

ACCESS AGREEMENT

BPS ENTITY USER ACCESS AGREEMENT BC BID

This agreement is made the ____ day of _____, 20_____.

BETWEEN:

HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, represented by the
Minister of Citizens' Services, c/o Procurement Services Branch 3rd Floor, 563 Superior St. Victoria, BC
V8V 1T7

(the "Province")

AND:

(the "Eligible BPS Entity")

WHEREAS:

- A. The Province issued the Negotiated Request for Proposals No. SBPT-05 for a "Sourcing and Procurement Spend Analytics Application and Services" dated December 6, 2017 (the "NRFP");
- B. CGI Information Systems and Management Consultants Inc. ("CGI") submitted a response to the NRFP and was selected as the successful proponent;
- C. The Province and CGI entered into Contract# C19LBS38667 pursuant to the NRFP, entitled "Sourcing and Procurement Spend Analytics Application and Services Agreement" and dated December 11, 2018 (the "BC Bid Contract") to provide a sourcing and procurement spend analytics application and services, which includes the Application;
- D. The Eligible BPS Entity is a BPS Entity and BC Bid User as those terms are defined in the BC Bid Contract;
- E. The Eligible BPS Entity wishes to access, and the Province wishes to provide access to, the Application as further described in this Access Agreement, on the terms and conditions set out in this Access Agreement; and
- F. In addition, by entering into this Access Agreement, the Eligible BPS Entity becomes eligible to enter into a separate contract directly with CGI as further described in section 4 of this Access Agreement.

NOW THEREFORE in consideration of the premises and mutual covenants set out in this Access Agreement and other valuable consideration (the receipt and sufficiency of which is hereby acknowledged by the parties), the parties agree as follows:

1. INTERPRETATION

1.1 In this Access Agreement, including the recitals:

- a) “**Access Fee**” means the fee that may be charged by the Province to an Eligible BPS Entity that has entered into a BPS Agreement in order for the Province to recover its associated costs, which is collected on behalf of the Province by CGI as further described in section 4 of the Access Agreement;
- b) “**Application**” means the software application located at bcbid.gov.bc.ca and includes any ancillary services, such as help desk services, that may be available from time to time to users of the Application, the scope of which are described at bcbid.gov.bc.ca;
- c) “**BPS Agreement**” means an agreement between the Eligible BPS Entity and CGI for the provision of the Application and any agreed services, on terms (including pricing) substantially similar to the terms of the BC Bid Contract, unless otherwise agreed by the Eligible BPS Entity;
- d) “**Business Day**” means a day, other than a Saturday or Sunday, on which Provincial government offices are open for normal business in British Columbia;
- e) “**BPS Entity**” means any of the following:
 - (a) a government organization, local public body or participating jurisdiction, each as defined in the *Procurement Services Act* (British Columbia), or
 - (b) a person, other than the government, a government organization, a local public body or a participating jurisdiction, provided the requirements set out in section 2(2) of the *Procurement Services Act* (British Columbia) have been met; and
- f) “**Eligible BPS Entity**” means the BPS Entity that has entered into this Access Agreement with the Province to use the Application and in accordance with this Access Agreement is eligible to enter into a BPS Agreement.

1.2 The headings or captions in this Access Agreement are inserted for convenience only and do not form a part of this Access Agreement and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Access Agreement.

1.3 In this Access Agreement, wherever the singular is used it will be construed as if the plural had been used where the context or the parties so require and vice versus.

2. TERM

2.1 Notwithstanding the date of execution of the Access Agreement, the term of this Access Agreement will commence on _____ and will expire upon the expiry or sooner termination of the BC Bid Contract, unless sooner terminated in accordance with the provisions of this Access Agreement. **(NOTE: Indicate the date you are signing this agreement in the space above.)**

