.1.

“Confidential Information” of the Supplier has the meaning set out in Section 5.1.

“Configuration Item” or “CI” means any component that needs to be managed in order to deliver Services set out in Attachment 9.

“Configuration Centre” means a secured location where the Supplier shall operate and perform the obligations specified for the configuration of Products as set out in this RFB. This location must be located within the province of Ontario.

“Configuration Management” means the processes used to maintain an accurate and complete description of the network which are aimed at profiling and managing the Deliverables and providing the resulting information to the various other processes associated with providing the Deliverables and with administering Changes to the Deliverables, as further described in Attachment 10 – Service Management Requirements.

“Configuration Management Database” or “CMDB” means an independent or segregated database established, maintained and updated by the Supplier throughout the Term to contain all the information and data arising out of or in connection with the Contract including Configuration Items that are required to be collected and kept current, with full access to the



OPS as specified in the Contract and includes the contents of any databases required to be maintained by the Supplier in connection with the Contract.

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

- (a) in relation to the RFB process, the Bidder has an unfair advantage or engages in conduct, directly or indirectly, that may give it an unfair advantage, including but not limited to (i) having or having access to information in the preparation of its Bid that is confidential to Her Majesty the Queen in right of Ontario and not available to other Bidders ; (ii) communicating with any person with a view to influencing preferred treatment in the RFB process; or (iii) engaging in conduct that compromises or could be seen to compromise the integrity of the open and competitive RFB process and render that process non-competitive and unfair; or
- (b) in relation to the performance of its contractual obligations in an OPS contract, the Supplier’s other commitments, relationships or financial interests (i) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgement; or (ii) could or could be seen to compromise, impair or be incompatible with the effective performance of its contractual obligations.

“Contract” has the same meaning as “Agreement”.

“Contract Manager” has the meaning set out in Section 1.3.19 – Governance of Attachment 1.

“Contract Year” means:

- (i) The period of time commencing on the Effective Date and ending on the last day of the twelfth (12th) calendar month thereafter; and
- (ii) Each subsequent period of twelve (12) consecutive calendar months.

“Corporate Change Advisory Board” or “CCAB” means a Government committee whose duties include approving infrastructure Changes affecting more than one (1) Cluster.

“Corporate Infrastructure Hosting Services (CIHS)” refers to the Enterprise platform used to deliver hosted services to the Ontario Public Service. The CIHS platform consists of, but is not limited to, Microsoft and Unix servers hosting domain controllers, domain name services, file and print servers, and web services.

“Counter-Claim” means a Respondent’s written statement concerning one or more additional Disputes setting forth, with particularity, the additional Dispute or Disputes for the Arbitral Tribunal to decide.



“Credit Check” is a security screening check based on results provided by a Canadian credit bureau to determine if an individual has any adverse credit information. As part of this check, information collected may include credit score and any relevant bankruptcies, legal proceedings, collection actions and court orders. Information obtained as part of the search will only be used for the purpose of assessing an individual’s clearance status.

“Criminal Record and Judicial Matters Check (CRJMC)” is a search through the Canadian Police Information Centre (CPIC) maintained by the Royal Canadian Mounted Police (RCMP) and a search through provincial and municipal police databases, using an individual’s name and date of birth, for information relating to the offence provisions of federal legislation including the Criminal Code (Canada), the Controlled Drugs and Substances Act (Canada) and the Youth Criminal Justice Act (Canada). The search will include records of previous convictions, convictions for which a pardon has been granted (where disclosure is authorized under the Criminal Records Act (Canada), findings of guilt under the Youth Criminal Justice Act (Canada), findings of guilt that have resulted in absolute or conditional discharges (disclosed within one (1) and three (3) years respectively, any outstanding charges and related information (e.g., an arrest warrant), as well as court orders (excludes mental health related orders and family court restraining orders). The RCMP may require verification of identity through fingerprint comparison before the information can be released.

“Customer” means any Client and, where the context admits, includes End Users.

“Data Storage Media” means the media used for the electronic storage of recorded information.

“Defence” means a Respondent’s written response to a Claim setting forth, with particularity, its position on the Dispute and the material facts upon which it intends to rely.

“Deliverables” means everything including Products and Services developed for or provided to the Ministry and Customers in the course of performing under the Agreement or agreed to be provided to the Ministry and any Customer under the Agreement by the Supplier or the Supplier’s Personnel as further defined but not limited by Schedule 1 in the Agreement, including but not limited to any goods or services or any and all Intellectual Property Rights and any and all concepts, techniques, ideas, information, documentation and other materials, however recorded, developed or provided.

“Desktop Software Packaging” means the various processes used to deliver the Services as set out in Section 16 of Attachment 9 – Service Requirements.

"Direct Deposit" means the electronic transfer of funds by the Client to the financial institution identified by the Supplier, in accordance with the Direct Deposit Protocols.



