

FORM OF AGREEMENT

BETWEEN:

Export Development Canada

(referred to as “EDC”)

AND:

[*INSERT FULL LEGAL NAME OF SUPPLIER*]

(referred to as the “Supplier”)

In consideration of their respective agreements set out herein, the parties covenant and agree as follows:

1. Contract Documents

The contract between the parties in respect of:

[Insert Name of Project or Brief Description of Deliverables – should match the description used as the title of the RFX document]

is comprised of the following documents, which are collectively referred to as the “Contract”:

- (a) this Agreement;
- (b) the Schedule of Deliverables, Rates, and Specific Provisions, attached hereto as Schedule 1;
- (c) the Standard Terms and Conditions, attached hereto as Schedule 2;
- (d) the **[*Insert RFX Document Name and #*]**, including any addenda, (the “Solicitation Document”); and
- (e) all the documentation submitted by the Supplier in response to the Solicitation Document (the “Supplier’s Submission”).

2. Interpretive Value of Contract Documents

Any ambiguity, conflict, or inconsistency between or among the documents comprising the Contract will be resolved by giving precedence to the express terms of the documents in the order in which they appear above, so that a first-mentioned document shall prevail notwithstanding any term or aspect of a later-mentioned document.

3. Execution

This Agreement may be executed in counterparts and (i) delivered by facsimile transmission or (ii) scanned and delivered by electronic transmission, and when so executed and delivered, will be deemed an original.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date written below.

Export Development Canada

Signature:

Name:

Title:

Date of Signature:

I have the authority to bind EDC.

Signature:

Name:

Title:

Date of Signature:

I have authority to bind EDC.

【Insert Supplier's Full Legal Name**】**

Signature:

Name:

Title:

Date of Signature:

I have the authority to bind the Supplier.

Schedule 1 – Schedule of Deliverables, Rates and Specific Provisions

A. Description of Deliverables

[*Describe the Deliverables. Reference can be made to the Solicitation Document and/or Supplier Submission, as appropriate*]

The Supplier shall provide the Deliverables as described in Appendix B, Section A of the Solicitation Document.

The Deliverables include the following components:

1. Initial Design and Development Services

Describe the design and development services.

2. Implementation Services

Describe implementation services, such as integration and migration of data.

Indicate any specific user acceptance testing provisions, if different than or not already addressed in Article 10 (see Schedule 3 – Supplementary Terms and Conditions section F.).

3. Training Services

Describe any requirements for training.

4. Software-as-a-Service

Provide overview of Software-as-a-Service deliverables and include the following:

These Deliverables are governed by a Software-as-a-Service agreement. Once executed, the Software-as-a-Service agreement shall form part of this Schedule 1 and shall be subject to all of the terms and conditions of the Contract.

The Software-as-a-Service Agreement should address licensing or other rights of use and termination transition services to ensure recovery and portability of data.

5. Software Licence

Provide overview of Software Licence deliverables and include the following:

These Deliverables are governed by the Software Licence granted by the Supplier, which shall satisfy the requirements of paragraph 7.04 of the Contract.

6. Hosting, Maintenance and Support

Describe any requirements for hosting, maintenance and support and include the following:

These Deliverables are governed by a Service Level Agreement. Once executed, the Service Level Agreement shall form part of this Schedule 1 and shall be subject to all of the terms and conditions of the Contract.

Where hosting services are provided, the Service Level Agreement should address termination transition services to ensure recovery and portability of data.

7. Future Design and Development Services

Describe any requirements for future design and development services, such as the implementation of changes in functional requirements.

B. Rates and Disbursements

B.1 Maximum Fee

Notwithstanding anything else in the Contract, the total amount payable by EDC to the Supplier under the Contract shall not exceed [*insert maximum contract amount*] (\$xxx).

B.2 Personnel and Rates

The following individuals are responsible for the provision of the Deliverables. The Rates for these individuals are set out below and shall remain fixed during the Term of this Contract:

[*insert personnel and rate information or replace this section with other applicable form of rate breakdown*]

C. Payment Terms

The payment terms for the Contract are as follows:

All fees payable to the Supplier shall be in Canadian funds. The Supplier shall prepare and submit invoices monthly on the 10th day of the month following the month in which the Services were rendered or the Deliverables were completed or accepted, as applicable. Each invoice shall specifically reference the applicable EDC purchase order number and include time sheets and any other documentation reasonably requested by EDC. EDC shall pay approved invoices within 30 days of receipt of such invoice. Payment shall be in Canadian funds unless otherwise specified by mutual agreement.

[*insert payment terms (i.e. monthly invoices, full payment upon acceptance, progress payments, etc.)*]

D. EDC and Supplier Representatives

EDC Representative and contact information for the Contract is:

[*insert name and title of EDC's representative in charge of the contract and contact details, including mailing address and email address*]

The Supplier Representative and contact information for the Contract is:

[*insert name and title of Supplier representative in charge of the contact and contact details, including mailing address and email address*]

E. Term of Contract

The Contract shall take effect on the [*insert date*] (the “**Effective Date**”) and shall be in effect for a period of [*insert # of years or months] from the Effective Date, with an option in favour of EDC to extend the term for an additional period of [*insert extension period, if applicable, or revise this language as necessary*], unless it is terminated earlier in accordance with the terms of the Contract or otherwise by operation of law.

F. Specific Provisions

[*Insert any additional contract performance terms, including identifying any specific individuals responsible for delivery. In addition, indicate if there are modifications to the Standard Terms and Conditions in Schedule 2 and note any express deletions from Supplier’s Submission or negotiated changes to the Solicitation Document, if applicable*]

F.1. Waiver of Moral Rights

If, pursuant to the Contract, EDC requests the execution of a waiver of moral rights, the waiver will be provided in the following form:

WAIVER OF MORAL RIGHTS

THIS WAIVER OF MORAL RIGHTS made in duplicate as of [*insert date].

I, [**** insert legal name of the individual**], an author of any or all of the Deliverables as defined in the Contract for [insert description], dated [****insert date****] between [**** insert legal name of the Supplier**] and the [**insert legal name of EDC**] (“EDC”), hereby expressly, irrevocably and without restriction, waive in favour of EDC, all Moral Rights with respect to the Deliverables and this waiver may be invoked without restriction by any person authorized by EDC to use the Deliverables.

In this Waiver of Moral Rights, "Moral Rights" has the same meaning as in the *Copyright Act*, R.S.C. 1985, c. C-42, as amended or replaced from time to time and includes comparable rights in applicable jurisdictions.

F.2. Security Clearance

In addition to the Supplier’s obligations set out in Article 4.09 (Performance by Specified Individuals only) of the Standard Terms and Conditions in Schedule 2, the Supplier shall provide specified individuals that have a minimum of the Government of Canada’s Enhanced Reliability security clearance, or equivalent as determined by EDC Security. For greater clarity, EDC Security clearance requirements may include verification of personal data, educational and professional qualifications, employment history, and other similar screening.

IN WITNESS WHEREOF I have executed this Waiver of Moral Rights as of the date written above.