3. USE OF THE APPLICATION

- 3.1 The Eligible BPS Entity is entitled to access and use those aspects of the Application that are made available to Eligible BPS Entities under the BC Bid Contract, which will include at a minimum functionality required for posting procurements and other sourcing activities. For greater certainty, for Eligible BPS Entities requiring administrative privileges, segregation of data or other additional functionality as further described in section 4, the Eligible BPS Entity will be required to enter into a BPS Agreement as contemplated in section 4.
- 3.2 The Eligible BPS Entity is entitled to access and use the Application in accordance with the BC Bid Contract at no additional charge and without the need for either the Eligible BPS Entity or a natural person who has been authorized to access and use the Application for or on behalf of the Eligible BPS Entity to agree to any additional terms and conditions with CGI, except as provided in section 4 below.
- 3.3 The Application is provided only for the purposes described in this Access Agreement and must not be used for any other purpose. Without limiting the general nature of the previous sentence, the Eligible BPS Entity must not use the Application: (a) for any unlawful or inappropriate purpose; (b) in any way that would jeopardize the security, integrity and/or availability of the Application or negatively impact other users of the Application; and (c) by decompiling, disassembling, reverse engineering, or otherwise copying any source code associated with the Application.
- 3.4 The Province or its contractors may at any time in its sole discretion take whatever steps it deems necessary in relation to any activity by the Eligible BPS Entity in accessing the Application to protect the security and/or integrity of the Application, including, without limitation, steps to disinfect any electronic transmission infected with a virus or other harmful code.
- 3.5 The Province may at any time in its sole discretion and without any prior notice: (a) make changes to or discontinue any aspects of the Application accessible to the Eligible BPS Entity; or (b) suspend or terminate the Eligible BPS Entity's access to and use of the Application.
- 3.6 The Eligible BPS Entity represents and warrants that any information provided in connection with registration for and/or use of the Application is complete and accurate.
- 3.7 The Eligible BPS Entity agrees to keep its information in the Application up to date.
- 3.8 The Eligible BPS Entity acknowledges that the Province is under no obligation to confirm or verify the actual identity or authority of any user of the Eligible BPS Entity's BCeID and the Eligible BPS Entity agrees that the Province may accept as valid, without confirmation or verification, all activities and communications that use its Eligible BPS Entity's BCeID.
- 3.9 The Eligible BPS Entity is liable for all use of its BCeID, including without limitation use by any individual or any other entity, whether with or without its knowledge or consent.
- 3.10 The Province or its licensors own the copyright in all information made available to the Eligible BPS Entity through the Application and the Province grants to the Eligible BPS Entity a personal, non-transferable, non-sublicensable, non-exclusive license to access and use the Application in accordance with this Access Agreement. Any rights not expressly granted herein are reserved. The Eligible BPS Entity must not remove or alter any proprietary symbol or notice, including any copyright notice, trademark, official mark or logo, displayed in connection with the Application.

- 3.11 The Eligible BPS Entity agrees that “BC BID” is an official mark of the Province, and nothing in this Access Agreement gives the Eligible BPS Entity any right to use or reproduce it.

4. BPS AGREEMENT

- 4.1 An Eligible BPS Entity may enter into a BPS Agreement if the Eligible BPS Entity requires:
- i. administrative privileges in connection with the Application;
 - ii. unique and complex workflows that require administrative privileges;
 - iii. the segregation of its data in connection with its use of the Application;
 - iv. integration of the Application with any systems; and/or
 - v. any additional functionality or services.
- 4.2 The Province may charge an Access Fee to the Eligible BPS Entity that has entered into a BPS Agreement.
- 4.3 The Eligible BPS Entity agrees that if it enters into a BPS Agreement, CGI may collect on behalf of the Province the Access Fee from the Eligible BPS Entity, which will be remitted to the Province.

5. LIMITATION OF LIABILITY

- 5.1 The Eligible BPS Entity acknowledges and agrees that the Application has been implemented in the interests of, and on terms and conditions appropriate to, the Province.
- 5.2 In addition to the Province’s general [Warranty Disclaimer and Limitation of Liabilities](#), the Province is providing the Eligible BPS Entity with access to the Application on an “as is” basis without warranty or condition of any kind, either express or implied, including any implied warranty or condition of quality, fitness for a particular purpose or non-infringement. Without limiting the general nature of the previous sentence, the Province does not warrant the accuracy, availability or completeness of the Application or any information provided in connection with the Application, or that the Application will function without error, failure or interruption.
- 5.3 The Province makes no warranties or representations of any kind with respect to the appropriateness or suitability of the Application for procurement or other uses by the Eligible BPS Entity, and expressly disclaims any warranties or representations as to the appropriateness or suitability of the terms and conditions or any functionality of the Application for the Eligible BPS Entity.
- 5.4 The Eligible BPS Entity is responsible for and has done its own due diligence in determining whether use of the Application is in accordance with its legal and policy obligations, including without limitation any law, policy or agreement applicable to the procurement of goods or services, and the Province makes no representation or warranty that the Application will meet any requirements that the Eligible BPS Entity is subject to under any law, policy or agreement.
- 5.5 Under no circumstances will the Province be liable for any direct, indirect, special, incidental, consequential or other loss, claim, injury or damage whatsoever whether foreseeable or unforeseeable, including without limitation use of or inability to use the Application, interruptions, deletion or corruption of files, loss of programs or information, errors, defects or delays arising out of or in any way connected with the use of the Application and whether based on contract, tort, strict liability or any other legal theory (each a “Claim”), whether or not the Province was made aware of the possibility of any such Claims.

- 5.6 By using the Application, the Eligible BPS Entity waives any and all Claims against the Province and waives any rights the Eligible BPS Entity may have to make any such Claims.
- 5.7 The Eligible BPS Entity agrees to indemnify and save harmless the Province and its servants, agents, directors, officers and employees against any and all losses, claims, damages, actions, causes of action, costs and expenses that any of them may sustain, incur, suffer or be put to by reason of the acts or omissions of the Eligible BPS Entity, or the acts or omissions of its servants, agents, directors, officers and employees, in relation to their use of the Application.
- 5.8 The Eligible BPS Entity agrees that at no time will the Province be providing legal advice to the Eligible BPS Entity and the Eligible BPS Entity has obtained its own legal advice in relation to this Access Agreement, use of the Application or entering into a BPS Agreement.