"Direct Deposit Protocols" means the protocols set out at [Doing Business with Ontario](#), which may be amended from time to time as required by Ontario.

"Director, Desktop Services" has the meaning as set out in Article 11 of the Agreement.

"Disaster Recovery Plan" or "DRP" means the plan prepared by the Supplier setting out how it will recover from disaster situations in order to continue to provide the Services.

"Dispute" means any dispute between the Ministry and the Supplier with respect to any matter under the Agreement.

"Documentation" means documents, whether in printed or electronic form, including installation guides, instructional materials, layouts, maintenance materials, manuals, system documentation, training materials, and user guides, and includes all developments and modifications to the above.

"Driver's Record Check" is conducted where driving is a requirement for the contract where a valid driver's licence is required. It involves a check of provincial databases for information regarding driving history using the individual's driver licence number. This check provides a three, five- or ten-year history of Highway Traffic Act and Criminal Code of Canada convictions and any current suspensions, along with the driver's current listed address and licence status.

"Effective Date" means the date on which the Agreement takes effect, as set out at the start of the Agreement.

"Electronic Bridge" means the electronic interface, put in place by the Supplier in accordance with the requirements set out in the Agreement, between the Supplier's ITSM Toolset and the OPS ITSM Toolset.

"Emergency" means a situation that calls for immediate action, assistance or relief (as determined by the Customer).

"Encryption" means the transformation of data via cryptography into a form unreadable by anyone not in possession of the required Data Storage Media.

"End User(s)" means the employees, agents or other representatives of the Ministry and any Client who is authorized to use any of the Products provided by the Supplier.

"End Point Management System" refers to a policy-based software solution that provides ability to manage and control computing devices connected to a corporate network. Managed elements may include Operating Systems, software applications, policy settings, and update protocols.



“Enterprise Business Grade Products” mean Products that meet all of the following requirements:

- Provide platform stability and consistency
- Provide at least 18-month product lifecycles
- Support localization for multiple languages and regions
- Have embedded, hardware-assisted management and security features
- Provide multigenerational replacement parts availability
- Indicate clear identification of generations
- Offer multi-year warranties
- Include formalized problem escalation processes and technical certification programs.

“Enterprise Service Management” or “eSM” means the various processes relating to the management of the Services required to be implemented and followed by the Supplier pursuant to the Agreement, including the various processes described in Attachment 10.

“EPEAT” or “Electronic Product Environmental Assessment Tool” means an on-line tool to assist purchasers select and compare computer desktops, laptops and monitors based on their environmental attributes. EPEAT is managed by the Green Electronics Council (GEC). GEC's EPEAT website hosts the database of EPEAT-registered Products. EPEAT-registered computer desktops, laptops, and monitors must meet an environmental performance standard for electronic Products - IEEE 1680- 2006.

“ERD” is the Employee Relations Division in the Ministry.

“ex-officio” means that the individual will attend meetings of any applicable committee, as set out in **Article 11** as and when requested to do so by the Chair of the committee or designate. The ex-officio member will have no voting powers and may be excluded from all or part of any meeting by the Chair or designate. Ex-officio members shall be subject to such conditions, including confidentiality, as may be required by the Chair or designate or by the Agreement.

“Expiry Date” means May 15, 2025 or, if the original term is extended, the final date of the extended term.

“External Network Access” means direct access into the Ontario Public Service network to facilitate communications with OPS servers.

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

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

Personal Computing Devices & Services

Page

82 of 100

RFB Agreement #14952



“FRU” or “Field Replaceable Unit” means a part that an authorized Supplier/Manufacturer repair technician is responsible for installing at the Customer Site.

“GO-ITS” means the Government of Ontario Information & Technology Standards, the official publications concerning the standards, guidelines, technical reports and preferred practices adopted by the Information Technology Standards Council as provided to the Supplier by the Ministry.

“Google Chrome” refers to the cross-platform web browser created and developed by Google.

“Hardware” means all existing OPS products including desktops, notebooks, tablets, monitors, peripherals including but not limited to keyboard and mice, and accessories and all the equipment intended for the processing, input, output, storage, manipulation, communication, transmission and retrieval of information (including any attachments and power supplies), all software (Operating System software or other software) that is an integral part to the operation of the Hardware, all processors, peripherals (keyboards, mice, etc.) and all related documentation (including user manuals, system manuals, operating manuals and specifications).

“Hardware Removal Services” has the meaning set out in Section 11 – Hardware Removal Service of Attachment 9 – Service Requirements.

“Hearing” shall have the meaning ascribed to such term in **Section 12.4**.

“High Impact” has the meaning set forth in GO-ITS 44 ITSM Terminology Reference Model.

“Image” means the Ministry approved base layer [what is a “base layer”?] consisting of Operating System, enterprise applications, and configuration settings to be applied to a computer prior to delivery to the End User.