Signature:

Name:

Date:

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ARTICLE 1 – INTERPRETATION

1.01 Defined Terms

When used in the Contract, the following words or expressions have the following meanings:

“Authority” means any government authority, agency, body, or department, whether federal, provincial, or municipal, having or claiming jurisdiction over the Contract; and **“Authorities”** means all such authorities, agencies, bodies, and departments;

“Business Day” means any working day, Monday to Friday inclusive, but excluding statutory holidays and other days on which EDC has elected to be closed for business;

“Canadian Privacy and Access to Information Law” means the *Privacy Act* and the *Access to Information Act*;

“Conflict of Interest” includes, but is not limited to, any situation or circumstance where: (a) in relation to the procurement process, the Supplier had an unfair advantage or engaged in conduct, directly or indirectly, that may have given it an unfair advantage, including, but not limited to: (i) having access to information that is confidential to EDC and not available to other bidders, proponents, or respondents; (ii) communicating with any person with a view to influencing preferred treatment in the procurement process; or (iii) engaging in conduct that compromises or could be seen to compromise the integrity of the open and competitive procurement process; or (b) in relation to the performance of the Contract, the Supplier’s other commitments, relationships, or financial interests (i) could or could be seen to exercise an improper influence over the objective, unbiased, and impartial exercise of its independent judgment; or (ii) could or could be seen to compromise, impair, or be incompatible with the effective performance of its contractual obligations;

“Deliverables” means everything developed for or provided to EDC in the course of performing under the Contract or agreed to be provided to EDC under the Contract by the Supplier or its directors, officers, employees, agents, partners, affiliates, volunteers, or subcontractors, as further defined, but not limited by, Schedule 1, including, but not limited to, any goods or services or any and all Intellectual Property and any and all concepts, techniques, ideas, information, documentation, and other materials, however recorded, developed, or provided;

“Direct Damages” include direct or general damages including:

- (a) damages that are reasonably contemplated as being the probable consequences of breach of the Contract, but exclude those damages that, in order to be reasonably contemplated, require knowledge of special circumstances, which are not known by both parties;
- (b) damages that are reasonably foreseeable as being the probable consequences of a tort that falls within the scope of the Contract, subject to any express limitation or negation of the tort duty, or of the right to sue in tort, set out in the Contract; and
- (c) where the Supplier has failed to remedy or correct a deficiency in the Deliverables required under the Contract within the timeframes prescribed under the Contract or under an EDC rectification request, the costs of obtaining replacement Deliverables that are substantially equivalent to the Deliverables required under the Contract including:
 - (i) costs incurred by EDC to remove and return any deficient Deliverables and re-procure deliverables equivalent to the Deliverables required under the Contract including all administrative costs, retraining costs, costs attributable to price increases or other costs

arising out of any temporary or interim measures that may be required because of any deficiencies in the Deliverables;

- (ii) fines, penalties, or awards of damages paid or payable by EDC resulting from unauthorized disclosure of, or access to, EDC Confidential Information, except those arising from EDC's own misconduct or negligent acts or omissions; or costs of restoring, recreating or correcting any lost or damaged records or data provided, however, that the Supplier shall not be liable for any losses incurred as a result of any failure by EDC to maintain such procedures that it would be reasonably expected to implement for the back-up and recovery of any records or data.

“EDC Confidential Information” means all information of EDC that is of a confidential nature, including all confidential information in the custody or control of EDC, regardless of whether it is identified as confidential or not, and whether recorded or not, and however fixed, stored, expressed, or embodied, which comes into the knowledge, possession, or control of the Supplier in connection with the Contract. For greater certainty, EDC Confidential Information shall: (a) include: (i) all new information derived at any time from any such information whether created by EDC, the Supplier, or any third party; (ii) all information (including Personal Information) that EDC is obliged, or has the discretion, not to disclose under provincial or federal legislation or otherwise at law; but (b) not include information that: (i) is or becomes generally available to the public without fault or breach on the part of the Supplier of any duty of confidentiality owed by the Supplier to EDC or to any third party; (ii) the Supplier can demonstrate to have been rightfully obtained by the Supplier, without any obligation of confidence, from a third party who had the right to transfer or disclose it to the Supplier free of any obligation of confidence; (iii) the Supplier can demonstrate to have been rightfully known to or in the possession of the Supplier at the time of disclosure, free of any obligation of confidence when disclosed; or (iv) is independently developed by the Supplier; but the exclusions in this subparagraph shall in no way limit the meaning of Personal Information or the obligations attaching thereto under the Contract or at law;

“EDC Representative” is as set out in Schedule 1 (Schedule of Deliverables, Rates, and Specific Provisions);

“Effective Date” is as set out in Schedule 1 (Schedule of Deliverables, Rates, and Specific Provisions);

“Expiry Date” is as set out in Schedule 1 (Schedule of Deliverables, Rates, and Specific Provisions);

“Indemnified Parties” means EDC and its wholly-owned subsidiaries, as well as their respective officials, directors, officers, agents, employees, and volunteers;

“Industry Standards” include, but are not limited to (a) the provision of any and all labour, supplies, equipment, and other goods or services that are necessary and can reasonably be understood or inferred to be included within the scope of the Contract or customarily furnished by Persons providing Deliverables of the type provided hereunder in similar situations in Canada and; (b) adherence to commonly accepted norms of ethical business practices, which shall include the Supplier establishing, and ensuring adherence to, precautions to prevent its employees or agents from providing or offering gifts or hospitality of greater than nominal value to any person acting on behalf of or employed by EDC;

“Intellectual Property” means any intellectual, industrial, or other proprietary right of any type in any form protected or protectable under the laws of Canada, any foreign country, or any political subdivision of any country, including, without limitation, any intellectual, industrial, or proprietary rights protected or protectable by legislation, by common law, or at equity;

“Legal Advice” means any legal advice, counselling or information provided by EDC’s lawyers or EDC’s external counsel to EDC, which the Supplier or its representatives may be exposed to during the course of performance of obligations under the Contract;

“Newly Created Intellectual Property” means any Intellectual Property created by the Supplier in the course of performance of its obligations under the Contract;

“Person” if the context allows, includes any individuals, persons, firms, partnerships, or corporations, or any combination thereof;

“Personal Information” means recorded information about an identifiable individual or that may identify an individual;

“Proceeding” means any action, claim, demand, lawsuit, or other proceeding;

“Rates” means the applicable price, in Canadian funds, to be charged for the applicable Deliverables, as set out in Schedule 1 (Schedule of Deliverables, Rates, and Specific Provisions);

“Record” means any recorded information, including any Personal Information, in any form: (a) provided by EDC to the Supplier, or provided by the Supplier to EDC, for the purposes of the Contract; or (b) created by the Supplier in the performance of the Contract;

“Requirements of Law” mean all applicable requirements, laws, statutes, codes, acts, ordinances, orders, decrees, injunctions, by-laws, rules, regulations, official plans, permits, licences, authorizations, directions, and agreements with all Authorities that now or at any time hereafter may be applicable to either the Contract or the Deliverables or any part of them;

“Supplier Representative” is as set out in Schedule 1 (Schedule of Deliverables, Rates, and Specific Provisions);

“Supplier’s Intellectual Property” means Intellectual Property owned by the Supplier prior to its performance under the Contract or created by the Supplier during the Term of the Contract independently of the performance of its obligations under the Contract;

“Term” is as set out in Schedule 1 (Schedule of Deliverables, Rates, and Specific Provisions); and

“Third-Party Intellectual Property” means any Intellectual Property owned by a party other than EDC or the Supplier.

