

CONTRACT NUMBER:

BETWEEN:

HER MAJESTY THE QUEEN in right of Alberta,
as represented by the Minister of _____
("Minister")

- and -

(Name of Corporation)
("Vendor")

BACKGROUND

The Minister requires services to be provided and materials delivered and has issued a Request for Proposals, dated _____, 200_ ("Request for Proposals"), which is part of this Contract;

The Vendor has presented a Proposal, dated _____, 200_ ("Proposal"), which is part of this Contract.

CONTRACT

The parties agree as follows:

1. The Background is part of this Contract.

DEFINITIONS

2. In this Contract:
 - (a) "Business Day" means 8:15 am to 4:30 pm in Alberta from Monday through Friday excluding holidays observed by Her Majesty the Queen in right of Alberta.
 - (b) "Change Request" is a written request from the Vendor to the Minister to consider whether certain Services or Materials are or are about to be outside the scope of this Contract.
 - (c) "Commercial Software" means software of the Vendor and/or the Vendor's subcontractors or agents (including their affiliates as specified in the Business Corporations Act of Alberta, as amended, revised or substituted from time to time) which was commercially available off the shelf prior to the Request for Proposals closing date.
 - (d) "Commercial Software Proprietary Tools" means any tools of the Vendor, the Vendor's employees, subcontractors or agents that are required to operate, maintain and make modifications to the Commercial Software.
 - (e) "Commercial Software User Documentation" means any documentation that describes the Commercial Software and, when used in conjunction with its source code, enables the user to operate, maintain and make modifications to the Commercial Software and includes the identification of any necessary tools that are not Commercial Software Proprietary Tools.
 - (f) "Confidential Information" means Minister Confidential Information and Vendor Confidential Information.

- (g) “Confidentiality Legislation” means any statutory or regulatory requirement, as amended, revised or substituted from time to time, to keep information confidential including the Freedom of Information and Protection of Privacy Act of Alberta.
- (h) “Contract” consists of the Request for Proposals, the Proposal and this document.
- (i) “Materials” include all the working papers, surveys, notes, plans, designs, reports, records, studies, drawings, examinations, assessments, procedures, specifications, evaluations, results, conclusions, interpretations, calculations, analyses, systems, software, source code, documents, writings, programs, hardware, devices, data or any components of these, regardless of how they are represented, stored, produced, or acquired that are to be delivered under this Contract and are as described elsewhere in this Contract.
- (j) “Minister Confidential Information” means any information concerning the Minister and/or third parties or any of the business or activities of the Minister and/or third parties acquired by the Vendor as a result of participation in this Contract, which is required by any Confidentiality Legislation to be kept confidential by the Minister or is supplied by the Minister in confidence including, but not limited to, such information that is contained in data management systems of the Minister or is financial, personal data or business information and plans of or relating to the Minister or third parties.
- (k) “Personal Information” means recorded information about an identifiable individual, including:
 - (i) the individual’s name, home or business address or home or business telephone number;
 - (ii) the individual’s race, national or ethnic origin, colour or religious or political beliefs or associations;
 - (iii) the individual’s age, sex, marital status or family status;
 - (iv) an identifying number, symbol or other particular assigned to the individual;
 - (v) the individual’s fingerprints, other biometric information, blood type, genetic information or inheritable characteristics;
 - (vi) information about the individual’s health and health care history including information about a physical or mental disability;
 - (vii) information about the individual’s educational, financial, employment or criminal history, including criminal records where a pardon has been given;
 - (viii) anyone else’s opinions about the individual; and
 - (ix) the individual’s personal views or opinions, except if they are about someone else.
- (l) “Pre-existing Work” means all parts of Materials, excluding Commercial Software, that were first created outside this Contract by the Vendor, the Vendor’s employees, subcontractors or agents (including their affiliates as specified in the Business Corporations Act of Alberta, as amended, revised or substituted from time to time) and which were in existence prior to the Request for Proposals closing date.
- (m) “Proprietary Tools” means any tools of the Vendor, the Vendor’s employees, subcontractors or agents that are required to operate, maintain and make modifications to the Pre-existing Work.
- (n) “Services” include the functions, duties, tasks, and responsibilities as described in this Contract.
- (o) “User Documentation” means any documentation that describes the Pre-existing Work and, when used in conjunction with its source code, enables the user to operate, maintain and make

modifications to the Pre-existing Work and includes the identification of any necessary tools that are not Proprietary Tools.

- (p) “Vendor Confidential Information” means information, supplied in confidence, concerning the Vendor and/or third parties or any of the business or activities of the Vendor and/or third parties and which is acquired by the Minister as a result of participation in this Contract.
3. The Vendor agrees to perform the Services and deliver the Materials in accordance with the provisions of this Contract.
4. The Vendor shall:
- (a) submit a written report to the Minister every ____ during the term of this Contract indicating:
 - (i) the Services and Materials completed;
 - (ii) the time schedule for those portions which are not completed; and
 - (iii) any other information requested by the Minister in relation to the completion of this Contract.
 - (b) follow any directions from the Minister including the location where the Services are to be performed.