“Image Development and Maintenance Manager” has the meaning set out in Section 1.3.19 – Governance of Attachment 1.

“Image Development and Management Service” has the meaning set out in Section 4 – Image Development and Management Service of Attachment 9 – Service Requirements.

“Impact” has the meaning set forth in GO-ITS 44 ITSM Terminology Reference Model.

“Incident” means an event that disrupts the proper performance or operation of any Hardware, Product or Service and that impacts the Customer or End User.

“Incident Acknowledge” has the meaning ascribed to it in Attachment 10.

“Incident Classification” means the process of assessing an Incident, the assignment of appropriate severity levels and the identification of any affected Configuration Items.

“Incident Management” means the processes associated with the management of Incidents, as further described in Attachment 10 – Service Management.

“Incident Resolution” has the meaning ascribed to it in Attachment 10.

“Indemnified Parties” means each of the following and their directors, officers, advisors, agents, appointees, and employees: Ontario, the members of the Executive Council of Ontario and Clients.

“Industry Standards” include, but are not limited to (a) the provision of any and all labour, supplies, Hardware and other goods or services that are necessary and can reasonably be understood or inferred to be included within the scope of the Agreement or customarily furnished by Persons providing Deliverables of the type provided hereunder in similar situations in Ontario and; (b) adherence to commonly accepted norms of ethical business practices, which shall include the Supplier establishing, and ensuring adherence to, measures 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.

“Information Technology Infrastructure Library” or “ITIL” consists of a set of books developed by the United Kingdom’s Office of Government Commerce (OGC). The books describe an integrated, process-based, best practice framework for managing IT services.

“Installation Services” has the meaning set out in Section 6 – Installation Service of Attachment 9 – Service Requirements.

“Infrastructure Technology Services” or “ITS” means the IT division of the Ministry.

“Intellectual Property Rights” means any intellectual or industrial property rights protected or protectable under the laws of Canada, any foreign country, or any political subdivision of any country and includes Moral Rights.

“ITSM” means the Information Technology Service Management framework for the delivery, support and management of IT Services for the OPS.

“ITSM Toolset” means an application or set of applications that has many features that facilitate and support recording and processing of IT Service Management processes and the related tasks. Unless otherwise stated, “ITSM Toolset” refers to the Ministry’s ITSM Toolset.



“Java Runtime” is a component of the Oracle Java platform which converts machine independent code to run on the host computing device.

"Known Error" means a Problem that has a documented root cause, workaround or resolution.

“Large Ontario Cities” means the following: Barrie, Greater Toronto and Hamilton Area* (GTHA), Guelph, Kingston, Kitchener, London, North Bay, Orillia, Ottawa, Peterborough, St. Catharines, Sault Ste. Marie, Sudbury, Thunder Bay, Timmins, Waterloo, and Windsor.

*Per Ontario Ministry of Natural Resources (2012) Greater Toronto and Hamilton Area (GTHA) Boundary definition.

“LAN” means Local Area Network

“Losses” means all liabilities, losses, costs, damages and expenses (including legal, expert and consulting fees).

"Major Incident" is a Priority 1 Incident, as defined in more detail in GO-ITS 37 Enterprise Incident Management Process.

"Major Incident Protocols" means the protocols set out in the GO-ITS 37 Enterprise Incident Management Process.

“Malicious Code” means any computer code or software containing components embedded with security risks or designed to enable cyber attacks, harmful or hidden programs or data designed to adversely affect, disrupt, disable, damage or shut down the use or operation of any hardware, mobile devices, firmware, software, communications system or network, including without limitation, malware, spyware, worms, time bombs, logic bombs, trap doors, Trojan Horses, drop dead devices, time locks and viruses and any code that would:

- (i) limit or restrict the use of any Deliverable by the OPS;
- (ii) impair the quality and timely delivery of any Deliverables by the Supplier; or
- (iii) restrict or prevent the OPS from obtaining replacement services from any Person.

“Manufacturer” means a company that, as its primary business function, designs, assembles, owns the trademark/patent and markets computer equipment including the Products to be supplied under the Agreement and that has signed the Manufacturer’s Undertaking, if required pursuant to the RFB, attached as Attachment 12.

“Manufacturer Canadian Listed Price” means the Product price that is listed on the Manufacturer’s website, in Canadian dollars.

“Media Retention” or “MR” means the removal of the Data Storage Media from a Product and permanently leaving the Data Storage Media in the end users possession in order to ensure maximum data security as set out in more detail within Attachment 9 – Service Requirements;

“MGCS” means the Ministry of Government and Consumer Services.

“Microsoft Autopilot” means Microsoft’s collection of technologies used to set up and pre-configure new computers/laptops/notebooks/tablets, in order to ready them for productive use.