ARTICLE 2 – GENERAL PROVISIONS

2.01 No Indemnities from EDC

Notwithstanding anything else in the Contract, any express or implied reference to EDC providing an indemnity or any other form of indebtedness or contingent liability that would directly or indirectly increase the indebtedness or contingent liabilities of EDC beyond the obligation to pay the Rates in respect of Deliverables accepted by EDC, whether at the time of entering into the Contract or at any time during the Term, shall be void and of no legal effect.

2.02 Entire Contract

The Contract embodies the entire agreement between the parties with regard to the provision of the Deliverables and supersedes any prior understanding or agreement, collateral, oral, or otherwise with respect to the provision of the Deliverables, existing between the parties at the Effective Date of the Contract.

2.03 Severability

If any term or condition of the Contract, or the application thereof to the parties or to any Persons or circumstances, is to any extent invalid or unenforceable, the remainder of the Contract, and the application of such term or condition to the parties, Persons, or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby.

2.04 Failure to Enforce Not a Waiver

Any failure by EDC to insist in one (1) or more instances upon strict performance by the Supplier of any of the terms or conditions of the Contract shall not be construed as a waiver by EDC of its right to require strict performance of any such terms or conditions, and the obligations of the Supplier with respect to such performance shall continue in full force and effect.

2.05 Changes by Written Amendment Only

Any changes to the Contract shall be by written amendment signed by the parties. No changes shall be effective or shall be carried out in the absence of such an amendment. Any such written changes shall be included in the definition of Contract.

2.06 Force Majeure

Neither party shall be liable for damages caused by delay or failure to perform its obligations under the Contract where such delay or failure is caused by an event beyond its reasonable control. The parties agree that an event shall not be considered beyond one's reasonable control if a reasonable business person applying due diligence in the same or similar circumstances under the same or similar obligations as those contained in the Contract would have put in place contingency plans to either materially mitigate or negate the effects of such event. Without limiting the generality of the foregoing, the parties agree that force majeure events shall include natural disasters and acts of war, insurrection, and terrorism but shall not include shortages or delays relating to supplies or services. If a party seeks to excuse itself from its obligations under the Contract due to a force majeure event, that party shall immediately notify the other party of the delay or non-performance, the reason for such delay or non-performance, and the anticipated period of delay or non-performance. If the anticipated or actual delay or non-performance exceeds fifteen (15) Business Days, the other party may immediately terminate the Contract by giving notice of termination and such termination shall be in addition to the other rights and remedies of the terminating party under the Contract, at law, or in equity.

2.07 Notices by Prescribed Means

Notices shall be in writing and shall be delivered by postage-prepaid envelope, personal delivery, or email, and shall be addressed to, respectively, EDC Representative and the Supplier Representative. Notices shall be deemed to have been given: (a) in the case of postage-prepaid envelope, five (5) Business Days after such notice is mailed; or (b) in the case of personal delivery or email one (1) Business Day after such notice is received by the other party. In the event of a postal disruption, notices must be given by personal delivery or by email. Unless the parties expressly agree in writing to additional methods of notice, notices may only be provided by the methods contemplated in this paragraph.

2.08 Governing Law

The Contract shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

ARTICLE 3 – NATURE OF RELATIONSHIP BETWEEN EDC AND SUPPLIER

3.01 Supplier's Power to Contract

The Supplier represents and warrants that it has the full right and power to enter into the Contract and there is no agreement with any other Person which would in any way interfere with the rights of EDC under the Contract.

3.02 Representatives May Bind the Parties

The parties represent that their respective representatives have the authority to legally bind them to the extent permissible by the Requirements of Law.

3.03 Supplier Not a Partner, Agent, or Employee

The Supplier shall have no power or authority to bind EDC or to assume or create any obligation or responsibility, express or implied, on behalf of EDC. The Supplier shall not hold itself out as an agent, partner, or employee of EDC. Nothing in the Contract shall have the effect of creating an employment, partnership, or agency relationship between EDC and the Supplier or any of the Supplier's directors, officers, employees, agents, partners, affiliates, volunteers, or subcontractors.

3.04 Non-Exclusive Contract, Work Volumes

The Supplier acknowledges that it is providing the Deliverables to EDC on a non-exclusive basis. EDC makes no representation regarding the volume of goods and services required under the Contract. EDC reserves the right to contract with other parties for the same or similar goods and services as those provided by the Supplier and reserves the right to obtain the same or similar goods and services internally.

3.05 Responsibility of Supplier

The Supplier agrees that it is liable for the acts and omissions of its directors, officers, employees, agents, partners, affiliates, volunteers, and subcontractors. This paragraph is in addition to any and all of the Supplier's liabilities under the Contract and under the general application of law. The Supplier shall advise these individuals and entities of their obligations under the Contract and shall ensure their compliance with the applicable terms of the Contract. In addition to any other liabilities of the Supplier pursuant to the Contract or otherwise at law or in equity, the Supplier shall be liable for all damages, costs, expenses, losses, claims, or actions arising from any breach of the Contract resulting from the actions of the above-mentioned individuals and entities. This paragraph shall survive the termination or expiry of the Contract.

3.06 No Subcontracting or Assignment

The Supplier shall not subcontract or assign the whole or any part of the Contract or any monies due under it without the prior written consent of EDC. Such consent shall be in the sole discretion of EDC and subject to the terms and conditions that may be imposed by EDC. Without limiting the generality of the conditions which EDC may require prior to consenting to the Supplier's use of a subcontractor, every contract entered into by the Supplier with a subcontractor shall adopt all of the terms and conditions of the Contract as far as applicable to those parts of the Deliverables provided by the subcontractor. Nothing contained in the Contract shall create a contractual relationship between any subcontractor or its directors, officers, employees, agents, partners, affiliates, or volunteers and EDC.

3.07 Duty to Disclose Change of Control

In the event that the Supplier undergoes a change in control, the Supplier shall immediately disclose such change in control to EDC and shall comply with any terms and conditions subsequently prescribed by EDC resulting from the disclosure.

3.08 Conflict of Interest

The Supplier shall: (a) avoid any Conflict of Interest in the performance of its contractual obligations; (b) disclose to EDC without delay any actual or potential Conflict of Interest that arises during the performance of its contractual obligations; and (c) comply with any requirements prescribed by EDC to resolve any Conflict of Interest. In addition to all other contractual rights or rights available at law or in equity, EDC may immediately terminate the Contract upon giving notice to the Supplier where: (a) the Supplier fails to disclose an actual or potential Conflict of Interest; (b) the Supplier fails to comply with any requirements prescribed by EDC to resolve a Conflict of Interest; or (c) the Supplier's Conflict of Interest cannot be resolved to the satisfaction of EDC. This paragraph shall survive any termination or expiry of the Contract.