TERM

5. The Vendor shall begin performing the Services and delivering the Materials on ____, 200_, and shall complete the performance of the Services and delivery of the Materials on or before _____, 200 .

PAYMENT

6. (a) The Minister agrees to pay the Vendor the sum of \$_____ to perform the Services and deliver the Materials including all expenses incurred under this Contract. The Vendor shall not be paid for the Goods and Services Tax (“GST”) or the Harmonized Sales Tax (“HST”). The Vendor shall be paid:
- (i) the amounts for completion of the Services and/or delivery of the Materials, as specified in Schedule “A” which is part of this Contract, in accordance with the provisions of this Contract; and
 - (ii) upon submitting an invoice and other supporting documentation which may be required by the Minister describing the Services and Materials for which payment is claimed.
- (b) The Minister shall pay the Vendor within 30 days of receipt of an invoice provided the requirements of clause 6(a) have been met.
- (c) Despite anything in this Contract, the Minister may holdback ___ percent of any payment due under this Contract to ensure the Services are performed and Materials delivered in accordance with the provisions of this Contract.
- (d) The Minister shall pay to the Vendor upon completion of the Warranty Period, (the Warranty Period is explained in clause 16(a)) any amount held back by the Minister under clause 6(c), if all the Services and Materials are in accordance with the provisions of this Contract.

7. Despite any other provision of this Contract, the Minister may inspect the Services and the Materials at any time and may order the re-execution of any Services or Materials which are not performed in accordance with the provisions of this Contract, and at the Vendor's expense, the Vendor shall re-execute the Services and Materials in accordance with this Contract.

RECORDS

8. The Vendor shall:
- (a) Keep and maintain in accordance with generally accepted accounting principles complete and accurate books, records, and accounts of all costs, expenditures and commitments relating to this Contract and, on demand, provide to the Minister these documents to examine, audit and take copies and extracts.
 - (b) Keep the documents referred to in clause 8(a) for 3 years following the completion or termination of this Contract.

NON-ASSIGNABILITY

9. The Vendor shall not assign, subcontract (other than as identified in the Proposal) or otherwise dispose of any of its rights, obligations, or interests in this Contract, without first getting the written approval of the Minister, which approval shall not be unreasonably withheld.

PERSONNEL REPLACEMENT

10. (a) The Vendor shall not replace any employee, subcontractor or agent identified in the Proposal or add any employee, subcontractor or agent to perform the Services without the prior written approval of the Minister, which approval shall not be unreasonably withheld.
- (b) The Vendor shall:
- (i) remove any employee, subcontractor or agent of the Vendor upon the written request of the Minister within the time limit indicated in such request; and
 - (ii) only replace such a removed employee, subcontractor or agent of the Vendor upon getting written approval of the Minister, which approval shall not be unreasonably withheld.

STATUTORY COMPLIANCE

11. The Vendor shall:
- (a) Comply with the provisions of all laws, now in force or in force after the signing of this Contract, that expressly or by implication apply to the Vendor in performing the Services.
 - (b) Pay, when due, all taxes, rates, duties, assessments and license fees that may be levied, rated, charged or assessed upon the Vendor in performing the Services.
 - (c) Comply with the Workers' Compensation Act when the Act applies and shall, upon demand by the Minister, deliver to the Minister a certificate from the Workers' Compensation Board showing that the Vendor is registered and in good standing with the Board.

MATERIAL OWNERSHIP

12. (a) Excluding Pre-existing Work, User Documentation, Proprietary Tools and Commercial Software, ownership in all Materials including copyright, patent, trade secret, industrial design or trade mark in the Materials that are made, prepared, developed, generated, produced or acquired under or in relation to this Contract by the Vendor, the Vendor's employees, subcontractors or agents belongs to the Minister when they are paid for by the Minister. The Materials, including the right to use the Pre-existing Work and Commercial Software included in any Materials to be provided to the Minister under this Contract, User Documentation and Proprietary Tools, shall be delivered to the Minister upon payment by the Minister for such Materials at completion or termination of this Contract.

(b) The Vendor:

- (i) irrevocably waives in whole all moral rights, and
- (ii) shall ensure that its employees, subcontractors and agents irrevocably waive in whole all moral rights,

to the Materials, made, prepared, developed, generated, produced, or acquired under this Contract, which includes the Pre-existing Work included in any Materials to be provided to the Minister under this Contract, User Documentation and Proprietary Tools but excludes any Commercial Software. The Vendor declares that these waivers shall operate in favour of the Minister and the Minister's assignees and licensees.