“Microsoft Deployment Toolkit” or “MDT” means the software toolkit used to automate the installation process for Microsoft Windows Operating System, including pre and post installation configuration steps providing automation to the installation process.

“Microsoft Edge” refers to the cross-platform web browser created and developed by Microsoft.

“Minister” means the Minister of Government and Consumer Services.

“Ministry” means the Ministry of Government and Consumer Services.

“Ministry Address” means the address set out under the definition of “Ministry Representative”.

“Ministry Designate” means the Ministry representative for matters relating to the Services as specified within Attachment 9 – Service Requirements.

“Ministry Representative” mean the representative for all matters relating to the OPS in connection with the Agreement unless otherwise specified by the Ministry Representative:

Ministry Representative

Name: Zelko Holjevac

Title: Director, Desktop Services

Address: 222 Jarvis Street, 3rd Floor Toronto, ON M7A 0B6

Telephone Number: 647-962-4491

E-Mail Address: zelko.holjevac@ontario.ca

Back-up

Name: Justin Leus

Title: Senior Manager, Vendor Management Services

Address: 222 Jarvis Street, 3rd Floor Toronto, ON M7A 0B6
Personal Computing Devices & Services

86 of 100

RFB Agreement #14952



Telephone Number: 416-371-5621

E-Mail Address: justin.leus@ontario.ca

“Moral Rights” has the same meaning as in the Copyright Act (Canada) and applies to comparable rights in applicable jurisdictions.

“.NET” is a Microsoft software framework for the development and implementation of different types of computer applications.

“Net New” means the procurement of Products that are not for Product Renewal purposes.

“Newly Created Intellectual Property” means any intellectual property created by the Supplier during the performance of its obligations under the Agreement.

“Non-Business Hours” means Saturday, Sunday and/or Statutory Holidays and any hours that are outside of Business Hours.

“Non-OPS Entity” means

- (i) Provincial agencies and any other organizations that have an active Memorandum of Understanding or similar agreement with an Ontario ministry, for whom the oversight ministry does not assume legal liability in connection with procurement-related contracts executed by the provincial agency/organization.
- (ii) Office of the Legislative Assembly of Ontario
- (iii) Independent Offices of the Legislative Assembly
- (iv) Ontario municipalities
- (v) Corporations, non-share or whose shareholders are exclusively municipalities, that have a parent municipality in Ontario and to whom the municipality has delegated authority to deliver services on its behalf.
- (vi) Ontario public hospitals
- (vii) Ontario school boards
- (viii) Ontario public universities
- (ix) Ontario public colleges
- (x) Ontario children’s aid societies



(xi) Every non-share capital corporation controlled by one or more designated broader public sector organizations that exists solely or primarily for the purpose of purchasing goods or services for the designated broader public sector organization or organizations.

(xii) Non-share capital corporations that have an active transfer payment agreement with an Ontario ministry and that have not been assessed as “high risk” in the ministry’s transfer payment risk assessment,

but excludes any OPS Entity.

“Non-Standard Product” means a product supplied by the Supplier other than a Product proposed in response to this RFB but excludes a Replacement Product.

“OEM” means Original Equipment Manufacturer.

“OEM Warranty” means the warranty provided by the Manufacturer for its Products.

“Off-Warranty Service” has the meaning set out in Section 9 – Off-Warranty Service of Attachment 9 – Service Requirements.

“On-site” means the Supplier must perform and fulfill a Service Request or resolve an Incident at the Customer’s site.

“Ontario” means Her Majesty the Queen in right of Ontario.

“Ontario Public Service” or “OPS” means the entities listed under the heading “OPS Clients” at the following link:

[https://www.doingbusiness.mgs.gov.on.ca/mbs/psb/psb.nsf/Attachments/Operational_Guidelines-ENG/\\$FILE/Operational_Guidelines-ENG.pdf](https://www.doingbusiness.mgs.gov.on.ca/mbs/psb/psb.nsf/Attachments/Operational_Guidelines-ENG/$FILE/Operational_Guidelines-ENG.pdf).

“Ontario Rules” has the meaning set out in **Section 3.9** of the Agreement.

“OPS Assets” means all tangible and intangible assets of any kind, including equipment, software, systems, networks, documentation and data, belonging to the OPS, including the Ministry and any Customer; and includes all rights, licenses or interests of the OPS in any such assets that are owned by any third party; without limiting the foregoing, the OPS Assets include all of the Confidential Information of Ontario (including the OPS Data).

“OPS Data” means all data and information, including Personal Information, in any form, that relate to or belong to the Ministry and any Client, including (i) any data relating to the operations, facilities, customers, personnel, assets and programs of the OPS; and (ii) all of the Personal Computing Devices & Services

information and data that the Supplier is required to collect and maintain as set out in Schedule 1; for purposes of the Agreement, all OPS Data will be deemed to form part of the OPS Assets.

