



**CORPORATE SUPPLY ARRANGEMENT #CS-000810**  
for **Computer Anti-malware Software and Services**

THIS CORPORATE SUPPLY ARRANGEMENT is made the 16 day of March, 2015.

**Compugen Inc.**  
100 Via Renzo Drive, Richmond Hill, Ontario, L4S 0B8  
(the "Offeror")

HEREBY OFFERS TO SUPPLY, AS, IF AND WHEN REQUESTED, THE GOODS AND SERVICES DESCRIBED IN SCHEDULE "A", TO HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA AND THE PUBLIC SECTOR ENTITIES, ON THE TERMS AND CONDITIONS DESCRIBED BELOW.

**THE OFFER IS AS FOLLOWS:**

**DEFINITIONS**

- 1.1 In this Corporate Supply Arrangement:
- a) **"Administrative Fee"** means the administration fee described in Schedule "D", Section 6;
  - b) **"Administration Requirements"** means those requirements set out in Schedule "D";
  - c) **"Contract"** means the contract that is formed on receipt by the Offeror of a Purchase Document for the Goods described in the Purchase Document, and if applicable, any addendum entered into between Public Sector Entities and the Offeror pursuant to section 3.2 (c);
  - d) **"Contractor"** means the Offeror who is in receipt of a Purchase Document requesting the Goods under this CSA;
  - e) **"Corporate Supply Arrangement"** or **"CSA"** means this CSA;
  - f) **"Purchase Document"** means a written Purchase Document form issued by a Purchaser to an Offeror against this CSA for the provision of a specified quantity of Goods at the prices set out in this CSA;
  - g) **"Goods"** means those goods described in Schedule "A";
  - h) **"Offeror"** means Compugen Inc.
  - i) **"Offeror's Representative"** means the representative and designated back-up assigned by the Offeror to administer the CSA;
  - j) **"Prices"** means the prices for the Goods set out in Schedule "B";
  - k) **"Province"** means Her Majesty the Queen in Right of the Province of British Columbia and includes Procurement Services and any ministries of the Province;
  - l) **"Province Representative"** means Kai Robinson, Procurement Specialist, or such other individual designated from time to time by the Province to administer this CSA on behalf of the Province;
  - m) **"Public Sector Entity"** or **"Entities"** means an eligible broader public sector organization listed at the Procurement Services' website that is eligible to issue a Purchase Document against a CSA;
  - n) **"Purchaser"** means the Province or a Public Sector Entity that has issued a Purchase Document; and
  - o) **"Procurement Services"** means the Procurement Services Branch, Ministry of Technology, Innovation and Citizens' Services.
- 1.2 All references to dollars, currency, and money must mean Canadian dollars (\$CAD).

**EXPIRY**

- 2.1 This CSA will expire on April 1, 2018 unless withdrawn in accordance with section 3.1 (G) or Section 8, or renewed by the Province for up to two additional two-year periods.

**CORPORATE SUPPLY ARRANGEMENT - GENERAL**

- 3.1 The Offeror makes the offer set out in this CSA on the following understandings:
- a) the establishment of this CSA does not oblige the Province or any Public Sector Entity to

authorize or order all or any of the Goods from the Offeror;

- b) a Contract is formed only on receipt of a Purchase Document by the Offeror;
- c) a Purchase Document will form a Contract only for those Goods in respect of which a Purchase Document has been issued by a Purchaser, provided always that such Purchase Document is made in accordance with the provisions of this CSA;
- d) the Contract will be on the terms and conditions set out in Schedules A, B, C, D, E and if applicable, any addendum entered into between Public Sector Entities and the Offeror pursuant to section 3.2;
- e) the Province and any Public Sector Entity each reserves the right to procure the specified Goods by any other means, including the use of other agreements, or by other procurement or contracting methods;
- f) the liability of a Purchaser will be limited to that which arises from a Contract made prior to the expiry date described in Section 2.1;
- g) the Province reserves the right to set aside this CSA, for whatever reason, and not make it available for any Purchase Documents. The Province will promptly notify the Offeror of such action;
- h) any changes to this CSA are to be documented by way of a written addendum between the Offeror and the Province;
- i) the Offeror's Representative, and a designated back-up individual, will be available during the Province's normal business hours, and will have the authority to represent the Offeror with respect to all issues arising under this CSA;
- j) the Offeror will reimburse the Administration Fee in accordance with Schedule "D";
- k) if the Offeror offers a lower price to others in the British Columbia public sector for substantially the same goods and terms and conditions of a Contract during the term of this CSA, that lower price will also apply to this CSA. For the purposes of this section, a lower price is a price that is lower than the unit price in Schedule "B", exclusive of the Administration Fee;
- l) the Offeror will provide the Province's Representative with 60 days written notice of any changes to the list of Goods included in Schedule "A", and the Province will determine, at its sole discretion, whether to accept such changes; and

- m) individual Purchase Documents must not exceed \$225,000.

## **CORPORATE SUPPLY ARRANGEMENT - PUBLIC SECTOR ENTITIES**

3.2 With respect to Purchase Documents by Public Sector Entities, the Offeror acknowledges that:

- (a) Public Sector Entities are solely responsible for all payments and other obligations to the Offeror incurred through making a Purchase Document against the CSA;
- (b) nothing in this CSA or any resulting Contract will impose any liability whatsoever on the Province in respect of any obligation of a Public Sector Entity to the Offeror, and the Province disclaims any and all liability in respect of any Purchase Document made by a Public Sector Entity against this CSA;
- (c) neither a Public Sector Entity utilizing the CSA nor the Offeror will be required to agree to any terms and conditions other than those set out in this CSA. However, Public Sector Entities will have the option of renegotiating the terms and conditions set out in Schedule E, to the extent necessary to address the Public Sector Entity's specific payment, insurance, indemnification, limitation of liability requirements, privacy, confidentiality and security requirements. All changes to the terms and conditions of Schedule E are to be set out in an addendum entered into with the Offeror; and
- (d) the Offeror reserves the right to refuse to enter into an addendum as contemplated in subsection (c) that would vary the terms and conditions of the Contract from that set out in this CSA.

## **PURCHASE DOCUMENT MECHANISM**

- 4. The Goods may be ordered by various methods, including: in person, telephone, facsimile, or email, so long as a written Purchase Document is presented that includes at a minimum:
  - (a) the reference number for this CSA;
  - (b) the name of the Purchaser;
  - (c) the description and specified quantity of the Goods that are being ordered; and
  - (d) the maximum amount payable for the Purchase Document.
- 5. Purchase Documents against a CSA paid for with the Province's corporate purchasing card must be accorded the same Prices and be subject to the same terms and conditions as any other Purchase Document.

6. If the Purchaser issues a Purchase Document to the Offeror prior to the expiry of this CSA and receives the Goods, then the Purchaser will pay to the Offeror the amounts payable as described in Schedule "B".

7. If there is any conflict or inconsistency among any of the provisions of the following documents:

- a) this CSA; and
- b) a Purchase Document,

then the order of precedence will be (a) and then (b), unless the Offeror and a Public Sector Entity have entered into an addendum revising the terms of the in accordance with section 3.2(c) of this CSA, in which case, any terms in such addendum stated to apply

notwithstanding the terms of Schedule E will take precedence.

**NOTIFICATION OF WITHDRAWAL**

8. In the event that the Offeror wishes to withdraw this CSA, the Offeror will provide no less than thirty (30) days' prior written notice to the Province Representative, and such withdrawal of this CSA will not be effective until receipt of such notification by the Province Representative and the expiry of such notice period.

9. The Offeror will fulfil any Purchase Documents made before the expiry of such notice period.

**SIGNED** by the Offeror

\_\_\_\_\_  
(Authorized Signatory)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Print Name

**SCHEDULE "A"**  
**GOODS**

The Offeror will provide computer anti-malware software and services on an as, if, and when requested basis to the Province and Public Sector Entities.

Computer anti-malware software and services includes the provision of:

- a.) Computer Anti-Malware Software set out in Table 1 together with licences for its use as set out below; and
- b.) Support and Maintenance Services as set out below.

**Computer Anti-Malware Software**

The Computer Anti-Malware Software means the software identified in Table 1 below, and includes all fixes, patches, updates, upgrades and new versions provided through the Services (the “**Software**”):

**Table 1**

<b>Name</b>	<b>Website for more information</b>
Trend Micro’s Enterprise Security for Endpoints	<a href="http://www.trendmicro.com/us/enterprise/security-suite-solutions/esea-endpoint-advanced/">http://www.trendmicro.com/us/enterprise/security-suite-solutions/esea-endpoint-advanced/</a>
OfficeScan	<a href="http://www.trendmicro.com/us/enterprise/product-security/officescan/index.html">http://www.trendmicro.com/us/enterprise/product-security/officescan/index.html</a>
Trend Micro Mobile Security	<a href="http://www.trendmicro.com/us/enterprise/product-security/mobile-security/index.html">http://www.trendmicro.com/us/enterprise/product-security/mobile-security/index.html</a>
Control Manager	<a href="http://www.trendmicro.com/us/enterprise/security-management/control-manager/">http://www.trendmicro.com/us/enterprise/security-management/control-manager/</a>
Intrusion Defence Firewall	<a href="http://www.trendmicro.ca/media/misc/intrusion-defense-firewall-en.pdf">http://www.trendmicro.ca/media/misc/intrusion-defense-firewall-en.pdf</a>

The Offeror represents and warrants that the Software meets the following requirements:

- a. The Software currently has one or both of the certification sets listed below:
  - i. International Computer Security Association (ICSA) Certifications:
    - Desktop / Server Anti-virus Detection and
    - Cleaning Certification, and/or
  - ii. West Coast Labs Checkmark Certifications:
    - Anti-virus Desktop and
    - Anti-virus Server and
    - Anti-Virus Disinfection.
  