(c) Subject to clause 12(d) and (e), the Vendor shall provide the Minister, upon completion or termination of this Contract, a copy of the Pre-existing Work included in any Materials to be provided to the Minister under this Contract, its source code, User Documentation and Proprietary Tools, and the Vendor grants to the Minister:

- (i) an irrevocable, non-exclusive, worldwide, paid up, royalty free license to use, execute, reproduce, display, perform and distribute (internally and externally) copies of the Pre-existing Work included in any Materials to be provided to the Minister under this Contract, its source code, User Documentation and Proprietary Tools and the right to prepare derivative works based on such Pre-existing Work, source code, User Documentation and Proprietary Tools;
- (ii) the right to authorize others to do any of the former; and
- (iii) an irrevocable, non-exclusive, worldwide, paid up, royalty free license to use, execute, reproduce, display, perform and distribute internally copies of any Commercial Software included in the Materials to be provided to the Minister under this Contract. The Minister may only grant these rights in this clause 12(c)(iii) to persons or organizations performing services on behalf of the Minister and only for the purposes of performing such services on behalf of the Minister.

(d) The right to distribute copies of the Pre-existing Work included in any Materials to be provided to the Minister under this Contract, its source code, User Documentation and Proprietary Tools shall only be to governments including provincial departments, provincial corporations, boards, agencies and committees, post-secondary institutions, local authorities such as municipalities, schools boards, schools, regional health authorities, hospitals, and to organizations performing services on behalf of governments, in the reasonable opinion of the Minister, but only for the purposes of performing such services on behalf of governments.

(e) The right to prepare derivative works of the Pre-existing Work included in any Materials to be provided to the Minister under this Contract, and its User Documentation and Proprietary

Tools shall only be granted to governments or organizations in Canada within clause 12 (d) through their employees, subcontractors or agents on the condition that:

- (i) the sublicensed organization becomes the owner of the derivative works unless that organization is sublicensed only because it is under contract to a government organization in which case the government organization would become the owner;
- (ii) the derivative work is used, executed or reproduced, displayed and performed only within organizations performing services on behalf of governments for the purposes of performing such services; and
- (iii) any such subcontractor or agent executes a confidentiality agreement that contains similar provisions for confidentiality as required of the parties by clause 14.

ESCROW

13. The Vendor must, within ten (10) Business Days of the execution of this Contract, maintain a current copy of any Commercial Software User Documentation, Commercial Software Proprietary Tools and the source code of the Commercial Software in escrow with an escrow agent, to be mutually agreed upon. Within ten (10) Business Days from the date of any new release of the Commercial Software, the Vendor must place an updated copy of the Commercial Software, Commercial Software User Documentation, Commercial Software Proprietary Tools and their source code with the agreed upon escrow agent if this Contract provides for maintenance or the right of the Minister to obtain new releases.

The agreement with the escrow agent must provide that a copy of the Commercial Software, Commercial Software User Documentation, Commercial Software Proprietary Tools and their source code in escrow shall be released to the Minister by the escrow agent not later than ten (10) Business Days after the occurrence of any one or more of the following events:

- (a) The Vendor making an assignment for the benefit of its creditors generally;
- (b) The Vendor filing a petition or making a proposal under the Bankruptcy and Insolvency Act, Canada, or similar equivalent legislation of an applicable jurisdiction;
- (c) The Vendor is the subject of a receiving order or a petition filed under the Bankruptcy and Insolvency Act, Canada, or such other applicable legislation and where the Vendor does not contest such receiving order or petition in good faith;
- (d) The Vendor making an application under the Companies' Creditors Arrangement Act or similar or equivalent legislation of any applicable jurisdiction;
- (e) The Vendor is subject to any distress or execution levied on its rights under the Contract;
- (f) The Vendor is subject to appointment of any receiver, manager, receiver-manager, liquidator or trustee of the property, assets or undertaking of the Vendor pursuant to the terms of a court order or security agreement or similar instrument and such appointment is not revoked or withdrawn within thirty (30) days of the appointment, provided that such period of thirty (30) days shall be extended to one hundred and twenty (120) days after such appointment where the Vendor demonstrates to the reasonable satisfaction of the Minister that it is contesting such appointment in good faith; or
- (g) The Vendor discontinues performing maintenance of the Commercial Software, if this Contract provides for maintenance.

CONFIDENTIALITY

14. (a) The Vendor and the Vendor's employees, subcontractors and agents shall, subject to any Confidentiality Legislation requirement:
- (i) not use, copy or disclose, except as necessary for the performance of the Services or

- upon written authorization of the Minister, any Minister Confidential Information;
 - (ii) adhere to security standards for Minister Confidential Information, including control of access to data and other information, using the same care and discretion the Minister follows for its own Confidential Information, as specified in this Contract. The Minister shall provide the Vendor with notice of any changes to these standards. If changing the security standards for Minister Confidential Information increases the Vendor's costs the Vendor may submit a Change Request.
- (b) Prior to allowing any third party, other than Vendor's subcontractors or agents, access to hardware, including loaner or replacement hardware, used by the Minister, the Minister's employees, subcontractors or agents, the Vendor shall:
 - (i) determine whether the hardware contains any information or software because of such use; and
 - (ii) contact and follow the instructions of the Minister if such information or software is present.
- (c) The Vendor shall identify any and all Vendor Confidential Information and specify in writing to the Minister what harm could reasonably be expected from its disclosure. The Minister does not warrant that this identification will preclude disclosure of the Vendor Confidential Information if disclosure is determined to be required under the Confidentiality Legislation.
- (d) Confidential Information must be kept confidential the longer of six (6) years, the Confidentiality Legislation requirement, if any, to keep Confidential Information confidential, or so long as the party retains Confidential Information of the other party.
- (e) The Vendor shall return to the Minister or destroy any Minister Confidential Information within thirty (30) days of this Contract being completed or terminated. Further, if such information is in electronic format in hardware of the Vendor or of its employees, subcontractors or agents, that information shall be dealt with in accordance with this Contract.
- (f) The Vendor may disclose Minister Confidential Information to:
 - (i) employees of the Vendor and any corporation, company or other entity that it controls or controls it who have a need to know;
 - (ii) the Vendor's subcontractors and agents who have a need to know provided that the Vendor has a similar confidentiality agreement with them as required of the parties by this clause 14; and
 - (iii) anyone else with the Minister's prior written consent.
- (g) The Minister and the Minister's employees, subcontractors and agents shall, subject to any Confidentiality Legislation requirement:
 - (i) not use, copy or disclose, except as necessary for the performance of the Services or upon written authorization of the Vendor, any Vendor Confidential Information; and
 - (ii) maintain security standards for Vendor Confidential Information, including control of access to data and other information, using the same care and discretion it follows for its own Confidential Information, as of the date of execution of this Contract. The Minister shall provide the Vendor with notice of any material changes to these standards.
- (h) Subject to any Confidentiality Legislation requirement, the Minister may disclose Vendor Confidential Information to:
 - (i) employees of the Minister who have a need to know;

- (ii) the Minister's subcontractors and agents who have a need to know provided that the Minister has a similar confidentiality agreement with them as required of the parties by this clause 14; and
 - (iii) anyone else with the Vendor's, the Vendor's subcontractor's or agent's prior written consent for their own Confidential Information.
- (i) A party has no obligation with respect to Confidential Information of the other party:
- (i) that the first mentioned party already possesses without obligation of confidentiality; develops independently; or rightfully receives without obligation of confidentiality from another; or
 - (ii) that is or becomes publicly available without breach of this clause 14.
- (j) A party has no obligation under this clause 14 with respect to any ideas, concepts, know-how or techniques contained in the Confidential Information of the other party that are related to the first mentioned party's business activities ("Knowledge"). This, does not however, give such party the right to disclose, unless described elsewhere in this Contract:
- (i) the source of the Knowledge;
 - (ii) any financial, statistical, or personal data; or
 - (iii) the other party's business plans.
- (k) Each party may disclose Confidential Information of the other party to their legal counsel who has an obligation to keep that information confidential.
- (l) The disclosure of a party's Confidential Information does not grant to the other party any license under any patents or copyrights.
- (m) Except for timely disclosure required to be made by any lawful government authority or regulatory body, by any stock exchange or operation of law, including but not limited to any Confidentiality Legislation, and except for public disclosure made by any Minister of Her Majesty the Queen in right of Alberta, mindfully taking into consideration the sensitivity of specific confidentiality in this Contract, no press release or other public announcement relating to this Contract shall be issued without the prior written consent of each party to the specific content and form of such press release or announcement. Each party shall use reasonable efforts to disclose such release or announcement proposed by it to the other party as soon as reasonably possible and the other party will use reasonable efforts to approve or otherwise comment on such release or announcement without delay.

RECORDS OF PERSONAL INFORMATION

15. (a) The Vendor shall for all records of Personal Information which are disclosed to the Vendor under this Contract, including those records which are collected, used or stored on behalf of the Minister, store them only in Alberta.
- (b) Before disclosing to the Minister any Personal Information about any individual who is providing or will provide the Services, the Vendor shall obtain the consent of the affected individual. The consent must be in writing; specify to whom the Personal Information can be disclosed; and how the Personal Information can be used. The Vendor shall provide such consents to the Minister for confirmation and review upon the Minister's request.

WARRANTY

16. (a) The Vendor warrants that the Materials shall perform as required by this Contract for a period of ___ days beginning on the date upon which the Materials are accepted by the Minister pursuant to the acceptance process described in this Contract (“Warranty Period”). During the Warranty Period, the Vendor shall immediately correct, at its own expense, any defects in the Materials caused by the acts or omissions of the Vendor or its employees, subcontractors or agents which causes the Materials not to perform as required by this Contract.
- (b) If a defect or series of defects in the Materials cannot be or is not corrected by the Vendor during the Warranty Period, the Warranty Period will continue for the defect or series of defects until the Materials function and perform in accordance with this Contract.
- (c) If a defect or a series of defects are not corrected to function and perform in accordance with this Contract within a reasonable period of time, the Minister may terminate this Contract and retain any amount held back under clause 6(c).

THIRD PARTY CLAIMS

17. (a) The Vendor agrees to indemnify and hold harmless the Minister from any and all third party claims, demands, actions or costs (including legal costs on a solicitor-client basis) for which the Vendor is legally responsible, including those arising out of negligence or wilful acts by the Vendor, or the Vendor’s employees or agents.

The Minister agrees to indemnify and hold harmless the Vendor from any and all third party claims, demands, actions or costs (including legal costs on a solicitor-client basis) for which the Minister is legally responsible, including those arising out of negligence or wilful acts by the Minister, or the Minister’s employees or agents.

This hold harmless provision shall survive this Contract.

- (b) Despite clause 17(a), where loss or damage is directly related to the Materials provided by or through the Vendor, the Vendor’s liability shall not extend to loss or damage arising out of:
- (i) modifications made to the Materials by the Minister;
 - (ii) the Vendor having been required to conform to all or part of specific product designs of the Minister;
 - (iii) the use by the Minister of the Materials with programs, hardware or software supplied by other parties, unless the Vendor has represented to the Minister that the Materials are designated for use with such other programs, hardware or software;
 - (iv) use of the Materials by the Minister in a manner contrary to the Vendor’s specifications and/or documentation provided by or through the Vendor and accepted by the Minister;
 - (v) use of the Materials by the Minister on any hardware for which the software was not designed; or
 - (vi) the Minister not using corrections to the Materials made known and available by the Vendor. This exception only applies if the corrections made known and available by the Vendor do not diminish the Material’s performance or functions as required by this Contract.
- (c) Despite clause 17(a), where loss or damage is directly related to the Materials provided by or through the Minister under this Contract, the Minister’s liability shall not extend to loss or damage arising out of:

- (i) modifications made to the Materials by the Vendor;
 - (ii) the use by the Vendor of the Materials with programs, hardware or software supplied by other parties, unless the Minister has represented to the Vendor that the Materials are designated for use with such other programs, hardware or software;
 - (iii) use of the Materials by the Vendor in a manner contrary to the Minister's specifications and/or documentation provided by or through the Minister and accepted by the Vendor;
 - (iv) use of the Materials by the Vendor on any hardware for which the software was not designed; or
 - (v) the Vendor not using corrections to the Materials made known and available by the Minister. This exception only applies if the corrections made known and available by the Minister do not diminish the Material's performance or functions as required by this Contract.
- (d) The party claimed against or sued by a third party must notify the other in writing of a claim or suit promptly and provide reasonable cooperation, at the responsible party's expense. Neither party shall have any obligation under any settlement made without its written consent.

INTELLECTUAL PROPERTY

18. (a) If a third party claims that any Materials delivered to the Minister by the Vendor, the Vendor's subcontractors or agents under this Contract infringes any copyright, patent, trade secret, industrial design, trade mark or any other proprietary right enforceable in Canada, the Vendor will defend the Minister against that claim at the Vendor's expense. This includes any customized Materials delivered under this Contract, the Commercial Software and Pre-existing Work included in any Materials to be provided to the Minister under this Contract, User Documentation, Proprietary Tools, and any modifications or enhancements to them by the Vendor, the Vendor's subcontractor or agents. In this regard, the Vendor will pay all costs, damages and legal fees that a court finally awards or are included in a settlement agreed to by the Vendor, provided that the Minister:
- (i) promptly notifies the Vendor in writing of the claim; and
 - (ii) cooperates with the Vendor, and allows the Vendor to control, with the Minister's participation, the defense and any related settlement negotiations.
- (b) If such a claim is made or appears likely to be made under clause 18(a), the Minister agrees to permit the Vendor to enable the Minister, at the Vendor's cost and with the Minister's agreement, to continue to use the Materials or to provide the Minister with a non-infringing replacement or modification which meets the specifications and functionality required for the Materials in this Contract. If the Vendor determines that none of these alternatives is reasonably available, the Minister shall return the Materials to the Vendor on the Vendor's written request and the Vendor shall pay the Minister, upon the Minister's return of the Materials, the remaining unamortized amount based on a seven year straight line amortization schedule.
- (c) The Vendor has no obligation regarding any claim based upon any of the following:
- (i) the Minister's modification of the Materials or use of software Materials in other than the operating environment specified for the software;
 - (ii) the combination, operation or use of the Materials with any programs, hardware or software that the Vendor did not provide, unless the Vendor has specifically approved of the other programs, hardware or software for such combination, operation or use;
 - (iii) compliance with the Minister's written requirements for the Materials and which the Vendor has advised the Minister in writing with reasons that clause 18(a) will not apply

- with the Minister's written requirement; or
 - (iv) infringement by anything provided first by the Minister for use in creating the Materials.
- (d) If a third party claims that the Materials delivered by the Vendor, the Vendor's subcontractors or agents infringes any copyright, patent, trade secret, industrial design, trade mark or any other proprietary right enforceable in Canada and the alleged infringement is based upon:
- (i) compliance with the Minister's written requirements for such Materials and which the Vendor has advised the Minister in writing with reasons that clause 18(a) will not apply with the Minister's written requirement; or
 - (ii) anything provided first by the Minister for use in creating such Materials

then the Minister will defend the Vendor against the claim at the Minister's expense. In this regard, the Minister will pay all costs, damages and legal fees that a court finally awards or are included in a settlement agreed to by the Minister, provided that the Vendor promptly notifies the Minister in writing of the claim and cooperates with the Minister in, and allows the Minister to control, with the Vendor's participation, the defense and any related settlement negotiations.

- (e) If a claim described in clause 18(d) is made or appears likely to be made, the Vendor agrees to permit the Minister, at the Minister's cost, to continue to use such Materials or to modify or replace it. If the Minister determines that none of these options are reasonably available, the Vendor agrees to return such Materials to the Minister on the Minister's written request.
- (f) The Minister has no obligation regarding any claim based on any of the following:
- (i) the Vendor's modification of the Materials or use of software Materials in other than the operating environment specified for the software;
 - (ii) the combination, operation or use of the Materials with any programs, hardware or software that the Minister did not provide, unless the Minister has specifically approved of the other programs, hardware, or software for such combination, operation or use;
 - (iii) compliance with the Vendor's written requirements for the Materials; or
 - (iv) infringement by anything provided first by the Vendor for use in creating the Materials, except to the extent such infringement arises from compliance with the Minister's requirements for the Materials and which the Vendor has advised the Minister in writing with reasons that clause 18(a) will not apply with the Minister's written requirement.
- (g) The party claimed against or sued by a third party must notify the other in writing of a claim or suit promptly and provide reasonable cooperation, at the responsible party's expense. Neither party shall have any obligation under any settlement made without its written consent.

RESPONSIBILITY AND LIMITATION OF LIABILITY-CLAIMS BY THE MINISTER

19. (a) The Vendor shall be responsible for loss or damage to the real or tangible personal property of the Minister where the Vendor is legally responsible, including negligence or wilful acts of the Vendor, the Vendor's employees, subcontractors or agents.
- (b) The Vendor shall be responsible for any and all financial losses suffered by the Minister where the Vendor is legally responsible including negligence or wilful acts of the Vendor, the Vendor's employees, subcontractors or agents.
- (c) The Vendor's liability for financial losses as described in clause 19(b) shall be limited to \$_____ per claim and up to an aggregate of \$_____ for this Contract.

- (d) The Vendor shall not be liable for loss of, or damage to the Minister's electronic records or data, except if the Vendor causes the loss of or damage to the back up electronic records or data. It is understood that the Minister has established back-up procedures for minimizing or avoiding the loss or damage to its electronic records or data through separate business recovery services outside this Contract.
- (e) Subject to clauses 17, 18 and 19 (a), (b) and (c), neither the Minister nor the Vendor shall be liable to the other in connection with any claim for any special, incidental, indirect or consequential loss or damages.

INSURANCE

20. (a) The Vendor shall, at its own expense, in accordance with the Insurance Act of Alberta and without limiting its liabilities under this Contract:
- (i) insure its operations under a contract of General Liability Insurance in an amount not less than \$2,000,000.00 inclusive per occurrence, insuring against bodily injury, personal injury, and property damage including loss of use thereof; and
 - (ii) maintain, throughout the term of this Contract and for a period of 12 months following the completion or termination of this Contract, Errors and Omissions insurance in an amount not less than \$_____, insuring its liability resulting from errors or omissions in the performance of its professional services under this Contract.
- (b) The Vendor shall maintain automobile liability insurance on all vehicles owned, operated or licensed in the name of the Vendor in an amount not less than \$1,000,000.00.
- (c) The Vendor shall provide the Minister with acceptable evidence of insurance, in the form of a detailed certificate of insurance, prior to commencing the Services and at any other time as requested by the Minister.
- (d) All required insurance shall be endorsed to provide the Minister with 30 days advance written notice of cancellation.

INDEPENDENT CONTRACTOR

21. The Vendor is an independent contractor for the purposes of this Contract and shall not be deemed to be a servant, employee or agent of the Minister.

NOTICES

22. (a) Any notice or payment to be made under this Contract shall be deemed given to the other party if in writing and personally delivered; sent by prepaid registered mail; or sent by facsimile transmission; addressed as follows:

The Minister:
Address:
Attention:
Fax:

The Vendor:

Address:
Attention:
Fax:

- (b) The address of either party may be changed to any other address in Alberta by notice in writing to the other party. Notice personally served or sent by facsimile transmission shall be deemed received when actually delivered or transmitted, if delivery or transmission is on a Business Day. All notices and payments sent by prepaid registered mail shall be deemed to be received on the fourth Business Day following mailing in any Post Office in Canada, except in the case of postal disruption, then any notice or payment shall be given by telegram, facsimile transmission or personally served.

TERMINATION

23. (a) The Minister may immediately terminate this Contract, without cause, upon written notice to the Vendor.
- (b) If this Contract is terminated:
- (i) Excluding Pre-existing Work, its User Documentation and Proprietary Tools and Commercial Software, all Materials made, prepared, developed, generated, produced or acquired by the Vendor, the Vendor's employees, subcontractors or agents under this Contract, up to and including the completion date of the Warranty Period, are the property of the Minister;
 - (ii) the Minister shall have the rights as described in clause 12 for all Pre-existing Work included in the Materials delivered to the Minister at the effective date of termination and its User Documentation and Proprietary Tools and Commercial Software;
 - (iii) the Vendor must still, if requested by the Minister, complete all Services required in clause 16, in accordance with this Contract;
 - (iv) all terms and conditions of this Contract, as applicable, shall continue during the Warranty Period; and
 - (v) the Minister shall only have to pay the Vendor for the Services completed and Materials delivered in accordance with this Contract up to the effective date of termination and if termination for cause, less any amount held back by the Minister under clause 6(c).

SAFETY AND SECURITY

24. The Vendor, Vendor's employees, subcontractors and agents when using any Alberta Government buildings, premises, equipment, hardware or software shall comply with all safety and security policies, regulations or directives relating to those buildings, premises, equipment, hardware or software.

COMPUTER FACILITIES

25. If the Vendor wishes to use:
- (i) Alberta Government computer hardware and software facilities for a longer period of time;
 - (ii) different facilities; or
 - (iii) Alberta Government computer hardware and software facilities for a use other than that stated in the Request for Proposals;

it must obtain the written approval of the Minister. If approval is denied or if the hardware or software is unavailable for any reason, the Services and Materials shall still be completed on the date stated in clause 5.

DELEGATION

26. (a) The Minister designates _____ of the Department of _____ as the Minister's representative for this Contract.
- (b) The Minister may change the designation in clause 26(a) by sending written notice to the Vendor of such change.

CHANGE REQUEST PROCESS

27. (a) If the Minister requests the Vendor to perform a Service or to produce Materials which the Vendor considers outside the scope of this Contract, the Vendor shall immediately, upon noticing such scope deviation or potential scope deviation, send a Change Request to the Minister.
- (b) If the Vendor is of the opinion that some aspect of the Services or the Materials will fall outside the scope of this Contract, the Vendor shall immediately, upon noticing such scope deviation or potential scope deviation, send a Change Request to the Minister.
- (c) The Change Request shall contain the following information:
- (i) a description of the applicable Services or Materials including the Vendor's reasons for considering them outside the scope of this Contract;
 - (ii) an estimated, itemized description of the cost to perform the Services or produce the Materials; and
 - (iii) a description of the consequences of performing or not performing the Services or producing or not producing the Materials including any effects on this Contract's scheduling or work plan.
- (d) The Minister shall determine whether the Services or Materials in the Change Request are within or outside the scope of this Contract.
- (e) Subject to clause 28, if the Minister considers the Services or Materials specified in the Change Request within the scope of this Contract, the Minister shall provide the Vendor with written notice and the Vendor shall complete these tasks at no additional cost to the Minister.
- (f) If the Minister considers the Services or Materials specified in the Change Request outside the scope of this Contract, the Minister may:
- (i) decide not to have the tasks completed or
 - (ii) request the Vendor to complete some or all of the tasks at a mutually agreed upon cost.

DISPUTE RESOLUTION

28. (a) The parties shall use reasonable effort to resolve any dispute via a meeting between the Minister's representative for this Contract and a representative of the Vendor.
- (b) If the parties' representatives cannot resolve the dispute, the Minister or the Minister's representative shall make a decision.

- (c) If the Vendor disagrees with the Minister's decision under clause 28(b), the Vendor shall have ten (10) days from the date of receipt of the Minister's decision to provide written notice to the Minister requiring the matter be submitted for arbitration, or the Vendor shall be deemed to have accepted the Minister's decision. All arbitrations shall be held in Edmonton, Alberta before a single arbitrator to be mutually agreed upon. If the parties cannot agree on an arbitrator within fifteen (15) Business Days of the receipt of the Minister's decision under clause 28(b), either party may apply, within twenty (20) Business Days of receipt of the Minister's decision under clause 28(b), to a Justice of the Court of Queen's Bench of Alberta to have an arbitrator appointed. Both parties shall present evidence to the arbitrator within ten (10) Business Days after the appointment of the arbitrator. The decision of the arbitrator shall be issued within thirty (30) days after the arbitrator is appointed. Except as modified in this Contract, the provisions of the Arbitration Act of Alberta, as amended, modified or substituted from time to time shall govern the arbitration process.
- (d) Despite any other provision of this Contract, the following matters are excluded from arbitration:
- (i) a decision by the Minister to allow this Contract to expire in accordance with clause 5;
 - (ii) any claims involving third parties;
 - (iii) intellectual property claims whether initiated by third parties or by the parties to this Contract;
 - (iv) a decision by the Minister not to approve a subcontractor or an assignment of this Contract pursuant to clause 9;
 - (v) a decision by the Minister to terminate this Contract pursuant to clause 23;
 - (vi) a decision by the Minister not to proceed with a Change Request; and
 - (vii) a decision by the Minister requiring the Vendor to proceed with a Change Request approved by the Minister.

CONFLICT OF INTEREST AND ETHICAL CONDUCT

29. (a) The Vendor shall ensure that there is not a conflict of interest or an apparent conflict of interest on the part of the Vendor or the Vendor's employees, subcontractors or agents in relation to the Services, and all Services shall be performed in accordance with high ethical standards, including without limitation the following:
- (i) the Vendor shall not influence, or seek to influence, or otherwise take part in a decision of the Minister knowing that the decision might further the Vendor's private interests;
 - (ii) where the Services involve providing advice, making recommendations to the Minister or exercising discretionary authority regarding a right, permission, privilege, status, contract or benefit, then such advice, recommendations or discretion must be provided, made or carried out impartially and without bias;
 - (iii) except for payment as set out in this Contract, the Vendor shall not accept any collateral gift, payment, commission or other direct benefit arising from or connected to the performance of the Services;
 - (iv) the Vendor shall not have any financial interest in the business of a third party that causes, or would appear to cause, a conflict of interest in connection with the performance of the Services;
 - (v) the Vendor, upon request by the Minister, shall deliver copies of all written ethical standards, conflict of interest policies and codes of conduct established or observed by the Vendor in its business practices or in relation to its employees or subcontractors; and
 - (vi) the Vendor shall comply with, and ensure that its employees and subcontractors comply with, the *Lobbyists Act* of Alberta.

- (b) In the event the Vendor becomes aware of any matter that causes or is likely to cause a conflict of interest in relation to the Vendor's performance of the Services, the Vendor shall immediately disclose such matter to the Minister in writing. Upon such disclosure, the Vendor shall not commence or continue performance of the Services without the prior written consent of the Minister. If the Minister is of the opinion the Vendor is in a conflict of interest, the Minister may terminate this Contract.

SURVIVAL OF TERMS

- 30. This Contract shall continue during the Warranty Period and despite any other provision of this Contract, those clauses which by their nature continue after the conclusion or termination of this Contract shall continue after such conclusion or termination, including:
 - (a) clause 8 Records
 - (b) clause 12 Material Ownership
 - (c) clause 14 Confidentiality
 - (d) clause 16 Warranty
 - (e) clause 17 Third Party Claims
 - (f) clause 18 Intellectual Property
 - (g) clause 19 Responsibility and Limitation of Liability-Claims by the Minister
- 31. In the case of conflicts, discrepancies, errors or omissions among the Request for Proposals, Proposal, this document and any amendments; the documents and amendments to them shall take precedence and govern in the following order:
 - (a) this document
 - (b) Request for Proposals
 - (c) Proposal

GENERAL

- 32. The Vendor shall
 - (a) ensure that its employees comply with the provisions of this Contract, and
 - (b) contract with its subcontractors and agents to comply with the provisions of this Contract.
- 33. Each party shall perform the acts, execute and deliver the writings, and give the assurances necessary to give full effect to this Contract.
- 34. Time is of the essence of this Contract.
- 35. This Contract contains the entire agreement of the parties concerning the subject matter of this Contract and no other understandings or agreements, verbal or otherwise, exist between the parties.
- 36. The rights, remedies and privileges of the Minister under this Contract are cumulative and any one or more may be exercised.
- 37. The parties shall not change this Contract except by written agreement.
- 38. This Contract shall be interpreted and applied in the courts, and according to the laws in force, in the Province of Alberta.

39. This Contract shall be for the benefit of and binds the successors and assigns of the parties.
40. The Minister certifies that the purchaser of the property and/or services described in this Contract is the Government of Alberta or a listed tax-free Government of Alberta Agency, and the purchaser is therefore not subject to the GST or the HST. The Government of Alberta's GST Registration Number is 124072513.
41. The Minister may deduct from all payments to the Vendor such amounts as required by the Income Tax Act (Canada), as amended, revised or substituted from time to time.
42. The headings in this document have been included for convenience only and they do not define, limit or enlarge the scope or meaning of this document or any part of it.
43. In this Contract words in the singular include the plural and words in the plural include the singular.
44. This Contract may be executed in any number of counterparts or by facsimile or electronically, each of which shall be deemed an original and all of which shall together constitute one and the same contract.

The parties have made this Contract.

HER MAJESTY THE QUEEN in right
of Alberta, as represented by
the Minister of _____

(Name of Vendor)

Signature

Signature

Title

Title

Date

Date

Schedule “A”