“OPS Entity” means (i) Ministries; (ii) Minister’s offices; (iii) Cabinet Office; (iv) Office of the Premier; and (v) Provincial agencies and any other organizations that have an active Memorandum of Understanding or similar agreement with an Ontario ministry, for whom the oversight ministry assumes legal liability in connection with procurement-related contracts executed by the provincial agency/organization. The list of entities may be amended from time to time at the sole discretion of MGCS.

“OPS Software” means proprietary software owned by or licensed to Ontario.

“Operating System” or “OS” means system software that manages computer hardware, software resources, and allows other programs to function.

“Order” means a request from the Ministry for the provision of a Product(s) or Service(s), including a Service Request, set out in Attachment 9 – Service Requirements and, where the context admits, references to an Order include a Statement of Work entered into between the Ministry and the Supplier.

“Other Security Screening Checks” means higher level checks that may be required when the duties or tasks establish a risk level greater than can be addressed through a CRJMC, Driver’s Record or Out of Country check. Other security screening checks which may be conducted in addition to the CRJMC are those included in the Police Record Checks Reform Act, out of scope of the Act or permitted by regulatory exemption to the Act. Checks are determined on the basis of a ministry risk assessment.

“Out-of-Country Driver’s Record Check (US and/or International)” Driver’s record check is conducted where driving is a requirement for the contract where a valid driver’s licence is required. When the individual has lived outside Canada for more than six (6) months consecutively within the last five (5) years, an out of country driver records check from the jurisdiction(s) in which they have resided is required. This check includes information such as current suspensions, along with the driver’s current listed address and licence status.

“Out-of-Country Police Certificate (US and/or International)” is a summary of an individual’s criminal record or a declaration of the absence of any criminal record from a law enforcement agency in another country outside of Canada. Police certificates are different in each state/country and may be called police clearance certificates, good conduct certificates, judicial record extracts, etc. Where an individual has lived outside of Canada for more than six (6) months consecutively within the last five (5) years, an out-of-country police certificate from the jurisdiction(s) in which they have resided is required.



“OTP” and “Ontario Tenders Portal eTendering System” means Ontario’s electronic tendering system currently hosted by Jaggaer.

“Party” means the Supplier, on one hand, and the Ministry, on the other hand; and “Parties” mean both of them.

“Patches” means Ministry-authorized updates to Operating System software or firmware.

"Performance Measurement" means the provision of an end-to-end management information system to support IT Service Management best practices based on the ITIL Best Practice framework.

“Performance Measures” mean the Service Levels set out in the RFB used to measure the performance of the Supplier under the Agreement.

“Peripheral” means a device that is connected to a computing device, but not an integral part of it, which expands the capabilities but does not form part of the core computer architecture, for example mice and keyboards.

“Person” as the context allows, includes an individual, person, company, partnership, corporation, unincorporated association, government or government agency, authority or entity howsoever designated or constituted and includes successor organizations or any combination thereof.

“Personal Information” has the meaning given to it in the FIPPA, which as at the Effective Date, means recorded information about an identifiable individual or that may identify an individual.

“Personal Computing Devices and Services” or “PCDS” means those Services, Products and Documentation described in this RFB that are to be made available or to be provided by or through the Supplier to the Ministry pursuant to the Agreement.

“Police Record Checks Reform Act (PRCRA)” means the Police Record Checks Reform Act, 2015, S.O. 2015, c. 30 as amended.

"Preferred Bidder" means the Bidder who has the highest cumulative score at the conclusion of the evaluation process set out in the Qualification Envelope of this RFB.

“Premium Warranty” has the meaning set out in Attachment 9 – Service Requirements.

"Priority" has the meaning ascribed in GO-ITS 44 ITSM Terminology Reference Model.

"Problem" means an unknown cause of one or more (potential or occurring) Incidents.



“Problem Management” is the means whereby critical, chronic or long-term Problems as determined by the Ministry, which may be temporarily resolved through work-around solutions, are completely resolved through analysis (impact analysis, root cause analysis) and development and implementation of long-term solutions based on that analysis. Problem management may include the preparation of reports during and/or upon completion of the resolution process to document impacts, causes and potential or implemented solutions.

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

“Product Category” means one of the categories of Products identified in Attachment 3 – Deliverables, Section 1.3.1.

“Product and Service Matrix” means the listing of all Products and Services, detailing specifications for each of the Products and Services, including: pricing, applicable discounts, and schedules for ‘End of Life’ for each of the Product Types.

“Product Type” means one of the specific Products required within a Product Category (as specified in Attachment 1 – Deliverables, Section 1.3.1).

“Products” means the following physical devices and components to be provided by the Supplier in accordance with the Agreement: (i) computers, including Desktops, Mobiles, Ultra Mobile Detachable, Ultra Mobile Convertible and Rugged Mobiles; (ii) Monitors; (iii) Peripherals and (iv) any other product set out in the Bid; and, where applicable, all references to “Product” will be deemed to include any Operating System software, including Apple OS and Chrome OS, embedded in or that is required for the effective use and operation of the applicable Product.

