

**INFORMATION TECHNOLOGY GENERAL TERMS AND CONDITIONS – ON SITE
SOFTWARE LICENSE AND SUPPORT CONTRACTS
(the “IT General Conditions”)**

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1. **DEFINITIONS** – In addition to any terms defined within the Contract, the following terms shall have their respective meanings indicated below.
 - 1.1 Appendix or Appendices – has the meaning set forth in the Contract Documents.
 - 1.2 Business Day – means any day other than a Saturday, Sunday or statutory holiday observed in the Province of Ontario.
 - 1.3 Change Order – a Change Order is a written amendment to the Contract prepared by the Parties stating their agreement upon, any one or more of the following;
 - 1.3.1 a change in one or more of the Deliverables;
 - 1.3.2 an extension of the Term for all or part of the Contract;
 - 1.3.3 the addition, deletion or adjustment of the Licenses, Support Services, hardware, services, or products, to be provided by the Contractor;
 - 1.3.4 the method of adjustment or the amount of the adjustment in the Contract Price, if any for the change; or
 - 1.3.5 any related matter.
 - 1.4 City – means the City of Ottawa.
 - 1.5 City Data – means any and all data or information;
 - 1.5.1 provided by the City to the Contractor under the Contract;
 - 1.5.2 entered or inputted into the Software, stored in Software, handled by the Software or processed by the Software; or
 - 1.5.3 created, derived, extrapolated or mined from data or information identified in Sections 1.5.1 or 1.5.2 above, for greater certainty such data or information includes but is not limited to metrics or analytics.
 - 1.6 City’s Software – means all computer programs other than the Software, which the City owns, operates, runs or has a license to use.
 - 1.7 City’s System – means the City’s complete information technology infrastructure, including but not limited to all of the hardware, City’s Software, software, and databases, onto which the Software will be installed and with which the Software will integrate.

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- 1.8 Commencement Date – means the earlier of the date on which the Contractor delivers the Software or the date on which the Contractor begins providing the Deliverables.
- 1.9 Confidential Information – has the meaning set forth in Section 11 of these IT General Conditions.
- 1.10 Contract – means the undertaking by the Parties to perform their respective duties, responsibilities and obligations, as set out in the Contract Documents.
- 1.11 Contractor – means the individual, corporation or partnership the City enters into the Contract with for the purposes of obtaining the Deliverables.
- 1.12 Contract Documents – means the documents listed in the City’s purchase order, formal agreement, supplemental conditions or authorization letter, as applicable, which set out the Parties’ respective duties, responsibilities and obligations under the Contract. To the extent of any inconsistency or conflict among the Contract Documents, the inconsistency or conflict shall be resolved in favor of the document that appears first on the list. For greater certainty, a Change Order is a Contract Document.
- 1.13 Contract Price – means the price to be paid by the City to the Contractor for the Deliverables, subject to any adjustments provided by the Contract.
- 1.14 Deliverables – means the Software, Support Services and/or other items, as applicable, to be provided by the Contractor to the City under the Contract.
- 1.15 Documentation – includes any literary works or other works of authorship, instructions, documentation, materials, manuals, reports, specifications, instructions, guides, procedures, process flow diagrams, drawings, notes, charts and similar works (including all third party works), regarding the Deliverables, in any form or medium whatsoever, to be provided by the Contractor to the City under the Contract.
- 1.16 Effective Date – means the date the Contract has been executed by both parties or where applicable accepted through issuance of a purchase order.
- 1.17 Fee and Payment Schedule – is the Schedule B to the Contract which sets out the Contract Price(s) for the Deliverables and the schedule of payment of the Contract Price.
- 1.18 Functional Specifications – means that portion of the Contract, wherever located and whenever issued, consisting of written requirements and standards that describe the design, functionality, performance and capacity characteristics

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required by the City of the Deliverables. The Functional Specifications shall also include the databases, human and machine procedures and all the input, processing and output detail for each data entry, query, update and report program.

1.19 Initial Term – has the meaning set out Section 8 of these IT General Conditions.

1.20 Installed Software – means the Software after it has been installed on the City’s servers and/or the City’s System.

1.21 Intellectual Property Rights – means:

1.21.1 any and all proprietary rights provided under patent law, copyright law (including moral rights), trade-mark law, design patent, trade secret law, industrial design law, or any other statutory provision or common law principal applicable to the Contract, which may provide a right in either hardware, software, documentation, Confidential Information, ideas, formulae, algorithms, concepts, inventions or know-how generally, or the expression or use of such hardware, software, documentation, Confidential Information, ideas, formulae, algorithms, concepts, inventions or know-how;

1.21.2 any and all applications, registrations, licenses, sub-licenses, franchises, agreements or any other evidence of a right in any of the foregoing; and

1.21.3 all licenses and waivers and benefits of waivers of the rights set out in 1.21.1 and 1.21.2 above, and all rights to damages and profits by reason of the infringement of any of the rights set out in 1.21.1 and 1.21.2 above.

1.22 Licenses – means the licenses provided to the City by the Contractor under Section 6 of these IT General Conditions.

1.23 Module – means a specific part, component, or portion of the Software.

1.24 Parties – means the City and the Contractor.

1.25 Personal Data – means recorded information about an identifiable individual.

1.26 Renewal Term – has the meaning set forth in Section 8.2.1 of these IT General Conditions.

1.27 Schedules – has the meaning set forth in the Contract Documents.

1.28 Security Breach – includes;

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- 1.28.1 the destruction, corruption, compromise, loss of integrity, loss of availability or unauthorized use, alteration, release or disclosure of the City’s Data or City’s Confidential Information, whether in the possession, care or control of the Contractor or the City;
- 1.28.2 any security breach, or potential security breach of the Software, City’s Software or City’s System related in any way to the Software; or
- 1.28.3 the introduction of a virus, malware or other harmful technology to the Software, City’s Software or City’s System.
- 1.29 Service Level Agreement or “SLA” – means the terms and conditions applicable to the Support Services provided by the Contractor. The SLA sets out, *inter alia*, the specific support and maintenance services provided by the Contractor and the levels of service that the Contractor must achieve in the performance of the Support Services. The SLA is set out in Schedule A of the Contract.
- 1.30 Site – means a building or location owned, leased, rented, or within the care, control or possession of City where the Software will be, *inter alia*, delivered, installed or operated.
- 1.31 Software – means all of the computer programs (software products or sub-products) which are to be furnished and licensed by the Contractor to the City under the Contract. Software includes, without limitation, all source code, object code of the software, integration code, databases, data structures, modules, user interfaces, design documents, test plans and scripts to implement the functions and requirements described in the Functional Specifications, together with all related Documentation and all Software Updates, that are provided in any form or medium by the Contractor to the City under the Contract. Software also includes all Third Party Software to be supplied by the Contractor that is a part of or is required in order to operate the Software. Where Support Services are purchased as one of the Deliverables under the Contract, Software also includes Software Upgrades. The Software is identified in Schedule C of the Contract.
- 1.32 Software Updates or Updated Software or Updated – means the concept of version 1.0 to 1.1, 1.2, etc. of the Software which is generally differentiated from the preceding version for critical security updates, fixes, patches, modifications, improvements to functionality or revisions of the computer technology which are made generally available to licensees of the Software. Where applicable Software Updates includes reference to Third Party Software which has been Updated.
- 1.33 Software Upgrades or Upgraded Software or Upgraded – means a new release or version of the Software which has substantially more functionality or features and

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which is generally differentiated from the preceding release of the Software by a change in the numeral to the left of the decimal in the product name (i.e. version 1.x vs. version 2.x). Where applicable Software Upgrades includes reference to Third Party Software which has been Upgraded.

1.34 Support Services – means any and all ongoing support services, including maintenance or software support necessary to keep the Software operating in accordance with the Functional Specifications. The Support Services shall be provided to the City as described in and at the service levels set out in the Service Level Agreement and otherwise in accordance with the provisions of the Contract.

1.35 Term – has the meaning set forth in Section 8 of these IT General Terms and Conditions.

1.36 Timetable - means the schedule and/or timetable agreed to by the Parties for carrying out the Deliverables.

1.37 Third Party Software – means any software in any form or medium which is provided by the Contractor as part of the Software, that is owned by persons other than the Contractor and that Contractor must sublicense directly from such person.

1.38 Use – has the meaning set out in Section 6.1.1.1 of these IT General Conditions.

1.39 Work – means all the work, materials, labour and services contemplated by the Contract of which the Deliverables may be the whole or a part.

2. **INTERPRETATION** - Unless the context otherwise requires or it is otherwise stated, the following rules shall apply to the interpretation of the Contract:

2.1 the insertion of headings into the Contract is for convenience only and shall not affect its interpretation;

2.2 the Contract has been negotiated by each Party with the benefit of legal representation, and any rule of construction to the effect that any ambiguities are to be resolved against the drafting Party, does not apply to the construction or interpretation of the Contract;

2.3 references to a specified Section, Subsection, Schedule or Appendix shall be construed as references to that specified Section, Subsection, Schedule or Appendix of this Contract;

2.4 words importing the singular number include the plural and vice versa and words importing gender include all genders;

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- 2.5 the word “person” includes an individual, partnership, association, body corporate, trustee, executor, administrator or legal representative;
 - 2.6 the word “dollar” and the “\$” sign refer to Canadian currency;
 - 2.7 words and abbreviations which have well known technical or trade meanings are used in the Contract in accordance with such recognized meanings;
 - 2.8 any reference in this Contract to all or any part of any statute, regulation, by-law or rule shall be construed as a reference to that statute, regulation, by-law or rule or the relevant part thereof, as amended, replaced or re-enacted from time to time;
 - 2.9 grammatical variations of any terms defined in this Contract shall have similar meanings to such defined terms;
 - 2.10 documents forming the Contract are complementary; what is required by any one document will be as binding as if required by all;
 - 2.11 the words “including” and “include” shall each mean “including without limitation”, and shall not be construed as limiting any general statement which they follow to the specific or similar items or matters immediately following such words; and
 - 2.12 any reference to the “City” in this Contract includes where necessary the City’s directors, employees, agents and subcontractors.
3. **TIME OF THE ESSENCE** – Time shall be of the essence of the Contract and of every part hereof and no extension or variation of this Contract shall operate as a waiver of this provision.
 4. **GENERAL** – The intent of the Contract is to include all the Work necessary for the performance of the Deliverables by the Contractor in accordance with the Contract. It is not intended, however, that the Contractor shall supply work not consistent with, not covered by, or not properly inferable from the Contract.
 5. **DELIVERABLES** – Subject to the provisions of the Contract and for the applicable Contract Price, Contractor will, in accordance with all the requirements of the Contract, supply the following Deliverables to City:
 - 5.1 The delivery to the City of Software which meets the Functional Specifications;
 - 5.2 The provision of the License(s), sublicense(s) and/or procurement of licenses, as applicable, for all the Software provided to City in accordance with Section 6 of these IT General Conditions and the Contract;
 - 5.3 The installation of the Software on the City’s System as required;

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- 5.4 The Documentation required to, *inter alia*, install, operate, configure and Use the Software;
- 5.5 The Support Services in accordance with Schedule A of the Contract; and
- 5.6 The full assumption, performance and compliance by Contractor with all of its obligations as described and set out in the Contract and in the Schedules and Appendices hereto.

6. LICENSE GRANT

6.1 Software License(s).

6.1.1 Subject to the terms and conditions of the Contract, Contractor grants to the City a perpetual, irrevocable, fully paid-up, royalty-free, non-exclusive and non-transferable (except as permitted by the Contract) unlimited user license(s) in the quantity specified in the Contract Documents, which permit the City to:

6.1.1.1 Load, store, access, execute, transmit, display and otherwise use, including as part of a network and/or the City’s System (“Use”), the Software in object code format in the course of its business operations;

6.1.1.2 Make copies of the Software in support of the Use by the City of the Software in accordance with the provisions of the Contract and for archival, testing, back-up or disaster recovery purposes;

6.1.1.3 Use the Software on back-up hardware as and when it may become necessary in the City’s sole discretion; and

6.1.1.4 Use, copy and modify the related Documentation in connection with the Use by the City of the Software.

6.1.2 For greater certainty, the foregoing license(s) are single user license(s) which generally equate to one (1) user for every one (1) license purchased hereunder, which allows for the specified number of authorized users to Use the Software at any one time. Such license(s) are not restricted as regards any hardware, Sites, or locations except as expressly provided in this Contract or as otherwise agreed by the Parties in writing.

6.1.3 City will reproduce all copyright, trade-mark or other proprietary notices included in or on the Software and/or related Documentation in or on all copies made by City.

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6.1.4 The Term of the License(s) granted under the Contract shall commence upon the first delivery of the Software or the first Module of the Software by the Contractor and shall remain in force for the Term of the License as set out in Section 6.1 of these IT General Conditions.

6.2 Third Party Software Licenses.

6.2.1 Contractor will, at the time of the delivery of any Third Party Software, procure the necessary licenses for the City to Use such Third Party Software and related Documentation, or sublicense such Third Party Software and related Documentation to City, on the same license terms and conditions set forth in Section 6.1 of these IT General Conditions with respect to the Software.

6.2.2 In the event of the sublicense of any Third Party Software by Contractor to City, Contractor assigns to City each and every warranty and right of indemnity given by any developer or owner in respect of the Third Party Software for the entire Term thereof.

6.3 Software Updates and Software Upgrades.

6.3.1 As part of the License(s) granted in Section 6.1 of these IT General Conditions Vendor shall provide Software Updates to the City as those Software Updates become available and City will be permitted to Use the Updated Software. Where Third Party Software is Updated, Contractor shall grant to or procure for the City a License to Use such Updated Software on comparable terms and conditions to those contained in Section 6.1 of these IT General Conditions.

6.3.2 Where the City purchases Support Services as part of the Deliverables under the Contract, as part of the License(s) granted in Section 6.1 of these IT General Conditions the Vendor shall make available Software Upgrades to the City as those Software Upgrades become available and the City will be permitted to Use the Upgraded Software. Where Third Party Software is Upgraded, Contractor shall grant to or procure for the City a License to Use such Updated Software on comparable terms and conditions to those contained in Section 6.1 of these IT General Conditions.

6.3.3 In the case of a Software Upgrade made available under Section 6.3.2 of these IT General Conditions, the City shall have the option to accept or reject the installation and use of the Software Upgrade. If the City elects not to install the Software Upgrade, this shall not affect the provision of any of the other Deliverables under the Contract, including Support Services. If the

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City elects to install the Software Upgrade, Contractor will install at no charge or provide the necessary tools for the City to install the Software Upgrade. Any Software Upgrade supplied under this Section shall be accompanied by sufficient Documentation and training to enable City’s personnel to Use, operate, maintain and support the Software Upgrade.

7. SUPPORT SERVICES

- 7.1 Unless otherwise specified in the Contract, Contractor will provide Support Services to City in relation to all the Software. Without limiting the foregoing, Support Services will be provided pursuant to the provisions of the SLA. Contractor will provide the Support Services in a manner that meets or exceeds the requirements of the SLA at all times. Without limiting the provisions of the Contract, Support Services will commence on the Commencement Date and run for a term of five (5) years from the Commencement Date (the “Initial Term”).
- 7.2 City’s remedies for a breach of the SLA include but are not limited to those remedies set out in the SLA.
- 7.3 The portion of the Contract Price applicable to the Support Services is set out in the Fee and Payment Schedule.

8. TERM

- 8.1 The Term of the Licenses granted under the Contract is as set out in Section 6.1.1 of these IT General Conditions, unless terminated in accordance with the provisions of the Contract.
- 8.2 The Term of the Support Services provided under the Contract is as set out in Section 7 of these IT General Conditions, unless terminated in accordance with the provisions of the Contract.
 - 8.2.1 Without limiting the provisions of Section 8.2 above, the Term of the Support Services may be extended by City for additional extension periods (each a “Renewal Term”), upon the same terms and conditions contained herein except the price for the services which shall be agreed to by the Parties. Any extension of the Support Services shall be triggered by delivery of written notice by City to the Contractor at least ninety (90) calendar days prior to the expiry of the Initial Term or any Renewal Term. For greater clarity, the above provision is not an automatic extension.
- 8.3 The Initial Term, together with any Renewal Term, shall be referred to herein as the “Term.”

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9. PAYMENT AND INVOICES

- 9.1 The City shall make payments to the Contractor of the Contract Price as specified in the applicable Fees and Payment Schedule, subject to receipt by the City from the Contractor of an invoice for the Contract Price.
- 9.2 Before advancing any payment(s) to the Contractor, the City reserves the right to determine in its sole and absolute discretion, whether the Deliverables conform to the requirements of the Contract. In the event that the Deliverables do not conform to the Contract, the City may take such action as necessary to correct the Contractor’s default, including, without limitation, withholding payment due or accrued for the Deliverables.
- 9.3 The City follows a policy whereby in the absence of prompt payment discount terms, all invoices will be paid on a Net 30 basis meaning payments will be made by the City within thirty (30) days of receipt and acceptance of the invoice, or the acceptance of the goods and services, whichever date is later. Contractors are encouraged to offer a cash discount for prompt payment. Contractors must register to receive payment via Direct Deposit (ETF). Information regarding how to register is available at the following link: http://www.City.ca/en/city_hall/accounts_payable.
- 9.4 Unless otherwise specified, the Contract Price is exclusive of all applicable sales, goods and services, value added, use or other like taxes chargeable or payable to any taxation authority (“Sales Taxes”). The City shall pay and the Contractor shall remit to the applicable taxation authority all Sales Taxes.
- 9.5 Unless otherwise specified, the Contract Price is inclusive of any and all custom duties and similar levies as well as any delivery, transportation, insurance and/or freight charges (“Other Charges”). Contractor shall pay and remit to the applicable authorities all applicable Other Charges as required by law.
- 9.6 The Contract Price payable hereunder to Contractor shall be invoiced and paid in Canadian dollars. All invoices will:
- 9.6.1 be submitted electronically in the Contractor’s name.
 - 9.6.2 identify the City contact or established City client/customer;
 - 9.6.3 include a purchase order number, contract reference number and, in the case of any Change Order, the applicable Change Order number;
 - 9.6.4 include a description of, and total amount due for, each of the Deliverables to which the invoice relates;
 - 9.6.5 set out the Sales Taxes (if any) owing as a separate line item; and

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9.6.6 include the Contractor’s HST/GST registration number. Invoices will include a description of and total amount due for, each of the Deliverables to which the invoice relates.

9.7 The Contractor must submit invoices by e-mail to AP-CF@City.ca in PDF (PDF v1.7 or lower, Black and White, minimum 300 DPI resolution) or TIFF (Black and White, minimum 300 DPI resolution) file format. Supplemental documentation supporting an invoice must be merged into a single file.

9.8 By submitting an invoice, the Contractor certifies that the invoice is consistent with the work delivered and is in accordance with the Contract.

9.9 Any missing information may result in a delay of payment and may include the return of the invoice for correction prior to payment.

9.10 No additional term or condition included in any of Contractor’s invoices will bind City.

9.11 City will pay each valid and payable invoice submitted to it in accordance with the Contract.

9.12 The Parties agree and acknowledge that the City is not obligated to pay interest on invoices that it is late in paying.

9.13 Without limiting City’s rights, Contractor agrees that City may set-off any losses, expenses, or amounts incurred by the City in remedying any default of the Contractor or due to failures of the Contractor in performing the Work against any amounts owing by the City to Contractor. The failure by City to set-off or deduct any amount from an invoiced payment will not constitute a waiver of City’s right to set-off, deduct or collect such amounts.

10. CITY’S RIGHT TO MAKE CHANGES

10.1 The City may, without invalidating the Contract, make changes to the Contract by Change Order.

10.2 A Change Order may be requested by the City at any time by providing Contractor with a written notice detailing the nature and scope and the reason for the desired change (a “Change Request”).

10.3 Contractor shall promptly evaluate each Change Request to assess the scope of the requested change. The Contractor shall promptly prepare and submit to City, in a form acceptable to City, a method of adjusting the Contract Price for the applicable changes, if any and a proposed adjustment in the Timetable and/or Deliverables if required.

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- 10.4 The adjustment in the Contract Price for a change shall be determined on the basis of the cost of the Contractor’s actual expenditures and savings attributable to the change. Contractor shall not be entitled to charge City any amount in excess of the estimate provided in the response to the Change Request unless such excess is approved in writing by City in advance.
- 10.5 When City and the Contractor agree to the changes and the adjustments in the Contract Price, Timetable and/or Deliverables or to the method to be used to determine the adjustments, such agreement shall be set out in a written Change Order. Once executed the Change Order shall become part of the Contract.
- 10.6 Notwithstanding any other provisions of the Contract, it is the intention of the Parties that the cost of any change covered by a Change Order shall cover and include any and all costs or liabilities attributable to the change other than those which are the result of or occasioned by any failure on the part of the Contractor to exercise reasonable care and diligence in carrying out the Contract or estimating the adjustment in the Contract Price for the change. Any cost due to failure on the part of the Contractor to exercise such reasonable care and diligence shall be borne by the Contractor.
- 10.7 Contractor will not implement any change without the prior written approval of City by way a Change Order.

11. CONFIDENTIAL INFORMATION.

- 11.1 The Parties acknowledge that by reason of their relationship hereunder, they may from time to time disclose information, whether by oral or written or other means, regarding their business, employees, clients, software, software technology, the Software, intellectual property and other information that is confidential (the “Confidential Information”).
- 11.2 Confidential Information of Ottawa shall include City Data.
- 11.3 Confidential Information of a Party includes, but is not limited to, the terms of the Contract, any information that is confidential or proprietary to the Parties or third parties, any information conceived, developed, produced, stored or handled as part of the performance of the Contract, any Personal Data and any City Data. For greater certainty, any such information that a reasonable person would determine to be confidential shall be deemed Confidential Information hereunder. Confidential Information shall not include information that (i) is or becomes generally available to the public other than as a result of the breach of the confidentiality obligations in the Contract by the receiving Party, (ii) is or has been independently acquired or developed by the receiving Party without violating any of the confidentiality obligations in the Contract (iii) was within the receiving Party’s

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possession prior to it being furnished to the receiving Party by or on behalf of the disclosing Party, or (iv) is received from a source other than the disclosing Party; provided that, in the case of (iii) and (iv) above, the source of such information was not known by the receiving Party to be bound by a confidentiality obligation to the disclosing Party or any other Party with respect to such information.

- 11.4 Each Party agrees that it will keep the Confidential Information strictly confidential and will not use in any way, for its own account or the account of any third Party, nor disclose to any third party, any Confidential Information revealed to it by the other Party without the other Party’s prior written consent, except to the extent expressly permitted by the Contract; and further each Party agrees it will not use such Confidential Information for any purpose other than as may be reasonably necessary for the performance of its duties pursuant to the Contract; provided, however, that the receiving Party may disclose the Confidential Information, or any portion thereof, to its directors, officers, employees, legal and financial advisors, controlling persons and entities who need to know such information to perform such Party’s obligations under the Contract and who agree to treat the Confidential Information in accordance with the confidential obligations in the Contract.
- 11.5 Each Party shall use a reasonable degree of care to protect the Confidential Information of the other Party from disclosure, release or misuse. Said degree of care shall in no event be less than the degree of care as it employs to avoid disclosure, release or misuse of its own Confidential Information of like importance. Further both Parties represent that they have adequate procedures to protect the secrecy of such Confidential Information including without limitation the requirement that employees have, where necessary executed non-disclosure agreements.
- 11.6 In the event that either Party receives a request to disclose all or any part of the Confidential Information of the other Party under the terms of a court order, subpoena, document request, or other legal or regulatory proceeding, such Party receiving the request agrees to notify the other Party within forty-eight (48) hours after receipt of such legal request, and the Party receiving such request agrees to cooperate with the notified Party in any attempt to obtain a protective order.
- 11.7 Each Party agrees, as applicable, that any violation of this Section may result in irreparable harm to the non-breaching Party and said non-breaching Party may be entitled to apply for injunctive relief, in the courts specified in the Contract without the necessity of proving actual damages, in addition to any other remedy that the non-breaching Party may have.
- 11.8 The City is subject to the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c.M.56, as amended (“MFIPPA”) with respect to

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information under its custody and control. Accordingly, all documents and information provided to City by Contractor pursuant to the Contract may be available to the public unless the Party submitting the information requests that it be treated as confidential. Contractor acknowledges that all information provided to City is subject to MFIPPA and may be subject to release under MFIPPA, notwithstanding the Contractor’s request to keep the information confidential. Contractor acknowledges that the City is not liable to the Contractor for any loss, injury or damage suffered by the Contractor as a result of the City’s obligation to abide by MFIPPA.

11.9 Each Party represents and warrants that it will duly observe all of its obligations under all applicable legislation regarding the security and privacy of Personal Data that arise in connection with the performance of the Contract. Contractor shall obtain the prior written consent of City to store or process Personal Data for the purpose of performing the Contractor’s obligations under the Contract at any site outside Canada.

11.10 When activities requiring the collection or handling of Personal Data are contracted out by the Contractor, the subcontract shall, where applicable, impose on the subcontractor the confidentiality, privacy protection and security obligations of the Contractor set out in the Contract.

12. OWNERSHIP AND TITLE

12.1 Except as expressly provided in the Contract, the Contract does not transfer any right, title or interest in or to any existing Intellectual Property Right of the Parties.

12.2 If Contractor delivers any of the Software to the City on any media, including any one of more of computer disks, USB’s or similar media, title to that media will pass to the City upon delivery.

12.3 All City Data will be the exclusive property of City and Contractor will not acquire any Intellectual Property Rights therein.

12.4 All data, reports and output generated as a result of the use of the Software by or on behalf of City, are and will be deemed the Confidential Information of the City and will be the exclusive property of the City and the Contractor will not acquire any Intellectual Property Rights therein.

13. DATA SECURITY AND CITY DATA – Without limiting the provisions of Section 11 of these IT General Conditions, the Parties agree as follows:

13.1 In the event of the expiry or termination of the Contract or any portion thereof, the Contractor shall promptly return all the City’s Confidential Information it has in its possession, care or control, in an acceptable format as specified by City at that

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time. Where the format specified by City is different from the then existing format in which the City Data and City Confidential Information are held, any costs of conversion to the new format shall be at City’s expense.

13.2 Contractor acknowledges that the City’s Confidential Information is confidential and shall not be:

13.2.1 Used other than in connection with the performance of the Contract;

13.2.2 Disclosed, sold, assigned, leased or otherwise provided to third parties by the Contractor; or

13.2.3 Commercially exploited by or on behalf of Contractor.

13.3 Without limiting the provisions of Section 11.5 of these IT General Conditions, the Contractor shall establish and maintain safeguards against any Security Breach, of City’s Confidential Information in the Contractor’s possession, care, or control. Those safeguards shall be no less rigorous than those data security policies in effect to protect Contractor’s similar data or Confidential Information. In the event Contractor discovers or is notified of a Security Breach or potential Security Breach of the City’s Confidential Information in its possession, care or control, Contractor shall no later than twenty-four (24) hours after discovery of such Security Breach:

13.3.1 notify the City in writing of such breach or such potential breach; and

13.3.2 investigate such breach or such potential breach, such investigation shall include, *inter alia*, an investigation into the cause and consequences of such breach or such potential breach. Contractor shall keep the City informed of the progress of said investigation and shall answer any and all inquiries made by the City in respect of the investigation.

Further, the Contractor shall provide the City with a written report on the results of such investigation within two weeks from the discovery of the Security Breach.

13.4 Contractor shall comply with all reasonable directives from the City with regard to privacy and security of the City’s Confidential Information in the Contractor’s possession, care or control.

13.5 Contractor agrees and acknowledges that nothing in the Contract limits or prevents the City from using the City’s Confidential Information in any current or future program or agreement with another party.

13.6 Contractor agrees that it shall not transfer or transmit outside of Canada any of the City’s Confidential Information without City’s prior written consent.

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- 13.7 That in the event of a Security Breach, which in any way involves the Software; howsoever caused, Contractor shall render assistance, if so requested by the City, in returning the City’s Confidential Information, the Software, the City’s Software and the City’s System, as applicable, to a fully secure and operational state. If such Security Breach is not caused or contributed to by a default, or an act or omission of the Contractor, Contractor may recover from the City all reasonable costs of rendering such assistance.
- 13.8 Contractor shall be liable to the City for any Security Breach when such Security Breach results from the default or act or omissions of Contractor. Such liability by Contractor shall be subject to the City having exercised data security and data management procedures in accordance with good practice in the information technology industry, as appropriate (including taking back-up copies of data as shall be reasonably necessary and appropriate to ensure security and continued operation of the Software), to avoid such loss or corruption where possible and to mitigate the effects thereof.
- 13.9 In the case of a Security Breach which results, directly or indirectly from the default or act or omissions of the Contractor, Contractor agrees and acknowledges that:
- 13.9.1 Subject to Section 13.3 of these IT General Conditions, the City shall lead and direct any investigation into the cause of the Security Breach and any actions necessary to remediate the Security Breach;
- 13.9.2 It shall fully cooperate with the City and shall render any and all information and assistance necessary to remediate the Security Breach;
- 13.9.3 As part of its obligation under this Section, it shall provide any and all corrective updates, fixes, patches or repairs necessary to remediate the Security Breach;
- 13.9.4 Notwithstanding the provision of such assistance by the Contractor, in respect of any Security Breach, the City maintains its rights under Section 18 of these IT General Conditions to terminate the Contract. For greater clarity, the Contractor agrees that any assistance provided in respect of a Security Breach does not cure a default.

14. WARRANTIES

- 14.1 The representations and warranties contained in Section 14 of these IT General Conditions shall:
- 14.1.1 Apply for as long as City Uses the Software; and

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14.1.2 Extend to all changes, modifications or enhancements made to the Software by the Contractor as well as all Updated Software and Upgraded Software provided by the Contractor pursuant to the Contract.

14.2 Representations and Warranties of the Contractor – The Contractor represents and warrants as follows:

14.2.1 it is duly incorporated and validly existing under the laws of its jurisdiction of incorporation and is duly authorized to carry on business in the Province of Ontario and has all the necessary corporate power, authority and capacity to enter into the Contract and to perform and fulfill each of its obligations hereunder;

14.2.2 the execution, delivery and performance of the Contract have been duly authorized by all necessary corporate action and the Contract constitutes a legally valid and binding obligation of the Contractor enforceable against it;

14.2.3 it is competent and has the necessary qualifications to perform its obligations hereunder and will perform its obligations in a professional and workmanlike manner and in accordance with the highest industry standards;

14.2.4 all Deliverables and Support Services, supplied under the Contract, and Contractor’s performance of the Contract, shall conform to all Functional Specifications and standards specified in the Contract;

14.2.5 that during the Term of the License(s), the Software will substantially conform to and perform and function in accordance with the requirements of the Contract, including the Functional Specifications, operate without error and be free from defects in material, design and workmanship, be of merchantable quality and free from manufacturing defects, and will be reasonably fit for the purpose for which it was intended;

14.2.6 Notwithstanding prior acceptance or Use of the Deliverables or any part thereof by City, the Contractor shall repair, remediate or replace at its expense, any of the Deliverables which are or become defective or which fail to conform to the requirements of the Deliverables as set out in the Contract, as a result of the fault of the Contractor.

14.2.7 the Software and Third Party Software will be the most current version available at the time of the delivery of same;

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- 14.2.8 the Software is free of any technology or coding that would cause harm to the confidentiality, integrity and availability of the Software as well as any City Software or parts of the City’s System, further that the Software is free of any encryption and Contractor has not incorporated and will not incorporate in the Software any clock, timer, counter, computer virus, worm, software lock, drop dead device, Trojan-horse routine, trap door, time bomb or any other disabling mechanism, protection feature, code or instruction that may be used to access, modify, replicate, distort, delete, damage, disable or prevent the use of the City Data, Software, City’s Software, City’s System, or any other software, hardware, or data of City;
- 14.2.9 no software components, other than the Software are necessary to fulfill the requirements of the Functional Specifications;
- 14.2.10 the Documentation is and will continue to be current, accurate and complete in all material respects;
- 14.2.11 it is and will remain the legal and beneficial owner or authorized sub licensor of all Intellectual Property Rights and other rights in and to the Software and Third Party Software;
- 14.2.12 Contractor has full power and authority and all necessary rights for it to grant the licences set forth in this Contract without the consent of any other person and City shall hold and enjoy all such licenses without any claim, interference or demand whatsoever by Contractor, its successors or any third party;
- 14.2.13 Contractor has full power and authority and all necessary rights for it to assign the Intellectual Property Rights in and to the Software without the consent of any other Person;
- 14.2.14 at the date of execution of the Contract there are no claims that have been made nor actions pending or, to the best of its knowledge, threatened regarding the ownership of the Software or Third Party Software;
- 14.2.15 The Software and its Use by City does not and will not infringe or otherwise violate the Intellectual Property Rights or any other rights of any Person;
- 14.2.16 Contractor will not infringe upon the Intellectual Property Rights or other rights of any Person in the performance of its obligations under the Contract;

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- 14.2.17 Contractor has all required licences, consents, approvals and permits from any Person necessary to perform its obligations under the Contract;
- 14.2.18 Contractor has the necessary financial resources to carry out its obligations under the Contract;
- 14.2.19 Contractor and its employees, agents have the necessary skills, expertise and experience to perform all of their obligations under the Contract;
- 14.2.20 The Contractor has not and will not:
- 14.2.20.1 Grant any rights or licenses; or
 - 14.2.20.2 Enter into any agreement or understanding with any Person,

That would conflict with Contractor’s obligations or City’s rights under the Contract.
- 14.3 The Contractor agrees to notify City immediately in writing of any material change in any of its representations and warranties contained in the Contract and if Contractor fails or neglects to do so, then such failure or neglect shall be considered a material breach by Contractor of the Contract.
- 14.4 Contractor acknowledges and agrees that the City has entered into the Contract on the basis of Contractor’s unique size, reputation, financial resources, intellectual property, technical approach, technical expertise and record of performance, all of which are personal to the Contractor. In this regard, Contractor represents and warrants as follows:
- 14.4.1 Contractor is not aware of any fact, event or circumstance relating to Contractor which has not been disclosed by Contractor to City in writing and which reasonably could be expected to, be relevant to City’s decision to enter, or not enter into the Contract; or have a material adverse effect on Contractor’s ability to perform and complete its obligations to City under the Contract;
 - 14.4.2 Contractor is not aware of any actual or proposed plan, decision, merger, amalgamation, reorganization, sale, transfer, disposition, divestiture or third party relationship related to Contractor which has not been disclosed by Contractor to City in writing and which reasonably could be expected to be relevant to City’s decision to enter, or not enter into the Contract; or have a material adverse effect on Contractor’s ability to perform and complete its obligations to City under the Contract;

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14.4.3 Contractor is not aware of any actual or potential liability, claim, action, lawsuit or proceeding related to Contractor which has not been disclosed by Contractor to City in writing and which reasonably could be expected to be relevant to City’s decision to enter, or not enter into the Contract; or have a material adverse effect on Contractor’s ability to perform and complete its obligations to City under the Contract;

14.5 Breach of Representation or Warranty - If Contractor breaches any representation or warranty contained in Sections 14.2 or 14.4 of these IT General Conditions, the City may, at City’s option, terminate the Contract upon provision of written notice to Contractor. In the event City terminates the Contract in accordance with this Section, in addition to the City’s rights and obligations under Section 18 of these IT General Conditions:

14.5.1 City may at City’s option acquire ownership, or use of the Software and/or any other Deliverables, equivalent to that which would have been acquired by City under the Contract at a price equivalent to that at which such Software and/or other Deliverables is included in the Contract Price (subject to any credit or refund that may be due to City in respect of any prepaid amounts and/or services not yet provided).

14.5.2 City may at City’s option, reject the Software (including any previously accepted Software) and/or any other Deliverables, in which case Contractor shall repay forthwith to City all monies paid up to and including such date of termination (other than a reasonable amount in respect of any period during which City has obtained value from City’s possession and use of the Software and/or other Deliverables).

14.5.3 Contractor shall assist City, at City’s request, with any migration to any new software products in any such circumstances.

14.6 City’s Warranty – City represents and warrants that it has authority to enter into the Contract and to grant to the Contractor any rights to be granted by City to Contractor hereunder and that it owns or has obtained valid licences to any Intellectual Rights necessary for the fulfillment of all of City’s obligations hereunder.

15. INDEMNITIES

15.1 General Indemnity – Contractor agrees to defend, indemnify and hold harmless each of City and its directors, officers, employees and agents (the “City Indemnitees”) from and against all losses, liabilities, expenses, costs and damages which are suffered or incurred by any of the City Indemnitees (including legal fees on a solicitor client basis and disbursements) as a result of or in connection with any claim, demand, suit, action, threat, allegation or proceeding asserted or

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threatened against any City Indemnitees by a third party (a “Claim”) arising out of or otherwise relating to:

15.1.1 A breach of the Contract by Contractor, including a breach of any representation, warranty or covenant made by Contractor; or

15.1.2 Any injury to persons (including injuries resulting in death) or loss or damage to property of others which may be or is alleged to be caused by or suffered as a result of the negligence or wilful misconduct of Contractor, any of its employees, agents or subcontractors or persons under their direction or control: provided, however, that City shall have the right to approve Contractor’s choice of legal counsel and that Contractor will not settle any Claim without prior written consent of City.

15.2 Intellectual Property Indemnity - In addition to the obligation set out in Section 15.1 of these IT General Conditions, Contractor will defend, indemnify and hold each of the City Indemnitees harmless from all losses, liabilities, expenses, costs and damages suffered or incurred by any of the City Indemnitees (including legal fees on a solicitor client basis, and disbursements) as a result of or in connection with any Claim alleging that the use or operation of all or any part of any Deliverable (including the Software, Third Party Software and/or Documentation) supplied by or on behalf of Contractor infringes any Intellectual Property Rights or other rights of any person. The foregoing indemnity is conditional upon:

15.2.1 City providing prompt written notice to Contractor of any Claim in respect of which indemnity is claimed;

15.2.2 Contractor being afforded the opportunity for control of the defence and settlement of any Claim (provided, however, that City will have the right to approve Contractor’s choice of legal counsel and Contractor will not settle any Claim without the prior written consent of City); and

15.2.3 Such reasonable cooperation by City in the defence and/or settlement of any Claim as Contractor may request.

15.3 If all or any part of any Deliverable supplied by or on behalf of Contractor becomes, or in Contractor’s opinion is likely to become, the subject of a claim described in Section 15.2 of these IT General Conditions or is or likely to be enjoined from use, Contractor will, in addition to honouring the indemnity in Section 15.2, at its sole option and expense, either:

15.3.1 Procure in favor of City the right to use the allegedly infringing technology, content, product, material or other property as contemplated in the Contract;

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15.3.2 Modify the Deliverable or the infringing part or parts thereof, as applicable, so as to render it non-infringing without affecting its quality, performance and functionality, acceptable to City, acting reasonably; or

15.3.3 If after reasonable commercial efforts by Contractor, Contractor is unable to perform any of the foregoing alternatives, City may terminate the Contract forthwith upon the provision of written notice thereof and Contractor will forthwith refund to City all amounts paid to Contractor pursuant to the Contract.

15.4 Confidential Information/City Data Indemnity – Contractor will defend, indemnify and hold each of the City Indemnities harmless from all losses, liabilities, expenses, costs and damages suffered or incurred by any of the City Indemnities (including legal fees on a solicitor client basis and disbursements) as a result of or in connection with any Claim arising from or related to, a breach of Sections 11 or 13 of these IT General Conditions, and/or the loss, destruction or unauthorized disclosure of, or access to City’s Confidential Information and/or City Data caused or contributed to by the Contractor.

16. LIMITATION OF LIABILITY

16.1 For the purposes of this Section, Direct Damages are those damages that fall within the scope of 16.1.1 or 16.1.2 below, or both:

16.1.1 Damages that arise naturally from breach of the Contract or that are reasonably contemplated at the time the Parties enter into the Contract as being the probable consequences of breach of the Contract;

16.1.2 Damages that are reasonably foreseeable as being the probable consequences of a tort that falls within the scope of the Contract.

For greater certainty, Direct Damages do include damages incurred from loss of data, loss of use of the Deliverables and loss of revenue but do not include damages for loss of profit or loss of economic opportunity. All damages which are not Direct Damages are categorized as Indirect Damages.

16.2 DIRECT DAMAGES – EXCEPT IN RESPECT OF BREACHES OF SECTION 11 and 13 OF THESE IT GENERAL CONDITIONS AND/OR IN RESPECT OF ANY AMOUNTS OWING PURSUANT TO THE INDEMNIFICATION OBLIGATIONS UNDER SECTIONS 15.1, 15.2, 15.3 AND 15.4 OF THESE IT GENERAL CONDITIONS AND SUBJECT TO SECTION 16.5 OF THESE IT GENERAL CONDITIONS, TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY’S LIABILITY ARISING UNDER OR IN CONNECTION WITH THE CONTRACT WILL BE LIMITED TO DIRECT DAMAGES.

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16.3 INDIRECT DAMAGES – EXCEPT IN RESPECT OF BREACHES BY THE CONTRACTOR OF SECTION 11 and 13 OF THE MSA AND/OR IN RESPECT OF ANY AMOUNTS OWING BY THE CONTRACTOR PURSUANT TO THE INDEMNIFICATION OBLIGATIONS UNDER SECTIONS 15.1, 15.2, 15.3 AND 15.4 OF THESE IT GENERAL CONDITIONS AND SUBJECT TO SECTION 16.5 OF THE MSA, TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING WITHOUT LIMITATION, LOSS OF PROFIT, INCOME OR SAVINGS), WHETHER BASED IN CONTRACT, TORT INCLUDING NEGLIGENCE AND STRICT LIABILITY), AT LAW OR IN EQUITY OR OTHERWISE, AND WHETHER OR NOT THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OCCURRING.

16.4 FOR GREATER CERTAINTY, THE PROVISIONS OF THIS SECTION 16 WILL APPLY IRRESPECTIVE OF THE NATURE OF THE CAUSE OF ACTION, DEMAND OR CLAIM, INCLUDING BUT NOT LIMITED TO, BREACH OF CONTRACT, NEGLIGENCE, TORT OR ANY OTHER LEGAL THEORY OF LIABILITY, AND WILL SURVIVE A FUNDAMENTAL BREACH OR BREACHES AND/OR FAILURE OF THE ESSENTIAL PURPOSE OF THIS CONTRACT OR OF ANY REMEDY CONTAINED HEREIN.

16.5 INJURY TO PERSONS – NEITHER PARTY EXCLUDES OR LIMITS THE LIABILITY OF THE OTHER PARTY IN THE EVENT OF DEATH OR PERSONAL INJURY.

17. TERMINATION FOR CONVENIENCE

17.1 Notwithstanding anything contained in the Contract, City may, at any time during the Term of the Contract, by giving written notice to the Contractor, terminate the Contract as regards to all or any part of the Deliverables. The termination notice shall set out the termination date for the Contract or any part thereof under this Section (the “Termination for Convenience Date”). Upon such a termination notice being given, the Contractor shall continue providing the Deliverables until the Termination for Convenience Date.

17.2 In the event of a termination notice being given pursuant to this Section, the Contractor shall be entitled to be paid;

17.2.1 On the basis of the Contract Price, for all completed Deliverables or portions thereof that are accepted in accordance with the Contract, whether completed before, or after and in compliance with the instructions contained in, the termination notice; and

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17.2.2 any costs that have been reasonably and properly incurred for purposes of performing the Contract up to the Termination for Convenience Date.

17.3 The Parties hereto agree that the notice provisions and payments due upon Termination for Convenience are valid, reasonable, fair and equitable. The parties agree that upon termination of the Contract in compliance with this Section the payments made by City to Contractor in accordance with this Section shall satisfy the obligations of City and that upon City making such payments to Contractor, Contractor shall have no claim for damages, compensation, loss of profit, allowance or otherwise by reason of, or directly or indirectly arising out of, any action taken or termination notice given by City under this Section, except to the extent that this Section expressly provides.

18. TERMINATION FOR DEFAULT

18.1 City may terminate the Contract, in whole or in part with respect to all or any part of the Contract, prior to the end of the Term, forthwith upon written notice if the Contractor is in default. The termination notice shall set out the termination date for the Contract or any part thereof under this Section (the “Termination for Default Date”). Upon such a termination notice being given, the Contractor shall continue providing the Deliverables until the Termination for Default Date. Reasons constituting default include:

18.1.1 Contractor failing to cure a material breach of the Contract (other than a breach expressly giving City the right to terminate forthwith), unless, in the case of such breach, the Contractor, within ten (10) Business Days after delivery of written notice of default from City, cures such breach and indemnifies City for any resulting damage or loss;

18.1.2 Contractor commits numerous breaches of its duties and obligations under the Contract that collectively constitute a material breach. In such a case the notice provisions of Section 18.1.1 apply;

18.1.3 Contractor committing a breach of any provisions of the Contract which expressly provide City with the right to terminate forthwith;

18.1.4 Contractor breaching any of its obligations under Sections 11, 13, 14 and 24 of these IT General Conditions;

18.1.5 Where the Contractor becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, or takes the benefit of any statute relating to bankrupt or insolvent debtors, or where a receiver is appointed under a debt instrument or a receiving order is made against the Contractor,

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or an order is made or a resolution passed for the winding up of the Contractor;

18.1.6 Contractor commits fraud or gross misconduct;

18.1.7 Contractor violates the then current version of the City’s Employee Code of Conduct or Responsible Computer Policy, it is the obligation of the Contractor to obtain a copy of the City’s Employee Code of Conduct and/or Responsible Computer Policy; or

18.1.8 A change in control of the Contractor where such control is acquired, directly or indirectly, in a single transaction or series of related transactions, or all or substantially all of the assets of the Contractor are acquired, by any entity, or the Contractor is merged with or into another entity to form a new entity, unless the Contractor demonstrates to the satisfaction of the City that such event will not adversely affect its ability to perform the services under the Contract.

18.2 Without limiting City’s other remedies under the Contract, in the event of a Termination for Default under this Section;

18.2.1 the Contractor shall be liable to City for any of the Contract Price paid for unfinished work, including all losses and damages which may be suffered by City by reason of the default or occurrence upon which the notice of default was based;

18.2.2 the Contractor shall be liable for any increase in the cost incurred by City in procuring the Deliverables from another source;

18.2.3 City may do such things and incur such costs as it deems necessary to correct the Contractor’s default and recover such costs from the Contractor including without limitation the withholding of payment due or accrued due to the Contractor for services rendered pursuant to this Contract, which moneys may be set off by the City against any expenses that it may incur in remedying a default or failures as described above; and

18.2.4 The Contractor shall repay immediately to City the portion of any advance payment that is unliquidated as of the date of delivery of the notice of default.

18.3 In the event of termination by City pursuant to Section 18.1.5 of these IT General Conditions, then City shall have an option, exercisable at its discretion prior to Contractor being wound up:

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18.3.1 In the case of Deliverables already delivered to City that conform to the requirements of the Contract, to acquire ownership or use equivalent to that which would have been acquired under the Contract, at a price equivalent to that at which such Deliverables are included in the Contract Price;

18.3.2 In the case of the Software to acquire ownership or licensed Use of such Software, at a fair price.

19. EFFECT OF TERMINATION OR EXPIRY – GENERAL

19.1 Return of Property and Money – If the Contract is terminated under the provisions of Sections 14.5, 17 or 18 of these IT General Conditions then, with the exception of any Deliverables already accepted, which shall not be subject to this Section:

19.1.1 Each Party shall return all items supplied to it in connection with the Contract by the other Party, subject to Section 18.2; and

19.1.2 Contractor shall repay forthwith to City all monies paid up to the date of termination other than monies in respect of any task or other services properly performed and from which City has obtained or will obtain value.

19.2 Immediately upon the expiry or termination of the Contract, each Party shall return all of the other Party’s Confidential Information and other property in its possession or control and will remove all digital representations thereof in any form, from all electronic storage media in its possession or under its control.

19.3 Termination, in accordance with the Contract regardless of cause or nature, shall be without prejudice to any other rights or remedies of the Parties.

20. INSURANCE

20.1 The Contractor shall provide and maintain, at its sole expense, during the term of this the Contract;

20.1.1 Commercial General Liability insurance issued on an occurrence basis for an amount of not less than five million dollars (\$5,000,000.00) per occurrence for any negligent acts or omissions by the Contractor. Such insurance shall include, but is not limited to, bodily injury, death and property damage including loss of use; premises, property and operations liability; products and broad form completed operations liability; blanket contractual liability; cross liability; severability of interest clause; contingent employers liability; personal injury liability; owner’s and Contractor’s protective coverage; non-owned automobile liability with a blanket contractual endorsement; an employer’s liability if the Contractor is not subject to the

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WSIA; broad form property damage; employees as additional insured and occurrence property damage;

20.1.2 Technology Professional Liability insurance for financial loss arising out of an error, omission or negligent act in the rendering of services in an amount not less than five million dollars (\$5,000,000.00) per claim and five million dollars (\$5,000,000.00) aggregate. Such policy shall be on a claims made basis and shall provide coverage for damages and defence costs. The Technology Professional Liability Policy will also include an insuring agreement for cyber or network security and privacy liability insurance, covering financial loss arising out of actual or potential unauthorized access, unauthorized use, and a failure to protect confidential information which results in loss or misappropriation of such information in both electronic and non-electronic format. Such insurance shall have a limit of five million dollars (\$5,000,000.00) million per claim.

20.2 All the insurance policies required of the Contractor under the Contract shall;

20.2.1 name City as an additional insured; and

20.2.2 contain an endorsement to provide City with 30 calendar days prior written notice of cancellation.

20.3 Evidence of insurance satisfactory to City shall be provided prior to execution of the Contract and continuing evidence of insurance coverage shall be producible upon request by City.

21. WORKPLACE SAFETY AND INSURANCE BOARD

21.1 The Contractor agrees that to the extent that the *Workplace Safety and Insurance Act, 1997*, S.O. 1997, c. 16, Sched. A, and the Regulations thereunder (collectively the “WSIA”) apply to its performance of the Contract, it shall pay to the Workplace Safety and Insurance Board all assessments and levies owing to the Board/Commission in respect to this the Contract. Any unpaid assessments or levies shall be the sole responsibility of the Contractor. Upon request of City, Contractor will provide a certificate from the Workplace Safety and Insurance Board (the “WSIB”) indicating that all payments by Contractor to the WSIB in conjunction with the Contract have been made. Further, the Parties agree that City will not be liable to the WSIB for future payments in connection with Contractor’s performance of the Contract.

22. STATUTORY AND OTHER COMPLIANCE RESPONSIBILITIES

22.1 Occupational Health and Safety Act, R.S.O. 1990, c. O.1.

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22.1.1 The Contractor agrees that to the extent that the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1, as amended, and the Regulations thereunder (collectively the “Act”), apply to its performance of the Contract, the Contractor shall assume all the responsibilities and obligations imposed upon an “employer” or the “constructor” under the Act. The Contractor agrees to fulfill all of its obligations under the Act. The Contractor shall indemnify and save harmless the City from any and all charges, fines penalties and costs that may be incurred by the City as a result of the Contractor’s failure to fulfill its obligations under the Act.

22.2 The *Accessibility for Ontarians With Disabilities Act, 2005*.

22.2.1 The Contractor hereby affirms that it is in compliance with the *Accessibility for Ontarians With Disabilities Act, 2005* (“AODA”) and the *Integrated Accessibility Standards*, O. Reg. 191/11 (“IASR”), in respect of the Software and other Deliverables provided by Contractor to or on behalf of City. Without limiting the generality of the foregoing, the Contractor affirms that;

22.2.1.1 as of the Commencement Date the Software and the Deliverables, as applicable, comply with the World Web Consortium Web content Accessibility Guidelines (WCAG) 2.0 Level A; and

22.2.1.2 as of January 1, 2021 the Deliverables will comply with WCAG 2.0 Level AA.

22.2.2 City is committed to providing equal treatment to people with disabilities with respect to the use and benefit of City services, programs, and goods in a manner that respects their dignity and that is equitable in relation to the broader public. Contractor acknowledges that City is obligated to ensure that all third party Contractors (such as the Contractor) who, on behalf of City, deal with the public or provide a service or product which is used by the public, comply as required with the AODA.

22.2.3 Pursuant to s. 7 of the IASR, the Contractor shall ensure that all of its employees, agents, volunteers, or others for whom it is responsible receive training, appropriate for the duties related to the provision of the Deliverables to City, on the requirements of the accessibility standards referred to in the IASR and on the Human Rights Code as it pertains to persons with disabilities.

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- 22.2.4 The Contractor shall only assign those employees who have successfully completed training in accordance with the IASR to provide the Deliverables to, or on behalf of, City.
- 22.2.5 The Contractor shall submit to City or the Ministry responsible for the AODA, if requested, documentation describing its accessibility training policies, practices and procedures, and a summary of the contents of training, together with a record of the dates on which training is provided and the number of attendees. City reserves the right to require the Contractor, at the Contractor’s expense, to amend its accessibility policies, practices and procedures if the City deems them not to be in compliance with the requirements of the AODA or the IASR.
- 22.3 Bilingual (English/French) Requirements – City recognizes both official languages as having the same rights, status and privileges, and is committed to providing equal treatment to people with respect to the use and benefit of City services, programs, and goods in a manner that respects their linguistic preferences. The Contractor undertakes to perform all of the duties of this Contract while meeting the requirements and provisions of City’s Bilingualism Policy, such as they apply to the active delivery of goods and services under the Contract, in both official languages. City’s Bilingualism Policy is available for the Contractor’s review upon request.
- 22.4 Employees in receipt of a severance package – The Contractor must comply with City’s policy regarding former City employees in receipt of a severance package. In accordance with this policy, a former employee may not be re-employed on a permanent, temporary, fee for service or contract basis, whether independently or as part of a consulting firm, until the complete period of time equal to the length of their notice period and/or payment at departure has expired. A former employee may be employed by a consulting firm, but may not be assigned to work on a City contract by the firm until their combined notice period or payment at departure has expired.
- 22.5 Equity and Diversity – City is bound by its “Equity and Diversity Policy.” To further endorse this policy, City strongly encourages all Contractors employing fifty (50) or more employees to establish an Equity and Diversity Program. City may at any time, by written notice, request that the Contractor demonstrate to City its Equity and Diversity Program or measures taken by the Contractor’s firm to promote equity and diversity.
- 22.6 Ethical Purchasing – The City is committed to purchasing goods and services from responsible Contractors that supply quality products at competitive prices and abide by ethical standards and norms. The Ethical Purchasing Policy adopted by

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the Ottawa City Council on May 23, 2007 ensures that purchasing activities are aligned with the City’s values and ensures that workplaces producing goods for the City respect human and workers’ rights. The Supplier Code of Conduct sets the minimum performance standards for the City’s Ethical Purchasing Policy. The Contractor and its subcontractors agree to comply with the minimum labour standards set out in the Supplier Code of Conduct. The Ethical Purchasing Policy and the Supplier Code of Conduct are located on the Purchasing page of City.ca. <http://City.ca/en/ethical-purchasing>

23. APPLICABLE LAWS.

23.1 The Contractor shall comply with all laws applicable to the performance of the Contract as well as such regulations, procedures and precautions provided by City as may be appropriate.

23.2 The Contractor shall comply with City By-laws, policies, ordinances, legal requirements, rules, regulations, codes and orders during the performance of the Contract.

23.3 The Contractor shall obtain and pay for any and all licenses and certificates required for the performance of the Contract.

23.4 Contractor shall not, in the performance of the Contract, in any manner endanger the safety or unlawfully interfere with the convenience of the public and shall ensure that its employees, agents and subcontractors conform to laws applicable to the performance of the Contract as well as such regulations, procedures and precautions provided by City as may be appropriate.

24. CONFLICT OF INTEREST.

24.1 For the purpose of the Contract, “Conflict of Interest” includes, but is not limited to, any situation or circumstance where, in relation to the performance of its contractual obligations in the Contract, the Contractor’s other commitments, relationships or financial interests are such as to, or could be seen to, exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgment; or are such as to, or could be seen to, compromise, impair or be incompatible with the effective performance of its contractual obligations.

24.2 The Contractor is required to disclose to City any potential Conflict of Interest prior to the Effective Date. If the Contractor does not disclose such a conflict of interest, City may, at its sole discretion immediately terminate the Contract without any liability to the Contractor for any loss, injury or damage resulting from the termination.

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24.3 If, during the Term, a Conflict of Interest arises, the Contractor shall so inform the City and if a significant Conflict of Interest is deemed to exist by City, then the Contractor shall take such steps as are necessary to remove the Conflict of Interest. If the Contractor does not remove the Conflict of Interest, City may, at its sole discretion immediately terminate the Contract without any liability to the Contractor for any loss, injury or damage resulting from the termination.

25. AUDIT AND ACCOUNTS

25.1 Contractor acknowledges that City has a duty to account for the disbursement of public funds.

25.2 The Contractor shall keep proper accounts and records with respect to the performance of its obligations under the Contract and any and all transactions and activities associated with the Contract, in addition to all expenditures or commitments made by the Contractor in connection therewith and shall keep all documents, invoices, receipts and vouchers relating thereto. All such accounts and records as well as any invoices, receipts and vouchers shall at all times during the Term be open to audit, inspection and examination by City.

25.3 Copies of said records shall be provided to City when requested so that they can be maintained in accordance with the City's Records Management Policy and Records Retention and Disposition By-Law 2003-527.

26. SUBCONTRACTORS

26.1 Contractor may not engage any person to perform all or any part of Contractor's obligations under the Contract without City's prior written consent, which consent may be withheld by City for any reason in City's complete discretion. Notwithstanding any subcontracting permitted hereunder, Contractor will remain primarily responsible for the acts and omissions of its subcontractors as though such acts and omissions were its own. City may, at any time, request that Contractor terminate any subcontract with any subcontractor and Contractor will, within five (5) Business Days of receiving City's notice, terminate such subcontract.

26.2 In any subcontract, the Contractor shall ensure that the subcontractor is bound by similar terms and conditions as are set out in the Contract.

27. DISPUTE RESOLUTION

27.1 Dispute Resolution – Except as otherwise provided in the Contract any dispute under the Contract (a “Dispute”) will be resolved as follows:

27.1.1 The Contractor and City shall make all reasonable efforts to promptly resolve any Dispute, controversy or claim by negotiations, which shall be

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initiated by either of them giving to the other written notice (the “Dispute Notice”) containing details of the Dispute and the other shall provide its written reply thereto within ten (10) Business Days;

27.1.2 If, for any reason, the Dispute has not been resolved as aforesaid within a further ten (10) Business Days after receipt of the reply to the Dispute Notice, then the Dispute shall be elevated to the position of General Manager of Corporate Services or delegate and the position of President of the Contractor for resolution. The General Manager and President shall have a period of a further twenty (20) Business Days to attempt to resolve the Dispute;

27.1.3 If, after the aforementioned twenty (20) Business Day period has expired, the Dispute remains unresolved, then the Parties shall proceed to attempt to resolve the Dispute by way of attending a mediation in Ottawa. Either party may initiate the mediation by providing a written notice to the other Party to schedule the mediation (the “Mediation Notice”). The Mediation Notice will include the name of the proposed mediator. Provided the Parties agree on the name of a mediator and subject to the availability of the mediator, such mediator and the Parties shall hold the mediation within thirty (30) Business Days of the mediator’s appointment. If the Parties cannot agree on the mediator to be appointed within three (3) Business Days of receipt of the Mediation Notice, either may apply to the Ontario Superior Court of Justice in City, Ontario, to have such a mediator appointed. The mediator’s fees, costs and expenses shall be borne equally by the Parties.

27.1.4 Should the Parties not be able to resolve the Dispute at a mediation, the Parties may commence a proceeding in the Ontario Superior Court of Justice in Ottawa, Ontario to resolve the matter; and

27.1.5 The time limits referred to in this Section may be abridged or extended by mutual agreement of the Parties.

27.2 The Contractor and City shall continue to fulfill their obligations in respect of the Contract during any Dispute. It is understood by the Parties that such action will not jeopardize any Dispute, either Party might have. Unless the Contract has been terminated, after providing notice of a Dispute to City, the Contractor shall continue to proceed with the work necessary to complete the Deliverables.

28. FORCE MAJEURE

28.1 If a Party is delayed in completion of their obligations hereunder by reasons of fire, flood, earthquake, acts of God, terrorism, riots, sabotage or other unlawful acts

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and any other similar event beyond the commercially reasonable control of a Party, then the time of completion of those obligations shall be extended for a period of time equal to the time lost due to such delays, at no cost or penalty to the Party.

28.2 No completion time extension shall be granted for delays unless written notice of the delay is given to the other Party within three (3) Business Days of the commencement of the delay

29. **AWARD** – The award of the Contract will be in accordance with City’s Purchasing By-Law and may be subject to approval by the Ottawa City Council.
30. **TERM OF COUNCIL** – Where a contract may extend beyond the term of Council, the contract shall contain provisions to minimize the financial liability of the City should the subsequent Council not approve sufficient funds to complete the contract and the contract must be terminated by the City.

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31. **LAW AND FORUM** – The Contract shall be governed and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada as applicable therein. Any claims or court proceedings between the parties commenced regarding the Contract shall be brought in the Ontario Superior Court of Justice in Ottawa.
32. **ENTIRE AGREEMENT** – The Contract and any documents incorporated by reference herein or to be delivered pursuant to the provisions of the Contract, constitutes the entire agreement between the Parties with respect to the subject matter hereof. There are no restrictions, promises, representations, warranties, covenants or undertakings other than those expressly set forth herein and therein. The Contract supersedes all prior negotiations, agreements and undertakings between the Parties with respect to such matter. The Contract including the Schedules and Appendices hereto may be amended only by an instrument in writing executed by both Parties or their permitted assignees.
33. **ASSIGNMENT** – The Contract or the right to receive payment hereunder, may not be assigned in whole or in part, by either Party, by operation of law or otherwise, without the prior written consent of the other Party. Any purported assignment made without that consent shall be void and of no effect. Assignment of the Contract shall not relieve the Contractor from any obligation under the Contract or impose any liability upon City, unless otherwise agreed to in writing by City.
34. **FOLLOW ON CONTRACTS** – Without limiting the provisions dealing with Change Orders, City reserves the right to enter into follow-on contracts with the Contractor for supply of other related or similar services or products should there be a requirement for same.
35. **SUCCESSORS AND ASSIGNS** – The Contract shall inure to the benefit of, and shall be binding upon, the successors and permitted assigns of City and the Contractor.
36. **RELATIONSHIP OF PARTIES** - The Parties intend to create an independent Contractor relationship and nothing contained in the Contract shall be construed to make either City or the Contractor partners, joint venturers, principals, agents or employees of the other. Neither party shall have any right, power or authority, express or implied to bind the other.
37. **NOTICES**
- 37.1 Any notice, consent, direction or other communication required or permitted to be given under the provisions of the Contract (herein referred to as a “Notice”) shall be in writing and may be delivered by hand, courier, mail, facsimile or email for the applicable Party at the address set out in the Purchase Order or Supplemental Conditions, as applicable. Subject to Section 37.2 below, any Notice will be effective on the day it is delivered to that address.

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37.2 If a Notice is sent by email, the Notice shall be effective upon either;

37.2.1 the receipt by the Party sending the Notice of a return email from the other Party confirming delivery of the Notice; or

37.2.2 provided the Party sending such Notice also sends a copy of the Notice by registered mail or courier, the date of receipt as verified by the registered mail or courier.

37.3 Any Party may change its address or email for notification purposes by giving the other party Notice of the new address or email and the date upon which it will become effective in accordance with the terms of this Section.

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38. **COUNTERPARTS** – The Contract may be executed simultaneously in any number of counterparts, each of which shall be deemed an original but all of which together constitute one and the same Contract.
39. **WAIVER** – No delay or omission by either party to exercise any right or power it has under the Contract shall impair or be construed as a waiver of such right or power. All waivers must be in writing and signed by the Party waiving its rights. A waiver by any Party of any breach or covenant shall not be construed to be a waiver of any succeeding breach or any other covenant.
40. **SEVERABILITY** - If any provision of the Contract is held by Court or arbitrator of competent jurisdiction to be contrary to law, then the remaining provisions of the Contract will remain in full force and effect.
41. **SURVIVAL** - Any provision of the Contract which by the nature of the rights or obligations set out therein, might reasonably be expected to be intended to survive, shall survive the expiry or termination of the Contract. Without limiting the application of the foregoing, all Contractor representations and warranties set out in the Contract as well as the provisions concerning indemnity against third party claims, limitations of liability, confidentiality, accounts and audit, shall survive the expiry or termination of the Contract.
42. **PUBLICITY AND PUBLICATION** – Neither Party shall use the other Party’s name or trade-mark or refer to the other Party directly or indirectly in any media release, public announcement or public disclosure relating to the Contract or its subject matter, in any promotional or marketing materials, lists or business presentations, without consent from the other Party for each such use or release. Without limiting the foregoing, the Contractor shall obtain the consent in writing of the City before publishing or issuing any information regarding the Contract.
43. **SOLICITATION** – Unless otherwise agreed to by the Parties, neither Party shall solicit the employees of the other Party during the Term of the Contract, for any reason.
44. **EXTENSIONS OF HOSPITALITY** - City employees are governed by an Employee Code of Conduct which prohibits the acceptance of gifts, favours, hospitality or entertainment, except as provided for in the City’s Gifts, Entertainment and Hospitality policy.

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45. **EXCUSABLE DELAY** - Any delay by a Party to the Contract in the performance of its obligations hereunder that is caused by an event beyond its control and which could not have been avoided by means reasonably available to it shall be an Excusable Delay. In the event of an Excusable Delay, the Party delayed shall, within three (3) working days, give notice to the other Party of the events that caused the delay indicating the reasons for the delay and showing what portion of its obligations hereunder are affected, and how. Within five (5) further working days the Party delayed will give the other Party a further written notice detailing its plans to prevent further delay and recovery plan for lost time. Notwithstanding the times set out herein for provision of notices the Party delayed shall act promptly when any event causing an Excusable Delay occurs and use all reasonable means to prevent further delay and recover lost time.
46. **SUSPENSION OF THE WORK** - The City may at any time, by written notice, order the Contractor to suspend or stop all or part of the Work under the Contract for a period of up to 180 days. The Contractor shall immediately comply with any such order in the manner that minimizes the cost of so doing. At any time prior to the expiration of the 180 days, the City shall either rescind the order or terminate the Contract, in whole or in part, under the provisions for termination under the Contract.
47. **RIGHTS AND REMEDIES** – Unless specifically stated herein, all rights and remedies provided under the Contract are cumulative and are in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. For greater certainty and without limiting the foregoing, the legal and equitable remedies of set off are preserved.