6. TERMINATION

- 6.1 Either party may terminate this Access Agreement on 30 days notice by giving notice of termination in writing to the other party in accordance with section 8 below.
- 6.2 In the event that there is a breach of this Access Agreement, the Province may, in its sole discretion, immediately terminate this Access Agreement and refuse the Eligible BPS Entity further access to the Application.

7. REPRESENTATIONS AND WARRANTIES

- 7.1 As at the date this Access Agreement is executed and delivered, the Eligible BPS Entity represents and warrants as follows:
- a) it is a legal entity that has the power and capacity to enter into this Access Agreement and to observe, perform and comply with the terms of this Access Agreement and all necessary corporate or other proceedings have been taken and done to authorize the execution and delivery of this Access Agreement by the Eligible BPS Entity;
 - b) that it has completed any due diligence necessary to satisfy itself as to the appropriateness or suitability of the Application for its purposes; and
 - c) this Access Agreement has been legally and properly executed by or on behalf of the Eligible BPS Entity and is legally binding upon and enforceable against the Eligible BPS Entity in accordance with its terms.
- 7.2 The Eligible BPS Entity represents and warrants that it is a BPS Entity.

8. NOTICES

- 8.1 Any notice, consent, approval, authorization, demand or specific written communication under this Access Agreement, to be effective, must be in writing and delivered by email, in which case it will be deemed to be received when the email arrives in the addressee's inbox as set out below:

To the Province:

Attention: BC Bid Help Desk

Email: bcbid@gov.bc.ca

To the Eligible BPS Entity:

Attention: _____

Email: _____

- 8.2 Either party may from time to time give notice to the other party of a substitute email address, which from the date such notice is given will supersede for purposes of section 8.1 any previous email address specified for the party giving the notice.

9. MISCELLANEOUS

- 9.1 This Access Agreement constitutes the entire agreement between the parties and no understandings, representations or agreements, oral or otherwise, exist between the parties with respect to the subject matter of this Access Agreement except as expressly set out or incorporated by reference in this Access Agreement.
- 9.2 If any provision of this Access Agreement or the application thereof to any person or circumstance is invalid or unenforceable to any extent, the remainder of this Access Agreement and the application of such provision to any other person or circumstance will not be affected or impaired thereby and will be valid and enforceable to the extent permitted by law.
- 9.3 Any sections of this Access Agreement in favour of the Province will survive the termination of this Access Agreement and continue in force indefinitely, including without limitation any accrued but unpaid payment obligations, indemnity in favour of the Province, confidentiality requirement, and any other sections of this Access Agreement which, by their terms or nature, are intended to survive the expiry or other termination of this Access Agreement.
- 9.4 This Access Agreement will enure to the benefit of and be binding upon each of the parties and its successors and permitted assigns.
- 9.5 A waiver of any term or breach of this Access Agreement 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.
- 9.6 An event of force majeure means a strike, lockout or labour dispute, a natural disaster, fire, flood, storm, epidemic or power failure, a war, or insurrection or act of terrorism or piracy, provided that any such event is a major disabling event or circumstance in relation to the normal operations of the party concerned as a whole which is beyond the reasonable control of the party directly affected and results in a material delay, interruption or failure by such party in carrying out its duties, covenants or obligations under this Access Agreement. Where an event of force majeure occurs, an affected party is not liable to the other party for any failure or delay in the performance of that parties obligations under this Access Agreement resulting from the event of force majeure, and any time periods for performance are automatically extended for the duration of the event of force majeure, provided that, if an event of force majeure occurs or is likely to occur, then the party directly affected will notify the other parties forthwith and will use its best efforts to

remove, curtail or contain the cause of the delay, interruption or failure and to resume with the least possible delay compliance with its duties, covenants and obligations under this Access Agreement.

- 9.7 Time will be of the essence of this Access Agreement.
- 9.8 No amendment or modification to this Access Agreement is effective unless it is in writing and signed by the parties to this Access Agreement.
- 9.9 Neither party shall assign this Access Agreement or any portion thereof without the prior written consent of the other party.
- 9.10 This Access Agreement will be governed by and construed and interpreted in accordance with the laws of the Province of British Columbia.
- 9.11 This Access Agreement may be entered into by each party signing a separate copy of this Access Agreement (including a photocopy, faxed copy or scanned PDF copy) and delivering it to the other party by mail, fax or email.

WHEREFORE this Access Agreement has been duly executed as of the date first above written.

<p>SIGNED on behalf of His Majesty the King in right of the Province of British Columbia by a duly authorized representative of the Minister of Citizens' Services</p> <p>By: _____ For the Minister of Citizens' Services</p>	<p>SIGNED on behalf of</p> <p>By: _____ (Authorized Signatory)</p> <p>_____ (Title)</p>
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