“Purchase Card” means the corporate charge card(s) used by the Ministry, as may be changed from time to time.

“Purchase Card Protocols” means the manner in which the Supplier is required to process any payments under the Agreement that the Ministry elects to make by way of Procurement Card, which shall include the requirement to: (a) collect the authorized employee's name, the abbreviated Ministry name, the expiry date, the GST exemption number and the employee's authorization; (b) contact the financial institution identified on the Procurement Card each time the Procurement Card is used for payment; (c) receive payment from the financial institution named on the Procurement Card once that institution authorizes payment; and (d) bear the cost of any and all charges relating to the use of the Procurement Card, including the financial institution's charges for payment through the Procurement Card.

“Purchase Order” means a written request submitted by the Ministry to the Supplier, signed by an authorized representative of the Ministry, pursuant to and in accordance with the Agreement,

for any of the Deliverables, or for a material addition, deletion or other change to the Deliverables requested pursuant to a previous Purchase Order.

“Qualification Envelope” means Section 1 of the RFB as set out on the Ontario Tenders Portal eTendering System.

“Qualification Response” means the Bidder’s response to the Qualification Envelope, any related attachments and includes, but is not limited to, the Form of Offer.

“Rate” means the maximum, all inclusive price, from the Effective Date of the Agreement to be charged for the applicable Deliverables, as follows:

- (a) in respect of a Service, the maximum price, in Canadian funds, as specified in the Bid to be charged for the applicable Service, or such lower amount as may be provided in accordance with the Agreement; and
- (b) in respect of any Product, the maximum price, in Canadian funds, that is the lower of:
 - (i) the price published as the Manufacturer Canadian Listed Price on the applicable Manufacturer’s website to which the percentage discount is applied as set out in the Agreement Schedule 1, as amended by a higher percentage discount, if any, set out in the Supplier’s bid or Manufacturer’s Undertaking;
 - (ii) a favourable price (lower than the discounted list price) for each of the Manufacturer’s Products within each of the Categories that the Manufacturer may offer as set out in the Agreement Schedule 1, as amended by a favourable lower price, if any, set out in the Supplier’s bid or Manufacturer’s Undertaking;

which maximum price represents the maximum amount chargeable by the Supplier for the provision of the Deliverables, including but not limited to: (a) all applicable duties; (b) all labour, material and administration costs; (c) all travel, carriage, shipping, freight and delivery costs; (d) all insurance costs; (e) all other overhead including any fees or other charges required by law; and (f) the cost of any warranty specified in the RFB as the minimum requirement for a given Product, the cost of any documentation to be provided with the Product and any costs of certifying that a Product or Service is ready for use by the OPS.

“Record”, for the purposes of the Agreement, means 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 Agreement; or (b) created by the Supplier in the performance of the Agreement.



“Redeployment Service” has the meaning set out in Section 12 – Redeployment Service of Attachment 9 – Service Requirements.

"Release Management" means the end-to-end management of introducing new services or solutions into the OPS’ production environment.

“Renewal” means the scheduled replacement of Products based on the Ministry’s lifecycle conducted as a project.

“Renewal Coordination” has the meaning of Section 7 – Renewal Coordination Service of Attachment 9 – Service Requirements.

“Rental Service” has the meaning set out in Section 14 – Rental Service of Attachment 9 – Service Requirements.

“Replacement Product” means all Hardware and Product Types including Accessories and Peripherals that are currently marketed by the Manufacturer that is of equal or greater performance capabilities and feature configuration and is the same brand as the Product that it is intended to replace unless the Ministry agrees to accept an alternate manufacturer.

“Reply” means an Applicant’s written reply to a Defence, setting forth, with particularity, its response, if any, to the Defence.

“Request for Bids” or “RFB” means the Request for Bids Tender 14952 dated, September 13, 2021, for Personal Computing Devices and Services (PCDS) issued by the Ministry and includes all Attachments, Schedule and addenda thereto.

“Requirements of Law” means the requirements of all applicable laws, statutes, codes, acts, ordinances, orders, decrees, injunctions, by-laws, rules, and regulations that at any time may be applicable to either the Agreement or the Deliverables or any part of them.

“Respondent” means the Party responding to a Complaint brought by the Applicant.

“RESTful” or (REpresentational State Transfer) web services provide interoperability between computer systems on the Internet. REST-compliant web services allow the requesting systems to access and manipulate textual representations of web resources by using a uniform and predefined set of stateless operations.

“Restoration Time” means the period between the time when a Service failure is logged through the creation of an Incident ticket and the time when Service Availability is resumed minus Pending State.