- b. The Software is recognized by Microsoft as being compatible with Windows 2003, 2003 R2, 2008, 2008 R2 and 2012 and 2012 R2 Server and Windows Vista, Windows 7 Professional and Windows 8.1, systems.

- c. The Software is recognized by Apple as being compatible with OSX systems.
- d. The Software provides the ability to detect and eliminate expanded threats (viruses, mal ware, root kits; BotNets, Trojans, etc.).
- e. The Software provides the ability to send logs to an ArcSight SIEM (Security Information and Event Management Solution).
- f. The Software allows selection of functionality during installation (e.g. anti-virus enabled, malware detection disabled).
- g. The Software ensures client software is managed when attached to the Purchaser's network but able to receive updates when disconnected from the Purchaser's network and its parent server (i.e. laptop computers travelling out of the Purchaser's network).
- h. The Software accommodates multiple operating system instances within a virtual environment on a single machine (including VM Ware and Hyper V).
- i. The Software is configurable to enable globally and individually:
  - i. what to scan (all files, file extension, internal file type),
  - ii. what not to scan (specific folder, etc.),
  - iii. action to be taken when a virus/malware is detected (disinfect, notify, log, etc.),
  - iv. alert messaging of events via: email, SNMP, SMS, or a client software interface.
- j. The Software provides event logging both locally and centrally including all:
  - i. administrative console activities.;
  - ii. successful and unsuccessful deployment of agents/software;
  - iii. successful and unsuccessful scans;
  - iv. client version installed; and
  - v. client last contact date and time.
- k. The Software is able to be deployed and managed including maintenance or patching over a network.
- l. The Software has an automatic distribution process of virus definition, signature or equivalent files where the deployment of these files should be "invisible" to the end-user and require minimal or no system administration involvement.
- m. The Software provides a warning in the event a virus signature file is older than a pre-selected date or if a client has failed.

- n. The Software provides the ability to lock down the configuration to prevent user tampering.
- o. The Software provides for unattended installation during setup.
- p. The Software provides a central management capability which integrates with Microsoft's Active Directory authentication and include the ability to:
  - i. report/identify systems that have lost connectivity to the parent server and require a positive action to remove from the central management database so that systems whose anti-malware service has become disabled can be identified and repaired,
  - ii. push configurations out from a central point,
  - iii. log to a central point,
  - iv. alert to a central point,
  - v. monitor and report on the service.
- q. The Software operates on or with the following physical servers and servers hosted on VMware and software:
  - i. Server Hardware:
    - Single and multi-processor Intel / AMD servers (HP, Dell, IBM, Oracle),
    - Large volumes: 2TB commonly , up to 4.0 TB, typically located on a SAN,
    - 64bit servers: Intel and AMD platform,
    - SAN-connected disks
  - ii. Server Operating Systems:
    - 32bit and 64bit Windows operating systems,
    - Windows 2003 (Standard and Enterprise): base O/S, SP1,
    - Windows 2003 R2,
    - Windows 2008, 2008 R2,
    - Windows 2012, 2012 R2
  - iii. Network:
    - Able to operate in environments with network ACLs and firewalls,
    - Utilize specific, non-variable ports (rather than one or more large port ranges)
  - iv. Applications:
    - VERITAS NetBackup,
    - Oracle,
    - Microsoft Office 2007/2010,
    - IIS 5.0/6.0/7.0,
    - Microsoft SQL 2000 & SQL 2005 & SQL 2008,
    - Citrix Presentation Server v4.5 and above,
    - Symantec PCAnywhere v10 and v11,
    - SharePoint,
    - SCCM 2012 and above,
    - Microsoft Exchange: v2010 and above.
- r. The Software does not include any disabling or limiting code, locking device, key, routine or device that would limit the Purchaser's use of the Software.

- s. All documentation accurately describes the use and operation of the Software and the Software will perform substantially in accordance with user documentation.
  
- t. The Offeror has all required rights to grant the Purchaser a permanent, irrevocable, royalty-free licence to the Software.

## Support and Maintenance Services

The Support and Maintenance Services means the services identified in Table 2 below (the “Services”):

**Table 2**

Name	Website for more information
24x7 Support	<a href="http://www.trendmicro.com/cloud-content/us/pdfs/business/datasheets/ds_support-services.pdf">http://www.trendmicro.com/cloud-content/us/pdfs/business/datasheets/ds_support-services.pdf</a>
Services Offerings	
Telephone Support hours	24 x 7
Designated contacts	4
Product updates and upgrades	✓
Phone, email and web-based support channels	✓
Priority call queuing	✓
Malware removal assistance	✓
Remote installation and upgrade support	4 hours/year
Priority access to Advanced Support Engineers	✓

The Offeror represents and warrants that the Services meet the following requirements:

- a. The Services will provide phone and email support 24 hours per day, 7 days per week. Response within 3 hours from the time the problem was registered for non-emergency issues, response within 1 hour from the time the problem was registered for emergency issues.
- b. The Services will complete the initial registration of problems without requiring more than 15 minutes of the caller’s time.
- c. The Services will provide proactive distribution of warnings, evaluations of virus threats, risk assessments and remedies.
- d. The Services will include delivery, installation and support for all fixes, patches, updates, upgrades and new versions provided through the Services, and subsequent updates and new releases of the Software, updated signature files and anything else directly related to the proper functioning of the Software.



**SCHEDULE "B"**  
**PRICES**

**Perpetual Licenses for Computer Anti-Malware Software**

The Perpetual Licenses will be permanent, irrevocable, royalty-free, non-exclusive licenses to make use of the Software. This License is per desktop or mobile seat (i.e. mobile seats have to be licensed on top of desktop seats). The Per-Seat Perpetual License Price includes 12 (twelve) months of the offered Support and Maintenance Services.

Per-Seat Perpetual License Price

Pricing information is available on the <a href="#">Goods and Services Catalogue</a>
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The Contractor will invoice for the Software fee after execution of the Purchase Document.

**Support and Maintenance Services**

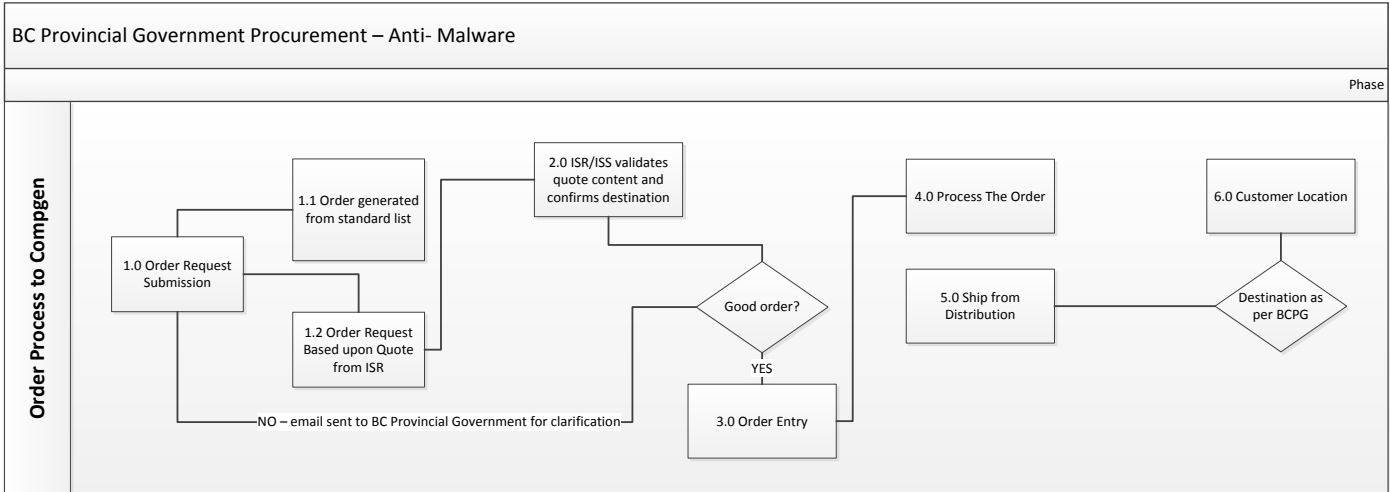
The Services will be available in Terms of one-year increments. The Services are provided on a per desktop or mobile seat basis seat (i.e. mobile seats have to be licensed on top of desktop seats)

Per-Seat Support and Maintenance Services (12 months) Price

Pricing information is available on the <a href="#">Goods and Services Catalogue</a>
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The Contractor will invoice for the Services fee annually during the Term, in advance on the first day of the Term and on each anniversary of that date.

## SCHEDULE "C" - ORDERING AND CONTACT INFORMATION



Procedure	Title	Procedure Description	Next Procedure
<b>1.0</b>	Order Request Submission	Order request submitted to <a href="mailto:softwarerequests@compugen.com">softwarerequests@compugen.com</a>	<b>1.1 or 1.2</b>
<b>1.1</b>	Order Generated through Standard list	Order requested can be generated through the list of standard items	<b>2.0</b>
<b>1.2</b>	ISR Quotation	Order request can also go through the consulting phase based on the quote from the Inside Sales rep.	<b>2.0</b>
<b>2.0</b>	ISR/ISS Validation	The ISR/ISS will review the quote and validate the accuracy of the order before processing. ISR/ISS will also confirm the final destination with BCPG	<b>4.0</b>
<b>3.0</b>	Order Entry	Once validated, the order will be entered into our JDE system	<b>5.0</b>
<b>4.0</b>	PO process	Once the SO has been entered, the PO will be sent electronically to our purchasing team, where the PO will be processed and submitted	<b>6.0</b>
<b>5.0</b>	Ship from Distribution	Product will be allocated to the request and ship to BCPG	<b>6.0</b>
<b>6..0</b>	Product Delivery (Customer Location)	Product will be delivered directly to the customer’s location	<b>End</b>

Name	Title	Email	Phone
Chris Fletcher	Inside Account Manager	<a href="mailto:cfletcher@compugen.com">cfletcher@compugen.com</a>	(250) 953-2117
Bob Denney	Sales Director, Calgary/BC	<a href="mailto:bdenney@compugen.com">bdenney@compugen.com</a>	(403) 571-4426
Jason Fris	National Director, Software	<a href="mailto:jfris@compugen.com">jfris@compugen.com</a>	(780) 969-1341
Terry Mirza	VP of Sales, Western Region	<a href="mailto:tmirza@compugen.com">tmirza@compugen.com</a>	(604) 801-7464

**SCHEDULE "D"**  
**ADMINISTRATIVE REQUIREMENTS**

The Offeror will comply with the following administrative requirements and procedures:

**PROCUREMENT SERVICES CSA CONTACTS**

1. For further information or clarification regarding:

Administration (Province):

Email: [csa@gov.bc.ca](mailto:csa@gov.bc.ca)

Phone: 250 387-7300

Representative (Province):

Kai Robinson, Procurement Specialist

Email: [Kai.Robinson@gov.bc.ca](mailto:Kai.Robinson@gov.bc.ca)

Phone: 778 677-0313

**REPORTING PROCEDURES**

**Quarterly Purchase Reports**

2. The Offeror will submit Purchase reports to Procurement Services on a quarterly basis as follows:

The Purchase report for:	Is due:
Quarter 1 (April, May, June)	July 31
Quarter 2 (July, August, September)	October 31
Quarter 3 (October, November, December)	January 31
Quarter 4 (January, February, March)	April 30

3. Quarterly Purchase reports will be sent via email to [csa@gov.bc.ca](mailto:csa@gov.bc.ca) and include the CSA # in the subject line.
4. The Purchase reports will be in MS Excel format and completed in the form of the CSA Purchase report template as provided and updated from time-to-time by the Province.
5. The Offeror will provide a quarterly Purchase report whether or not any Purchase Documents are received in that quarter. Each quarterly Purchase report will provide an explanation for any missing data.

**Quarterly Fee Remission**

6. **Administration Fee.** Each quarter, the Offeror will submit to Procurement Services Branch a cheque for one percent of all sales (exclusive of taxes and transportation charges) that were reported to Procurement Services on the quarterly Purchase report, including sales to any Public Sector Entity. The cheque must be payable to the Minister of Finance, and sent to the following address:

Procurement Services Branch  
PO Box 9476 Stn Prov Gov  
Victoria BC V8W 9W6

The cheque must clearly identify each CSA and the months represented in the payment. The cheque must be submitted no later than 1 month following the end of each quarter as follows:

The fee for:	Is due:
Quarter 1 (April, May, June)	July 31
Quarter 2 (July, August, September)	October 31
Quarter 3 (October, November, December)	January 31
Quarter 4 (January, February, March)	April 30

7. Purchase reports may be checked against provincial financial records to verify accuracy. Procurement Services shall promptly notify the Offeror of any discrepancy, who will be given one month to respond to or rectify the report.
8. More than two occurrences of inaccuracies may result in the CSA being suspended, until such time as the supplier can demonstrate to Procurement Services that they are capable of managing the terms of their CSA agreement.
9. Failure to submit a reimbursement cheque for the Administration Fee within two months of the end of a quarter in which sales were reported may result in the CSA being suspended until such time as reimbursement is received.

**SCHEDULE "E"**  
**CONTRACT TERMS AND CLAUSES**

**1 Definitions and Interpretation**

1.1

- (a) **"Business Day"** means a day, other than a Saturday or Sunday, on which Provincial government offices are open for normal business in British Columbia;
- (b) **"Contractor"** has the meaning given to it in the Corporate Supply Arrangement;
- (c) **"Province"** means Her Majesty the Queen in right of the Province of British Columbia;
- (d) **"Purchaser"** has the meaning given to it in the Purchase Document;
- (e) **"Record"** has the meaning given to it in the Interpretation Act;
- (f) **"Services"** has the meaning given to it in Schedule A;
- (g) **"Software"** has the meaning given to it in Schedule A;
- (h) **"Term"** means the term of the Contract as set out in the Purchase Document.

1.2

- (a) "includes" and "including" are not intended to be limiting;
- (b) unless the context otherwise requires, references to sections by number are to sections of this Agreement;
- (c) the Contractor and the Purchaser are referred to as "the parties" and each of them as a "party";
- (d) "attached" means attached to this Agreement when used in relation to a schedule;
- (e) unless otherwise specified, a reference to a statute by name means the statute of British Columbia by that name, as amended or replaced from time to time;
- (f) the headings have been inserted for convenience of reference only and are not intended to describe, enlarge or restrict the scope or meaning of this Agreement or any provision of it;
- (g) "person" includes an individual, partnership, corporation or legal entity of any nature; and
- (h) unless the context otherwise requires, words expressed in the singular include the plural and vice versa.

**2. Deliverables and Services**

- 2.1 The Contractor will make available to the Purchaser the Software, including permanent, irrevocable, royalty-free, non-exclusive licenses to use the Software for the number of seats requested by the Purchaser in the Purchase Document, and delivery of copies of the Software and related documentation.
- 2.2 The Software will include all fixes, patches, updates, upgrades and releases of the Software that are issued by the Contractor between the delivery to the Purchaser of the initial version of the Software and the end of the Term.
- 2.3 Regardless of the date of execution or delivery of the Purchase Document, the Contractor must provide the Services during the Term.
- 2.4 The Contractor must supply and pay for all labour, materials, equipment, tools, facilities, approvals and licenses necessary or advisable to perform the Contractor's obligations under the Contract, including the license for the Software.

- 2.5 Unless otherwise specified in the Contract, the Contractor must perform the Services to a standard of care, skill, and diligence maintained by persons providing, on a commercial basis, services similar to the Services.
- 2.6 The Contractor must ensure that all persons employed or retained to perform the Services are qualified and competent to perform them and are properly trained, instructed and supervised.
- 2.7 The Contractor will comply with all laws applicable to it in the performance of the Contract. The Contractor assumes the risk of a change in laws during the term of the Contract, provided such change is of general application.
- 2.8 The Contractor will comply with any policies of the Purchaser relating to privacy, data protection, security, acceptable use, conduct and access to the Purchaser's facilities and systems, to the extent applicable to performance of the Contract and provided that the Purchaser has given the Contractor notice of such policies. The Purchaser has the right to modify its policies during the term of the Contract, with the impact of any modification to be addressed through a change management process.
- 2.9 The Contractor is responsible to have all permits and licenses necessary for its performance of the Contract.
- 2.10 The Purchaser may require the Contractor to remove any of its personnel from the performance of the Implementation Services if any such personnel does not comply with the Contractor's obligations under the Contract or is otherwise unacceptable to the Purchaser, acting reasonably.
- 2.11 The Contractor will designate a contact who will be the Purchaser's principal point of contact in connection with the Contract, and who will have the power to make decisions for and bind the Contractor.
- 2.12 The Contractor will be responsible for all acts and omissions of, and for all claims and losses caused by, its personnel.

### **3. Fees and Payment**

- 3.1 If the Contractor complies with the Contract, then the Purchaser must pay to the Contractor at the times and on the conditions set out in the Contract:
  - (a) the fees described in Schedule B; and
  - (b) any applicable taxes payable by the Purchaser under law or agreement with the relevant taxation authorities on the fees described in paragraph (a).
- 3.2 In order to obtain payment of any fees under the Contract, the Contractor must submit to the Purchaser a written statement of account in a form satisfactory to the Purchaser, containing:
  - (a) the Contractor's legal name and address;
  - (b) the date of the statement;
  - (c) the Contractor's calculation of all fees claimed under the Contract;
  - (d) the Contractor's calculation of all applicable taxes payable by the Purchaser in relation to the Software and the Services;
  - (e) a description of the Contract to which the statement relates;
  - (f) a statement number for identification; and

- (g) any other billing information reasonably requested by the Purchaser.
- 3.3 Within 30 days of the Purchaser's receipt of the Contractor's written statement of account delivered in accordance with the Contract, the Purchaser must pay the Contractor the fees (plus all applicable taxes), claimed in the statement if they are in accordance with the Contract. Statements of account or contract invoices offering an early payment discount may be paid by the Purchaser as required to obtain the discount.
- 3.4 The Purchaser may withhold from any payment due to the Contractor an amount sufficient to indemnify in whole or in part the Purchaser and its employees and agents against any liens or other third-party claims that have arisen or could arise in connection with the provision of the Software or Services. An amount withheld under this section must be promptly paid by the Purchaser to the Contractor upon the basis for withholding the amount having been fully resolved to the satisfaction of the Purchaser.
- 3.5 Interest on any payments due under this Contract which are past due shall be payable by the paying party to the other party at times and using rates described in the *Interest on Overdue Accounts Payable Regulation*, B.C. Reg. 215/83, as amended.
- 3.6 Where the Purchaser is the Province, this Contract and the financial obligations of the Province pursuant to this Contract will be subject to
- (a) there being sufficient moneys available in an appropriation, as defined in the *Financial Administration Act*, to enable the Province in any fiscal year or part thereof when the payment of money by the Province to the Contractor falls due under this Contract to make that payment; and
  - (b) Treasury Board, as defined in the *Financial Administration Act*, not having controlled or limited expenditure under any appropriation referred to in subsection (a) of this section.
- 3.7 Unless otherwise specified in the Contract, all references to money are to Canadian dollars.
- 3.8 If the Contractor is not a resident in Canada, the Contractor acknowledges that the Purchaser may be required by law to withhold income tax from the fees described in Schedule B and then to remit that tax to the Receiver General of Canada on the Contractor's behalf.
- 3.9 The Contractor must not in relation to performing the Contractor's obligations under the Contract commit or purport to commit the Purchaser to pay any money except as may be expressly provided for in the Contract.
- 3.10 The Contractor must:
- (a) apply for, and use reasonable efforts to obtain, any available refund, credit, rebate or remission of federal, provincial or other tax or duty imposed on the Contractor as a result of the Contract that the Purchaser has paid or reimbursed to the Contractor or agreed to pay or reimburse to the Contractor under the Contract; and
  - (b) immediately on receiving, or being credited with, any amount applied for under paragraph (a), remit that amount to the Purchaser.
- 3.11 If the Purchaser disputes a statement of account, the dispute will proceed as set out in the dispute resolution process set out in the Contract. The Purchaser may withhold amounts in dispute until the dispute is resolved. Disputed amounts that have been withheld by the Purchaser and are subsequently determined to be properly payable will be paid with interest. Disputed amounts that

have not been withheld by the Purchaser and are subsequently determined not to have been properly payable will be repaid by the Contractor with interest.

#### **4. Representations and Warranties**

4.1 The Contractor makes the representations and warranties set out in Schedule A.

4.2 As at the date the Contract is executed, the Contractor represents and warrants to the Purchaser as follows:

- (a) *Incorporation*: it is incorporated under the laws of Ontario, and is and throughout the Term will remain a corporation duly organized and validly existing;
- (b) *Legal Capacity*: it has, and will at all relevant times have, the power and capacity to enter into this Contract and to grant the licenses granted herein, perform the Services and observe, perform and comply with the terms of this Contract;
- (c) *Binding Agreement*: it has duly authorized this Contract by all necessary corporate action and has legally and properly executed this Contract, which constitutes a valid, subsisting and legally binding obligation upon it which is enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency and other laws of general application limiting the enforceability of creditors' rights, and to the fact that specific performance and injunctive relief are equitable remedies available only in the discretion of the court;
- (d) *Accurate Information*: all written information, statements, documents and reports furnished or submitted by Contractor to the Purchaser in connection with this Contract, including the proposal, are true and correct in all material respects to the best of Contractor's knowledge, except to the extent modified or replaced by this Contract;
- (e) *No Contrary Knowledge*: it has no knowledge of any untrue or incorrect representation or assurance, whether verbal or written, given by it or any Contractor Personnel to the Purchaser in connection with this Contract, the RCSA or the response;
- (f) *No Adverse Developments*: it has no knowledge of any fact that materially adversely affects or, so far as it can foresee, might materially adversely affect its properties, assets, condition (financial or otherwise), business or operations or its ability to fulfil its obligations under this Contract;
- (g) *No Insolvency Event*: no bankruptcy or insolvency event has occurred within the past 10 years (whether or not such bankruptcy or insolvency event is continuing) with respect to Contractor or any past or present affiliate or predecessor of Contractor, nor is there any basis on which a bankruptcy or insolvency event might reasonably be expected to occur during the Term with respect to Contractor or any affiliate of Contractor;
- (h) *No Resulting Default*: the observance and performance of the terms and conditions of this Contract do not and will not constitute a breach by it of or a default by it under:
  - (i) any Law applicable to or binding upon Contractor;
  - (ii) Contractor's its Articles, by-laws or other constituting documents; or
  - (iii) any contract or agreement to which Contractor is a party;
- (i) *No Adverse Claims*: it is not a party to and has no knowledge of any claim against it that would materially affect its undertaking or financial condition or its ability to perform its obligations under this Contract;
- (j) *Compliance with Laws*: it is not in breach of any law applicable to its business that would impair its ability to perform its obligations under this Contract and it will comply with all applicable laws in performing its obligations under this Contract;
- (k) *Necessary Permits*: it holds and will during the Term maintain in good standing, all permits, licenses, consents and authorizations issued by any federal, provincial, state, regional or



municipal government, or an agency of any of them, and has given all notices, that are necessary in connection with its operations and the performance of its obligations under this Contract;

- (l) *Adequate Resources*: it has and will maintain sufficient trained staff, facilities, materials, appropriate equipment and, subject to [subcontracting terms], subcontracts with approved subcontractors in place and available to enable it to fully perform the Services;
- (m) *Necessary Expertise*: it possesses the necessary skills, expertise and experience to carry out and complete the Services in accordance with the terms of this Contract;
- (n) *No Liens*: all deliverables will be free and clear of liens at the time of delivery to the Purchaser;
- (o) *No Inducements*: neither Contractor nor anyone on its behalf has unlawfully given, nor will they give, any payment, gift, donation, benefit, thing of value or other inducement to any employee or representative of the Purchaser or any government, governmental agency or political party in connection with this Contract or the transactions contemplated by this Contract; and to the best of Contractor's knowledge without making due enquiry, no officer, director, employee, agent or representative of the Purchaser or any government, governmental agency or political party has unlawfully given any payment, gift, donation, benefit, thing of value or other inducement to Contractor or any of its representatives or personnel; and
- (p) *No Lobbying*: neither Contractor nor anyone on its behalf has engaged in any lobbying with respect to this Contract or the transactions contemplated by this Contract.

All representations and warranties made or provided by Contractor under this Contract are material and will conclusively be deemed to have been relied upon by the Purchaser, notwithstanding any prior or subsequent investigation by the Purchaser.

## **5. Intellectual Property**

5.1 The license granted by the Contractor to the Purchaser for use of the Software will have the following characteristics:

- (a) upon payment of the license fees under the Contract, it will be fully paid up, royalty free, perpetual and irrevocable;
- (b) the Purchaser may install and use the Software in multiple environments, including production, training, development, testing and disaster recovery;
- (c) the Purchaser will have the right to assign the license;
- (d) the license will grant the Purchaser the right to use the Software for all government purposes;
- (e) the Purchaser may permit the Software to be used by any contractor or outsourced service provider providing services to the Purchaser, provided that such use is for the benefit of the Purchaser within the scope of this license; and
- (f) the terms of the license will apply to any new releases of the Software or to any other Software provided by Contractor under this or another agreement, including with respect to any separate maintenance agreement.

5.2 The Contractor will defend the Purchaser and its related parties and personnel against any claim that all or any part of the Software infringes the patent, copyright or other intellectual property rights of a third party, and will indemnify the Purchaser and its related parties and personnel against any third party liabilities, obligations, costs and expenses resulting from such claims. In the event of an infringement claim, the Contractor will, at its cost, obtain from the third party, for the benefit of the Purchaser, a license that permits the Purchaser to continue using the Software, or modify the Software so that it is no longer infringing.

## **6. Privacy and Security**

- 6.1 The Privacy Protection Schedule, in a form substantially similar to the wording attached as Appendix 1, will form part of the Contract.
- 6.2 The Security Schedule, in a form substantially similar to the wording attached as Appendix 2, will form part of the Contract.
- 6.3 Each of the Purchaser and the Contractor will maintain the confidentiality of the other party's confidential information, and use the other party's confidential information only for purposes permitted by the Contract. All confidential information shall be subject to the provisions of the *Freedom of Information and Protection of Privacy Act*, British Columbia.
- 6.4 Any public announcement relating to the Contract will be arranged by the Purchaser and, if such consultation is reasonably practicable, after consultation with the Contractor.
- 6.5 The Contractor must not, without the prior written approval of the Purchaser, refer for promotional purposes to the Purchaser being a customer of the Contractor or the Purchaser having entered into the Contract.

## **7. Indemnification and Liability**

- 7.1 The Contractor will defend and indemnify the Purchaser and its related parties and personnel against claims, losses, costs or expenses, including the fees of solicitors or other professionals (each a "Loss") at any time, either before or after the Contract ends, caused or contributed to by or resulting from any act or omission of the Contractor, its personnel or anyone for whom it is in law responsible, including:
- (a) breach of the Contract;
  - (b) breach by the Contractor of any other contract, license or law binding upon it;
  - (c) the Contractor's failure to pay any tax for which it is responsible;
  - (d) death or injury to any person;
  - (e) loss of or damage to property;
  - (f) breach of confidentiality and privacy requirements;
  - (g) infringement of third party intellectual property rights;
  - (h) any act or omission by the Contractor or by any of the Contractor's agents, employees, officers, directors or Subcontractors in connection with the Contract; or
  - (i) any representation or warranty of the Contractor being or becoming untrue or incorrect.
- 7.2 The indemnification by the Contractor pursuant to section 9.1 is limited to:
- (a) \$2,000,000 per Loss; and
  - (b) \$4,000,000 in the aggregate for all Losses.
- 7.3 The limitations set out in section 7.2 do not apply to a Loss resulting from or relating to any of the following:
- (a) bodily injury or damage to real property or tangible personal property;
  - (b) third-party intellectual property rights; or
  - (c) breach of confidentiality or privacy obligations.

- 7.4 To claim indemnification for a Loss pursuant to section 7.1, the Purchaser must notify the Contractor in writing of the Loss as soon as reasonably practicable after the Purchaser becomes aware of the Loss provided that a failure by the Purchaser to provide such notification will not invalidate the claim unless the Contractor is materially prejudiced by that failure.
- 7.5 If the Loss is on the basis of a third-party claim that any element of the Software or Services infringes the intellectual property rights of any person,
- (a) then, without limiting section 7.1, the Contractor must defend the Purchaser against that claim at the Contractor's expense and the Contractor must pay all associated costs, damages and legal fees that a court or arbitrator finally awards or are included in a settlement agreed to by the Contractor; and
  - (b) the Purchaser must cooperate with the Contractor in the defence of the claim and, where appropriate in the discretion of the Purchaser, will allow the Contractor to appoint and instruct counsel and otherwise control the defence and any related settlement negotiations.

## 8. Insurance

- 8.1 The Contractor must comply with the Insurance Schedule attached as Appendix 3.
- 8.2 The Contractor must comply with, and must ensure that any Subcontractors comply with, all applicable occupational health and safety laws in relation to the performance of the Contractor's obligations under the Contract, including the Workers Compensation Act in British Columbia or similar laws in other jurisdictions.
- 8.3 Within 10 Business Days of being requested to do so by the Purchaser, the Contractor must provide the Purchaser with evidence of the Contractor's compliance with sections 8.1 and 8.2.

## 9. Assignment

- 9.1 The Contractor may not assign this Contract without the Purchaser's consent, which may be given or refused in the Purchaser's discretion. For the purposes of the Contract, "assignment" will include a change of control of the Contractor.

## 10. Default, Termination and Force Majeure

- 10.1 In this section:
- (a) "**Event of Default**" means any of the following:
    - (i) an Insolvency Event,
    - (ii) the Contractor fails to perform any of the Contractor's obligations under the Contract, or
    - (iii) any representation or warranty made by the Contractor in the Contract is untrue or incorrect; and
  - (b) "**Insolvency Event**" means any of the following:
    - (i) an order is made, a resolution is passed or a petition is filed, for the Contractor's liquidation or winding up,
    - (ii) the Contractor commits an act of bankruptcy, makes an assignment for the benefit of the Contractor's creditors or otherwise acknowledges the Contractor's insolvency,

- (iii) a bankruptcy petition is filed or presented against the Contractor or a proposal under the Bankruptcy and Insolvency Act (Canada) is made by the Contractor,
- (iv) a compromise or arrangement is proposed in respect of the Contractor under the Companies' Creditors Arrangement Act (Canada),
- (v) a receiver or receiver-manager is appointed for any of the Contractor's property, or
- (vi) the Contractor ceases, in the Purchaser's reasonable opinion, to carry on business as a going concern.

10.2 The term of the Contract will commence on the date set out in the Purchase Document. With respect to the license of the Software, the term of the Contract will be perpetual upon payment by the Purchaser of the Software fees. With respect to the Services, the term will be set out in the Purchase Document.

10.3 The Contractor acknowledges that the Purchaser gives no assurance whatsoever, expressed or implied, that this Contract will be renewed or extended beyond the expiry of the initial term or any renewal term, and that Contractor has arranged its business affairs on the assumption that this Contract may terminate at the end of the initial term or, if the Purchaser renews this Contract for a renewal term, at the end of the then current renewal term.

10.4 The Purchaser may terminate the Services without cause at any time, but will not be entitled to a refund of the fees paid for the Services for the then-current year. If the Purchaser has prepaid the fees for the Services in subsequent years, those fees will be refunded to the Purchaser.

10.5 The Purchaser may terminate the Services with cause if the Contractor is in breach of its obligations under the Contract in relation to the Services, unless the Contractor remedies that breach within a reasonable time after notice from the Purchaser. Where the Purchaser terminates the Services for cause, the Contractor will refund to the Purchaser a pro rata portion of the Services fees for the then-current year and any fees for subsequent years of the Services that were prepaid by the Purchaser.

10.6 The Contractor may terminate the Services for the Purchaser's failure to pay for the Services, provided that the Contractor has first given notice to the Purchaser of such failure, and the Purchaser has not remedied such failure within a reasonable time.

10.7 Where the Services have been terminated by the Purchaser or the Contractor, or not renewed by the Purchaser, the Purchaser may thereafter reinstate the Services by paying the previously unpaid Services fees, upon which the Contractor will provide to the Purchaser all fixes, patches, updates, upgrades and releases of the Software that were issued by the Contractor in the intervening period.

10.8 On the happening of an Event of Default, or at any time thereafter, the Purchaser may, at its option, elect to do any one or more of the following:

- (a) by written notice to the Contractor, require that the Event of Default be remedied within a time period specified in the notice;
- (b) pursue any remedy or take any other action available to it at law or in equity; or
- (c) by written notice to the Contractor, terminate the Contract with immediate effect or on a future date specified in the notice, subject to the expiration of any time period specified under section 10.8(a).

10.9 No failure or delay on the part of the Purchaser to exercise its rights in relation to an Event of Default will constitute a waiver by the Purchaser of such rights.

- 10.10 If the Contractor becomes aware that an Event of Default has occurred or anticipates that an Event of Default is likely to occur, the Contractor must promptly notify the Purchaser of the particulars of the Event of Default or anticipated Event of Default. A notice under this section as to the occurrence of an Event of Default must also specify the steps the Contractor proposes to take to address, or prevent recurrence of, the Event of Default. A notice under this section as to an anticipated Event of Default must specify the steps the Contractor proposes to take to prevent the occurrence of the anticipated Event of Default.
- 10.11 In this section and sections 10.12 and 10.13:
- (a) “Event of Force Majeure” means one of the following events:
    - (i) a natural disaster, fire, flood, storm, epidemic or power failure,
    - (ii) a war (declared and undeclared), insurrection or act of terrorism or piracy,
    - (iii) a strike (including illegal work stoppage or slowdown) or lockout, or
    - (iv) a freight embargoif the event prevents a party from performing the party’s obligations in accordance with this Agreement and is beyond the reasonable control of that party; and
  - (b) “Affected Party” means a party prevented from performing the party’s obligations in accordance with this Agreement by an Event of Force Majeure.
- 10.12 An Affected Party is not liable to the other party for any failure or delay in the performance of the Affected Party’s obligations under this Agreement resulting from an Event of Force Majeure and any time periods for the performance of such obligations are automatically extended for the duration of the Event of Force Majeure provided that the Affected Party complies with the requirements of section 10.13.
- 10.13 An Affected Party must promptly notify the other party in writing upon the occurrence of the Event of Force Majeure and make all reasonable efforts to prevent, control or limit the effect of the Event of Force Majeure so as to resume compliance with the Affected Party’s obligations under this Agreement as soon as possible.

## **11. Governing Law and Dispute Resolution**

- 11.1 The Contract will be governed by the laws of British Columbia. All disputes that cannot be resolved by the parties will be resolved by arbitration under the arbitration laws of British Columbia. The arbitration will be held in Victoria, B.C. or Vancouver, B.C., as specified by the Purchaser. Any dispute or matter that is not arbitrable or that may be brought before a court will be submitted to the courts of British Columbia. The obligation to arbitrate is without prejudice to a party’s rights to apply to the British Columbia court to protect against irreparable harm, including the disclosure of confidential information or personal information.
- 11.2 In the event of any dispute between the parties arising out of or in connection with the Contract, the following dispute resolution process will apply unless the parties otherwise agree in writing:
- (a) the parties must initially attempt to resolve the dispute through collaborative negotiation;
  - (b) if the dispute is not resolved through collaborative negotiation within 15 Business Days of the dispute arising, the parties must then attempt to resolve the dispute through mediation under the rules of the Mediate BC Society; and

- (c) if the dispute is not resolved through mediation within 30 Business Days of the commencement of mediation, the dispute must be referred to and finally resolved by arbitration under the Arbitration Act.

11.3 Unless the parties otherwise agree in writing, an arbitration or mediation under section 13.1 will be held in Victoria, British Columbia.

11.4 Unless the parties otherwise agree in writing or, in the case of an arbitration, the arbitrator otherwise orders, the parties must share equally the costs of a arbitration or mediation under section 13.1 other than those costs relating to the production of expert evidence or representation by counsel.

## 12. General

12.1 Where the Purchaser is the Province, nothing in the Contract will require the Province to act in a manner that is contrary to, or is inconsistent with, any policies, directives, executive directions, Treasury Board decisions, guidelines, rules, regulations, legislation or other determinations of the Province. In addition, Contractor expressly acknowledges and confirms that nothing contained in this Contract, including without limitation any requirement or obligation that the Province act reasonably, not act unreasonably or use reasonable efforts or other similar requirement or obligation, will be construed or otherwise interpreted in any manner that would or could cause the Province to fetter its discretion or the Province's ability to introduce, pass, amend, modify, replace, revoke or otherwise exercise any rights or authority regarding legislation, regulations, policies or any other authority of the Province.

12.2 The Contractor must not provide any services to any person in circumstances which, in the Purchaser's reasonable opinion, could give rise to a conflict of interest between the Contractor's duties to that person and the Contractor's duties to the Purchaser under the Contract.

12.3 The Contractor and the Purchaser hereby acknowledge and affirm that this Contract constitutes a "procurement" by the Purchaser as that term is utilized in the *North American Free Trade Agreement* and the *General Agreement on Trade in Services*, and consequently:

- (a) *North American Free Trade Agreement* Sections 1102, 1103, 1107, 1106(1)(b), (c), (f), and (g), and 1106(3)(a) and (b) do not apply to this Contract, by virtue of the *North American Free Trade Agreement* Sections 1108(7)(a) and 1108(8) (b);
- (b) *North American Free Trade Agreement* Chapter Twelve does not apply to this Contract by virtue of Section 1201(2)(c);
- (c) the Services being procured under this Contract are services supplied in the exercise of governmental authority for purposes of the *General Agreement on Trade in Services*; and
- (d) Sections II, XVI and XVII of the *General Agreement on Trade in Services* do not apply to this Contract because, for purposes of Section XIII of that agreement, this Contract constitutes a procurement by a governmental agency of services being purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of services for commercial sale.

12.4 Any notice contemplated by the Contract, to be effective, must be in writing and delivered as follows:

- (a) by fax to the addressee's fax number specified on the first page of the Purchase Document, in which case it will be deemed to be received on the day of transmittal unless transmitted after the normal business hours of the addressee or on a day that is not a Business Day, in which cases it will be deemed to be received on the next following Business Day;

- (b) by hand to the addressee's address specified on the first page of the Purchase Document, in which case it will be deemed to be received on the day of its delivery; or
  - (c) by prepaid post to the addressee's address specified on the first page of the Purchase Document, in which case if mailed during any period when normal postal services prevail, it will be deemed to be received on the fifth Business Day after its mailing.
- 12.5 Either party may from time to time give notice to the other party of a substitute address or fax number, which from the date such notice is given will supersede for purposes of section 12.4 any previous address or fax number specified for the party giving the notice.
- 12.6 The Contractor must not subcontract any of the Contractor's obligations under the Contract to any person without the Purchaser's prior written consent. No subcontract, whether consented to or not, relieves the Contractor from any obligations under the Contract. The Contractor must ensure that:
- (a) any person retained by the Contractor to perform obligations under the Contract; and
  - (b) any person retained by a person described in paragraph (a) to perform those obligations fully complies with the Contract in performing the subcontracted obligations.
- 12.7 A waiver of any term or breach of the Contract is effective only if it is in writing and signed by, or on behalf of, the waiving party and is not a waiver of any other term or breach.
- 12.8 No modification of the Contract is effective unless it is in writing and signed by, or on behalf of, the parties.
- 12.9 The Contract (including any modification of it) constitutes the entire agreement between the parties as to performance of the Services.
- 12.10 Sections 3.1 to 3.11, 5.1, 5.2, 6.1 to 6.5, 7.1 to 7.5, 8.3, 10.1 to 10.13, 11.1 to 11.4, 12.4, 12.5, 12.10, and 12.12, any accrued but unpaid payment obligations, and any other sections of the Contract (including schedules) which, by their terms or nature, are intended to survive the completion of the Services or termination of the Contract, will continue in force indefinitely subject to any applicable limitation period prescribed by law, even after the Contract ends.
- 12.11 The schedules to the Contract (including any appendices or other documents attached to, or incorporated by reference into, those schedules) are part of the Contract.
- 12.12 In relation to the performance of the Contractor's obligations under the Contract, the Contractor is an independent contractor and not:
- (a) an employee or partner of the Purchaser; or
  - (b) an agent of the Purchaser except as may be expressly provided for in the Contract.
- The Contractor must not act or purport to act contrary to this section.
- 12.13 The Contractor must not do anything that would result in personnel hired or used by the Contractor or a Subcontractor in relation to providing the Services being considered employees of the Purchaser.
- 12.14 Time is of the essence in the Contract and, without limitation, will remain of the essence after any modification or extension of the Contract, whether or not expressly restated in the document effecting the modification or extension.
- 12.15 Conflicts among provisions of the Contract will be resolved as follows:

- (a) a provision in the body of this Schedule E will prevail over any conflicting provision in, attached to or incorporated by reference into any other document, unless that conflicting provision expressly states otherwise; and
- (b) a provision in any other document will prevail over any conflicting provision in a document attached to, or incorporated by reference into such document, unless the attached document expressly states otherwise.

12.16 Where the Purchaser is the Province, the Contract does not operate as a permit, license, approval or other statutory authority which the Contractor may be required to obtain from the Province or any of its agencies in order to provide the Services. Nothing in the Contract is to be construed as interfering with, or fettering in any manner, the exercise by the Province or its agencies of any statutory, prerogative, executive or legislative power or duty.

12.17 If any provision of the Contract or the application of it to any person or circumstance is invalid or unenforceable to any extent, the remainder of the Contract and the application of such provision to any other person or circumstance will not be affected or impaired and will be valid and enforceable to the extent permitted by law.

12.18 Each party must perform the acts, execute and deliver the writings, and give the assurances as may be reasonably necessary to give full effect to the Contract.



## **Appendix 1 to Schedule E Privacy Protection Schedule**

### **Definitions**

1. In this Schedule,
  - (a) “**access**” means disclosure by the provision of access;
  - (b) “**Act**” means the *Freedom of Information and Protection of Privacy Act*;
  - (c) “**contact information**” means information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual;
  - (d) “**personal information**” means recorded information about an identifiable individual, other than contact information, to which the Contractor has access or collected or created by the Contractor as a result of the Contract or any previous agreement between the Purchaser and the Contractor dealing with the same subject matter as the Contract but excluding any such information that, if this Schedule did not apply to it, would not be under the “control of a public body” within the meaning of the Act.

### **Purpose**

2. The purpose of this Schedule is to:
  - (a) enable the Purchaser to comply with the Purchaser's statutory obligations under the Act with respect to personal information; and
  - (b) ensure that, as a service provider, the Contractor is aware of and complies with the Contractor's statutory obligations under the Act with respect to personal information.

### **Collection of personal information**

3. Unless the Contract otherwise specifies or the Purchaser otherwise directs in writing, the Contractor may only collect or create personal information that is necessary for the performance of the Contractor's obligations, or the exercise of the Contractor's rights, under the Contract.
4. Unless the Contract otherwise specifies or the Purchaser otherwise directs in writing, the Contractor must collect personal information directly from the individual the information is about.
5. Unless the Contract otherwise specifies or the Purchaser otherwise directs in writing, the Contractor must tell an individual from whom the Contractor collects personal information:
  - (a) the purpose for collecting it;
  - (b) the legal authority for collecting it; and
  - (c) the title, business address and business telephone number of the person designated by the Purchaser to answer questions about the Contractor's collection of personal information.

### **Accuracy of personal information**

6. The Contractor must make every reasonable effort to ensure the accuracy and completeness of any personal information to be used by the Contractor or the Purchaser to make a decision that directly affects the individual the information is about.

### **Requests for access to personal information**

7. If the Contractor receives a request for access to personal information from a person other than the Purchaser, the Contractor must promptly advise the person to make the request to the Purchaser unless the Contract expressly

requires the Contractor to provide such access and, if the Purchaser has advised the Contractor of the name or title and contact information of an official of the Purchaser to whom such requests are to be made, the Contractor must also promptly provide that official's name or title and contact information to the person making the request.

#### **Correction of personal information**

8. Within 5 business days of receiving a written direction from the Purchaser to correct or annotate any personal information, the Contractor must annotate or correct the information in accordance with the direction.
9. When issuing a written direction under section 8, the Purchaser must advise the Contractor of the date the correction request to which the direction relates was received by the Purchaser in order that the Contractor may comply with section 10.
10. Within 5 business days of correcting or annotating any personal information under section 8, the Contractor must provide the corrected or annotated information to any party to whom, within one year prior to the date the correction request was made to the Purchaser, the Contractor disclosed the information being corrected or annotated.
11. If the Contractor receives a request for correction of personal information from a person other than the Purchaser, the Contractor must promptly advise the person to make the request to the Purchaser and, if the Purchaser has advised the Contractor of the name or title and contact information of an official of the Purchaser to whom such requests are to be made, the Contractor must also promptly provide that official's name or title and contact information to the person making the request.

#### **Protection of personal information**

12. The Contractor must protect personal information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or disposal, including any expressly set out in the Contract.

#### **Storage and access to personal information**

13. Unless the Purchaser otherwise directs in writing, the Contractor must not store personal information outside Canada or permit access to personal information from outside Canada.

#### **Retention of personal information**

14. Unless the Contract otherwise specifies, the Contractor must retain personal information until directed by the Purchaser in writing to dispose of it or deliver it as specified in the direction.

#### **Use of personal information**

15. Unless the Purchaser otherwise directs in writing, the Contractor may only use personal information if that use is for the performance of the Contractor's obligations, or the exercise of the Contractor's rights, under the Contract.

#### **Disclosure of personal information**

16. Unless the Purchaser otherwise directs in writing, the Contractor may only disclose personal information inside Canada to any person other than the Purchaser if the disclosure is for the performance of the Contractor's obligations, or the exercise of the Contractor's rights, under the Contract.
17. Unless the Contract otherwise specifies or the Purchaser otherwise directs in writing, the Contractor must not disclose personal information outside Canada.

### **Notice of foreign demands for disclosure**

18. In addition to any obligation the Contractor may have to provide the notification contemplated by section 30.2 of the Act, if in relation to personal information in the custody or under the control of the Contractor, the Contractor:
- (a) receives a foreign demand for disclosure;
  - (b) receives a request to disclose, produce or provide access that the Contractor knows or has reason to suspect is for the purpose of responding to a foreign demand for disclosure; or
  - (c) has reason to suspect that an unauthorized disclosure of personal information has occurred in response to a foreign demand for disclosure

the Contractor must immediately notify the Purchaser and, in so doing, provide the information described in section 30.2(3) of the Act. In this section, the phrases “foreign demand for disclosure” and “unauthorized disclosure of personal information” will bear the same meanings as in section 30.2 of the Act.

### **Notice of unauthorized disclosure**

19. In addition to any obligation the Contractor may have to provide the notification contemplated by section 30.5 of the Act, if the Contractor knows that there has been an unauthorized disclosure of personal information in the custody or under the control of the Contractor, the Contractor must immediately notify the Purchaser. In this section, the phrase “unauthorized disclosure of personal information” will bear the same meaning as in section 30.5 of the Act.

### **Inspection of personal information**

20. In addition to any other rights of inspection the Purchaser may have under the Contract or under statute, the Purchaser may, at any reasonable time and on reasonable notice to the Contractor, enter on the Contractor’s premises to inspect any personal information in the possession of the Contractor or any of the Contractor’s information management policies or practices relevant to the Contractor’s management of personal information or the Contractor’s compliance with this Schedule and the Contractor must permit, and provide reasonable assistance to, any such inspection.

### **Compliance with the Act and directions**

21. The Contractor must in relation to personal information comply with:
- (a) the requirements of the Act applicable to the Contractor as a service provider, including any applicable order of the commissioner under the Act; and
  - (b) any direction given by the Purchaser under this Schedule.
22. The Contractor acknowledges that it is familiar with the requirements of the Act governing personal information that are applicable to it as a service provider.

### **Notice of non-compliance**

23. If for any reason the Contractor does not comply, or anticipates that it will be unable to comply, with a provision in this Schedule in any respect, the Contractor must promptly notify the Purchaser of the particulars of the non-compliance or anticipated non-compliance and what steps it proposes to take to address, or prevent recurrence of, the non-compliance or anticipated non-compliance.

## **Termination of Contract**

24. In addition to any other rights of termination which the Purchaser may have under the Contract or otherwise at law, the Purchaser may, subject to any provisions in the Contract establishing mandatory cure periods for defaults by the Contractor, terminate the Contract by giving written notice of such termination to the Contractor, upon any failure of the Contractor to comply with this Schedule in a material respect.

## **Interpretation**

25. In this Schedule, references to sections by number are to sections of this Schedule unless otherwise specified in this Schedule.
26. Any reference to the "Contractor" in this Schedule includes any subcontractor or agent retained by the Contractor to perform obligations under the Contract and the Contractor must ensure that any such subcontractors and agents comply with this Schedule.
27. The obligations of the Contractor in this Schedule will survive the termination of the Contract.
28. If a provision of the Contract (including any direction given by the Purchaser under this Schedule) conflicts with a requirement of the Act or an applicable order of the commissioner under the Act, the conflicting provision of the Contract (or direction) will be inoperative to the extent of the conflict.
29. The Contractor must comply with the provisions of this Schedule despite any conflicting provision of this Contract or, subject to section 30, the law of any jurisdiction outside Canada.
30. Nothing in this Schedule requires the Contractor to contravene the law of any jurisdiction outside Canada unless such contravention is required to comply with the Act.

## Appendix 2 to Schedule E Security Schedule

### Definitions

1. In this Schedule,
  - (a) "Equipment" means any equipment, including interconnected systems or subsystems of equipment, software and networks, used or to be used by the Contractor to provide the Services;
  - (b) "Facilities" means any facilities at which the Contractor provides or is to provide the Services;
  - (c) "Information" means information
    - (i) in the Material, or
    - (ii) accessed, produced or obtained by the Contractor (whether verbally, electronically or otherwise) as a result of the Contract;
  - (d) "Record" means a "record" as defined in the *Interpretation Act*;
  - (e) "Sensitive Information" means
    - (i) Information that is "personal information" as defined in the *Freedom of Information and Protection of Privacy Act*, or
    - (ii) any other Information specified by the Purchaser to be "Sensitive Information"; and
  - (f) "Services Worker" means an individual involved in providing the Services for or on behalf of the Contractor and, for greater certainty, may include
    - (i) the Contractor or a subcontractor if an individual, or
    - (ii) an employee or volunteer of the Contractor or of a subcontractor.

### Schedule contains additional obligations

2. The obligations of the Contractor in this Schedule are in addition to any other obligation in the Contract or the schedules attached to it relating to security including, without limitation, the obligations of the Contractor in the Privacy Protection Schedule, if attached.

### Services Worker confidentiality agreements

3. The Contractor must not permit a Services Worker who is an employee or volunteer of the Contractor to have access to Sensitive Information unless the Services Worker has first entered into a confidentiality agreement with the Contractor to keep Sensitive Information confidential on substantially similar terms as those that apply to the Contractor under the Contract.

### Services Worker security screening

4. The Contractor may only permit a Services Worker who is an employee or a volunteer of the Contractor to have access to Sensitive Information or otherwise be involved in providing the Services if, after having subjected the Services Worker to the personnel security screening requirements set out in Exhibit 1 and any additional requirements the Contractor may consider appropriate, the Contractor is satisfied that the Services Worker does not constitute an unreasonable security risk. The Contractor must create, obtain and retain Records documenting the Contractor's compliance with the security screening requirements set out in Exhibit 1 in accordance with the provisions of that Exhibit 1.

### **Services Worker activity logging**

5. The Contractor must create and maintain detailed Records logging the activities of all Service Workers in relation to:
  - (a) their access to Sensitive Information; and
  - (b) other matters specified by the Purchaser in writing for the purposes of this section.

### **Facilities and Equipment protection and access control**

6. The Contractor must create, maintain and follow a documented process to:
  - (a) protect Facilities and Equipment of the Contractor required by the Contractor to provide the Services from loss, damage or any other occurrence that may result in any of those Facilities and Equipment being unavailable when required to provide the Services; and
  - (b) limit access to Facilities and Equipment of the Contractor
    - (i) being used by the Contractor to provide the Services, or
    - (ii) that may be used by someone to access Informationto those persons who are authorized to have that access and for the purposes for which they are authorized, which process must include measures to verify the identity of those persons.
7. If the Purchaser makes available to the Contractor any Facilities or Equipment of the Purchaser for the use of the Contractor in providing the Services, the Contractor must comply with any policies and procedures provided to it by the Purchaser on acceptable use, protection of, and access to, such Facilities or Equipment.

### **Sensitive Information access control**

8. The Contractor must create, maintain and follow a documented process for limiting access to Sensitive Information to those persons who are authorized to have that access and for the purposes for which they are authorized, which process must include measures to verify the identity of those persons.

### **Integrity of Information**

9. The Contractor must create, maintain and follow a documented process for maintaining the integrity of Information while possessed or accessed by the Contractor.
10. For the purposes of section 9, maintaining the integrity of Information means that, except to the extent expressly authorized by the Contract or approved in writing by the Purchaser, the Information has:
  - (a) remained as complete as when it was acquired or accessed by the Contractor; and
  - (b) not been altered in any material respect.

### **Documentation of changes to processes**

11. The Contractor must create and maintain detailed Records logging any changes it makes to the processes described in sections 6, 8 and 9.

### **Notice of security breaches**

12. If Contractor becomes aware that:
  - (a) unauthorized access, collection, use, disclosure, alteration or disposal of Information or Records containing Information; or

- (b) unauthorized access to Facilities or Equipment

has occurred or is likely to occur (whether or not related to a failure by the Contractor to comply with this Schedule or the Contract), the Contractor must immediately notify the Purchaser of the particulars of that occurrence or likely occurrence. If the Contractor provides a notification under this section other than in writing, that notification must be confirmed in writing to the Purchaser as soon as it is reasonably practicable for the Contractor to do so.

### **Review of security breaches**

- 13. If the Purchaser decides to conduct a review of a matter described in section 12 (whether or not the matter came to the attention of the Purchaser as a result of a notification under section 12), the Contractor must, on the request of the Purchaser, participate in the review to the extent that it is reasonably practicable for the Contractor to do so.

### **Retention of Records**

- 14. Unless the Contract otherwise specifies, the Contractor must retain all Records in the Contractor's possession that contain Information until directed by the Purchaser in writing to dispose of them or deliver them as specified in the direction.

### **Audit**

- 15. In addition to any other rights of inspection the Purchaser may have under the Contract or under statute, the Purchaser may, at any reasonable time and on reasonable notice to the Contractor, enter on the Contractor's premises to inspect and, at the Purchaser's discretion, copy:
  - (a) any Records in the possession of the Contractor containing Information; or
  - (b) any of the Contractor's Information management policies or processes (including the processes described in sections 6, 8 and 9 and the logs described in sections 5 and 11) relevant to the Contractor's compliance with this Schedule

and the Contractor must permit, and provide reasonable assistance to, the exercise by the Purchaser of the Purchaser's rights under this section.

### **Termination of Contract**

- 16. In addition to any other rights of termination which the Purchaser may have under the Contract or otherwise at law, the Purchaser may, subject to any provisions in the Contract establishing mandatory cure periods for defaults by the Contractor, terminate the Contract by giving written notice of such termination to the Contractor, upon any failure of the Contractor to comply with this Schedule in a material respect.

### **Interpretation**

- 17. In this Schedule, unless otherwise specified:
  - (a) references to sections are to sections of this Schedule; and
  - (b) references to exhibits are to the exhibits attached to this Schedule.
- 18. Any reference to the "Contractor" in this Schedule includes any subcontractor retained by the Contractor to perform obligations under the Contract and the Contractor must ensure that any such subcontractors comply with this Schedule.
- 19. The exhibits attached to this Schedule are part of this Schedule.

20. If there is a conflict between a provision in an exhibit attached to this Schedule and any other provision of this Schedule, the provision in the exhibit is inoperative to the extent of the conflict unless the exhibit states that it operates despite a conflicting provision of this Schedule.
21. If there is a conflict between:
  - (a) a provision of the Contract, this Schedule or an exhibit attached to this Schedule; and
  - (b) a documented process required by this Schedule to be created or maintained by the Contractor;the provision of the Contract, Schedule or exhibit will prevail to the extent of the conflict.
22. The obligations of the Contractor in this Schedule will survive the termination of the Contract.



## Exhibit 1 – Security screening requirements

The personnel security screening requirements set out in this Exhibit 1 are for the purpose of assisting the Contractor determine whether or not a Services Worker constitutes an unreasonable security risk.

### Verification of name, date of birth and address

- The Contractor must verify the name, date of birth and current address of a Services Worker by viewing at least one piece of “primary identification” of the Services Worker and at least one piece of “secondary identification” of the Services Worker,\* as described in the table following this section. The Contractor must obtain or create, as applicable, Records of all such verifications and retain a copy of those Records. For a Services Worker from another province or jurisdiction, reasonably equivalent identification documents are acceptable.

Primary Identification	Secondary Identification
<p><b>Issued by ICBC:</b></p> <ul style="list-style-type: none"> <li>• B.C. driver’s licence or learner’s licence (must have photo)</li> <li>• B.C. Identification (BCID) card</li> </ul> <p><b>Issued by provincial or territorial government:</b></p> <ul style="list-style-type: none"> <li>• Canadian birth certificate</li> </ul> <p><b>Issued by Government of Canada:</b></p> <ul style="list-style-type: none"> <li>• Canadian Citizenship Card</li> <li>• Permanent Resident Card</li> <li>• Canadian Record of Landing/Canadian Immigration Identification Record</li> </ul>	<ul style="list-style-type: none"> <li>• School ID card (student card)</li> <li>• Bank card (only if holder’s name is on card)</li> <li>• Credit card (only if holder’s name is on card)</li> <li>• Passport</li> <li>• Foreign birth certificate (a baptismal certificate is not acceptable)</li> <li>• Canadian or U.S. driver’s licence</li> <li>• Naturalization certificate</li> <li>• Canadian Forces identification</li> <li>• Police identification</li> <li>• Foreign Affairs Canada or consular identification</li> <li>• Vehicle registration (only if owner’s signature is shown)</li> <li>• Picture employee ID card</li> <li>• Firearms Acquisition Certificate</li> <li>• Social Insurance Card (only if has signature strip)</li> <li>• B.C. CareCard</li> <li>• Native Status Card</li> <li>• Parole Certificate ID</li> <li>• Correctional Service Conditional Release Card</li> </ul>

\*It is not necessary that each piece of identification viewed by the Contractor contains the name, date of birth and current address of the Services Worker. It is sufficient that, in combination, the identification viewed contains that information.

### Verification of education and professional qualifications

- The Contractor must verify, by reasonable means, any relevant education and professional qualifications of a Services Worker, obtain or create, as applicable, Records of all such verifications, and retain a copy of those Records.

### Verification of employment history and reference checks

- The Contractor must verify, by reasonable means, any relevant employment history of a Services Worker, which will generally consist of the Contractor requesting that a Services Worker provide employment references and the Contractor contacting those references. If a Services Worker has no relevant employment history, the Contractor must seek to verify the character or other relevant personal characteristics of the Services

Worker by requesting the Services Worker to provide one or more personal references and contacting those references. The Contractor must obtain or create, as applicable, Records of all such verifications and retain a copy of those Records.

**Security interview**

4. The Contractor must allow the Purchaser to conduct a security-focused interview with a Services Worker if the Purchaser identifies a reasonable security concern and notifies the Contractor it wishes to do so.

**Criminal history check**

5. The Contractor must arrange for and retain documented results of a criminal history check on a Services Worker obtained through the Services Worker's local policing agency. Criminal history checks must be repeated as necessary to ensure that at all times the most recent criminal history check on a Services Worker was completed within the previous five years.

**Appendix 3 to Schedule E**  
**Insurance**

1. The Contractor must, without limiting the Contractor's obligation or liabilities and at the Contractor's own expense, purchase and maintain throughout the Term the following insurances with insurers licensed in Canada in forms and amounts acceptable to the Purchaser:
  - (a) Commercial General Liability in an amount not less than \$2,000,000 inclusive per occurrence against bodily injury, personal injury and property damage and including liability assumed under this Agreement and this insurance must:
    - (i) include the Purchaser as an additional insured,
    - (ii) be endorsed to provide the Purchaser with 30 days advance written notice of cancellation or material change, and
    - (iii) include a cross liability clause; and
  - (b) Professional Errors and Omissions Liability insuring the Contractor's liability resulting from errors or omissions in the performance of the Services in an amount per occurrence, and in the aggregate, calculated as follows:
    - (i) not less than \$1,000,000, if the "Maximum Amount" set out in Schedule B is less than \$500,000; and
    - (ii) not less than \$2,000,000, if the "Maximum Amount" set out in Schedule B is \$500,000 or greater.
2. All insurance described in section 1 of this Schedule must:
  - (a) be primary; and
  - (b) not require the sharing of any loss by any insurer of the Purchaser.
3. The Contractor must provide the Purchaser with evidence of all required insurance as follows:
  - (a) within 10 Business Days of commencement of the Services, the Contractor must provide to the Purchaser evidence of all required insurance in the form of a completed Province of British Columbia Certificate of Insurance;
  - (b) if any required insurance policy expires before the end of the Term, the Contractor must provide, within 10 Business Days of the policy's expiration, evidence of a new or renewal policy meeting the requirements of the expired insurance in the form of a completed Province of British Columbia Certificate of Insurance; and
  - (c) despite paragraph (a) or (b) above, if requested by the Purchaser at any time, the Contractor must provide to the Purchaser certified copies of the required insurance policies.
4. Despite section 1(b) of this Schedule, if in the Purchaser's sole discretion, the Purchaser has approved in writing either a fronted self-insurance program or a duly licensed captive insurer as an alternative to the Professional Liability Insurance requirement set out in section 1(b), then the Contractor must maintain throughout the Term that alternative in accordance with the terms of the approval.