3.09 Contract Binding

The Contract can be enforced by and is binding upon the parties and their successors, executors, administrators, and their permitted assigns.

ARTICLE 4 – PERFORMANCE BY SUPPLIER

4.01 Commencement of Performance

The Supplier shall commence performance upon receipt of written instructions from EDC.

4.02 Deliverables Warranty

The Supplier hereby represents and warrants that the Deliverables shall: (i) be provided fully and diligently in a professional and competent manner by persons qualified and skilled in their occupations; and (ii) be free from defects in material, workmanship, and design, suitable for the purposes intended, in compliance with all applicable specifications and free from liens or encumbrance on title; and furthermore that all Deliverables shall be provided in accordance with: (a) the Contract; (b) Industry Standards; and (c) Requirements of Law. If any of the Deliverables, in the opinion of EDC, are inadequately provided or require corrections, the Supplier shall forthwith make the necessary corrections at its own expense as specified by EDC in a rectification notice.

4.03 Health and Safety

Without limiting the generality of section 4.02, the Supplier warrants and agrees that it has complied with and will comply with, and ensure that any subcontractors comply with, all applicable occupational health and safety laws, regulations, and standards in relation to the performance of the Supplier's obligations under the Contract. The Supplier shall provide EDC with evidence of the Supplier's compliance with this section upon request by EDC.

4.04 Shipment of Goods

To the extent that the Deliverables include the shipment of goods to EDC, all such goods shall be delivered F.O.B. Destination, Freight Prepaid to EDC's place of business or such other location as may be specified in the Contract. No transportation or delivery charges of any kind, including, without limitation, packing, boxing, storage, cartage, or customs brokerage charges, shall be paid by EDC, unless specifically agreed by EDC in writing. The Deliverables will be suitably packed in such a manner as will ensure their safe transportation undamaged to their destination. The Deliverables will remain at the risk of the Supplier until the Deliverables are received by EDC. Receipt of the Deliverables at EDC's location does not

constitute acceptance of the Deliverables by EDC. The Deliverables are subject to EDC's inspection and acceptance within a reasonable period of time after delivery. If any of the Deliverables, in the opinion of EDC, are inadequately provided or require corrections, the Supplier shall make the necessary corrections at its own expense as specified by EDC in a rectification notice.

4.05 Use and Access Restrictions

The Supplier acknowledges that unless it obtains specific written preauthorization from EDC, any access to or use of EDC property, technology, or information that is not necessary for the performance of its contractual obligations with EDC is strictly prohibited. The Supplier further acknowledges that EDC may monitor the Supplier to ensure compliance with this paragraph. This paragraph is in addition to and shall not limit any other obligation or restriction placed upon the Supplier. In the event that it becomes necessary for the Supplier to use or access EDC's facilities, property, technology, system, network, or devices (collectively, "EDC Assets"), the Supplier represents and warrants that it shall not use such EDC Assets for an unauthorized purpose, including without limitation, any use which could disable, damage, overburden, or impair the EDC Assets, or interfere with any authorized third party's enjoyment of such EDC Assets.

4.06 Notification by Supplier of Discrepancies

During the Term, the Supplier shall advise EDC promptly of: (a) any contradictions, discrepancies, or errors found or noted in the Contract; (b) supplementary details, instructions, or directions that do not correspond with those contained in the Contract; and (c) any omissions or other faults that become evident and should be corrected in order to provide the Deliverables in accordance with the Contract and Requirements of Law.

4.07 Change Requests

EDC may, in writing, request changes to the Contract, which may include altering, adding to, or deleting any of the Deliverables. The Supplier shall comply with all reasonable EDC change requests and the performance of such request shall be in accordance with the terms and conditions of the Contract. If the Supplier is unable to comply with the change request, it shall promptly notify EDC and provide reasons for such non-compliance. In any event, any such change request shall not be effective until a written amendment reflecting the change has been executed by the parties.

4.08 Pricing for Requested Changes

Where an EDC change request includes an increase in the scope of the previously contemplated Deliverables, EDC shall set out, in its change request, the proposed prices for the contemplated changes. Where the Rates in effect at the time of the change request: (a) include pricing for the particular type of goods or services contemplated in the change request, the Supplier shall not unreasonably refuse to provide those goods or services at prices consistent with those Rates; or (b) are silent to the applicable price for the particular goods or services contemplated in the change request, the price shall be negotiated between EDC and the Supplier within a reasonable period of time, and in any event, such change request shall not become effective until a written amendment reflecting the change has been executed by the parties.

4.09 Performance by Specified Individuals Only

The Supplier agrees that to the extent that specific individuals are named in the Contract as being responsible for the provision of the Deliverables, only those individuals shall provide the Deliverables under the Contract. The Supplier shall not replace or substitute any of the individuals named in the Contract without the prior written approval of EDC, which may not arbitrarily or unreasonably be

withheld. Should the Supplier require the substitution or replacement of any of the individuals named in the Contract, it is understood and agreed that any proposed replacement must possess similar or greater qualifications than the individual named in the Contract. The Supplier shall not claim fees for any replacement individual greater than the Rates established under the Contract. In the event the individuals responsible for the provision of the Deliverables are working in Canada, the Supplier shall ensure that such individuals have obtained all necessary permissions to work in Canada and that such individuals maintain the right to work in Canada for as long as they are providing services to EDC.

4.10 Time

Time is of the essence of the Contract.

4.11 Rights and Remedies Not Limited to Contract

The express rights and remedies of EDC and obligations of the Supplier set out in the Contract are in addition to and shall not limit any other rights and remedies available to EDC or any other obligations of the Supplier at law or in equity.

ARTICLE 5 – PAYMENT FOR PERFORMANCE AND AUDIT

5.01 Payment According to Contract Rates

EDC shall, subject to the Supplier's compliance with the provisions of the Contract, pay the Supplier for the Deliverables provided at the Rates established under the Contract.

5.02 Hold Back or Set Off

EDC may hold back payment or set off against payment if, in the opinion of EDC acting reasonably, the Supplier has failed to comply with any requirements of the Contract.

5.03 No Expenses or Additional Charges

There shall be no other charges payable by EDC under the Contract to the Supplier other than the Rates established under the Contract.

5.04 Payment of Taxes and Duties

Unless otherwise stated, the Supplier shall pay all applicable taxes, including excise taxes incurred by or on the Supplier's behalf with respect to the Contract.

5.05 Withholding Tax

EDC shall withhold any applicable withholding tax from amounts due and owing to the Supplier under the Contract and shall remit it to the appropriate government in accordance with applicable tax laws. This paragraph shall survive any termination or expiry of the Contract.

5.06 Interest on Late Payment

If a payment is in arrears through no fault of the Supplier, the interest charged by the Supplier, if any, for any late payment shall not exceed the Bank of Canada's prime rate in effect on the date that the payment went into arrears.

5.07 Document Retention and Audit

For seven (7) years after the expiration or termination of the Contract, the Supplier shall maintain all necessary records to substantiate: (a) all charges and payments under the Contract; and (b) that the Deliverables were provided in accordance with the Contract and with Requirements of Law. During the Term, and for seven (7) years after the expiry or termination of the Contract, the Supplier shall permit and

assist EDC in conducting audits of the operations of the Supplier to verify (a) and (b) above. EDC shall provide the Supplier with at least ten (10) Business Days prior notice of its requirement for such audit. The Supplier's obligations under this paragraph shall survive any termination or expiry of the Contract.

ARTICLE 6 – CONFIDENTIALITY

6.01 Confidentiality and Promotion Restrictions

Any publicity or publications related to the Contract shall be at the sole discretion of EDC. EDC may, in its sole discretion, acknowledge the Deliverables provided by the Supplier in any such publicity or publication. The Supplier shall not make use of its association with EDC without the prior written consent of EDC. Without limiting the generality of this paragraph, the Supplier shall not, among other things, at any time directly or indirectly, communicate with the media in relation to the Contract unless it has first obtained the express written authorization to do so by EDC.

6.02 EDC Confidential Information

During and following the Term, the Supplier shall: (a) keep all EDC Confidential Information confidential and secure; (b) limit the disclosure of EDC Confidential Information to only those of its directors, officers, employees, agents, partners, affiliates, volunteers, or subcontractors who have a need to know it for the purpose of providing the Deliverables and who have been specifically authorized to have such disclosure; (c) not directly or indirectly disclose, destroy, exploit, or use any EDC Confidential Information (except for the purpose of providing the Deliverables, or except if required by order of a court or tribunal), without first obtaining: (i) the written consent of EDC; and (ii) in respect of any EDC Confidential Information about any third party, the written consent of such third party; (d) provide EDC Confidential Information to EDC on demand; and (e) return all EDC Confidential Information to EDC on or before the expiry or termination of the Contract, with no copy or portion kept by the Supplier.

6.03 Restrictions on Copying

The Supplier shall not copy any EDC Confidential Information, in whole or in part, unless copying is essential for the provision of the Deliverables. On each copy made by the Supplier, the Supplier must reproduce all notices which appear on the original.

6.04 Notice of Breach and Data Breach Obligations

If the Supplier (a) does not comply or suspects that it has not complied with a confidentiality provision in the Contract; or (b) becomes aware of or reasonably suspects any potential or actual unauthorized or unlawful collection, access, use, disclosure or disposition of EDC Confidential Information (either of the events described in (a) or (b), the "Incident"), the Supplier must: (a) immediately (no later than 24 hours) notify EDC's Compliance & Ethics Team by email at P&IR@edc.ca of the particulars of the Incident (including how and when the Incident occurred), such notification to continue as details become available; (b) immediately preserve and protect all evidence that relates to the Incident; and (c) in a timely manner take all steps, including retaining third parties, to: (i) mitigate the impact of the Incident; (ii) prevent a subsequent occurrence of a similar Incident; and (iii) otherwise co-operate with EDC to resolve the Incident; and (iv) if directed by EDC, notify the parties who are affected by the Incident.

6.05 Injunctive and Other Relief

The Supplier acknowledges that a breach of any provisions of this Article may cause irreparable harm to EDC or to any third party to whom EDC owes a duty of confidence, and that the injury to EDC or to any third party may be difficult to calculate and inadequately compensable in damages. The Supplier agrees

that EDC is entitled to obtain injunctive relief (without proving any damage sustained by it or by any third party) or any other remedy against any actual or potential breach of the provisions of this Article.

6.06 **Notice and Protective Order**

TO THE MAXIMUM EXTENT PERMITTED BY LAW, if the Supplier or any of its directors, officers, employees, agents, representatives or advisors become legally compelled to disclose any EDC Confidential Information:

- (a) due to a legal obligation arising out of the laws of any foreign jurisdiction, the Supplier will provide EDC with prompt notice to that effect and shall not disclose EDC Confidential Information without prior authorization from EDC; or
- (b) due to a legal obligation arising under Canadian law the Supplier will provide EDC with prompt notice to that effect in order to allow EDC to seek one or more protective orders or other appropriate remedies to prevent or limit such disclosure, and it shall co-operate with EDC and its legal counsel to the fullest extent. If such protective orders or other remedies are not obtained, the Supplier will disclose only that portion of EDC Confidential Information which the Supplier is legally compelled to disclose, only to such person or persons to which the Supplier is legally compelled to disclose, and the Supplier shall provide notice to each such recipient (in co-operation with legal counsel for EDC) that such EDC Confidential Information is confidential and subject to non-disclosure on terms and conditions equal to those contained in the Agreement and, if possible, shall obtain each recipient's written agreement to receive and use such EDC Confidential Information subject to those terms and conditions.

6.07 **Records and Legislative Compliance**

The Supplier and EDC acknowledge and agree that *Canadian Privacy and Access to Information Law* applies to and governs all Records and may require the disclosure of such Records to third parties. Furthermore, the Supplier agrees: (a) to keep Records secure; (b) to provide Records to EDC within seven (7) calendar days of being directed to do so by EDC for any reason including an access request or privacy issue; (c) not to access any Personal Information unless EDC determines, in its sole discretion, that access is permitted under *Canadian Privacy and Access to Information Law* and is necessary in order to provide the Deliverables; (d) not to directly or indirectly use, collect, disclose, or destroy any Personal Information for any purposes that are not authorized by EDC; (e) to ensure the security and integrity of Personal Information and keep it in a physically secure and separate location safe from loss, alteration, destruction, or intermingling with other records and databases and to implement, use, and maintain the most appropriate products, tools, measures, and procedures to do so; (f) to restrict access to Personal Information to those of its directors, officers, employees, agents, partners, affiliates, volunteers, or subcontractors who have a need to know it for the purpose of providing the Deliverables and who have been specifically authorized by a EDC representative to have such access for the purpose of providing the Deliverables; (g) to implement other specific security measures that in the reasonable opinion of EDC would improve the adequacy and effectiveness of the Supplier's measures to ensure the security and integrity of Personal Information and Records generally; and (h) that any confidential information supplied to EDC may be disclosed by EDC where it is obligated to do so under *Canadian Privacy and Access to Information Law*, by an order of a court or tribunal, or pursuant to a legal proceeding, and the provisions of this paragraph shall prevail over any inconsistent provisions in the Contract.

6.08 **Privacy Safeguards**

In addition to any other specific measures established under paragraph 6.07 or elsewhere under the Contract, the Supplier will take all necessary measures to prevent:

- (a) dissemination of EDC Confidential Information and Records to any third party or to any foreign jurisdiction without EDC's prior express written approval;
- (b) remote access to EDC Confidential Information and Records from outside of Canada; or
- (c) access by any employee or any other third party to EDC Confidential Information and Records without EDC's prior express written approval and the execution by the employee or third party in question of a non-disclosure agreement prescribed by EDC.

6.09 Audit of Security Measures and Privacy Safeguards

EDC may require the Supplier, at the Supplier's expense, to engage a mutually agreed third party to audit the security measures and privacy safeguards of the Supplier. Any such audits may require the examination of some or all equipment used and some or all Records maintained by the Supplier in connection with the Contract. Any auditor appointed pursuant to this paragraph shall be entitled to examine and verify, both physically and electronically, the Supplier's privacy safeguards and security measures, policies, practices, capabilities and assurances.

The Supplier agrees to cooperate with EDC and provide reasonable assistance when EDC conducts any privacy impact assessment (PIA), threat risk assessment (TRA), or other assessment related to the security of the Deliverables.

If at any time, EDC deems that the Supplier has in place insufficient privacy safeguards and security measures, the result of which, in EDC's sole opinion, exposes EDC to unacceptable risk, the Supplier shall promptly implement safeguards and measures satisfactory to EDC to mitigate the risk exposure.

6.10 EDC Legal Advice and Solicitor-Client Privilege

During the course of the Supplier's performance of its obligations under this Contract, the Supplier and/or its representatives may be exposed to Legal Advice. The Supplier acknowledges and agrees that such Legal Advice is given for the benefit of EDC only, shall not be construed as legal advice to the Supplier, and shall be subject to EDC's solicitor-client privilege, as well as the confidentiality and intellectual property provisions herein that protect EDC.

6.11 Survival

The provisions of this Article shall survive any termination or expiry of the Contract.

ARTICLE 7 – INTELLECTUAL PROPERTY

7.01 EDC Intellectual Property

The Supplier agrees that all Intellectual Property and every other right, title and interest in and to all concepts, techniques, ideas, information and materials, however recorded, (including images and data) provided by EDC to the Supplier shall remain the sole property of EDC at all times.

7.02 No Use of EDC Insignia

The Supplier shall not use any insignia, trademarks, or logo of EDC except where required to provide the Deliverables, and only if it has received the prior written permission of EDC to do so.

7.03 Ownership of Intellectual Property

Unless the Contract expressly states otherwise, EDC shall be the sole owner of any Newly Created Intellectual Property, and the following provisions shall apply:

- (a) The Supplier irrevocably assigns to and in favour of EDC and EDC accepts every right, title and interest in and to all Newly Created Intellectual Property in the Deliverables, immediately following the creation thereof, for all time and irrevocably waives in favour of EDC all rights of integrity and other moral rights to all Newly Created Intellectual Property in the Deliverables, immediately following the creation thereof, for all time.
- (b) To the extent that any of the Deliverables include, in whole or in part, the Supplier's Intellectual Property, the Supplier grants to EDC a licence to use that Supplier Intellectual Property in the manner contemplated in this Article, the total consideration for which shall be payment of the Rates to the Supplier by EDC.
- (c) At the request of EDC, at any time or from time to time, the Supplier shall execute and agrees to cause its directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors to execute an irrevocable written waiver of any moral rights or other rights of integrity in the applicable Deliverable(s) in favour of EDC, such waiver to be in the form set out in Schedule 1, and which waiver may be invoked without restriction by any person authorized by EDC to use the Deliverables. The Supplier shall deliver such written waiver(s) to EDC within 10 Business Days of the receipt of the request from EDC.
- (d) The Supplier shall place a copyright notice on all recorded Deliverables it provides to EDC under the Contract in the following form: "EDC, [insert year of publication]."
- (e) At the request of EDC, at any time or from time to time, the Supplier shall execute and agrees to cause its directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors to execute a written assignment of copyright in the applicable Deliverable(s) to EDC. The Supplier shall deliver such written assignment(s) to EDC within 10 Business Days of the receipt of the request from EDC. The Supplier shall assist EDC in preparing any Canadian copyright registration that EDC considers appropriate. The Supplier will obtain or execute any other document reasonably required by EDC to protect the Intellectual Property of EDC.

7.04 **Supplier's Grant of Licence**

For those parts of the Deliverables that are Supplier Intellectual Property, the Supplier grants to EDC a perpetual, world-wide, non-exclusive, irrevocable, transferable, royalty free, fully paid up right and license: (a) to use, modify, reproduce and distribute, in any form, those Deliverables; and (b) to authorize other Persons, including agents, contractors or sub-contractors, to do any of the former on behalf of EDC.

To the extent that the Deliverables include the licencing of software to EDC, the Supplier shall grant a licence in the form of a "Software Licence" with terms and conditions satisfactory to EDC that shall at a minimum include the following:

- (a) a perpetual, irrevocable, world-wide, royalty-free, fully paid up, non-exclusive, unrestricted, fully transferable licence grant to the software (machine-readable object code) and any related documentation;
- (b) the right of EDC and its designated users (including, without limitation, EDC-authorized third party users) to install, copy, distribute, deploy and otherwise use the software, including without limitation the ability to make such modifications to the software in this context as may be required, with title to the software and any modifications retained by the Supplier;

- (c) the right of access to the software by an unlimited number of third party users, including the general public;
- (d) a licence to use the software in the environments and for the number of instances specified in the Contract;
- (e) a licence to use the software on any hardware and at any capacity;
- (f) a reasonable period of time in which to test and accept the software after it has been installed in EDC's environment;
- (g) a formal payment protocol that confirms that no licensing fees or other payments under the Contract shall be payable until the software has been formally accepted in writing by EDC;
- (h) a warranty that the Supplier has exclusive title to the software and documentation or otherwise has the right to grant the licence to EDC;
- (i) a warranty that the software is free from all encumbrances and does not contain any disabling code;
- (j) a warranty that the software shall be compatible with future versions or releases of the operating system on which it was originally installed and shall be subsequently maintained to remain so compatible;
- (k) a warranty that the software otherwise conforms to the requirements, functional specifications, warranties and standards set out in the Contract;
- (l) a licence to use the software at an internal or third party disaster recovery site;
- (m) a licence to use any other Deliverables provided under the Contract; and
- (n) a licence to use the Deliverables in the manner contemplated by and as otherwise described in the Solicitation Document.

Once executed, the Software Licence shall form part of Schedule 1 and shall be subject to all of the terms and conditions of the Contract. For greater certainty, no parts of the Software Licence shall conflict with the terms of the Contract and any such inconsistencies shall be void and of no legal effect.

7.05 **No Restrictive Material in Deliverables**

The Supplier shall not incorporate into any Deliverables anything that would restrict the right of EDC to modify, further develop or otherwise use the Deliverables in any way that EDC deems necessary, or that would prevent EDC from entering into any contract with any contractor other than the Supplier for the modification, further development of or other use of the Deliverables.

7.06 **Third-Party Intellectual Property**

The Supplier represents and warrants that the provision of the Deliverables shall not infringe or induce the infringement of any Third-Party Intellectual Property rights. The Supplier further represents and warrants that it has obtained assurances with respect to any Supplier Intellectual Property and Third-Party Intellectual Property that any rights of integrity or any other moral rights associated therewith have been waived.

7.07 **Escrow**

To the extent that the Deliverables include an obligation on the part of the Supplier to provide software escrow services to EDC, the Supplier and EDC will enter into a "Software Escrow Agreement" on terms satisfactory to EDC which shall include as a minimum the following provisions and protections:

- (a) The delivery into escrow of all source code, documentation and executables for the software.
- (b) The release of escrow materials in the event that the Supplier becomes bankrupt, insolvent, or ceases to operate as a going concern, or is otherwise unable or unwilling to support, maintain or adequately develop the software.

(c) EDC's right to request the Supplier to demonstrate to EDC that the escrowed materials are indeed what they purport to be.

(d) EDC's right to approve the Supplier's proposed escrow agent.

7.08 EDC May Prescribe Further Compliance

EDC reserves the right to prescribe the specific manner in which the Supplier shall perform its obligations relating to this Article.

7.09 Survival

The obligations contained in this Article shall survive the termination or expiry of the Contract.

ARTICLE 8 – INDEMNITIES AND INSURANCE

8.01 Supplier Indemnity

The Supplier hereby agrees to indemnify and hold harmless the Indemnified Parties from and against any and all liability, loss, costs, fines, penalties, damages and expenses (including legal, expert and consultant fees), causes of action, actions, claims, demands, lawsuits or other proceedings, (collectively, "Claims"), by whomever made, sustained, incurred, brought or prosecuted, including for breaches of confidentiality or privacy or Intellectual Property rights or for third party bodily injury (including death), personal injury and property damage, in any way based upon, occasioned by or attributable to anything done or omitted to be done by the Supplier, its subcontractors or their respective directors, officers, agents, employees, partners, affiliates, volunteers or independent contractors in the course of performance of the Supplier's obligations under, or otherwise in connection with, the Contract. The obligations contained in this paragraph shall survive the termination or expiry of the Contract.

8.02 Insurance

The Supplier hereby agrees to put in effect and maintain insurance for the Term, at its own cost and expense, with insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, all the necessary and appropriate insurance that a prudent person in the business of the Supplier would maintain including, but not limited to commercial general liability insurance on an occurrence basis for third-party bodily injury, personal injury, and property damage, to an inclusive limit of not less than **two million (\$2,000,000)** per occurrence and including products and completed operations liability. The policy is to include the following:

- (a) EDC as an additional named insured with respect to liability arising in the course of performance of the Supplier's obligations under, or otherwise in connection with, the Contract;
- (b) contractual liability coverage;
- (c) cross-liability and severability of interests clause;
- (d) employer liability coverage;
- (e) thirty-day (30-day) written notice of cancellation, termination, or material change;
- (f) tenant legal liability coverage (if applicable and with suitable sub-limits); and
- (g) non-owned automobile coverage with blanket contractual coverage for hired automobiles.

8.03 Proof of Insurance

The Supplier shall provide EDC with proof of the insurance required by the Contract in the form of valid certificates of insurance that reference the Contract and confirm the required coverage. The Supplier shall provide EDC with renewal replacements on or before the expiry of any such insurance. Upon the request of EDC, a copy of each insurance policy shall be made available to it. The Supplier shall ensure that each of its subcontractors obtains all the necessary and appropriate insurance that a prudent person in the business of the subcontractor would maintain and that EDC and Indemnified Parties are named as additional insured with respect to any liability arising in the course of performance of the subcontractor's obligations under the subcontract for the provision of the Deliverables.

8.04 Workplace Safety and Insurance

The Supplier warrants and agrees that it has complied and will comply with all applicable workplace safety and insurance laws and regulations and, if applicable, will provide proof of valid coverage by means of a current clearance certificate to EDC upon request. The Supplier covenants and agrees to pay when due, and to ensure that each of its subcontractors pays when due, all amounts required to be paid by it and its subcontractors under all applicable workplace safety and insurance laws and regulations during the Term. The Supplier further agrees to indemnify EDC for any and all liability, loss, costs, damages, and expenses (including legal fees) or other charges in connection with the Supplier's failure to comply with any applicable workplace safety and insurance laws or related to the Supplier's status with any workplace safety and insurance board or body.

8.05 Limitation of Liability

Neither party shall be liable for any consequential, indirect, incidental or special damages (meaning damages requiring special knowledge by one party of the other's circumstances), including lost profits or lost opportunity costs, suffered by the other party with respect to any Claims arising out of or in connection with the Contract but this shall not limit liability for Direct Damages. Liability under the Contract for all Claims whether they be Direct Damages or otherwise, shall not exceed ten million dollars (\$10,000,000) in Canadian funds, inclusive of the amounts recovered or recoverable through the insurance prescribed under the Contract, but none of these limitations shall restrict or limit liability for the following:

- (a) damages and costs arising from infringement or inducement of infringement of Third Party Intellectual Property rights;
- (b) claims for liens, attachments, charges or other encumbrances resulting from claims against the Supplier upon or in respect of any Deliverables furnished to EDC;
- (c) damages and costs applicable to any breach of the confidentiality and privacy provisions set out in the Contract;
- (d) damages and costs for (i) personal injury (including bodily injury or death); or (ii) physical harm to tangible personal property and real property, to the extent caused by breach of contract, negligence or willful misconduct or other tortious acts or omissions of the Supplier;

and the Supplier agrees that the Indemnified Parties shall not be liable for any property damage, bodily injury (including death) or personal injury to the Supplier or for any Proceeding by any third party against the Supplier arising in the course of the performance of the Supplier's obligations under the Contract or

arising otherwise in connection with the Contract, except to the extent the damage or injury is caused by the negligence or willful misconduct of any of the Indemnified Parties.

ARTICLE 9 – TERMINATION, EXPIRY, AND EXTENSION

9.01 Immediate Termination of Contract

EDC may immediately terminate the Contract upon giving notice to the Supplier where: (a) the Supplier is adjudged bankrupt, makes a general assignment for the benefit of its creditors, or a receiver is appointed on account of the Supplier's insolvency; (b) the Supplier breaches any provision in Article 6 (Confidentiality); (c) the Supplier breaches the Conflict of Interest paragraph in Article 3 (Nature of Relationship Between EDC and Supplier); (d) the Supplier, prior to or after entering into the Contract, makes a material misrepresentation or omission or provides materially inaccurate information to EDC; (e) the Supplier undergoes a change in control which adversely affects the Supplier's ability to satisfy some or all of its obligations under the Contract; (f) the Supplier subcontracts for the provision of part or all of the Deliverables or assigns the Contract without first obtaining the written approval of EDC; or (g) the Supplier's acts or omissions constitute a substantial failure of performance and the above rights of termination are in addition to all other rights of termination available at law, or events of termination by operation of law.

9.02 Dispute Resolution by Rectification Notice

Subject to the above paragraph, where the Supplier fails to comply with any of its obligations under the Contract, EDC may issue a rectification notice to the Supplier setting out the manner and timeframe for rectification. Within seven (7) Business Days of receipt of that notice, the Supplier shall either: (a) comply with that rectification notice; or (b) provide a rectification plan satisfactory to EDC. If the Supplier fails to either comply with that rectification notice or provide a satisfactory rectification plan, EDC may immediately terminate the Contract. Where the Supplier has been given a prior rectification notice, the same subsequent type of non-compliance by the Supplier shall allow EDC to immediately terminate the Contract.

9.03 Termination on Notice

EDC reserves the right to terminate the Contract, without cause, upon fourteen (14) calendar days prior notice to the Supplier.

9.04 Supplier's Obligations on Termination

On termination of the Contract for any reason, the Supplier shall, in addition to its other obligations under the Contract and at law:

- (a) at the request of EDC, provide EDC with any completed or partially completed Deliverables;
- (b) at no additional cost, provide EDC with a report detailing: (i) the current state of the provision of Deliverables by the Supplier at the date of termination; and (ii) any other information requested by EDC pertaining to the provision of the Deliverables and performance of the Contract;
- (c) execute such documentation as may be required by EDC to give effect to the termination of the Contract;
- (d) comply with all obligations with respect to the handling of records and information under the Contract;

- (e) immediately return to EDC all Records, files, lists, documents (including electronic material), equipment, software, intellectual property and any other property belonging to EDC, as requested by EDC;
- (f) comply with any other instructions provided by EDC, including but not limited to instructions for facilitating the transfer of its obligations to another Person; and
- (g) carry out any termination transition services provided for in Schedule 1 – Deliverables, Pricing and Specific Provisions or elsewhere in the Contract.

This paragraph shall survive any termination of the Contract.

9.05 Supplier's Payment Upon Termination

On termination of the Contract, EDC shall only be responsible for the payment of the Deliverables provided under the Contract up to and including the effective date of any termination. Termination shall not relieve the Supplier of its warranties and other responsibilities relating to the Deliverables performed or money paid. In addition to its other rights of hold back or set off, EDC may hold back payment or set off against any payments owed if the Supplier fails to comply with its obligations on termination.

9.06 Termination in Addition to Other Rights

The express rights of termination in the Contract are in addition to and shall in no way limit any rights or remedies of EDC under the Contract, at law or in equity.

9.07 Expiry and Extension of Contract

The Contract shall expire on the original Expiry Date, unless EDC exercises its option to extend the Contract, such extension to be upon the same terms (including the Rates in effect at the time of extension), conditions, and covenants contained in the Contract. The option shall be exercisable by EDC giving notice to the Supplier not less than thirty (30) days prior to the original Expiry Date. The notice shall set forth the precise duration of the extension.

9.08 Evaluation of Performance

The Supplier will be subject to a performance evaluation during the course of and/or at the conclusion of the assignment.

In the event that the Supplier fails to perform its obligations under the Contract, EDC may, in addition to any and all legal and equitable remedies available to it, place the Supplier on probation or suspend the Supplier from participating in future procurement opportunities.

ARTICLE 10 – ACCEPTANCE TESTING

10.01 Acceptance Testing Requirement

The Deliverables in their entirety, and each part of the Deliverables, shall be subject to testing by EDC ("Acceptance Testing"). EDC may, at its sole discretion, decide not to subject any or all of the Deliverables to Acceptance Testing, provided such decision is communicated to the Supplier in writing. Unless the Contract sets out a different process for Acceptance Testing that expressly supersedes this Article, the process described in this Article will apply.

10.02 Preliminary Acceptance Testing Plan

Acting reasonably and prior to any part of the Deliverables being ready for Acceptance Testing, the Supplier and EDC will together develop a mutually agreeable plan for Acceptance Testing of the Deliverables ("Acceptance Testing Plan"). Each Acceptance Testing Plan shall be set out in writing and include:

- (a) the duration of the Acceptance Testing period;
- (b) the name(s) or title of the person(s) who will conduct the Acceptance Testing;
- (c) a description of how the Acceptance Testing and the results will be documented;
- (d) a list of success criteria; and
- (e) who will be responsible for developing appropriate test data (which test data will be subject to the reasonable approval of the other party).

The Supplier shall give EDC written notice when any part of the Deliverables is ready for Acceptance Testing.

10.03 **Acceptance Testing Plan Review**

Upon EDC's receipt of a notice that any part of the Deliverables is ready for Acceptance Testing, the Supplier will, if requested by EDC, review the Acceptance Testing Plan with EDC. The Acceptance Testing Plan shall apply unless the Parties agree to amend it. EDC and the Supplier will set a mutually agreeable time and place for performing the Acceptance Testing.

10.04 **Conduct of Acceptance Testing**

A representative nominated by EDC must be present for every Acceptance Testing, unless EDC indicates to the Supplier in writing that it does not require a representative to be present. EDC may use external users as testers during any Acceptance Testing. During Acceptance Testing, the Supplier shall perform any tasks specified by EDC that are consistent with the Acceptance Testing Plan as promptly as possible.

10.05 **Certification Of Acceptance, And Notices Of Deficiencies**

As soon as practicable after completion of an Acceptance Testing period EDC shall either:

- (a) certify to the Supplier in writing that the applicable Acceptance Testing has been successfully completed, or
- (b) notify the Supplier of all defects and deficiencies in the Deliverables made apparent to EDC by the Acceptance Testing.

Acceptance of all or any part of the Deliverables will only occur when EDC certifies to the Supplier in writing that the applicable Acceptance Testing has been successfully completed.

10.06 **Conditional Acceptance**

In the case of Acceptance Testing for a part of the Deliverables that is a component of, or must interface with, another part of the Deliverables, EDC may provide a conditional acceptance of that part of the Deliverables that will be dependent upon EDC's acceptance of the other part(s) of the Deliverables.

10.07 Corrections

As promptly as possible, but not later than twenty (20) Business Days following the date of receipt by the Supplier of any notice of defects or deficiencies, the Supplier shall correct the defects and deficiencies identified in such notice at the Supplier's expense and notify EDC in writing when such corrections have been completed. Upon receipt of such notice by EDC, the Acceptance Testing shall be repeated in accordance with the Acceptance Testing Plan.

10.08 Unacceptable Deliverables

If all or any part of the Deliverables are not accepted by EDC after the second or any subsequent Acceptance Testing, EDC may, at its option, exercisable by written notice to the Supplier within thirty (30) calendar days of the end of Acceptance Testing period:

- (a) Allow the Supplier a further opportunity to correct the defects or deficiencies and repeat the Acceptance Testing;
- (b) Accept all or any part of the Deliverables (although of diminished value) as the case may be, at a revised cost acceptable to both EDC and the Supplier;
- (c) Terminate the Contract by notice in writing to the Supplier; or
- (d) Permit the Supplier to replace the Deliverables with a substitute that, in EDC's sole opinion, is functionally equivalent or superior.

If the Contract is terminated pursuant to this paragraph, the Supplier shall refund to EDC all monies paid in respect of the unacceptable Deliverables within fifteen (15) calendar days of the Supplier's receipt of the notice of termination.