“Return Material Authorization” or “RMA” means an authorization number provided by the Supplier upon request of the Ministry when the Ministry returns a Product.

“RFB Closing Date and Time” means the Bid submission date and time as set out in the RFB and as may be amended from time to time in accordance with the terms of the RFB.

“RFB Contact” means the person listed in Part 1 – Qualification Envelope Section 1.1.8 – Procurement Details.

“RFC”, in the context of Change Management, means a Request for Change.

“Rules” means the rules applicable to Arbitration as set out in the Agreement Article 12

“Sanitize” means a process that makes data permanently inaccessible, and in the context of this RFB, refers to techniques intended to make data permanently inaccessible on Data Storage Media.

“Sanitization Certificate” means a certificate which is produced by the Supplier that confirms that the sanitization of the Data Storage Media was successfully completed.

“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 the following:

1. 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
2. A Criminal Record Check and Judicial Matters Check
3. Other checks if determined necessary on the basis of an approved contract risk assessment.

“Security Clearance” means a decision made by CSS, SCO following receipt of the Security Screening Check documents that will permit the person being cleared to engage in the performance of the services.

“Service Credits” means the amount of money that the Ministry is entitled to deduct from the monthly payments or other payments payable to the Supplier under the Agreement.

“Services” means all of the services to be provided by the Supplier to the Ministry or a Customer under the Agreement.



"Service Asset and Configuration Management" or "SACM" has the meaning set out in Attachment 10 to this RFB, and includes the establishment of an authoritative Configuration Management Database to support ITS services, and ensures that control processes and procedures are implemented to maintain the integrity of critical operational information.

“Service Catalogue” means the detailed listing of Services described in Attachment 9 and associated pricing, Service descriptions, Service Levels and related information which is to be provided by the Supplier electronically to the Ministry or posted to a web portal.

“Service Centre” has the meaning ascribed to it in GO-ITS 44 ITSM Technology Reference Model, as referred to in Attachment 10.

“Service Delivery Manager” has the meaning set out in Section 1.3.19 – Governance of Attachment 1.

“Service Improvement Plan” or “SIP” is a formal Plan to provide guidelines as to when and in which form improvements to a Process or IT Service are to be implemented.

“Service Levels” means the performance metrics used to measure the performance of the Supplier and the Services as set out in Attachment 9 – Service Requirements.

“Service Level Management” or “SLM” means the processes associated with the identification, definition and documentation of Service Levels and implementation and management of the Services to the Service Levels.

“Service Management” means the various processes used to deliver the Services as set out in Attachment 10 – Service Management.

"Service Order Management" or "SOM" is an office within ITS Service Management that processes and coordinates standard Service Requests (moves, adds, and changes) for ITS Infrastructure Services.

“Service Request” or “SR” means a request for Service fulfillment as per the Services described in Attachment 9 – Service Requirements including Warranty and Off-Warranty Services.

"Service Request Management" means the end-to-end management of Service Requests.

“Service Window” means a time frame in which a service or activity is to take place.

“Site” means a specific Customer location.

"Situation Manager" has the meaning and roles and responsibilities set out in GO-ITS 37.0 Incident Management Standard.



“Software” means machine-readable object code instructions that are preloaded by the Supplier on Hardware and Products at no additional cost. The term “Software” applies to all parts of software and documentation, including new releases, updates, and modifications of software.

“Software Media” means the electromagnetic or other media in which the Software is contained, recorded or fixed and includes disks and tape.

“Specifications” means the requirements, specifications, functions or features (including without limitation all mandatory technical specifications for Deliverables as set out in the RFB, as well as all rated requirements that the Supplier indicated in its Bid that it or its Products and Services are capable of providing or performing or will provide or will perform) to be provided as set forth in the Agreement or such other document as is incorporated by reference, and where not inconsistent with the Agreement, as set out in any document accompanying such Deliverable.

“Standards” means the documented technological requirements, attributes or characteristics and related criteria as set out in the RFB.

“Standard Warranty” has the meaning set out in Attachment 9 – Service Requirements.

“Statement of Work” means a document to be made between the Ministry and the Vendor in accordance with the Agreement] for Ad Hoc Services.

“Steady State” has the meaning as set out in section 2.2 of Attachment 10.

“Subcontractor” means any contractor of the Supplier or any of its subcontractors at any tier of subcontracting.

“Supplemental Confidential Information” has the meaning set out in the Agreement **Section 5.1**.

“Supplier Address” and “Supplier Representative” mean:

Supplier Representative

Name: Manju.Chikkahanumaiah

Title: Account Executive

Telephone Number: 416-569-9936

E-Mail Address: Manju.Chikkahanumaiah@compucom.com



Supplier

Name: Gurmit Sandhu

Title: Contract Manager

Telephone Number: 416-294-4793

Facsimile number:

E-Mail Address: gurmit.sandhu@compucom.com

“Supplier” and “Successful Bidder” mean the Preferred Bidder who executes the Agreement with the Ministry pursuant to this RFB.

