MASTER SERVICES AGREEMENT

Between

RESOURCE PRODUCTIVITY AND RECOVERY AUTHORITY

and

[SUPPLIER]

as of

⚫, 2019,

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MASTER SERVICES AGREEMENT

THIS AGREEMENT is entered into, and effective, as of the ⚫ day of ⚫, 2019 (“**Effective Date**”).

B E T W E E N:

**RESOURCE PRODUCTIVITY AND RECOVERY AUTHORITY**, a corporation organized and existing under the laws of the Province of Ontario

(hereinafter referred to as the “**Authority**”)

OF THE FIRST PART;

- and -

**[SUPPLIER]**, a limited liability partnership organized and existing under the laws of Canada

(hereinafter referred to as **the Supplier**”)

OF THE SECOND PART.

WHEREAS the Authority is obligated by the *Resource Recovery and Circular Economy Act, 2016* (Ontario) to create an electronic public registry to receive information submitted to the Authority and to provide public access to information;

WHEREAS the Authority issued a Request for Proposals dated -⚫ for the development of the System ;

WHEREAS the Supplier is willing to provide, and the Authority is willing to procure, the Services (as hereafter defined) subject to the terms and conditions contained in this Agreement;

NOW THEREFORE, IN CONSIDERATION of the mutual covenants herein contained and for other good and valuable consideration (the receipt and sufficiency of which are acknowledged by both Parties), the Parties hereby covenant and agree with each other as follows:

1. INTERPRETATION
   1. Definitions

In this Agreement, each capitalized word or phrase shall have the meaning attributed thereto in Schedule A unless otherwise specified.

* 1. Schedules

The following schedules are attached to and form part of this Agreement:

[Schedule A – Definitions](#_Toc492892305)

[[Schedule ⚫ – Managed Services](#_Toc492892306)]

[Schedule ⚫ – Acceptance Testing](#_Toc492892307)

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[OTHERS]

* 1. Headings and Index

The division of this Agreement into Articles, Sections and Schedules and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. Except as expressly set out herein, references to an Article, Section or Schedule refer to the applicable Article, Section or Schedule to the main body of this Agreement and not to any Article, Section or Schedule of any other document.

* 1. Extended Meanings

The Parties agree to the following interpretive terms and conditions:

* + 1. words importing the singular number include the plural and vice versa and words importing gender include all genders in this Agreement;
    2. reference to any agreement, indenture or other instrument in writing means such agreement, indenture or other instrument in writing as amended, modified, replaced or supplemented from time to time, unless otherwise agreed to herein;
    3. reference to any statute or regulation or bylaw shall be deemed to be a reference to such statute or regulation or bylaw as amended, re-enacted or replaced from time to time, unless otherwise agreed to herein and references to a statute shall include the regulations made thereunder;
    4. time periods within which a payment is to be made or any other action is to be taken hereunder shall be calculated excluding the day on which the period commences, but including the day on which the period ends; and
    5. whenever any payment to be made or action to be taken hereunder is required to be made or taken on a day other than a business day, such payment shall be made or action taken on the next following business day.
  1. Contract Documents
     1. The Contract Documents consisting of this Agreement (including the Schedules), the Statements of Work, the RFP and the Proposal set forth the entire agreement and understanding between the Parties. Each Party acknowledges that it is entering into this Agreement solely on the basis of the agreements and other provisions contained in the Contract Documents, and that it has not relied upon any representations, warranties, or inducements of any kind, whether oral or written, and from any source, other than those that are expressly contained therein. Each Party, respectively, acknowledges that it is entering into this Agreement for its own purposes and not for the benefit of any third party.
     2. The contra proferentum rule (which requires that any ambiguity in an agreement shall be interpreted against the Party drafting the agreement) shall not apply to the interpretation of the Contract Documents.
  2. Governing Law

This Agreement and the other Contract Documents shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. Save and except for disputes submitted to arbitration pursuant to Article 12, each Party irrevocably attorns to and submits to the exclusive jurisdiction of the courts of Ontario with respect to any dispute or other matter arising hereunder or related hereto.

* 1. No Implied Terms

No implied representations, warranties, covenants, terms or obligations of any kind by, or on behalf of, either the Authority or the Supplier shall arise from anything in the Contract Documents and only the express terms and conditions contained in the Contract Documents shall be binding upon the Authority and the Supplier.

* 1. Severability

If any provision of this Agreement is declared by a Court of competent jurisdiction to be invalid, illegal or unenforceable, such provision shall be severed from this Agreement to the extent of such invalidity, illegality, or unenforceability, and the other provisions of this Agreement shall remain in full force and effect.

* 1. No Waiver

No waiver of or consent to depart from the requirements of any provision of the Contract Documents shall be binding against either Party unless it is in writing and is signed by the Party giving it. Such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it has been given and shall not be deemed or constitute a waiver of any other provisions (whether or not similar) nor shall such waiver constitute a continuing waiver unless otherwise expressly provided. Notwithstanding Section 1.11, no failure on the part of either Party to exercise, and no delay in exercising, any right under the Contract Documents shall operate as a waiver of such right. No single or partial exercise of any such right shall preclude any other or further exercise of such right or the exercise of any other right.

* 1. Currency

All dollar amounts in this Agreement are expressed in Canadian funds.

* 1. Time of the Essence

Except as otherwise expressly agreed in this Agreement or the Statements of Work, no delay in exercising any right shall constitute a waiver of such right and the Parties agree that time shall be of the essence in the performance of any obligation or duty to the extent any time requirements are specifically set out as such in the Agreement or the Statements of Work.

* 1. Priority of Contract Documents

For the purposes of resolving any conflict within the Contract Documents, the order of priority of interpretation to resolve any direct conflict or contradiction of relevant terms and conditions therein shall, from highest to lowest in order of priority, be as follows:

* + 1. this Agreement including the Schedules;
    2. the Statements of Work;
    3. the Proposal; and
    4. the RFP and all documentation provided by the Authority to the Supplier during the RFP process.

1. CONTRACT MANAGEMENT
   1. Executive Steering Committee

The Parties shall form an executive steering committee to facilitate communications between them (the “**Executive Steering Committee**”). The Executive Steering Committee shall meet to discuss and communicate the Authority’s goals and objectives concerning the System, to set the operational priorities and strategies related to the provision of the Services in order to achieve those goals and objectives, and to provide ongoing management and oversight of the Project. Any decisions or determinations of the Executive Steering Committee shall not constitute an amendment or change to this Agreement unless the provisions of Section 2.5 have been fully complied with. The Executive Steering Committee shall be composed of two (2) officers or senior managers of the Authority, two (2) officers or senior managers of the Supplier, each Party’s Designated Representative, and such other Persons as may be mutually agreed by the Parties.

* 1. Designated Representatives
     1. Each Party shall nominate a designated representative (the “**Designated Representative**”) who shall be responsible for the implementation, administration, management and operational performance of this Agreement on behalf of that Party, including overall management of that Party’s performance hereunder. Each of the Party’s Designated Representatives shall make themselves reasonably available for consultation with the other Party’s Designated Representative during regular business hours on Business Days in both the pre-implementation and post-implementation phases of the Project. Except as otherwise provided in Section 2.5 hereof, each Party shall have the right to rely upon the instructions, information, and decisions received from the other Party’s Designated Representative in writing with respect to all matters relating to this Agreement. The Parties’ Designated Representatives shall initially be John Pinard, the Director of I & IT of the Authority, and ⚫, the ⚫ of the Supplier. Each Party may change its Designated Representative, on a permanent or temporary basis, on written notice to the other Party.
     2. If either Party is dissatisfied with the other Party’s Designated Representative for any reason (acting reasonably), senior executives from each Party shall meet in order to resolve the issue and following such meeting, if required by the dissatisfied Party, the other Party shall appoint a new Designated Representative.
  2. Executive Steering Committee Meetings
     1. Subject to the following provisions of this Section 2.3, the Parties shall determine an appropriate schedule and protocol for regular Executive Steering Committee meetings, other required meetings to be held between the operational representatives of the Authority and the Supplier and overall governance of the Project.
     2. The Executive Steering Committee shall meet at least quarterly, or more frequently if requested by the Authority, to review and compare the Supplier’s actual performance of the Services to the requirements of the Contract Documents including the Project schedule and the Budget and the Executive Steering Committee may recommend remedial actions to resolve any performance deficiencies or variances therefrom. Each Party shall promptly provide the other with a written report upon becoming aware of events or circumstances that may reasonably be expected to have a material adverse effect on the performance, schedule for delivery or cost of any of the Services, including details of such events or circumstances, the potential effect and a suitable strategy to avoid or mitigate such effect.
  3. Statements of Work
     1. The Parties agree to enter into one or more Statements of Work (occasionally herein referred to as a “**SOW**”) with respect to each phase of the Project. Each Statement of Work will describe the scope of the Services to be provided, the specifications and requirements for the work, the portion of the Budget allocated to the SOW, the schedule for delivery of the Services, key personnel and subcontractors to be engaged on the work, Fees and method of calculation thereof (i.e. time and materials or fixed fee, subject to Section 2.4.4), milestones triggering payment and other matters.
     2. Each Statement of Work will be signed by the Designated Representatives of the Parties to signify agreement. Statements of Work will be numbered consecutively beginning with the number SOW 001.
     3. The Parties acknowledge and agree that, for any Work Breakdown Package (occasionally herein referred to as a “WBP”) or part thereof, as required by the Contract Documents, they will prepare a preliminary SOW for discovery activities to gather high level requirements and define scope, which may be completed on a time and materials basis or fixed fee basis, as agreed to by the Parties. All other implementation SOWs will be performed on a fixed fee basis.
  4. Change Management
     1. Either Party shall have the right to propose and request to the other Party, in writing, changes, amendments, additions, modifications or enhancements (“**Changes**”) to a Statement of Work.
     2. In order to propose or request such a Change, either Party’s Designated Representative or his/her designate shall deliver a written notice (the “**Change Request**”) to the other Party’s Designated Representative specifying the proposed Change and the purpose or objective sought with such proposed Change.
     3. Each Change Request shall: (1) specify the Change in scope; (2) how the proposed Change would be implemented; (3) describe the impact on the schedule for the performance of the Party’s obligations; and, (4) describe the additional charges or cost reduction, if any, that would result from the implementation of such Change. If the contents of the Change Request are acceptable to the Party to whom the Change Request is issued, then the Parties shall set out and describe, in reasonable and necessary written detail, the Change being agreed to in a change order, which shall be executed and delivered by the Designated Representatives of the Parties or their designates (a “**Change Order**”) to authorize the Change. Change Orders signed by the Designated Representatives or their designates shall amend the relevant Statement of Work and the Parties shall implement and perform such Change in accordance with the provisions of the Change Order.
     4. For greater certainty, neither Party shall have any duty, responsibility or obligation to accept, approve or enter into any Change Order whatsoever, provided that each Party will act reasonably and cooperate in the execution of a Change Order required to accomplish the purposes of the Project.

1. SERVICES
   1. Services Description
      1. The Supplier agrees that it shall perform the responsibilities and services that are expressly set out in the Contract Documents (the “**Services**”), including, without limitation, the Services required to implement the Project described therein but subject to any assumptions and limitations set out therein. The Supplier will manage, assess and monitor security and privacy for the Project and any operational maintenance procedures with respect to each of the components of the Project in accordance with and as agreed to in the Contract Documents, including responsibility for disaster recovery and backup procedures. The Supplier will provide additional Services to support the Project including data migration, training, preparation of user documentation and reference material, software refinement, implementation of system architecture and security as agreed upon in an the Contract Documents.
   2. Service Quality Standards
      1. Without limiting the provisions of Sections 3.5, 3.12 and 3.14, the Services shall be performed in Canada (unless otherwise agreed in a SOW) by the Supplier diligently and in a professional manner that is consistent with the quality of care, diligence, standards and practices for the performance of services that are similar to the Services in Canada. All Personnel who perform any part of the Services shall have the training, experience, professional qualifications, and technical expertise that are reasonably necessary to perform their respective Services.
      2. As a part of the Services, the Supplier shall provide and implement reasonable quality assurance processes and procedures to manage and facilitate its performance, including without limitation reasonable service quality inspection and verification assessment to confirm the Supplier’s compliance with the terms of the Contract Documents.
      3. The Supplier shall create and maintain reasonably accurate, complete and current records concerning the Supplier’s performance of the Services, including as may be specifically required pursuant to the Contract Documents (“**Service Records**”).
      4. If the Supplier fails to perform any Services in the manner that is required by the Contract Documents, it shall promptly report same to the Authority and investigate the causes and impact of any such failure and the Supplier shall bring the performance of such Services into compliance with the Contract Documents as soon as reasonably possible.
      5. The Supplier agrees that it shall diligently and promptly respond to and address all Services and Performance Requirements complaints, breach of information and other relationship issues that are addressed in writing by the Authority’s Designated Representative to the Supplier’s Designated Representative. Any such concern that the Authority’s Designated Representative (acting prudently and reasonably) may identify in writing and by telephone as “urgent” to the Supplier’s Designated Representative shall be responded to and remedial action commenced by the Supplier within twenty-four (24) hours after such “urgent” concern is delivered to the Supplier’s Designated Representative. This Section 3.2.5 shall not limit or restrict any other remedial right of the Authority herein.
   3. Certification Compliance

The Supplier shall hold the certifications which the Supplier represents that the Supplier holds as set out in the Proposal.

* 1. Managed Services [to be included if applicable]
     1. The Supplier agrees that it will, following implementation and deployment of the System or part thereof, provide the Authority with the Managed Services set out in the Contract Documents and for the period of time set out in the Contract Documents (the “**Managed Services**”). Without limitation to the foregoing, the Managed Services will include management of Data Centres, the delivery of call-centre support services and maintenance of the Applications that are required for the operation of the System unless otherwise agreed between the Parties. The Supplier will review the security alerts and incidents that are generated by Vendors, conduct a regular review of the available log files of the System, e.g. daily or weekly, and monitor the security conditions and environment for the System at all times. The frequency and format of reporting by the Supplier to the Authority will be as set out in the applicable SOW. The Supplier will advise the Authority of any incidents of concern or requiring instructions or direction from the Authority. The Supplier will act on behalf of the Authority in managing the relationship with the Vendors, provided that the Supplier will not have authority or responsibility to undertake legal obligations or actions on behalf of the Authority nor to take legal proceedings on behalf of the Authority in relation to the license agreements for the Applications unless mutually agreed in writing.]
     2. Fees for Managed Services will be invoiced on a monthly subscription basis following deployment, as set out in Schedule ⚫ hereto unless otherwise agreed between the Parties.
  2. Performance Requirements
     1. The Supplier shall perform the Services in accordance with the operational requirements, performance specifications, service levels and performance standards set out in the Contract Documents (the “**Performance Requirements**”). The Supplier shall comply with all of the Authority’s policies, to the extent applicable in connection with the Supplier’s performance of the Services, including its human resources, privacy and information security policies as of the date that copies of such policies (and, in the case of modifications, the date such modifications) are delivered to the Supplier, provided that such policies are not inconsistent with this Agreement, do not impose additional costs on the Supplier, are of general application and are subject to any exceptions mutually agreed upon in writing by the parties.
     2. The Supplier shall provide the Authority with at least ninety (90) days’ prior written notice of the Supplier’s intention to host any of the Applications provided by it from any location other than the Data Centres. Except as otherwise explicitly provided herein, the Supplier shall not provide any Services from any location outside of Canada without the prior written consent of the Authority, which approval may be withheld by the Authority in its sole and absolute discretion and shall notify the Authority as soon as reasonably practicable if it becomes aware of any of the Vendors intending to host any of the Applications from any location outside Canada or from a location other than the Data Centres.
     3. In addition to any other obligations, duties and responsibilities provided elsewhere in the Contract Documents, the Supplier shall provide:
        1. the overall management, assessment and monitoring of the Services in accordance with the provisions of the Contract Documents;
        2. all required accelerators and tools required in order to provide the Authority with the functionality described in the Contract Documents; and
        3. assistance to the Authority as is reasonably required to obtain the licenses of the Applications identified in Schedule ⚫ in order to provide the Authority with the functionality described in the Contract Documents.
     4. The Authority shall:
        1. commit the necessary resources and management effort to perform, in a timely manner, the acceptance testing procedures required herein;
        2. be responsible for the performance of other Persons engaged by the Authority in connection with the Project, even if the Supplier has been involved in recommending or selecting such Persons, or in the monitoring of their services;
        3. provide the Supplier with accurate, complete and reliable information concerning the operations of the Authority and the required functionality of the System;
        4. enter into the licenses of the Applications identified in Schedule ⚫ hereto and perform all of its obligations as licensee thereunder;
        5. provide the Supplier with reasonable assistance and cooperation to facilitate the Supplier’s performance of the Services, including reasonably prompt decisions and approvals by the Authority; and,
        6. perform its other obligations under the Contract Documents;

(collectively, the “**Authority Responsibilities**”).

* + 1. The Supplier shall be entitled to rely on all written decisions and written approvals of the Authority concerning the Services that are made in accordance with this Agreement. The Supplier shall provide the Authority with reasonably prompt, accurate, and complete written notice of any claim that the Authority has failed to perform any of the Authority Responsibilities.
  1. Acceptance Testing

The Supplier and the Authority agree that the Authority shall examine, verify and test the Services and Deliverables that the Supplier is required to perform and provide in accordance with the Contract Documents, as set out in Schedule ⚫ hereof. As more particularly described in Schedule ⚫, the Supplier acknowledges and agrees that the Authority will not accept any Deliverable which is dependent on the acceptance of a prior Deliverable until the prior Deliverable has been accepted.

* 1. Performance Requirement Measurement and Other Reporting

Without limiting Section 3.2.3, throughout the Term (both pre-implementation and post-implementation), the Supplier shall create, and provide to the Authority, the reports and information that are set out in the Contract Documents, on a bi-weekly or other basis as agreed upon by the Parties**.** The Supplier shall report its performance of the Services against the Performance Requirements and against the Budget, including particulars where reasonably requested.

* 1. Audits
     1. During the Term of the Agreement and (i) upon written notice of not less than thirty (30) Business Days and (ii) no more than once during each twelve (12) month period, the Authority’s independent auditor or other audit representatives or the Auditor General of Ontario (collectively the “**Audit Representatives**”) will have the right, at the Authority’s expense, to audit and inspect and the Supplier will make available in Toronto, Canada during its regular business hours, those Services Records which may be reasonably required in order to verify:
        1. performance by the Supplier of its obligations under this Agreement;
        2. the technology, infrastructure, practices and procedures followed and used by the Supplier to provide the Services;
        3. the internal controls, practices and procedures used by the Supplier to provide the Services; and
        4. the accuracy of amounts charged to the Authority under this Agreement, including Fees, expenses, credits and calculations and methodologies related thereto;

(collectively, the “**Audit**”).

* + 1. In connection with the exercise by the Authority’s Audit Representatives of the rights set forth in Section 3.8.1, the Supplier will, during regular business hours, provide to the Authority’s Audit Representatives, such access to the materials identified in Section 3.8.1 as are reasonably necessary to perform the Audit pursuant to this Section 3.8.
    2. In the event of a regulatory or statutory audit that is required by applicable law such as an audit under the *Auditor General Act* (Ontario), if the requirements of the audit cannot be satisfied by operation of Sections 3.8.1 and Sections 3.8.2, the Supplier will, subject to compliance with the provisions of this Section 3.8, provide such additional information and cooperate with the Audit Representative to the extent required by applicable law.
    3. The Supplier shall at its expense, once per year as scheduled by the Supplier, arrange with its independent auditor to conduct an SSAE 16 SOC2 Type II (or higher) audit for the Data Centre. The Supplier will provide copies of the Audit certificates to the Authority.
    4. The Supplier will at the Authority’s expense, provide such reasonable assistance to and cooperate fully with the Authority’s Audit Representatives in connection with the exercise of their respective audit rights set out in this Article 3.
    5. Except as otherwise provided herein, all Audits shall: (i) be conducted during the Supplier’s regular business hours; (ii) be of reasonable duration, not to exceed three (3) Business Days unless reasonably required by the Authority; (iii) the Authority shall ensure that any such Audit does not unreasonably interfere with the Supplier’s ability to provide the Services or otherwise with the operation of its business; and (iv) the Audits shall be subject to the Supplier’s reasonable security policies and professional and confidentiality obligations to its other clients. When selecting a third party auditor, the Authority will consult with the Supplier and take into consideration any reasonable objections the Supplier may have.
  1. Audit Discrepancies
     1. If and to the extent that an Audit reveals one or more unreported failures to meet a Performance Requirement, the Supplier shall pay the costs and expenses incurred by the Authority in respect of the portion of such Audit related to such failure. the Supplier shall ensure that any and all Audit findings concerning all failures to meet Performance Requirements are promptly corrected by the Supplier to the reasonable satisfaction of the Authority.
     2. If such Audit does not reveal a failure by the Supplier to meet a Performance Requirement or reveals that the Authority has not paid, in accordance with the Contract Documents, all of the amounts that are due and payable to the Supplier, then the Authority shall pay all of the costs and expenses of such Audit. Where such Audit reveals either an overpayment by the Authority or an underpayment to the Supplier, the Party that owes money shall return or pay such payment, as applicable, together with interest at the Prime Rate plus two percent (2%), from the date the non-defaulting Party paid, or should have paid, such amount.
  2. Project Roadmap
     1. The Project Roadmap sets out the estimated timelines and key milestones in the Project. The Parties will review and refine the Project Roadmap as the Project progresses, provided that amendments to the Project Roadmap must be approved by the Executive Steering Committee.
     2. The Supplier acknowledges and agrees that the target date for the implementation and deployment of the System is ⚫ and the Parties agree to use commercially reasonable efforts to achieve such date.
  3. Root-Cause Analysis and Resolution
     1. Not later than ten (10) days after the Supplier’s discovery of a failure, or the Supplier’s receipt of a notice from the Authority regarding the Supplier’s failure, to meet any of the Performance Requirements [including those with respect to the Managed Services], the Supplier shall conduct a reasonably comprehensive root-cause analysis to identify the cause of such failure. the Supplier shall correct any such failure (regardless of whether caused by the Supplier) and, in the case of a failure to provide any Performance Requirements, remedy such failure so as to conform with the Performance Requirements. If the findings of the root cause analysis determine that the Supplier was the sole or primary cause of the failure, the root cause analysis will be performed at the Supplier’s expense.
     2. Subject to Section 3.5.3 and 3.5.5 hereof, and without limiting any other right or remedy available to the Authority in connection with such breach subject to this Agreement, the Supplier shall pay and assume all costs and expenses of remedying and correcting any such breach or failure to the extent attributable to the Supplier. Without limiting Section 3.5, the Authority shall pay such remedial and correctional costs and expenses in the event, and to the extent, that the Authority or any Vendor has caused or contributed to the occurrence of the relevant breach or failure.
  4. Disabling Devices

The Supplier agrees that it shall not knowingly, by any act or omission, cause, create, contribute, insert, or permit to be inserted, the occurrence, manifestation, or inclusion of any Disabling Device, in (or to) any computer program that comprises any part of the Services. Furthermore, notwithstanding Section 3.2, the Supplier shall use Canadian generally accepted industry practices and information technology security tools in Canada to avoid and mitigate against any such act or omission. The Supplier shall implement and use such best practices during the Term to identify, screen and prevent any such occurrence, act or omission. In the event that the Supplier breaches its obligations under this Section 3.12, the Supplier shall (at its cost and expense) be responsible for promptly reducing or eliminating the existence or effects of any Disabling Device installed or injected by any third party and discovered in such resources, without causing a loss of operating efficiency or data or interruption in the provision of the Services in accordance with the Performance Requirements. Notwithstanding the foregoing, the Supplier shall not have any responsibility or liability to the extent that such Disabling Device is caused or contributed to by the Authority or a user of the System or any other third party for whom the Supplier is not legally responsible pursuant to this Agreement.

* 1. Disaster Recovery [to be included if applicable]
     1. The Supplier will manage, assess and monitor the design, implementation and operational maintenance of data backup and recovery and disaster recovery measures for the System. The Supplier will maintain a disaster recovery plan that complies with the Contract Documents and provide a copy thereof to the Authority no later than ninety (90) days prior to the launch of the System. Such plan shall be subject to the approval of the Authority, acting reasonably. The Supplier’s disaster recovery plan shall, at a minimum, include provisions and procedures to address physical security, fire protection, power supplies, loss of cooling/air conditioning, backup of computer equipment, hardware and software change control procedures, protection and restoration of Authority Data, and communication and/or connectivity, but will not cover components outside of the Supplier’s maintenance responsibility.
     2. Each Party shall provide immediate written notice to the other Party of the occurrence of any circumstance, Force Majeureevent, or disaster in response to which the Supplier shall invoke its disaster recovery plan. Once the disaster recovery plan is invoked, the Supplier shall provide the Services through the use of its disaster recovery plan at all times in spite of the existence of any Force Majeure event affecting the Supplier unless a Force Majeure event that is separate, distinct and unrelated to the Force Majeure event that initially invoked the disaster recovery plan prevents the implementation and execution of the disaster recovery plan. For greater certainty, the same Force Majeure event that invoked the disaster recovery plan shall not be the circumstance or reason that prevents the implementation of the disaster recovery plan. For the purposes of this Section 3.13, circumstances, Force Majeure event, or disaster means any situation whereby any Services that are provided by the Supplier or third parties managed by the Supplier either have been inoperable for 24 consecutive hours, or are reasonably likely to be inoperable for 24 consecutive hours due to such event. Upon such written notice, the Supplier shall have 12 hours to execute and implement the disaster recovery plan. After such plan has been invoked, the Supplier shall provide the Services in accordance with the performance requirements stipulated by the Contract Documents.
  2. Security
     1. **Security Requirements**. The Supplier shall ensure that the information in the Applications is protected with technological, administrative and physical safeguards that represent best efforts for the sensitivity of the information, the format in which it is held and the related privacy risks and secure such information against theft, loss and unauthorized use or disclosure (the “**Security Requirements**”).
     2. **Government of Ontario Standards.** The Registry System will be designed and implemented to generally conform with the Government of Ontario’s best practices from time to time including its security and privacy standardsand will be hardened against hacking and other malicious attacks, including through mobile devices.
  3. Change of Law

If any changes to the Operating Agreement or any laws, rules, regulations or policies established under the RRCEA or the WDTA occur after the Effective Date which render illegal or materially interfere with either Party’s ability to perform all or any part of this Agreement or materially alter the obligations of the Authority to provide the System or alter the functionality or operation of the System (“**Change of Law**”), the Parties agree that they shall use their commercially reasonable efforts to alter the arrangements and agreements provided for in the Contract Documents by way of an amendment to this Agreement and any of the other affected Contract Documents so as to reflect the reasonable expectations and requirements of the Parties that takes into account such Change of Law.

* 1. Personal Information
     1. **Collection, Use and Disclosure.** The Supplier shall collect, use, store and disclose Personal Information in accordance with the provisions of applicable law and any written policies and procedures of the Authority that have been communicated to the Supplier. The Authority hereby confirms that it has the necessary consents to disclose Personal Information to the Supplier pursuant to this Agreement and that the Personal Information provided to the Supplier has been provided in accordance with applicable law.
     2. **Permitted/Prohibited Disclosures**. The Supplier shall not collect, use or disclose any Personal Information except to the extent required to perform the obligations of the Supplier under this Agreement. In the case of disclosure of Personal Information by the Supplier to a third party, the Supplier shall require such third party to enter into an agreement imposing obligations upon the third party with respect to the collection, use and disclosure of such Personal Information which are substantially similar to those obligations set out herein.
     3. **Security and Confidentiality**. The Supplier acknowledges and agrees that: (i) Personal Information may include sensitive personal (including financial) information; and (ii) the Supplier shall use at least the same degree of care in maintaining the security and confidentiality of all Personal Information as it uses in maintaining the confidentiality of its own confidential information of comparable sensitivity and importance, including the use of encryption technology as warranted, but in no event with less care than is reasonable given the sensitive nature of such Personal Information.
     4. **Co-operation**. The Supplier shall provide all co-operation reasonably required by the Authority in responding to any claim, inquiry, complaint, investigation or remedial action regarding the unauthorized collection, storage, use or disclosure of Personal Information.
     5. **Retention and Return**. The Supplier shall retain all Personal Information only for so long as is reasonably necessary to complete the purposes for which the Personal Information was provided and as otherwise permitted by applicable law. The Supplier shall return to the Authority or, as directed by the Authority, delete or destroy the Personal Information, promptly upon any expiration or termination of this Agreement.
     6. **Transfer Out of Canada**. Except as permitted pursuant to the provisions of Section 4.4 below, the Supplier shall not transfer out of Canada or store in databases situated outside of Canada any Personal Information, whether during normal operations or in the event of disaster recovery, without the prior written consent of the Authority.
  2. Location of Services

Except as permitted pursuant to the provisions of Section 4.4 below, the Supplier agrees that it shall perform the Services entirely and exclusively within Canada unless otherwise agreed by the Authority in writing. Without limitation to the generality of the foregoing, none of the System technology infrastructure, the data, the Services associated with disaster recovery, data processing, nor any other aspect of the Services shall be performed or provided outside of Canada without the prior written consent of the Authority, provided that the Supplier’s obligation with respect to the Vendors shall be limited to monitoring, managing and assessing the location(s) from which they are providing Services, advising the Authority promptly if any of the Vendors is providing Services from outside Canada and, in such case, assisting the Authority to substitute another Vendor providing a functionally equivalent service from a location within Canada if so required by the Authority. Notwithstanding the foregoing, the use of cloud based solutions accessed in Canada shall not be considered performance of Services outside of Canada.

1. THE AUTHORITY DATA
   1. Ownership and Access

The Authority Data shall be and remain the sole and exclusive property of the Authority. Except as otherwise provided under this Agreement, the Supplier shall ensure that the Authority’s Designated Representative shall have the unrestricted, unqualified, and reasonably prompt viewing (“read‑only”) access to the Authority Data. For greater certainty, the Supplier shall not:

* + - 1. have, acquire or assert any right, title or interest (including ownership or other proprietary right) in any of the Authority Data;
      2. use or copy, or permit any other Person to use or copy, any of the Authority Data, except as reasonably required in connection with the Services or as otherwise expressly approved in writing by the Authority;
      3. sell, disclose, transfer, assign, lease or otherwise commercially exploit or dispose of any of the Authority Data, even in the event of a Dispute between the Parties or upon termination or expiration of this Agreement; or

make any copies of the Authority Data, except as required strictly for back up and disaster recovery purposes, for fault diagnosis and for development and testing purposes. In the case of the Authority Data being used to generate test data, if so required by the Authority in a SOW and at an additional cost to the Authority, all data that is confidential to the Authority or parties that are regulated by the Authority including data relating to prices, volumes of business and Personal Information shall be disguised comprehensively beyond reasonable prospect of identification and recovery, and such test data and related results shall be kept strictly confidential to those responsible for testing. Copying the Authority Data for analysis or any use or purpose other than as expressly permitted herein is strictly prohibited unless done with the prior written authorization of the Authority and in accordance with any conditions set out by the Authority as part of any such permission granted.

* 1. Access Standards

The Supplier shall not request or permit access to the Authority Data to be given to any Personnel except to the extent that such Personnel have a need to obtain access to the Authority Data in connection with the provision by the Supplier of the Services.

* 1. Approval

The Authority must expressly pre-approve in writing the Personnel of all Subcontractors who may access the Authority Data, and in each case the extent and duration of such access, prior to such Personnel being provided with Access to the Authority Data.

* 1. Storage and Return of the Authority Data

At no time will any of the computer files containing the Authority Data in the possession or control of the Supplier or its Subcontractors be (i) stored or held in a form or manner not approved by or accessible to the Authority, or (ii) be stored, held by or processed other than in Canada, except to the extent agreed in writing by the Authority in each case. Notwithstanding the foregoing, the Authority agrees that Authority Data (including Confidential Information and Personal Information) but excluding Registrant Data may be held on a cloud-based platform outside Canada for the purpose of providing the Services. The Supplier will comply with any policies and procedures established by the Registrar of the Authority with respect to Registrant Data from the time when written notice thereof is provided to the Supplier. Immediately upon the later of any expiration or termination of this Agreement and the completion of any Termination Transition Services, and otherwise promptly upon the request of the Authority, the Supplier shall provide to the Authority all copies of such files and the Authority Data in its control, including all applicable hardware and software keys and such information as to format encryption (if any) and any other specification or information reasonably necessary for the Authority to retrieve, read, revise, use and/or maintain such files and the Authority Data.

* 1. Theft or Loss or Damage to the Authority Data

If any of the Authority Data is stolen, lost, destroyed or damaged, due to any act or omission of the Supplier or its Subcontractors in breach of the Contract Documents, then the Supplier shall promptly: (i) upon being aware of same, provide written notice of such breach, loss, destruction or damage to the Authority; and (ii) use its reasonable efforts (including performing its obligations as set out in under Section 3.13) to restore the Authority Data as required by the Authority at the Supplier’s sole cost and expense.

1. CONFIDENTIALITY
   1. General

Except as otherwise expressly provided in the Contract Documents, all Confidential Information communicated to, or obtained by, one Party concerning the other Party, whether before or after the Effective Date, has been and shall be received in strict confidence as set out herein and shall be used by the recipient Party only to the extent that is strictly necessary for the purposes of the Contract Documents. No such information, including the terms of the Contract Documents, shall be disclosed by the recipient Party, its agents or employees, or used for any purpose other than as is strictly necessary for the performance of the Contract Documents without the prior written consent of the other Party. The Authority agrees that the Supplier may give Confidential Information to the Supplier’s Subcontractors as long as they are bound by substantially the same confidentiality obligations as the Supplier. Confidential Information may be disclosed to a Party’s auditors and other professional advisors under a duty to maintain the strict confidentiality of the Confidential Information as required under this Agreement. The Supplier shall not transmit, communicate, use, store, hold or process Confidential Information outside Canada except as expressly permitted hereunder.

* 1. Maintenance of Security and Confidentiality

The receiving Party of any Confidential Information shall take reasonable steps to maintain the security and confidentiality of the Confidential Information of the disclosing Party. Each Party further agrees:

* + - 1. to take reasonable steps, but no less rigorous than those taken to protect its own Confidential Information of a similar nature, to prevent any disclosure of the other Party’s Confidential Information;
      2. to reproduce the disclosing Party’s Confidential Information only to the extent necessary to meet its obligations under this Agreement;
      3. to notify the disclosing Party promptly upon becoming aware of Confidential Information having been disclosed in violation of this Section or that is otherwise lost or unaccounted for; and
      4. to use reasonable efforts to limit the disclosure of the other Party’s Confidential Information to those of the receiving Party’s Affiliates, directors, officers, employees, professional advisors, third party service providers, consultants, subcontractors and contractors who have a need to know such information under this Agreement; provided, however, that the receiving Party shall cause any such Person who is not one of the receiving Party’s directors, officers or employees to be bound by obligations of confidentiality at least as stringent as those set out herein prior to disclosure.
  1. Return or Destruction

Upon expiry or any termination of this Agreement, or upon the request of the Party disclosing its Confidential Information (except as otherwise required in connection with the performance of obligations under the Contract Documents), the receiving Party shall: (a) return or destroy all forms of such Confidential Information in its possession; (b) use all reasonable efforts to destroy all copies of all materials that incorporate or reflect such Confidential Information; and (c) certify to the disclosing Party that such materials have been either returned or destroyed, in each case except as to executed original copies of any contractual documents or other materials customarily held by the receiving Party as legal or working paper archival material as required in accordance with professional standards obligations. It is understood and agreed that the Supplier’s computer system and the computer systems of persons and legal entities to whom the Authority’s Confidential Information was disclosed in accordance with this Agreement, may automatically back-up Confidential Information disclosed to it or them under this Agreement. To the extent that such computer back-up procedures create copies of the Authority’s Confidential Information, the Supplier may retain such copies in its archival or back-up computer storage for the period it normally archives backed-up computer records, provided that such back-up copies shall be subject to the provisions of this Agreement until the same are destroyed, and shall not be accessed by the Supplier during such period of archival or back-up storage other than as might be permitted herein.

* 1. Enforcement

The Parties agree that any actual or threatened disclosure or misappropriation of Confidential Information shall cause the owner immediate and irreparable injury, and therefore such owner shall be entitled to apply to any court of competent jurisdiction for injunctive or other equitable relief. The foregoing shall be in addition to and without prejudice to such other rights as the disclosing Party may have at law or in equity.

* 1. Third Party Information

Any and all information belonging or relating to any third party, if marked as being proprietary and confidential (the “**Third Party Information**”) is and shall constitute Confidential Information. Each Party shall use Third Party Information solely in connection with such Party’s performance of its obligations under the Contract Documents, and each Party may disclose Third Party Information only on a “need-to-know” basis to employees, agents and subcontractors of such Party, after appropriate written non-disclosure obligations have been put in place.

* 1. Confidentiality Exceptions

The foregoing provisions of this Article 5 shall not apply to Confidential Information that:

* + - 1. is previously known to, or lawfully in the possession of, the receiving Party prior to the date of disclosure, as evidenced by reliable documentation;
      2. is independently known to, developed or discovered by, the receiving Party without any reference whatsoever to the Confidential Information;
      3. is obtained by the receiving Party from an unrelated and arm’s length third party having a bona fide right to disclose same, and who has not otherwise disclosed, obtained, or used same in any breach of either an obligation of confidence or fiduciary duty to any Person, including disclosing Party or its representatives;
      4. is or becomes public knowledge through no fault, act or omission of, or breach of this Agreement by, the receiving Party or its representatives;
      5. is required to be disclosed pursuant to a final judicial order by a Court of competent jurisdiction;
      6. is disclosed by the Authority to the Minister of the Environment and Climate Change (the “**Minister**”) or his/her officials pursuant to the Operating Agreement between the Authority and the Minister or pursuant to applicable law including, without limitation, the RRCEA and the WDTA; or
      7. is disclosed to other stakeholders at the discretion of the Authority with the prior written consent of the Supplier, such consent not to be unreasonably withheld, and provided that appropriate written non-disclosure obligations have been put in place.

1. KEY PERSONNEL
   1. Roles of Key Personnel

Each of the Supplier’s and its Subcontractors’ Key Personnel, including the Supplier’s Designated Representative, is designated in, and shall have the roles and responsibilities assigned to him or her as set forth in, Schedule ⚫ hereto. Schedule ⚫ may be modified from time to time in accordance with this Agreement, and shall be deemed modified upon any replacement or substitution of a new individual for any Key Personnel as advised by the Supplier from time to time in writing or upon the addition of any new Key Personnel as advised from time to time by the Supplier in writing. The Authority shall be entitled to review, in advance of their assignment to the Services, the resumes of all Key Personnel and the Supplier’s Designated Representative.

* 1. Assignment of the Supplier’s Key Personnel

Except as hereinafter provided, Key Personnel shall be assigned to the performance of the Services on a dedicated basis or as otherwise specified in a SOW. At least once per year, the Supplier shall provide an opportunity for the Authority to provide comments to the Supplier on the performance of all Key Personnel and the Supplier’s Designated Representative in the provision of the Services. If any Key Personnel or the Supplier’s Designated Representative becomes incapacitated, voluntarily terminates employment with the Supplier (and/or any of the Supplier’s Affiliates or Subcontractors), is terminated by the Supplier or is transferred, the Supplier shall provide prompt written notice thereof to the Authority, and, to the extent possible in the circumstances within forty-eight (48) hours, the Supplier shall replace such individual with another individual on a dedicated basis who is at least as well qualified and experienced as the individual being replaced. The Supplier agrees that, wherever reasonably possible, any departing Key Personnel shall, prior to their departure, overlap with all replacement Key Personnel for a two (2) week period (unless the Parties otherwise mutually agree) to facilitate and promote knowledge transfer, know-how training, and experiential continuity concerning their Service duties and obligations. The cost of expense of such overlap shall be solely borne by the Supplier.

* 1. Additional Personnel Requirements

All costs and expenses associated with providing, equipping and retaining Personnel are included within the Fees, including, without limitation, all wages and benefits and associated staffing costs such as training and education, office supplies, personal computer refreshment, travel and lodging costs and recruiting and relocation expenses. Any travel and lodging expenses to be incurred by the Supplier Personnel in connection with the Services shall be subject to prior approval by the Authority.

* 1. Replacement of Key Personnel

Notwithstanding Section 6.2, if the Authority determines, acting fairly and reasonably, that the performance or conduct of any Key Personnel employed or retained by the Supplier to perform any Services is unsatisfactory for any reason or is not in compliance with the provisions of this Agreement, the Authority shall so notify the Supplier in writing and the Supplier shall promptly address the performance or conduct of such Person. In the event any such Person is Key Personnel, then upon the Authority’s request, the Supplier agrees to replace such individual within a reasonably prompt period of time with another individual on a dedicated basis or as otherwise specified in a Statement of Work who is at least as well qualified and experienced as the individual being replaced.

* 1. Supervision and Conduct of Personnel

The Supplier shall be responsible for all Personnel assigned by the Supplier to provide Services under this Agreement and, subject to this Section 6.5, the Supplier shall have the sole right to direct and control the management of such staff. Except as otherwise stated herein, the Supplier shall: (a) determine and pay all wages and salaries; (b) provide benefits, as are deemed necessary or desirable; (c) comply with applicable laws, including income tax and employment tax withholding laws, and workers’ compensation insurance coverage; and (d) file all applicable reports with federal, provincial, state, municipal and local agencies and authorities as required by law. The Supplier shall require that all of its Subcontractors shall assume and carry out the same responsibilities with respect to their respective employees.

* 1. Subcontractor Agreements
     1. The Authority acknowledges that the Supplier may, subject to the provisions of Section 15.7 below, use Subcontractors to provide the Services, support the delivery of the Services and/or for internal, administrative and/or regulatory compliance purposes.
     2. The Supplier agrees that all Subcontractors shall be contractually obligated to the Supplier to comply with, adhere to, and perform their respective obligations in accordance with the terms and conditions of the Contract Documents, including all intellectual property and confidentiality obligations, and all applicable obligations, duties, and responsibilities of the Supplier to the Authority thereunder.
     3. For greater certainty, the Supplier shall be fully responsible and liable to the Authority for all acts and omissions of the Subcontractors in accordance with, and subject to, the Contract Documents. In no event shall the Supplier be relieved of any of its duties or obligations as a result of its use of any Subcontractors. The Supplier shall supervise the activities and performance of each Subcontractor and shall be liable for any act or failure to act by such Subcontractor. If the Authority determines that the performance or conduct of any Subcontractor is unsatisfactory or has caused the Supplier to breach the Contract Documents, the Authority may notify the Supplier of such determination in writing, indicating the reasons therefor, in which event the Supplier shall (without limiting the Supplier’s liability pursuant to the first sentence in this Section 6.6.3) promptly, in consultation with the Authority, use its reasonable efforts to either remedy the performance or conduct of such Subcontractor or to replace such Subcontractor by another third party or by Personnel. The Authority agrees that claims or actions relating to the Services, the Deliverables and this Agreement shall be brought against the Supplier alone, and not against: (i) any individual or (ii) any Subcontractor.
     4. Except with respect to intellectual property and confidentiality rights, the Supplier agrees and confirms that all Subcontractor arrangements, contracts and obligations between the Supplier and each Subcontractor shall secure and include each Subcontractor’s agreement and written irrevocable waiver not to make or undertake any complaint, claim, demand or allegations against the Authority, nor to undertake any remedial action, litigation, proceeding or dispute resolution action whatsoever against the Authority in connection with, or in any way related to the System, or any arrangement, agreement or other obligation that may exist (or be alleged to exist) between the Supplier and any such Subcontractor.

1. FINANCIAL ARRANGEMENTS
   1. Payment of Fees
      1. In full consideration of the Supplier’s performance of the Services, the Authority shall pay the Supplier the fees set out in the Master Rate Card appended as Schedule ⚫ hereto (“**Fees**”) for all Services performed on a time and materials basis. The total fee for Services performed on a fixed-price basis will be based on the fees set out in the relevant SOW. All amounts payable by the Authority hereunder shall be subject to receipt by the Authority of a reasonably detailed invoice (“**Invoice**”). In the case of Implementation Services, an Invoice shall be issued only after completion and the Authority’s Full Acceptance or Conditional Acceptance of the applicable Deliverables comprising a Milestone as set out in the applicable Statement of Work.
      2. The Supplier acknowledges and agrees that the Budget for the various components of the Project including Implementation Services, [Managed Services] and other Services is as set out in Schedule ⚫ hereto and that the Budget represents the maximum cost of the Project, except for Change Orders agreed to between the Parties.
      3. The Fees set out in the Master Rate Card shall apply through until the end of ⚫ and may be increased in each calendar year thereafter by an amount not exceeding the annual increase in the Consumer Price Index (Toronto, Canada and India as applicable for Implementation Services excluding testing) in the prior 12 months.
      4. the Supplier acknowledges and agrees that each fixed-fee SOW for Implementation Services will have a final Milestone of ten percent (10%) of the Fees under the fixed-fee SOW. The Supplier will not issue the Invoice for the final Milestone until Full Acceptance of the Deliverables associated with such Milestone and until thirty (30) days has elapsed following the planned go-live date.

If the Authority in good faith disputes all or any portion of an Invoice for the Fees, then the Authority shall pay the undisputed portion of the Invoice by the due date and shall provide the following notification with respect to the disputed portion of the Invoice. The Authority shall notify the Supplier as soon as possible (and in any event no later than the due date of the Invoice) of the specific amount disputed and shall provide reasonable detail as to the basis for the dispute. The Parties shall then attempt to resolve the disputed portion of such Invoice as soon as possible in accordance with the dispute resolution procedures in Schedule ⚫. Upon resolution of the disputed portion, the Authority shall immediately pay the Supplier the resolved amount, including any applicable interest charges attributable for the duration of the dispute (but subject to Section 7.3).

* 1. Taxes
     1. The Fees are exclusive of all federal or provincial goods and services, use, excise, or value added taxes and other similar charges (“**Taxes**”) payable by the Authority in connection with the receipt of such Services. All Invoices provided by the Supplier with respect to Fees and Expenses to be paid by the Authority will separately state and detail the amount of any Taxes that the Supplier claims are payable by the Authority in connection with this Agreement.
     2. The Supplier shall collect Taxes from the Authority in the same manner it collects such tax from the Supplier’s other customers in the ordinary course of its business and the Supplier shall be solely and directly responsible for remitting such Taxes to the relevant taxing authority.
     3. The Supplier represents, warrants and covenants to the Authority that it is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada).
  2. Time of Payment and Interest

Unless otherwise specified in this Agreement, any amount payable to a Party under this Agreement shall be due net thirty (30) days after the date the applicable Invoice is received.

* 1. Out-of-Pocket Expenses

Except as otherwise agreed, the Supplier shall be responsible for the out-of-pocket expenses incurred by it in the ordinary course of performing the Services. The Authority shall have no responsibility for out-of-pocket expenses unless approved in advance by the Authority (the “**Expenses**”).

1. INTELLECTUAL PROPERTY
   1. Ownership of the Supplier’s Intellectual Property

Except as otherwise set out in Section 8.2 hereof, the Supplier and the Authority agree as follows:

The Supplier and/or applicable third parties (including Subcontractors), as applicable, shall retain all right, title and interest in and to all Confidential Information and Intellectual Property Rights (including without limitation various intellectual, industrial and other property, concepts, ideas, methods, methodologies, procedures, processes, know-how, techniques, models, templates, working papers, the generalized features of the structure, sequence and organization of software, user interfaces and screen designs, general purpose consulting and software tools, utilities and routines, and logic, coherence and methods of operation of systems, business rules and business processes) (i) owned by the Supplier or licensed to the Supplier by a third party prior to the Effective Date (including any modifications, derivatives or enhancements thereto), (ii) developed by or on behalf of the Supplier or a Subcontractor, as applicable, (alone or jointly with any other Person) during the Term of this Agreement and independent from this Agreement or not originally, uniquely and specifically for the Authority; or (iii) specifically identified in a SOW as the Supplier’s intellectual property (the “**the Supplier Intellectual Property**”).

* 1. Ownership of the Authority Intellectual Property

The Supplier and the Authority agree and confirm that the following provisions of this Section 8.2 describe and define the **“Authority Intellectual Property**”, and the Authority shall solely and exclusively own all right, title and interest in, and to the following:

* + - 1. all Confidential Information and Intellectual Property Rights that are either: owned or licensed by the Authority prior to the Effective Date; developed by the Authority (alone or jointly with another Person); developed originally, uniquely and specifically for the Authority by another Person; or otherwise originally, uniquely and specifically developed by the Supplier for the Authority expressly pursuant to this Agreement and which forms any part or aspect of the System or the other Deliverables to be provided under the Contract Documents;
      2. all the Authority Data, including all such information existing as of the Effective Date and as contained in the System;
      3. all software, computer program interfaces, graphic user interfaces, software design elements, and computer program code, and all materials and documentation related thereto (including business rules, routing scripts, flow charts, and business processes) that have been originally, specifically, and uniquely developed and created by the Supplier or its Subcontractors for the Authority pursuant to, and as required in, the Contract Documents;
      4. the part or portion of any work that is originally and uniquely created, conceived and developed by the Supplier including the technical and functional specifications for the System and its “look and feel”, order of operations, content screens and papers, logos, trademarks, brand indicia, tradenames, configuration, labels and business styles and interfaces;
      5. any Service reports, communications, or notices, and all computer programs, that are specifically and uniquely created by the Supplier for the Authority (and paid for by the Authority) as a deliverable or specific Service obligation (or requirement) pursuant to the Contract Documents; and
      6. all modifications, copies, endorsements and derivative works that the Supplier or its Subcontractors may make to the Authority Intellectual Property pursuant to Section 8.3 hereof.
  1. Grants of Licenses by the Authority to the Supplier

Subject to the terms and conditions of the Contract Documents, the Authority grants to the Supplier, during the Term, a fully paid-up, royalty-free, non-exclusive license to:  (i) use, copy, modify, enhance or create derivative works from the Authority Intellectual Property, solely and strictly as necessary for the purpose of fulfilling the Supplier’s obligations under the Contract Documents; and (ii) sublicense the rights referred to in (i) to Subcontractors solely to the extent necessary to enable such Subcontractors to perform the Supplier’s obligations hereunder.

* 1. Grants of Licenses by the Supplier to the Authority

The Supplier hereby grants to the Authority an irrevocable, perpetual, royalty-free, non-exclusive, non-transferable and non-assignable license to use any proprietary Intellectual Property of the Supplier to the extent embedded in the Deliverables hereunder as needed or required for the System and all related Deliverables to operate in accordance with the Contract Documents.

* 1. Residual Knowledge

Subject to the terms and conditions of this Agreement, the Parties agree that either Party may use general ideas, concepts, know-how, methodologies, processes, technologies, algorithms or techniques which were developed or created in the course of performing or receiving the Services and which may be retained in the unaided memory of such Party’s personnel without such personnel taking steps to commit such ideas, concepts, know-how, methodologies, processes, technologies, algorithms or techniques to memory, provided that in doing so, such Party does not infringe any Intellectual Property Rights or other proprietary right of the other Party or of any third Person.

* 1. Third Party Rights and Licences

Without limiting or otherwise affecting the Authority’s obligations under Section 3.5.4, the Supplier shall use its commercially reasonable efforts to assist the Authority to obtain from third parties all rights and licenses required to deliver the functionality required by the Contract Documents including, without limitation, those specified in Schedule ⚫ hereto, and such rights and licenses shall not contain any terms, conditions, qualifications, conditions or other provisions that may, in any manner or to any extent, interfere with, limit, detrimentally affect, harm, or otherwise restrict the Authority in the operation of the System. The Authority shall direct any third party licensor to cooperate with the Supplier in the delivery of the required software to the Authority and the Supplier shall manage the relationship with the suppliers of such software on behalf of the Authority and the relationship with any cloud services provider hosting such software, whether or not the Authority is the licensee of such software products. With respect to all technology used and to be used by the Supplier to perform the Services hereunder, whether proprietary to the Supplier or proprietary to any other Person, the Supplier hereby grants and agrees to grant to the Authority all licences and sublicences held by the Supplier in order for the Authority and its authorized representatives (including third party service providers), to use, or receive the benefit of the use by the Supplier of, such technology in connection with the Services.

1. REPRESENTATIONS AND WARRANTIES
   1. By the Supplier

The Supplier represents, warrants, and covenants, as follows:

* + 1. **Organization**. the Supplier is a [corporation] duly organized and validly existing under the laws of the Province of Ontario;
    2. **Authorization**. The Supplier has full power and authority to execute and deliver this Agreement and the other Contract Documents to which it is a party and to perform its obligations hereunder and thereunder. The execution, delivery and performance by the Supplier of this Agreement and the other Contract Documents to which it is a Party have been duly authorized and no additional authorization or action on its part is required in connection with the execution, delivery and performance by the Supplier thereof;
    3. **Enforceable**. The Agreement constitutes a valid and binding obligation of the Supplier, enforceable against the Supplier in accordance with its terms subject to the following qualifications:
       1. specific performance, injunction and other equitable remedies are discretionary and, in particular, may not be available where damages are considered an adequate remedy; and
       2. enforcement may be limited by bankruptcy, insolvency, liquidation, reorganization, reconstruction and other similar laws generally affecting the enforceability of creditors’ rights;
    4. **No Financial Interest**. To the best of the Supplier’s knowledge after due enquiry, neither the Supplier nor any of its Affiliates, nor any employee of either, has, shall have or shall acquire, any contractual, financial, business or other interest, direct or indirect, that would conflict in any material manner or degree with the Supplier’s performance of its duties and responsibilities to the Authority under this Agreement or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement. Upon becoming aware, the Supplier shall promptly inform the Authority of any such interest that may be incompatible with the interests of the Authority;
    5. **Independent Judgment**. To the best of the Supplier’s knowledge after due enquiry, no independence or conflict of interest issues exist between the Supplier (or any of its Affiliates, or employee of either) and the Authority with respect to the performance of this Agreement, as of the Effective Date, that would contravene independence rules or regulations that govern the profession or the business of the Supplier (the “**Regulations**”);
    6. **Third Party Agreements**. The Supplier has disclosed all material commercial arrangements and agreements with third parties that the Supplier shall rely upon or intends to use or is required to use to provide the Services;
    7. **Delivered Solution and Services Warranty**. Based on the information provided in the RFP and the assumptions made in the Proposal, the Supplier represents and warrants that the Supplier’s design, implementation, development, configuration and operation of the System [and the Managed Services] will meet or exceed the Authority’s stated requirements and specifications, be fit and serviceable for the proposed usage as specified in the RFP, meet generally accepted industry standards, meet government standards and best practices to the extent they are applicable to the Authority under the Operating Agreement, the RRCEA or the WDTA, and generally support achieving the Authority’s statutory mandate.
    8. **Deliverables Warranty.** Each Deliverable will operate without Defects and will conform to the requirements and specifications in the SOW with respect thereto for a period of one (1) year following Full Acceptance thereof by the Authority (the “**Warranty Period**”).
  1. By the Authority

The Authority represents, warrants and covenants, as follows:

* + 1. **Organization**. The Authority is a corporation duly organized and validly existing under the laws of the Province of Ontario;
    2. **Authorization**. The Authority has full corporate power and authority to execute and deliver this Agreement and the other Contract Documents to which it is a Party and to perform its obligations hereunder and thereunder. The execution, delivery and performance by the Authority of this Agreement and the other Contract Documents to which it is a Party have been duly and validly authorized and no additional corporate authorization or action on its part is required in connection with the execution, delivery and performance by the Authority thereof, provided that the Board of Directors of the Authority must approve any expenditures that are outside the scope or Budget of the Supplier’s Proposal and any SOW involving an expenditure in excess of $250,000; and,
    3. **Enforceability**. The Agreement constitutes a valid and binding obligation of the Authority, enforceable against the Authority in accordance with its terms, subject to the following qualifications:
       1. specific performance, injunction and other equitable remedies are discretionary and, in particular, may not be available where damages are considered an adequate remedy; and
       2. enforcement may be limited by bankruptcy, insolvency, liquidation, reorganization, reconstruction and other similar laws generally affecting the enforceability of creditors’ rights.

1. INDEMNITIES
   1. General Indemnity by the Supplier

The Supplier agrees to indemnify, defend and hold harmless the Authority and its officers, directors, employees, agents, successors and permitted assigns (each, an “**Authority Indemnitee**”), from and against any and all claims, demands, litigation, harm, injury, losses, liabilities, damages and costs (including taxes) and all related expenses, including reasonable legal fees and disbursements and costs of investigation, litigation and settlement, together with interest and penalties (“**Losses**”), suffered or incurred by the Authority Indemnitees as a result of, or arising out of or in connection with the following:

* + 1. any breach or inaccuracy of any representation or warranty of the Supplier in the Contract Documents;
    2. any failure by the Supplier to perform any of its obligations in the Contract Documents including, without limitation, its obligations with respect to the collection, use and disclosure of Personal Information;
    3. any damage or injury to persons or property caused by the Supplier in performing the Services;
    4. any negligent act or omission of the Supplier; or,
    5. any breach by the Supplier of Article 5 of this Agreement as it relates to the Authority’s Confidential Information.
  1. Proprietary Rights Indemnities
     1. **Supplier Indemnity**. The Supplier agrees to indemnify, defend and hold harmless the Authority Indemnitees from and against any and all Losses sustained by them arising out of or in connection with any act of infringement of any existing patent or copyright or any unauthorized use of any trade secret, except to the extent that such infringement or unauthorized use arises from (i) the use or modification by the Authority or any Person other than the Supplier, of the Supplier’s Deliverables hereunder other than as contemplated by the Contract Documents; (ii) failure of the Authority or any Person other than the Supplier, as applicable, to use corrections or modifications made available by the Supplier, if such corrections or modifications would have prevented the infringement; (iii) the use or modification by the Authority or any Person other than the Supplier, of the Deliverables in connection with any product or information not owned or developed by the Supplier; (iv) the Authority’s distribution, marketing or use for the benefit of third parties of the Deliverables hereunder; or (v) information, materials, instructions or specifications provided by or on behalf of the Authority or any third party.

**Supplier Options**. In addition to the Supplier’s indemnity obligations in Section 10.2.1, if the Services provided by the Supplier hereunder, or any Deliverables resulting therefrom, are held by a court of competent jurisdiction to misappropriate or infringe a proprietary right of any third party, or are likely to do so, the Supplier shall take one of the following steps at the Supplier’s discretion and expense (as long as the performance of the Services is not adversely or detrimentally affected): (i) replace such Services or Deliverables with other equivalent services free of infringement; (ii) modify such Services or Deliverables so that they shall be free of the infringement; (iii) procure at no cost to the Authority a licence or other right to use such Services or Deliverables; and/or (iv) discontinue the portion of the Services or Deliverables which is infringing, and adjust, in a manner acceptable to the Authority, the Fees for the Services. Except for the Authority’s rights pursuant to Section 10.2.1 the Authority’s rights and remedies under this Section 10.2.2 shall be exhaustive concerning such misappropriation or infringement of a third party proprietary right.

* 1. Indemnification Procedures
     1. **Notice**. In the event that the Authority shall become aware of any claim in respect of which it is to be indemnified pursuant to this Agreement (“**Claim**”), the Authority shall promptly give written notice thereof to the Supplier. Such notice shall specify whether the Claim arises as a result of a Claim by a third party against the Authority (a “**Third Party Claim**”) or whether the Claim does not so arise (a “**Direct Claim**”), and shall also specify with reasonable particularity (to the extent that the information is available): (i) the factual basis for the Claim; and (ii) the amount of the Claim, if known. Any failure or delay in giving, or deficiency in the content of, such notice shall not constitute a breach and shall not excuse the obligation under this Article except to the extent, if any, that the Supplier is prejudiced by such failure or delay.
     2. **Third Party Claims**. In respect of any Third Party Claim, the Supplier shall be entitled to elect by written notice addressed to the Authority, within fifteen (15) days after its receipt of such notice, to assume control over the investigation, defence, negotiation and settlement of such Third Party Claim at its own cost, risk and expense. If the Supplier elects to assume such control, the Authority shall have the right to participate in the investigation, defence, negotiation and settlement of such Third Party Claim at the cost of the Supplier and to retain counsel to act on its behalf, provided that the fees and disbursements of such counsel shall be paid by the Authority unless the Supplier consents to the retention of such counsel or unless the named parties to any action or proceeding include both the Supplier and the Authority and the representation of both the Supplier and the Authority by the same counsel would be inappropriate due to the actual or reasonably potential differing interests between them (such as the availability of different defences). the Supplier shall not settle any Claim without the prior written consent of the Authority, not to be unreasonably withheld.
     3. **Control of Third Party Claims**. If the Supplier does not elect to assume control of the investigation, defence, negotiation and settlement of the Third Party Claim, or if the Supplier, having elected to assume such control thereafter fails to diligently defend the Third Party Claim, the Authority shall have the right to assume such control in such reasonable manner as it may deem appropriate, at the cost, risk and expense of the Supplier, and the Supplier shall be bound by the results obtained by the Authority with respect to such Third Party Claim. the Supplier shall have the right to participate in such defence at its own cost and expense.
     4. **Co-operation in Third Party Claims**. The Authority, at its own cost and expense, agrees to provide reasonable co-operation and assistance to the Supplier in the investigation, defence, negotiation and settlement of any Claim, including providing reasonable access to relevant information and employees.
     5. **Advanced Payments in Third Party Claims**. If any Third Party Claim is of a nature such that the Authority is required by applicable law or the order of any court, tribunal or regulatory body having jurisdiction to make a payment to a third party with respect to the Third Party Claim before the completion of settlement negotiations or related legal proceedings, as the case may be, the Authority may make such payment and the Supplier shall, forthwith after demand by the Authority, reimburse the Authority for such payment. For greater certainty, if such payment, by resulting in settlement of the Third Party Claim, precludes a final determination of the merits of the Third Party Claim and the Authority and the Supplier are unable to agree whether such payment was reasonable in the circumstances having regard to the amount and merits of the Third Party Claim, such dispute shall be dealt with pursuant to the dispute resolution process referred to in Article 12 of this Agreement.
     6. **Direct Claims**. Disputes resulting in or from a Direct Claim shall be resolved pursuant to the dispute resolution process referred to in Article 12 of this Agreement.
     7. **Set-off and Subrogation**. The indemnity obligations hereunder shall be enforceable without right of set-off, counterclaim or defence as against the Authority. The Supplier shall, upon payment of an indemnity in full under the Agreement, be subrogated to the Authority with respect to the claims and defences to which such indemnification relates.
     8. **Agency for Indemnities**. The Authority agrees that it accepts each indemnity in favour of the Authority Indemnities as agent and trustee of such Persons. The Authority may enforce an indemnity in favour of any of the Authority’s Indemnitees on behalf of such indemnities.

1. REMEDIES & RISK MANAGEMENT
   1. Limitation of Liability

The Supplier and the Authority expressly acknowledge that the exclusions and limitations of liability contained in this Section have been the subject of negotiation between the Parties and they are fair and reasonable in the commercial circumstances of this Agreement.

* 1. Indirect Damages

Except with respect to the indemnities provided in Sections 10.1, 10.2, and 10.3, in no event shall either Party be liable for any opportunity cost, lost profit, indirect, incidental, special, exemplary, consequential or punitive damages arising in connection with the Contract Documents, even if advised of the possibility thereof.

* 1. Service Breach Remedies

[Penalties for breach of service level agreements to be negotiated, if applicable]

1. ARBITRATION
   1. Dispute Resolution

In the event of any dispute or disagreement between the Parties with respect to the interpretation of any provision of this Agreement, any amounts due hereunder or the performance of the Parties under this Agreement (a “**Dispute**”), each Party’s Designated Representative shall meet to attempt to resolve the Dispute or to negotiate for an adjustment to any provision of this Agreement. Each Party acknowledges that it is in their mutual interest to have their respective Designated Representatives resolve all matters by mutual agreement and each agrees to act reasonably and in good faith to permit and encourage their respective Designated Representatives to do so. If such Designated Representatives are not able to resolve any Dispute referred to them within fifteen (15) days, the matter shall be referred to the Chief Executive Officer of the Authority and the ⚫ of the Supplier, each of whom shall be fully briefed on the matter and shall have the authority to negotiate on behalf of and bind their respective Party. If such senior representatives are not able to resolve any Dispute referred to them within fifteen (15) days of such referral then the matter may be referred to arbitration (or mediation) as provided for herein.

* 1. Arbitration

If the Parties do not reach a resolution pursuant to Section 12.1 within the period specified therein, the Dispute shall, at the option of either Party, be referred to arbitration in accordance with the provisions of Schedule ⚫ – Arbitration Process. Judgment upon the award rendered in any such arbitration may be entered in any court having jurisdiction thereof, or application may be made to such court for a judicial acceptance of the award and an enforcement, as the law of such jurisdiction may require or allow.

* 1. Mediation

Notwithstanding the foregoing, in lieu of proceeding immediately to arbitration, the Parties may, by mutual agreement, proceed to mediation before a single mediator jointly selected by them for a period of thirty (30) days following the end of the second fifteen (15) day period referred to in Section 13.1, or such longer period as they may agree upon in writing, in an attempt to resolve the Dispute. Failing resolution of the Dispute within such thirty (30) day period or any longer period of time agreed upon by the Parties, either party shall again have the option to refer the Dispute to arbitration.

* 1. Equitable Relief

Nothing in this Section is intended to prevent a Party from applying to a Court of competent jurisdiction in appropriate circumstances for equitable relief, e.g. an order of specific performance or injunction, without proof of actual damage (and without posting a bond or other security).

* 1. No Suspension of Services

Notwithstanding anything to the contrary contained herein, in the event that any Dispute arises between the Parties (regardless of whether or not it requires at any time the use of the dispute resolution procedures described above), in no event shall the Supplier interrupt the provision of Services to the Authority or any obligations related to disentanglement, disable any hardware or software used to provide Services, or perform any other action that prevents, impedes or reduces in any way the provision of Services or the Authority’s ability to conduct its business and operational activities, unless: (i) authority to do so is expressly granted by the Authority or ordered by a court of competent jurisdiction; or (ii) this Agreement (including any Termination Transition Services) has been terminated or has expired pursuant to Article 13 hereof.

1. TERM AND TERMINATION
   1. Term

This Agreement shall be effective on the Effective Date and shall continue for an initial period of two (2) years thereafter (the “**Term**”).

* 1. Termination for Cause

In addition to any other rights or remedies hereunder and without intending to waive, remove, limit or in any way restrict any legal or equitable remedy otherwise available to either Party, but subject to Article 12, a Party may terminate this Agreement, a Statement of Work or any portion of the Services at any time on giving notice in writing if:

* + 1. the other Party breaches any of its obligations or covenants hereunder or thereunder with respect to Confidential Information;
    2. the other Party fails to pay in full any sum owing by it under this Agreement or a Statement of Work (not including amounts which are the subject of a *bona fide* Dispute) within sixty (60) days of the prescribed due date; or
    3. the other Party fails to observe or perform any other material obligation or covenant required to be observed or performed by it under the Contract Documents and such failure continues for a period of thirty (30) days (or such other period as the Parties may otherwise agree to) after delivery of written notice requiring the other Party to cure such failure.
  1. Termination without Cause

The Authority has the right to terminate this Agreement or a Statement of Work in its sole and unfettered discretion at its convenience at any time upon sixty (60) days prior written notice.

* 1. Termination for Insolvency

In addition to any other rights or remedies hereunder, either Party may terminate this Agreement or a Statement of Work forthwith by giving written notice to the other Party where that other Party: (i) makes any general assignment for the benefit of creditors or otherwise enters into any composition or arrangement with its creditors; (ii) has a receiver and/or manager appointed over its assets or makes an application to do so; (iii) becomes bankrupt or insolvent or commits an act of bankruptcy or takes or attempts to take advantage of any law or statute for the relief of bankrupt or insolvent debtors; (iv) has a resolution or a petition filed or an order made for its winding up; or (v) ceases to carry on business. Notwithstanding the foregoing, neither Party shall be entitled to terminate this Agreement or a Statement of Work under this Section if the other Party, or its creditors, or some other Party makes suitable provisions for the performance of its obligations hereunder during any event referred to in this Section 13.5.

* 1. Orderly Termination
     1. In connection with the expiration of this Agreement or a Statement of Work or the termination of any Services for any reason (except for the non-payment of Fees other than due to a *bona fide* Dispute and subject to Section 13.2.2), the Supplier shall use its reasonable efforts to minimize the adverse impact of any such expiration or termination on the Authority to facilitate the orderly transition and migration of all terminated Services to either the Authority or a third party designated by the Authority, from the Supplier (the “**Termination Transition Services**”). The Authority and its employees and agents shall reasonably assist and co-operate with the Supplier in connection with the Supplier’s obligations under this Section.

1. INSURANCE
   1. Required Coverages

The Supplier (and all Subcontractors) shall provide, maintain, and pay for the insurance coverages described herein, the policies for which shall: be endorsed to include the Authority as an additional insured; include a cross liability and severability of interest provisions; and contain a provision to the effect that the insurance afforded applies separately to each insured against whom a claim is made or action is brought except with respect to the limits of the insurer’s liability. The Supplier shall provide proof of coverage prior to the start of the work under this Agreement. Furthermore, the Supplier’s insurers shall be acceptable to the Authority, acting reasonably. All required insurance policies shall be issued by insurers licensed to underwrite insurance in the Province of Ontario or otherwise consistent with insurers of top tier accounting firms in Canada. The Supplier shall provide the Authority with written notice of any cancellation or termination of insurance, as well as any material change in coverage. The Supplier shall pay all deductible amounts under the policies, which shall include the following coverages:

* + - 1. Commercial General Liability Insurance, including coverage for all non-owned automobile, employer’s liability, contractual liability, and other coverage extensions standard to the industry with minimum bodily injury, including death and property damage limits of not less than $10,000,000 inclusive for each accident or occurrence;
      2. Errors and Omissions insurance in the amount of $10,000,000 covering all professional liability with respect to the Services; and
      3. Workers compensation insurance (whether private or publicly provided) if required by applicable law and regulations of the Province of Ontario in order to perform the Services.
  1. Evidence of Insurance

At any time during the Term, when requested by the Authority, the Supplier shall provide evidence of compliance with the foregoing insurance requirements in the form of an insurance certificate. None of the requirements contained herein as to types, limits and approval of insurance coverage to be maintained by the Supplier are intended to limit or qualify the liabilities and obligations assumed by the Supplier under this Agreement. Receipt of any certificate showing less coverage than requested is not a waiver of the Supplier’s obligation to fulfill its requirements hereunder. The Supplier represents and covenants that any insurance deductible amount does not either materially or substantially reduce the insurance coverage requirements stipulated herein. Without limiting its obligations under this Agreement, for greater certainty, the Supplier will be responsible to pay any loss amount, which lies within its deductible, up to the maximum amount of the deductible.

1. GENERAL PROVISIONS
   1. Notices

Any notice, demand or other communication (in this Section, a “notice”) required or permitted to be given or made hereunder shall be in writing and shall be sufficiently given or made if: delivered in person during normal business hours on a Business Day and left with a receptionist or other responsible employee of the relevant Party at the applicable address set forth herein; sent by prepaid first class mail; or sent by any electronic means of sending messages by email (“**Electronic Transmission**”) and confirmed by prepaid first class mail; in the case of a notice to the Supplier, to:

[Name of Supplier]  
[Address of Supplier]

Attention: ⚫email: ⚫  
  
and, in the case of a notice to the Authority, to:

Resource Productivity and Recovery Authority  
4711 Yonge Street  
Suite 408  
Toronto, Ontario, M2N 6K8

Attention: Chief Executive Officer  
email: fdenton@rpra.ca

Each notice sent in accordance with this Section shall be deemed to have been received: on the day it was delivered; at start of business on the third Business Day after it was mailed (excluding each Business Day during which there existed a general interruption of postal services due to strike, lockout or other cause); or on the same day that it was sent by Electronic Transmission, or at start of business on the first Business Day thereafter if it was sent after 5:00 p.m. Eastern Time or if the day on which it was sent was not a Business Day. Either Party may change its address for notice by giving notice to the other Party as provided in this Section.

* 1. Further Assurances

Each Party shall do such acts and shall execute such further documents, and shall cause the doing of such acts and shall cause the execution of such further documents as are within its power, as the other Party may in writing at any time and from time to time reasonably request be done and or executed, in order to give full effect to the provisions of this Agreement, such acts and executions of documents not to be unreasonably delayed or withheld.

* 1. Non-Solicitation

During the Term, and for a period of one year following the expiration or termination of this Agreement, each Party agrees not to hire or solicit for employment any personnel of the other Party who are assigned to work under this Agreement, except as otherwise agreed in writing by the Parties. This provision shall not restrict the right of either Party to solicit resources through advertisements or solicitations generally in the media.

* 1. Public Announcements

Each Party shall submit to the other all advertising, written sales promotion, press releases and other publicity matters relating to this Agreement in which the other Party’s name or mark is mentioned or language from which the connection of said name or mark may be inferred or implied, and shall not publish or use media releases, public announcements or public disclosures relating to this Agreement or the subject matter of this Agreement, including promotional or marketing material (but not including any announcement intended solely for internal distribution at the Authority or the Supplier, as the case may be, or any disclosure required by legal, accounting or regulatory requirements beyond the reasonable control of the Authority or the Supplier) without the prior written approval of the other Party, which approval shall not be unreasonably withheld. Notwithstanding the foregoing, the Supplier may disclose in its customer lists and to potential clients that it is providing the Services to the Authority.

* 1. Invalidity

If any of the provisions or part thereof contained in this Agreement is found by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions or parts thereof contained herein shall not be in any way affected or impaired thereby.

* 1. No Amendment

No supplement, modification or termination of this Agreement or any of the other Contract Documents shall be binding unless executed in writing by the Party to be bound thereby.

* 1. Assignment and Subcontracting

Neither Party shall assign or subcontract (except as permitted in a SOW) any of its rights or obligations under this Agreement or any of the other Contract Documents not specifically transferable by its terms without the prior written consent of the other Party, such consent not to be unreasonably withheld.

* 1. Enurement

This Agreement shall enure to the benefit of and be binding upon each of the Parties and their respective successors (including by amalgamation or statutory arrangement) and permitted assigns.

* 1. Survival

The provisions of Article 5, Article 7, Article 8, Article 10, Article 11, Article 12, Article 13 and Article 15 shall remain in effect after the termination of this Agreement, until such time as the Parties mutually agree to the release of the obligations contained therein. No termination of this Agreement or a Statement of Work by either Party shall affect the rights and obligations of a Party which have accrued as of the date of such termination.

* 1. Counterparts

This Agreement may be executed in any number of counterparts. Either Party may send a copy of its executed counterpart to the other Party by email instead of delivering a signed original of that counterpart. Each executed counterpart (including each copy sent by facsimile transmission or other electronic means) shall be deemed to be an original; all executed counterparts taken together shall constitute one agreement.

* 1. Remedies

All rights and remedies, whether liquidated damages or otherwise, shall be cumulative and shall not be exclusive or exhaustive unless otherwise expressly stated herein.

* 1. Force Majeure
     1. Subject to Section 15.12.2, neither Party shall be liable for its failure or delay in fulfilling its obligations under the Contract Documents, if such failure or delay is caused by fire, flood, weather conditions or other acts of God, invasions, riots, closing of public highways, strike, lockout or other labor dispute, civil unrest, war, acts of terrorism or any circumstance beyond the reasonable control of the Party (“**Force Majeure**”).
     2. Section 15.12.1 shall only relieve either Party of its obligations and duties to fully perform the Contract Documents in the event, and only to the extent, that the performance of such obligations remain delayed or not performed after the full implementation of the disaster recovery plan as, and when, required by the Contract Documents. For greater certainty, the disaster recovery plan shall be implemented by the Supplier in the event of any Force Majeure event or circumstance as and when required by, and contemplated in, the Contract Documents. Throughout the first four weeks of the Force Majeure event, the Supplier will charge the Authority any unavoidable costs plus any labor charges associated with any portion of the Services the Supplier is required to perform other than as in accordance with the disaster recovery plan. The Supplier, at its sole discretion, may cease to perform any or all of the Services if the Supplier believes honestly and in good faith that to continue to perform the Services would unreasonably compromise the safety of its employees. If the Service interruption caused by the Force Majeure continues as stipulated herein and despite the full and proper implementation and performance of the disaster recovery plan, beyond four (4) weeks, either Party shall have the right to terminate this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **RESOURCE PRODUCTIVITY AND RECOVERY AUTHORITY** | |  | **[SUPPLIER]** | |
|  |  |  |  |  |
| By: |  |  | By: |  |
| Name:Title: |  |  | Name: Title: |  |

Schedule A – Definitions

This Schedule is attached to and forms part of the Master Services Agreement between Resource Productivity and Recovery Authority (the “**Authority**”) and ⚫ (“**the Supplier**”) dated the ⚫ day of ⚫, 2019 (the “**Agreement**”).

“**Acceptance Criteria**” has the meaning ascribed to it in Schedule ⚫;

“**Affiliate**” has the meaning ascribed to it, as at the Effective Date, in subsections 2(2) to (5), inclusive, of the Canada Business Corporations Act;

“**Agreement**” means this Master Services Agreement and all Schedules to this agreement.

“**Applications**” means the commercial off-the-shelf software licensed by the Authority as set out in Schedule ⚫ and the public facing website;

“**Audit**” has the meaning ascribed to it in Section 3.8.1;

“**Audit Representatives**” has the meaning ascribed to it in Section 3.8.1;

“**Authority Data**” means all data and information owned by or in the possession of the Authority, whether in printed, electronic or other form, including Registrant Data;

“**Authority Indemnitee**” has the meaning ascribed to it in Section 10.1;

“**Authority Intellectual Property**” has the meaning ascribed to it in Section 8.2;

“**Authority Responsibilities**” has the meaning ascribed to it in 3.5.4;

“**Budget**” means the budget for all of the Services required for the Project forming part of Schedule ⚫ to the Agreement and which shall not, in total, exceed the estimated cost of the Project as set out in the Proposal;

“**Business Day**” means any day, other than a Saturday, Sunday, statutory or civic holiday in the Province of Ontario;

“**Change of Law**” has the meaning ascribed to it in Section 3.15;

“**Change Order**” has the meaning ascribed to it in Section 2.5.3;

“**Change Request**” has the meaning ascribed to it in Section 2.5.2;

“**Changes**” has the meaning ascribed to it in Section 2.5.1;

“**Claim**” has the meaning ascribed to it in Section 10.3.1;

“**Conditional Acceptance**” means that a Deliverable substantially meets the Acceptance Criteria, subject to a list of remedial actions being completed by the Supplier to the Authority’s satisfaction within the times as the Authority may set out for such remedial actions;

“**Confidential Information**” means all information and materials in any medium relating to the business and management of either Party, including all contents of customer files, data, business information, employee information, accounting information, trade secrets, Intellectual Property Rights, Deliverables, information subject to an obligation of confidence to a third party (including credit card information held by the Authority) and other information relating to the Supplier or its Affiliates, the Authority or its Affiliates and including any information marked confidential, restricted or proprietary by either Party or any other Person, provided, however, that the failure of either Party to so mark any material shall not relieve the receiving Party of the obligation to maintain the confidentiality of any unmarked material which the receiving Party knows or should reasonably know contains Confidential Information. In the case of the Authority, all the Authority Data and all Personal Information is included within the Authority’s Confidential Information;

“**Contract Documents**” means those documents referred to in Section 1.5.1;

“**Data Centre**” means each of the data centres in Canada from which the Supplier operates at which any of the Applications being provided by the Supplier are hosted, all of which shall be identified in writing by the Supplier to the Authority and approved by the Authority in writing before they are utilized by the Supplier in the performance of the Services under this Agreement;

“**Defect**” means an error in design, coding, logic or configuration that causes the Registry System to malfunction or to produce incorrect/unexpected results such that the required functionality of the Registry System set out in this Agreement or the applicable Statement of Work is not available;

“**Deliverable**” means any document, tangible requirement, material, report, item of software or service that the Supplier is required to deliver or provide pursuant to the Contract Documents, as more particularly described and delineated in any Statement of Work;

“**Designated Representative**” has the meaning ascribed to it in Section 2.2.1;

“**Direct Claim**” has the meaning ascribed to it in Section 10.3.1;

“**Disabling Device**” is any virus, timer, clock, counter, time lock, time bomb, trap door, Trojan horse, worm, file injector, unauthorized code, boot sector injector, or other limiting, disabling or debilitating design, instruction or routine that could, if triggered, erase data or programming or cause the resources to become inoperable, impaired or compromised in functionality or performance, or otherwise incapable of being used in the full manner for which such resources were intended to be used;

“**Dispute**” has the meaning ascribed to it in Section 12.1;

“**Effective Date**” means the date first set out and defined in this Agreement;

“**Electronic Transmission**” has the meaning ascribed to it in Section 15.1;

“**Executive Steering Committee**” has the meaning ascribed to it in Section 2.1;

“**Expenses**” has the meaning ascribed to it in Section 7.4;

“**Fees**” has the meaning ascribed to it in Section 7.1.1;

“**Full Acceptance**” means that a Deliverable has been Accepted by the Authority without reservation or qualification;

“**Implementation Services**” means Services provided by the Supplier relating to design, build, configuration, integration, testing and deployment of the System as described more particularly in a Statement of Work;

“**includin****Property Rights**” includes any proprietary right provided under: (i) patent law, (ii) copyright law, (iii) trademark law, (iv) design patent or industrial design law, (v) semi-conductor chip or mask work law, and (vi) any other statutory provision or common law principle applicable to the Services which may provide a right in either: (a) ideas, formulae, algorithms, concepts, inventions or know-how generally including trade secret law, specifications, designs, plans, drawings, software, systems, processes, methodologies, documents, materials, computer systems, technology, prototypes, business or strategic plans, business rules, administrative and operational requirements, Registry specifications and business processes; or (b) the expression of such ideas, formulae, algorithms, concepts, inventions or know-how;

“**Invoice**” has the meaning ascribed to it in Section 7.1.1;

“**Key Personnel**” means Personnel whom the Parties recognize and agree are material and fundamental to the provision of the Services in accordance with this Agreement as set out in Schedule ⚫;

“**Losses**” has the meaning ascribed to it in Section 10.1;

“**Master Rate Card**” means the Master Rate Card appended to the Agreement as Schedule \_;

“**Milestone**” means a specific Deliverable or grouping of specific Deliverables (including dependent Deliverables) as identified in a fixed fee SOW against which the Supplier will Invoice in accordance with the terms of this Agreement;

“**Operating Agreement**” means the operating agreement referred to in s. 28 of the RRCEA between the Minister of the Environment and Climate Change and the Authority, as such agreement may be amended from time to time;

“**Party**” means either the Supplier or the Authority and “**Parties**” means both of them;

“**Performance Requirements**” has the meaning ascribed to that term in Section 3.5;

“**Person**” means any individual, company, corporation, partnership, government or government agency, authority or entity howsoever designated or constituted;

“**Personal Information**” means information collected by the Supplier from or on behalf of the Authority about an identifiable individual but does not include the name, title or business address or telephone number of an employee of an organization;

“**Personnel**” means the officers, employees, agents and representatives of the Supplier and Subcontractors who contribute to the provision of the Services to the Authority and shall include Key Personnel;

“**Prime Rate**” means the rate of interest expressed as a rate per annum that the Authority’s principal bank establishes at its head office in Toronto as a reference rate of interest for Canadian Dollar loans to its corporate customers in Canada and to which it refers as its prime rate;

“**Project**” means the configuration, development, implementation and operation of the System;

“**Project Roadmap**” means the Project Roadmap developed by the Parties and appended to the Agreement as Schedule \_ which sets out the estimated timelines and key milestones of Deliverables comprising the Project;

“**Proposal**” means the Financial Proposal and the Technical Proposal, both dated ⚫, submitted by the Supplier in response to the RFP;

“**Supplier’s Intellectual Property**” has the meaning ascribed to it in Section 8.1;

“**Regulations**” has the meaning ascribed to it in Section 9.1.5;

“**RFP**” means the Request for Proposals dated ⚫ issued by the Authority in respect of the Project;

“**RRCEA**” means the *Resource Recovery and Circular Economy Act, 201*6 (Ontario);

“**Secondary Acceptance Test Period**” means the time permitted for the Authority to conduct the second round of Acceptance Tests on each Deliverable, as set out in Schedule \_C;

“**Security Requirements**” has the meaning ascribed to it in Section 3.14.1;

“**Services**” has the same meaning ascribed to it in Section 3.1;

“**Statement of Work**” or “**SOW**” means a statement of work entered into between the Parties pursuant to Section 2.4 hereof;

“**Subcontractor**” means any Person (including, for greater certainty, any related entity of the Supplier), that provides services under a subcontract to the Supplier in support of its delivery of the Services;

“**System**” means the ⚫ system to be developed and implemented by the Supplier as described in the Contract Documents;

“**System Deliverable**” has the meaning ascribed to it in Schedule ⚫;

“**Taxes**” has the meaning ascribed to it in Section 7.2.1;

“**Term**” has the meaning ascribed to it in Section 13.1;

“**Termination Transition Services**” has the meaning ascribed to it in Section 13.5.1;

“**Third Party Claim**” has the meaning ascribed to it in Section 10.3.1;

“**Third Party Information**” has the meaning ascribed to it in Section 5.5;

“**Vendors**” means licensors of the Applications;

“**Warranty Period**” has the meaning ascribed to it in Section 9.1.8;

“**WDTA**” means the *Waste Diversion Transition Act, 2016* (Ontario); and

“**Work Breakdown Package**” or “**WBP**” means a component of the Project, as described in the Proposal and the Project Roadmap, but subject to refinement and agreement between the Parties in Statements of Work as the Project progresses.

Schedule B – Managed Services [If Applicable]

This Schedule is attached to and forms part of the Master Services Agreement between Resource Productivity and Recovery Authority (the “**Authority**”) and ⚫ (“**the Supplier**”) dated the ⚫ day of ⚫, 2019 (the “Agreement”).

All capitalized words and phrases in this Schedule shall have the same meanings as ascribed to them in the Agreement or in Schedule A, unless otherwise defined herein.

Schedule ⚫ – Acceptance Testing

This Schedule is attached to and forms part of the Master Services Agreement between Resource Productivity and Recovery Authority (the “**Authority**”) and ⚫ (“**the Supplier**”) dated the ⚫ day of ⚫, 2019 (the “Agreement”).

All capitalized words and phrases in this Schedule shall have the same meanings as ascribed to them in the Agreement or in Schedule A, unless otherwise defined herein.

**SCHEDULE** ⚫ **– PERFORMANCE REQUIREMENTS**

This Schedule is attached to and forms part of the Master Services Agreement between Resource Productivity and Recovery Authority (the “**Authority**”) and ⚫ (“**the Supplier**”) dated the ⚫ day of ⚫, 2019 (the “Agreement”).

All capitalized words and phrases in this Schedule shall have the same meanings as ascribed to them in the Agreement or in Schedule A, unless otherwise defined herein.

**SCHEDULE** ⚫ **– PROJECT ROADMAP**

This Schedule is attached to and forms part of the Master Services Agreement between Resource Productivity and Recovery Authority (the “**Authority**”) and ⚫ (“**the Supplier**”) dated the ⚫ day of ⚫, 2019 (the “Agreement”).

All capitalized words and phrases in this Schedule shall have the same meanings as ascribed to them in the Agreement or in Schedule A, unless otherwise defined herein.

Schedule ⚫ – Key Personnel

This Schedule is attached to and forms part of the Master Services Agreement between Resource Productivity and Recovery Authority (the “**Authority**”) and ⚫ (“**the Supplier**”) dated the ⚫ day of ⚫, 2019 (the “Agreement”).

All capitalized words and phrases in this Schedule shall have the same meanings as ascribed to them in the Agreement or in Schedule A, unless otherwise defined herein.

The following Key Personnel are identified for the System:

|  |  |
| --- | --- |
| **Project Role** | **Key Personnel** |
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**SCHEDULE** **⚫ – PROJECT BUDGET AND MASTER RATE CARD**

This Schedule is attached to and forms part of the Master Services Agreement between Resource Productivity and Recovery Authority (the “**Authority**”) and ⚫ (“**the Supplier**”) dated the ⚫ day of ⚫, 2019 (the “Agreement”).

All capitalized words and phrases in this Schedule shall have the same meanings as ascribed to them in the Agreement or in Schedule A, unless otherwise defined herein.

Schedule ⚫ – THIRD PARTY Licenses

This Schedule is attached to and forms part of the Master Services Agreement between Resource Productivity and Recovery Authority (the “**Authority**”) and ⚫ (“**the Supplier**”) dated the ⚫ day of ⚫, 2019 (the “Agreement”).

All capitalized words and phrases in this Schedule shall have the same meanings as ascribed to them in the Agreement or in Schedule A, unless otherwise defined herein.

Schedule ⚫ – Arbitration Process

This Schedule is attached to and forms part of the Master Services Agreement between Resource Productivity and Recovery Authority (the “**Authority**”) and ⚫ (“**the Supplier**”) dated the ⚫ day of ⚫, 2019 (the “Agreement”).

All capitalized words and phrases in this Schedule shall have the same meanings as ascribed to them in the Agreement or in Schedule A, unless otherwise defined herein.

1. Where any dispute, which pursuant to the Agreement to which this Schedule J is attached is to be settled by arbitration (the “**Matter**”), the provisions of this Schedule shall govern the arbitration of the Matter exclusively and shall constitute a submission for the purposes of the *Arbitration Act*, 1991 (Ontario).
2. Arbitration shall be commenced by a Party to the Agreement (the **“Claimant**”) delivering a written complaint (the “**Complaint**”) to the other Party to the Agreement (the “**Respondent**”) describing the Matter. Within 5 Business Days after the receipt of the Complaint, the Respondent shall, by notice to the Claimant, use its reasonable efforts to agree upon the appointment of a sole arbitrator (the “**Sole Arbitrator**”) who has professional experience and expertise in the information technology services industry and related legal and commercial issues. Failing agreement on the appointment of the arbitrator, the Parties shall seek the expeditious appointment of the Sole Arbitrator by the ADR Institute of Ontario (formerly, the Arbitration and Mediation Institute of Ontario). The arbitration shall be held in the City of Toronto unless the Parties agree otherwise.
3. Any decision of the Sole Arbitrator made with respect to the Matter or with respect to any aspect of, or any matter related to, the arbitration hereunder (including, without limitation, the procedures of the arbitration) shall be made by the Sole Arbitrator. All decisions of the Sole Arbitrator with respect to the Matter shall be rendered in writing and shall contain a brief recital of the facts upon which the decision is made and the reasons therefor.
4. If the Claimant and the Respondent agree on a code of procedure or on specific matters of procedure, that agreement shall be binding on the Sole Arbitrator. In the absence of such agreement, the Sole Arbitrator, after giving the Claimant and the Respondent an opportunity to be heard, shall determine the procedure for the arbitration. This procedure shall include, at the least, an opportunity for written submissions by or on behalf of the Claimant and the Respondent and may include proceedings by way of exchange of oral argument, hearings with or without witnesses, and such other procedures as the Sole Arbitrator may consider appropriate.
5. The following shall apply to the arbitration of any Matter:
   1. within 10 Business Days after the appointment of the Sole Arbitrator, the Claimant shall deliver to the Respondent and the Sole Arbitrator a written statement (the “**Arbitrable Claim**”) concerning the Matter setting forth, with particularity, its position with respect to the Matter and the material facts upon which it intends to rely;
   2. within 10 Business Days after the delivery of the Arbitrable Claim, the Respondent shall deliver to the Claimant and the Sole Arbitrator a written response (the “**Answer**”) to the Claimant setting forth, with particularity, its position on the Matter and the material facts upon which it intends to rely;
   3. if the Respondent fails to deliver an Answer within the time limit referred to in Section 5(b), the Respondent shall be deemed to have admitted the Arbitrable Claim;
   4. within 5 Business Days after the delivery of the Answer, the Claimant may deliver to the Respondent and the Sole Arbitrator a written reply (the “**Reply**”) to the Answer, setting forth, with particularity, its response, if any, to the Answer;
   5. within the time provided for the delivery of the Answer to the Arbitrable Claim, the Respondent may also deliver to the Claimant and the Sole Arbitrator a counter complaint (the “**Counter Complaint**”) setting forth, with particularity, any additional Matter for the Sole Arbitrator to decide. Within 5 Business Days after the delivery of a Counter Complaint, the Claimant shall deliver to the Respondent and the Sole Arbitrator an Answer to such Counter-Complaint. If the Claimant fails to deliver an Answer to the Counter-Complaint within such 5‑Business Day period the Claimant will be deemed to have admitted the Counter-Complaint. Within 5 Business Days after the delivery of an Answer to the Counter-Complaint, the Respondent may deliver to the Claimant and the Sole Arbitrator a Reply to such Answer. Any Matter submitted to arbitration in accordance with this Section 5(e) shall be governed by, and dealt with as if it were the subject of a Complaint in accordance with this Schedule, except that it shall be deemed a submission to the Sole Arbitrator already appointed, and shall be determined by the Sole Arbitrator accordingly;
   6. the time limits set for the delivery of the documents referred to in Sections 5(a) to 5(e) may be extended by the Sole Arbitrator for such period and for such reasons as he/she in his/her discretion may determine upon application made by either the Claimant or the Respondent, as the case may be, on notice to the other, either before the expiry of the time limit in issue or within 2 Business Days thereafter and, in the event that the other wishes to oppose the application, it shall be given an opportunity to make submissions on the application;
   7. upon completion of the foregoing steps in this Section 6.1 or upon the expiry of the time limit provided therefor if a step provided for in this Section 6.1 is not taken by such time, either the Claimant or the Respondent may make application to the Sole Arbitrator to convene a preliminary hearing for determination of the following:
      1. appointing the time, date and place for the hearing (the “**Hearing**”) of the Matter;
      2. arranging for the production of documents concerning the Matter as between the Claimant and the Respondent;
      3. arranging for the delivery of and answers to written interrogatories concerning the Matter as between the Claimant and the Respondent; and,
      4. prescribing such additional rules and procedures considered by the Sole Arbitrator to be necessary or desirable for the conduct of the arbitration (including, without limitation, commission of witnesses and discovery under oath); and
   8. the Sole Arbitrator shall at the time and place appointed by the Sole Arbitrator convene the Hearing and shall, after the Hearing, determine the Matter or Matters submitted to them and make their award.
6. Every claim or award of the Sole Arbitrator made pursuant hereto shall be final and binding upon the Claimant and the Respondent and there shall be no appeal therefrom. The Sole Arbitrator shall have jurisdiction to award the costs of the arbitration, including the fees of the Sole Arbitrator, as between the Claimant and the Respondent as the Sole Arbitrator sees fit, and to direct the payment of interest in respect of any award at such rates and from and to such dates as are determined by the Sole Arbitrator to be appropriate.
7. The Sole Arbitrator shall be paid their normal professional fees for their time and attendances in dealing with the Matter, which fees, unless otherwise directed by the Sole Arbitrator in accordance with Section 6 above, shall be paid equally by the Claimant and the Respondent.
8. All notices and all other documents required or permitted by this Article to be given by the Claimant or the Respondent to the Sole Arbitrator shall be given in accordance with the Sole Arbitrator’ instructions.