“Supplier’s Pre-existing Intellectual Property” means software or other intellectual property incorporated into or that forms part of the Deliverables that was in existence prior to the commencement of the Agreement or that has been or will be created other than in connection with the performance by the Supplier of any obligations under the Agreement. For greater certainty, the Supplier’s Pre-existing IP may include certain software or other intellectual property created by any third party and licensed to the Supplier.

“Supplier(’s) Personnel” includes the Supplier’s directors, officers, partners, agents, employees, advisors, independent contractors and Subcontractors, and includes employees, agents and other representatives of Subcontractors.

“Term” means the period of time from the Effective Date first above written up to and including the earlier of: (i) the Expiry Date or (ii) the date of termination of the Agreement in accordance with its terms.

“Total Evaluated Price” means the amount indicated in the Pricing Rollup worksheet in Attachment 6 – Rate Bid Form as “total evaluated price”, which amount is determined based on information submitted by a Bidder in Attachment 6 – Rate Bid Form.

“Transition-In” shall have the meaning ascribed to such term in the Agreement Schedule 1, Part 1.

“Transition-In Plan” shall have the meaning ascribed to such term in the Agreement Schedule 1, Part 1.

“Transition Out” shall have the meaning ascribed to such term in the Agreement Schedule 1, Part 1.

Personal Computing Devices & Services

Page

97 of 100

RFB Agreement #14952



“USB” means Universal Serial Bus and is an industry standard that establishes specifications for cables and connectors and protocols for connection, communication and power supply between computers, peripherals and other computers.

“User Caused Damage” means physical damage to a Product which was not caused by defective materials or manufacture or normal wear and tear.

“VLAN” means Virtual Local Area Network.

“Vulnerable Sector Check (VSC)” means all information disclosed in a Criminal Records and Judicial Matters Check. Every criminal offence with which the individual has been charged that resulted in a finding of not criminally responsible on account of mental disorder (disclosure prohibited if the request is made more than five years after the date of the finding or if the individual received an absolute discharge); and any non-conviction information authorized for exceptional disclosure in accordance with section 10 of the Police Records Check Reform Act, 2015.

“Warranty Period” means means the applicable period specified in Section 8 – Warranty Services of Attachment 9 – Service Requirements, during which the Supplier is required to provide Warranty Services with respect to any applicable Deliverables.

“Warranty Services” has the meaning set out in Section 8 – Warranty Services of Attachment 9 – Service Requirements.

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

“XML” means Extensible Markup Language.

“XML bridge” has the same meaning as “Electronic Bridge.



Schedule 3 – Schedule of Assignment of Copyright

Pursuant to the Article of the Agreement entitled Intellectual Property, this form shall be executed by the Supplier in the manner contemplated by the Agreement where the Deliverables include Intellectual Property Rights.

ASSIGNMENT OF COPYRIGHT

THIS ASSIGNMENT made in triplicate as of [*Insert date].

In consideration of the Ministry entering into the Agreement for [**insert description] dated [*insert date of Agreement] the undersigned agreed to assign and now does assign and transfer unto the Ministry all of its right, title and interest in and to the copyright in Canada and internationally of the original work(s) entitled “[**at the time of execution of the assignment, specific Deliverable to be inserted]” for the remainder of the unexpired term of the copyright.

IN WITNESS WHEREOF the undersigned has executed this Assignment of Copyright as of the date written above.

COMPUCOM CANADA CO.

Signature: _____
 I have authority to bind the Supplier

Name: _____

Date: _____



Schedule 4 – Schedule of Waiver of Moral Rights

Pursuant to the Article of the Agreement entitled Intellectual Property, this form shall be executed by the Supplier in the manner contemplated by the Agreement where the Deliverables include Intellectual Property Rights.

WAIVER OF MORAL RIGHTS

THIS WAIVER OF MORAL RIGHTS made in triplicate as of [*insert date].

I, [** insert legal name of the individual], an author of any or all of the Deliverables as defined in the Agreement for [insert description], dated [** insert date**] between COMPUCOM CANADA CO. and Her Majesty the Queen in right of Ontario as represented by the Minister of Government and Consumer Services.

("the Ministry"), hereby expressly, irrevocably and without restriction, waive in favour of the Ministry, all Moral Rights with respect to the Deliverables and this waiver may be invoked without restriction by any person authorized by the Ministry to use the Deliverables.

In this Waiver of Moral Rights, "Moral Rights" has the same meaning as in the Copyright Act, R.S.C. 1985, c. C-42, as amended or replaced from time to time and includes comparable rights in applicable jurisdictions. IN WITNESS WHEREOF I have executed this Waiver of Moral Rights as of the date written above.

[Instructions: Insert legal name of individual]

Signature:

Name:

Date:

