

AMENDING AGREEMENT NO. 1

THIS AMENDING AGREEMENT NO. 1 is dated for reference the 15th day of March 2018.

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, as represented by the Minister of Citizens' Services (formerly as represented by the Minister of Citizens' Services and Open Government)

(the "Province")

AND: AINS, Inc., a corporation having an office at 806 West Diamond Avenue, Suite 400, Gaithersburg, Maryland, 20878, USA

(the "Contractor")

WHEREAS:

- A. The parties entered into an agreement dated for reference March 19th, 2013 and identified as Ministry Contract No. C13LCTZ28824 (the "Agreement"); and
- B. The parties now wish to amend the Agreement on the terms and conditions contained in this Amending Agreement No. 1.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual promises set out below, and of other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by each party), the parties agree as follows:

- 1. Any capitalized terms not defined in this Amending Agreement No. 1 are used as defined in the Agreement.
- 2. The cover page of the Agreement is amended by deleting the email address "dweaver@ains.com" and replacing it with "packley@ains.com".
- 3. Page 1 of the Agreement is amended by deleting the words "Attn: Bruce Winter" and replacing them with "Attn: Delayne Morris, Contract Manager, Ministry of Citizens' Services, Information Management Branch".
- 4. Section 1 of Part 1 of Schedule "A" (Services) to the Agreement is amended by deleting the words "March 31, 2018" and replacing them with "March 31, 2021".
- 5. Section 1 of Part 4 of Schedule "A" (Services) to the Agreement is amended by deleting paragraphs (a), (c) and (d) in their entirety and replacing them with the following:

"(a) Cliff Sink

VP Sales
 AINS, Inc.
 301-670-2351
csink@ains.com

- (c) Level 2 and 3: Subject matter expertise both functional and technical
 Pam Ackley – 240-364-7520
packley@ains.com".

6. Paragraph 2(D) (Ongoing Maintenance) of Schedule "B" (Fees) is amended by adding, immediately following the pricing table for Year 2 through Year 5, the following table:

Quantity	Item(s)/Description	Unit Price	Extended Price
Year 6 (2018/2019)			
140	ATIPXpress Annual Maintenance Date of Coverage: 4/1/2018 thru 3/31/19	\$ 500.00	\$ 70,000.00
1	PAL Maintenance for medium sized company Date of Coverage: 4/1/2018 thru 3/31/19	\$ 3,100.00	\$ 3,100.00
1	20 - Support Call package Date of Coverage: 4/1/2018 thru 3/31/19	\$ 1,800.00	\$ 1,800.00
Optional			
	ATIPXpress License Perpetual One Time	\$ 2,500.00	
	eCase eDiscovery for ATIPXpress	\$ 7,500.00	
	eCase eDiscovery Maintenance	\$ 2,500.00	
	Training Full Application Per Day	\$ 5,000.00	
	Training Role Based per Hour WebEx	\$ 180.00	
	Total due In Canadian Dollars		\$ 74,900.00
Year 7 (2019/2020)			
140	ATIPXpress Annual Maintenance Date of Coverage: 4/1/2019 thru 3/31/20	\$ 517.50	\$ 72,450.00
1	PAL Maintenance for medium sized company Date of Coverage: 4/1/2019 thru 3/31/20	\$ 3,208.50	\$ 3,208.50
1	20 - Support Call package Date of Coverage: 4/1/2019 thru 3/31/20	\$ 1,863.00	\$ 1,863.00
Optional			
	ATIPXpress License Perpetual One Time	\$ 2,587.50	
	eCase eDiscovery for ATIPXpress	\$ 7,762.50	
	eCase eDiscovery Maintenance	\$ 2,587.50	
	Training Full Application Per Day	\$ 5,175.00	
	Training Role Based per Hour WebEx	\$ 186.30	
	Total due In Canadian Dollars		\$ 77,521.50

Year 8 (2020/2021)			
140	ATIPXpress Annual Maintenance	\$ 535.61	\$ 74,985.40
	Date of Coverage: 4/1/2020 thru 3/31/21		
1	PAL Maintenance for medium sized company	\$ 3,320.80	\$ 3,320.80
	Date of Coverage: 4/1/2020 thru 3/31/21		
1	20 - Support Call package	\$ 1,928.21	\$ 1,928.21
	Date of Coverage: 4/1/2020 thru 3/31/21		
Optional			
	ATIPXpress License Perpetual One Time	\$ 2,678.06	
	eCase eDiscovery for ATIPXpress	\$ 8,034.19	
	eCase eDiscovery Maintenance	\$ 2,678.06	
	Training Full Application Per Day	\$ 5,356.13	
	Training Role Based per Hour WebEx	\$ 192.82	
	Total due In Canadian Dollars		\$ 80,234.41

7. Section 4 of Schedule "B" (Fees) to the Agreement is deleted in its entirety and replaced with the following:

"Statement of Account: In order to obtain payment of any fees under this Agreement, the Contractor must deliver to the Province a written statement of account in a form satisfactory to the Province containing:

- (a) the Contractor's legal name and address;
- (b) the date of the statement;
- (c) the Contractor's calculation of all fees claimed under this Agreement;
- (d) the Contractor's calculation of all applicable taxes payable by the Province in relation to the Services;
- (e) a description of this Agreement to which the statement relates;
- (f) a statement number for identification; and
- (g) any other billing information reasonably requested by the Province.

Unless the Province instructs otherwise, written statements of account from the Contractor must be sent in duplicate to:

Attention – Delayne Morris, Manager Business and Operations
Enterprise-wide Application Services
PO Box 9412 Stn. Prov. Govt.
Victoria, BC V8W 9V1."

8. The Agreement, as amended by this Amending Agreement No. 1, is ratified and confirmed.
9. This Amending Agreement No. 1 will be effective as of the date of execution and delivery of this Amending Agreement No. 1.

10. This Amending Agreement No. 1 may be executed by the parties in any number of counterparts, each of which when so executed and delivered will be deemed to be an original and all of which together will constitute one and the same document. Delivery of an executed counterpart by facsimile transmission or by email with a scanned PDF attachment will be effective to the same extent as if such party had delivered a manually executed counterpart.

IN WITNESS WHEREOF the parties have duly executed this Amending Agreement No. 1 on the respective dates set forth below.

SIGNED on behalf of the Province
by a duly authorized representative
of the Minister of Citizens' Services

)
)
)
)


(Signature of Authorized Signatory)

CHAD HOSKINS
(Print Name of Authorized Signatory)

3/19/2018
(Date of Signature)

SIGNED on behalf of AINS, Inc.
by its duly authorized signatory

)
)
)
)


(Signature of Authorized Signatory)

MOHINDER GOSWAMI
(Print Name of Authorized Signatory)

3/16/2018
(Date of Signature)

INFORMATION TECHNOLOGY & MANAGEMENT CONSULTING PROFESSIONAL SERVICES AGREEMENT



<i>For Administrative Purposes Only</i>	
Ministry Contract No.: C13LCTZ28824 Requisition No.: 28824 Solicitation No.(if applicable): _____ Commodity Code: _____ Contractor Information Supplier Name: AINS, Inc Supplier No.: 2462940 Telephone No.: 571-289-0266 E-mail Address: dweaver@ains.com Website: _____	Financial Information Client: 112 Responsibility Centre: 32670 Service Line: 20053 STOB: 2000 Project: 3200000 Template version: April 1, 2013

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SCHEDULE A – SERVICES

- Part 1 - Term
- Part 2 - Services
- Part 3 - Related Documentation
- Part 4 - Key Personnel

SCHEDULE B – FEES AND EXPENSES

- Part 1 - Maximum Amount Payable
- Part 2 - Fees
- Part 3 - Expenses
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SCHEDULE C – APPROVED SUBCONTRACTOR(S)

SCHEDULE D – INSURANCE

SCHEDULE E – PRIVACY PROTECTION SCHEDULE

SCHEDULE F – ADDITIONAL TERMS

SCHEDULE G – SECURITY SCHEDULE

THIS AGREEMENT is dated for reference the 19 day of March, 2013.

BETWEEN:

AINS, Inc (the "Contractor") with the following specified address and fax number:

806 W. Diamond Ave., Suite 400
Gaithersburg, MD
20878, USA

AND:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, as represented by the Minister of Citizens' Services and Open Government (the "Province") with the following specified address and fax number:

W228 - 4000 Seymour Place
PO Box 9412 STN PROV GOVT
Victoria, British Columbia
V8W 9V1

Attn: Bruce Winter

The Province wishes to retain the Contractor to provide the services specified in Schedule A and, in consideration for the remuneration set out in Schedule B, the Contractor has agreed to provide those services, on the terms and conditions set out in this Agreement.

As a result, the Province and the Contractor agree as follows:

1 DEFINITIONS

General

1.1 In this Agreement, unless the context otherwise requires:

- (a) "Business Day" means a day, other than a Saturday or Sunday, on which Provincial government offices are open for normal business in British Columbia;
- (b) "Incorporated Material" means any material in existence prior to the start of the Term or developed independently of this Agreement, and that is incorporated or embedded in the Produced Material by the Contractor or a Subcontractor;
- (c) "Initial Order" means the initial order for an combined package (see Schedule B for list) of the Contractor's goods and services;
- (d) "Material" means the Produced Material and the Received Material;
- (e) "Produced Material" means records, software and other material, whether complete or not, that, as a result of this Agreement, are produced by the Contractor or a Subcontractor and includes the Incorporated Material;
- (f) "Received Material" means records, software and other material, whether complete or not, that, as a result of this Agreement, are received by the Contractor or a Subcontractor from the Province or any other person;
- (g) "Services" means the services described in Part 2 of Schedule A;
- (h) "Subcontractor" means a person described in paragraph (a) or (b) of section 13.4; and

- (i) "Term" means the term of the Agreement described in Part 1 of Schedule A subject to that term ending earlier in accordance with this Agreement.

Meaning of "record"

- 1.2 The definition of "record" in the *Interpretation Act* is incorporated into this Agreement and "records" will bear a corresponding meaning.

2 SERVICES

Provision of services

- 2.1 The Contractor must provide the Services in accordance with this Agreement.

Term

- 2.2 Regardless of the date of execution or delivery of this Agreement, the Contractor must provide the Services during the Term.

Supply of various items

- 2.3 Unless the parties otherwise agree in writing, the Contractor must supply and pay for all labour, materials, equipment, tools, facilities, approvals and licenses necessary or advisable to perform the Contractor's obligations under this Agreement, including the license under section 6.4.

Standard of care

- 2.4 Unless otherwise specified in this Agreement, the Contractor must perform the Services to a standard of care, skill, and diligence maintained by persons providing, on a commercial basis, services similar to the Services.

Standards in relation to persons performing Services

- 2.5 The Contractor must ensure that all persons employed or retained to perform the Services are qualified and competent to perform them and are properly trained, instructed and supervised.

Instructions by Province

- 2.6 The Province may from time to time give the Contractor reasonable instructions (in writing or otherwise) as to the performance of the Services. The Contractor must comply with those instructions but, unless otherwise specified in this Agreement, the Contractor may determine the manner in which the instructions are carried out.

Confirmation of non-written instructions

- 2.7 If the Province provides an instruction under section 2.6 other than in writing, the Contractor may request that the instruction be confirmed by the Province in writing, which request the Province must comply with as soon as it is reasonably practicable to do so.

Effectiveness of non-written instructions

- 2.8 Requesting written confirmation of an instruction under section 2.7 does not relieve the Contractor from complying with the instruction at the time the instruction was given.

Applicable laws

- 2.9 In the performance of the Contractor's obligations under this Agreement, the Contractor must comply with all applicable laws.

3 PAYMENT

Fees and expenses

- 3.1 If the Contractor complies with this Agreement, then the Province must pay to the Contractor at the times and on the conditions set out in Schedule B:

- (a) the fees described in that Schedule;
- (b) the expenses, if any, described in that Schedule if they are supported, where applicable, by proper receipts and, in the Province's opinion, are necessarily incurred by the Contractor in providing the Services; and
- (c) any applicable taxes payable by the Province under law or agreement with the relevant taxation authorities on the fees and expenses described in paragraphs (a) and (b) .

The Province is not obliged to pay to the Contractor more than the "Maximum Amount" specified in Schedule B on account of fees and expenses.

Statements of accounts

- 3.2 In order to obtain payment of any fees and expenses under this Agreement, the Contractor must submit to the Province a written statement of account in a form satisfactory to the Province upon completion of the Services or at other times described in Schedule B.

Withholding of amounts

- 3.3 Without limiting section 9.1, the Province may withhold from any payment due to the Contractor an amount sufficient to indemnify in whole or in part the Province and its employees and agents against any liens or other third-party claims that have arisen or could arise in connection with the provision of the Services. An amount withheld under this section must be promptly paid by the Province to the Contractor upon the basis for withholding the amount having been fully resolved to the satisfaction of the Province.

Appropriation

- 3.4 The Province's obligation to pay money to the Contractor is subject to the *Financial Administration Act*, which makes that obligation subject to an appropriation being available in the fiscal year of the Province during which payment becomes due.

Currency

- 3.5 Unless otherwise specified in this Agreement, all references to money are to Canadian dollars.

Non-resident income tax

- 3.6 If the Contractor is not a resident in Canada, the Contractor acknowledges that the Province may be required by law to withhold income tax from the fees described in Schedule B and then to remit that tax to the Receiver General of Canada on the Contractor's behalf.

Prohibition against committing money

- 3.7 Without limiting section 13.10(a), the Contractor must not in relation to performing the Contractor's obligations under this Agreement commit or purport to commit the Province to pay any money except as may be expressly provided for in this Agreement.

Refunds of taxes

- 3.8 The Contractor must:

- (a) apply for, and use reasonable efforts to obtain, any available refund, credit, rebate or remission of federal, provincial or other tax or duty imposed on the Contractor as a result of this Agreement that the Province has paid or reimbursed to the Contractor or agreed to pay or reimburse to the Contractor under this Agreement; and
- (b) immediately on receiving, or being credited with, any amount applied for under paragraph (a), remit that amount to the Province.

4 REPRESENTATIONS AND WARRANTIES

- 4.1 As at the date this Agreement is executed and delivered by, or on behalf of, the parties, the Contractor represents and warrants to the Province as follows:

- (a) except to the extent the Contractor has previously disclosed otherwise in writing to the Province,
 - (i) all information, statements, documents and reports furnished or submitted by the Contractor to the Province in connection with this Agreement (including as part of any competitive process resulting in this Agreement being entered into) are in all material respects true and correct,
 - (ii) the Contractor has sufficient trained staff, facilities, materials, appropriate equipment and approved sub contractual agreements in place and available to enable the Contractor to fully perform the Services, and
 - (iii) the Contractor holds all permits, licenses, approvals and statutory authorities issued by any government or government agency that are necessary for the performance of the Contractor's obligations under this Agreement; and
- (b) if the Contractor is not an individual,
 - (i) the Contractor has the power and capacity to enter into this Agreement and to observe, perform and comply with the terms of this Agreement and all necessary corporate or other proceedings have been taken and done to authorize the execution and delivery of this Agreement by, or on behalf of, the Contractor, and
 - (ii) this Agreement has been legally and properly executed by, or on behalf of, the Contractor and is legally binding upon and enforceable against the Contractor in accordance with its terms except as enforcement may be limited by bankruptcy, insolvency or other laws affecting the rights of creditors generally and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction.

5 PRIVACY, SECURITY AND CONFIDENTIALITY

Privacy

- 5.1 The Contractor must comply with the Privacy Protection Schedule attached as Schedule E.

Security

- 5.2 The Contractor must:

- (a) make reasonable security arrangements to protect the Material from unauthorized access, collection, use, disclosure, alteration or disposal; and

- (b) comply with the Security Schedule attached as Schedule G.

Confidentiality

- 5.3 The Contractor must treat as confidential all information in the Material and all other information accessed or obtained by the Contractor or a Subcontractor (whether verbally, electronically or otherwise) as a result of this Agreement, and not permit its disclosure or use without the Province's prior written consent except:
- (a) as required to perform the Contractor's obligations under this Agreement or to comply with applicable laws;
 - (b) if it is information that is generally known to the public other than as result of a breach of this Agreement; or
 - (c) if it is information in any Incorporated Material.

Public announcements

- 5.4 Any public announcement relating to this Agreement will be arranged by the Province and, if such consultation is reasonably practicable, after consultation with the Contractor.

Restrictions on promotion

- 5.5 The Contractor, must not, without the prior written approval of the Province, refer for promotional purposes to the Province being a customer of the Contractor or the Province having entered into this Agreement.

6 MATERIAL AND INTELLECTUAL PROPERTY

Access to Material

- 6.1 If the Contractor receives a request for access to any of the Material from a person other than the Province, and this Agreement does not require or authorize the Contractor to provide that access, the Contractor must promptly advise the person to make the request to the Province.

Ownership and delivery of Material

- 6.2 The Province exclusively owns all property rights in the Material which are not intellectual property rights. The Contractor must deliver any Material to the Province immediately upon the Province's request.

Matters respecting intellectual property

- 6.3 The Province exclusively owns all intellectual property rights, including copyright, in:
- (a) Received Material that the Contractor receives from the Province; and
 - (b) Produced Material, other than any Incorporated Material.

Upon the Province's request, the Contractor must deliver to the Province documents satisfactory to the Province that irrevocably waive in the Province's favour any moral rights which the Contractor (or employees of the Contractor) or a Subcontractor (or employees of a Subcontractor) may have in the Produced Material and that confirm the vesting in the Province of the copyright in the Produced Material, other than any Incorporated Material.

Rights in relation to Incorporated Material

- 6.4 Upon any Incorporated Material being embedded or incorporated in the Produced Material and to the extent that it remains so embedded or incorporated, the Contractor grants to the Province:
- (a) a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to use, reproduce, modify and distribute that Incorporated Material; and
 - (b) the right to sublicense to third-parties the right to use, reproduce, modify and distribute that Incorporated Material.

Right of Province to negotiate license of Produced Material

- 6.5 After the end of the Term, the Province in its sole discretion, may negotiate with the Contractor to provide the Contractor a license (which may be exclusive or non-exclusive) for the Contractor to use, reproduce, modify or distribute some or all of the Produced Material.

7 RECORDS AND REPORTS

Work reporting

- 7.1 Upon the Province's request, the Contractor must fully inform the Province of all work done by the Contractor or a Subcontractor in connection with providing the Services.

Time and expense records

- 7.2 If Schedule B provides for the Contractor to be paid fees at a daily or hourly rate or for the Contractor to be paid or reimbursed for expenses, the Contractor must maintain time records and books of account, invoices, receipts and vouchers of expenses in support of those payments, in form and content satisfactory to the Province. Unless otherwise specified in this Agreement, the Contractor must retain such documents for a period of not less than seven years after this Agreement ends.

8 AUDIT

- 8.1 In addition to any other rights of inspection the Province may have under statute or otherwise, the Province may at any reasonable time and on reasonable notice to the Contractor, enter on the Contractor's premises to inspect and, at the Province's discretion, copy any of the Material and the Contractor must permit, and provide reasonable assistance to, the exercise by the Province of the Province's rights under this section.

9 INDEMNITY AND INSURANCE

Indemnity

- 9.1 The Contractor must indemnify and save harmless the Province and the Province's employees and agents from any losses, claims, damages, actions, causes of action, costs and expenses that the Province or any of the Province's employees or agents may sustain, incur, suffer or be put to at any time, either before or after this Agreement ends, including any claim of infringement of third-party intellectual property rights, where the same or any of them are based upon, arise out of or occur, directly or indirectly, by reason of any act or omission by the Contractor or by any of the Contractor's agents, employees, officers, directors or Subcontractors in connection with this Agreement (each a "Loss"), excepting always liability arising out of the independent acts or omissions of the Province and the Province's employees and agents.

Monetary limitations of indemnity

- 9.2 The indemnification by the Contractor pursuant to section 9.1 is limited to:
- (a) \$2,000,000 per Loss; and

- (b) \$4,000,000 in the aggregate for all Losses.

Exceptions to monetary limitations

- 9.3 The limitations set out in section 9.2 do not apply to a Loss resulting from any of the following:
- (a) bodily injury or damage to real property or tangible personal property;
 - (b) a claim of infringement of third-party intellectual property rights; or
 - (c) a breach of section 5.1, 5.2, 5.3 or 6.1 of this Agreement.

Province to notify Contractor of Loss

- 9.4 To claim indemnification for a Loss pursuant to section 9.1, the Province must notify the Contractor in writing of the Loss as soon as reasonably practicable after the Province becomes aware of the Loss provided that a failure by the Province to provide such notification will not invalidate the claim unless the Contractor is materially prejudiced by that failure.

Third-party intellectual property infringement claims

- 9.5 If the Loss is on the basis of a third-party claim that any element of the Material infringes the intellectual property rights of any person,
- (a) then the Contractor must defend the Province against that claim at the Contractor's expense and the Contractor must pay all associated costs, damages and legal fees that a court or arbitrator finally awards or are included in a settlement agreed to by the Contractor; and
 - (b) the Province must cooperate with the Contractor in the defence of the claim and, where appropriate in the discretion of the Province, will allow the Contractor to appoint and instruct counsel and otherwise control the defence and any related settlement negotiations.

Insurance

- 9.6 The Contractor must comply with the Insurance Schedule attached as Schedule D.

Workers compensation

- 9.7 Without limiting the generality of section 2.9, the Contractor must comply with, and must ensure that any Subcontractors comply with, all applicable occupational health and safety laws in relation to the performance of the Contractor's obligations under this Agreement, including the *Workers Compensation Act* in British Columbia or similar laws in other jurisdictions.

Personal optional protection

- 9.8 The Contractor must apply for and maintain personal optional protection insurance (consisting of income replacement and medical care coverage) during the Term at the Contractor's expense if:
- (a) the Contractor is an individual or a partnership of individuals and does not have the benefit of mandatory workers compensation coverage under the *Workers Compensation Act* or similar laws in other jurisdictions; and
 - (b) such personal optional protection insurance is available for the Contractor from WorkSafeBC or other sources.

Evidence of coverage

- 9.9 Within 10 Business Days of being requested to do so by the Province, the Contractor must provide the Province with evidence of the Contractor's compliance with sections 9.7 and 9.8.

10 FORCE MAJEURE

Definitions relating to force majeure

10.1 In this section and sections 10.2 and 10.3:

- (a) "Event of Force Majeure" means one of the following events:
 - (i) a natural disaster, fire, flood, storm, epidemic or power failure,
 - (ii) a war (declared and undeclared), insurrection or act of terrorism or piracy,
 - (iii) a strike (including illegal work stoppage or slowdown) or lockout, or
 - (iv) a freight embargoif the event prevents a party from performing the party's obligations in accordance with this Agreement and is beyond the reasonable control of that party; and
- (b) "Affected Party" means a party prevented from performing the party's obligations in accordance with this Agreement by an Event of Force Majeure.

Consequence of Event of Force Majeure

10.2 An Affected Party is not liable to the other party for any failure or delay in the performance of the Affected Party's obligations under this Agreement resulting from an Event of Force Majeure and any time periods for the performance of such obligations are automatically extended for the duration of the Event of Force Majeure provided that the Affected Party complies with the requirements of section 10.3.

Duties of Affected Party

10.3 An Affected Party must promptly notify the other party in writing upon the occurrence of the Event of Force Majeure and make all reasonable efforts to prevent, control or limit the effect of the Event of Force Majeure so as to resume compliance with the Affected Party's obligations under this Agreement as soon as possible.

11 DEFAULT AND TERMINATION

Definitions relating to default and termination

11.1 In this section and sections 11.2 to 11.4:

- (a) "Event of Default" means any of the following:
 - (i) an Insolvency Event,
 - (ii) the Contractor fails to perform any of the Contractor's obligations under this Agreement, or
 - (iii) any representation or warranty made by the Contractor in this Agreement is untrue or incorrect; and
- (b) "Insolvency Event" means any of the following:
 - (i) an order is made, a resolution is passed or a petition is filed, for the Contractor's liquidation or winding up,
 - (ii) the Contractor commits an act of bankruptcy, makes an assignment for the benefit of the Contractor's creditors or otherwise acknowledges the Contractor's insolvency,
 - (iii) a bankruptcy petition is filed or presented against the Contractor or a proposal under the *Bankruptcy and Insolvency Act* (Canada) is made by the Contractor,
 - (iv) a compromise or arrangement is proposed in respect of the Contractor under the *Companies' Creditors Arrangement Act* (Canada),

- (v) a receiver or receiver-manager is appointed for any of the Contractor's property, or
- (vi) the Contractor ceases, in the Province's reasonable opinion, to carry on business as a going concern.

Province's options on default

- 11.2 On the happening of an Event of Default, or at any time thereafter, the Province may, at its option, elect to do any one or more of the following:
- (a) by written notice to the Contractor, require that the Event of Default be remedied within a time period specified in the notice;
 - (b) pursue any remedy or take any other action available to it at law or in equity; or
 - (c) by written notice to the Contractor, terminate this Agreement with immediate effect or on a future date specified in the notice, subject to the expiration of any time period specified under section 11.2(a).

Delay not a waiver

- 11.3 No failure or delay on the part of the Province to exercise its rights in relation to an Event of Default will constitute a waiver by the Province of such rights.

Province's right to terminate other than for default

- 11.4 In addition to the Province's right to terminate this Agreement under section 11.2(c) on the happening of an Event of Default, the Province may terminate this Agreement for any reason by giving at least 10 days' written notice of termination to the Contractor.

Payment consequences of termination

- 11.5 Unless Schedule B otherwise provides, if the Province terminates this Agreement under section 11.4:
- (a) the Province must, within 30 days of such termination, pay to the Contractor any unpaid portion of the fees and expenses described in Schedule B which corresponds with the portion of the Services that was completed to the Province's satisfaction before termination of this Agreement; and
 - (b) the Contractor must, within 30 days of such termination, repay to the Province any paid portion of the fees and expenses described in Schedule B which corresponds with the portion of the Services that the Province has notified the Contractor in writing was not completed to the Province's satisfaction before termination of this Agreement.

Discharge of liability

- 11.6 The payment by the Province of the amount described in section 11.5(a) discharges the Province from all liability to make payments to the Contractor under this Agreement.

Notice in relation to Events of Default

- 11.7 If the Contractor becomes aware that an Event of Default has occurred or anticipates that an Event of Default is likely to occur, the Contractor must promptly notify the Province of the particulars of the Event of Default or anticipated Event of Default. A notice under this section as to the occurrence of an Event of Default must also specify the steps the Contractor proposes to take to address, or prevent recurrence of, the Event of Default. A notice under this section as to an anticipated Event of Default must specify the steps the Contractor proposes to take to prevent the occurrence of the anticipated Event of Default.

12 DISPUTE RESOLUTION

Dispute resolution process

- 12.1 In the event of any dispute between the parties arising out of or in connection with this Agreement, the following dispute resolution process will apply unless the parties otherwise agree in writing:
- (a) the parties must initially attempt to resolve the dispute through collaborative negotiation;
 - (b) if the dispute is not resolved through collaborative negotiation within 15 Business Days of the dispute arising, the parties must then attempt to resolve the dispute through mediation under the rules of the British Columbia Mediator Roster Society; and
 - (c) if the dispute is not resolved through mediation within 30 Business Days of the commencement of mediation, the dispute must be referred to and finally resolved by arbitration under the *Arbitration Act*.

Location of arbitration or mediation

- 12.2 Unless the parties otherwise agree in writing, an arbitration or mediation under section 12.1 will be held in Victoria, British Columbia.

Costs of arbitration or mediation

- 12.3 Unless the parties otherwise agree in writing or, in the case of an arbitration, the arbitrator otherwise orders, the parties must share equally the costs of a arbitration or mediation under section 12.1 other than those costs relating to the production of expert evidence or representation by counsel.

13 MISCELLANEOUS

Delivery of notices

- 13.1 Any notice contemplated by this Agreement, to be effective, must be in writing and delivered as follows:
- (a) by fax to the addressee's fax number specified on the first page of this Agreement, in which case it will be deemed to be received on the day of transmittal unless transmitted after the normal business hours of the addressee or on a day that is not a Business Day, in which cases it will be deemed to be received on the next following Business Day;
 - (b) by hand to the addressee's address specified on the first page of this Agreement, in which case it will be deemed to be received on the day of its delivery; or
 - (c) by prepaid post to the addressee's address specified on the first page of this Agreement, in which case if mailed during any period when normal postal services prevail, it will be deemed to be received on the fifth Business Day after its mailing.

Change of address or fax number

- 13.2 Either party may from time to time give notice to the other party of a substitute address or fax number, which from the date such notice is given will supersede for purposes of section 13.1 any previous address or fax number specified for the party giving the notice.

Assignment

- 13.3 The Contractor must not assign any of the Contractor's rights under this Agreement without the Province's prior written consent.

Subcontracting

- 13.4. The Contractor must not subcontract any of the Contractor's obligations under this Agreement to any person without the Province's prior written consent, excepting persons listed in the attached Schedule C. No subcontract, whether consented to or not, relieves the Contractor from any obligations under this Agreement. The Contractor must ensure that:
- (a) any person retained by the Contractor to perform obligations under this Agreement; and
 - (b) any person retained by a person described in paragraph (a) to perform those obligations
- fully complies with this Agreement in performing the subcontracted obligations.

Waiver

- 13.5 A waiver of any term or breach of this Agreement is effective only if it is in writing and signed by, or on behalf of, the waiving party and is not a waiver of any other term or breach.

Modifications

- 13.6 No modification of this Agreement is effective unless it is in writing and signed by, or on behalf of, the parties.

Entire agreement

- 13.7 This Agreement (including any modification of it) constitutes the entire agreement between the parties as to performance of the Services.

Survival of certain provisions

- 13.8 Sections 2.9, 3.1 to 3.4, 3.7, 3.8, 5.1 to 5.5, 6.1 to 6.5, 7.1, 7.2, 8.1, 9.1 to 9.6, 9.9, 10.1 to 10.3, 11.2, 11.3, 11.5, 11.6, 12.1 to 12.3, 13.1, 13.2, 13.8, and 13.10, any accrued but unpaid payment obligations, and any other sections of this Agreement (including schedules) which, by their terms or nature, are intended to survive the completion of the Services or termination of this Agreement, will continue in force indefinitely, even after this Agreement ends.

Schedules

- 13.9 The schedules to this Agreement (including any appendices or other documents attached to, or incorporated by reference into, those schedules) are part of this Agreement.

Independent contractor

- 13.10 In relation to the performance of the Contractor's obligations under this Agreement, the Contractor is an independent contractor and not:
- (a) an employee or partner of the Province; or
 - (b) an agent of the Province except as may be expressly provided for in this Agreement.

The Contractor must not act or purport to act contrary to this section.

Personnel not to be employees of Province

- 13.11 The Contractor must not do anything that would result in personnel hired or used by the Contractor or a Subcontractor in relation to providing the Services being considered employees of the Province.

Key Personnel

- 13.12 If one or more individuals are specified as "Key Personnel" of the Contractor in Part 4 of Schedule A, the Contractor must cause those individuals to perform the Services on the Contractor's behalf, unless the Province otherwise approves in writing, which approval must not be unreasonably withheld.

Pertinent information

- 13.13 The Province must make available to the Contractor all information in the Province's possession which the Province considers pertinent to the performance of the Services.

Conflict of interest

- 13.14 The Contractor must not provide any services to any person in circumstances which, in the Province's reasonable opinion, could give rise to a conflict of interest between the Contractor's duties to that person and the Contractor's duties to the Province under this Agreement.

Time

- 13.15 Time is of the essence in this Agreement and, without limitation, will remain of the essence after any modification or extension of this Agreement, whether or not expressly restated in the document effecting the modification or extension.

Conflicts among provisions

- 13.16 Conflicts among provisions of this Agreement will be resolved as follows:
- (a) a provision in the body of this Agreement will prevail over any conflicting provision in, attached to or incorporated by reference into a schedule, unless that conflicting provision expressly states otherwise; and
 - (b) a provision in a schedule will prevail over any conflicting provision in a document attached to, or incorporated by reference into a schedule, unless the schedule expressly states otherwise.

Agreement not permit nor fetter

- 13.17 This Agreement does not operate as a permit, license, approval or other statutory authority which the Contractor may be required to obtain from the Province or any of its agencies in order to provide the Services. Nothing in this Agreement is to be construed as interfering with, or fettering in any manner, the exercise by the Province or its agencies of any statutory, prerogative, executive or legislative power or duty.

Remainder not affected by invalidity

- 13.18 If any provision of this Agreement or the application of it to any person or circumstance is invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to any other person or circumstance will not be affected or impaired and will be valid and enforceable to the extent permitted by law.

Further assurances

- 13.19 Each party must perform the acts, execute and deliver the writings, and give the assurances as may be reasonably necessary to give full effect to this Agreement.

Additional terms

- 13.20 Any additional terms set out in the attached Schedule F apply to this Agreement.

Governing law

13.21 This Agreement is governed by, and is to be interpreted and construed in accordance with, the laws applicable in British Columbia.

14 INTERPRETATION

14.1 In this Agreement:

- (a) "includes" and "including" are not intended to be limiting;
- (b) unless the context otherwise requires, references to sections by number are to sections of this Agreement;
- (c) the Contractor and the Province are referred to as "the parties" and each of them as a "party";
- (d) "attached" means attached to this Agreement when used in relation to a schedule;
- (e) unless otherwise specified, a reference to a statute by name means the statute of British Columbia by that name, as amended or replaced from time to time;
- (f) the headings have been inserted for convenience of reference only and are not intended to describe, enlarge or restrict the scope or meaning of this Agreement or any provision of it;
- (g) "person" includes an individual, partnership, corporation or legal entity of any nature; and
- (h) unless the context otherwise requires, words expressed in the singular include the plural and *vice versa*.

15 EXECUTION AND DELIVERY OF AGREEMENT

15.1 This Agreement may be entered into by a separate copy of this Agreement being executed by, or on behalf of, each party and that executed copy being delivered to the other party by a method provided for in section 13.1 or any other method agreed to by the parties.

The parties have executed this Agreement as follows:

SIGNED on the <u>19th</u> day of <u>March</u>, 20<u>13</u> by the Contractor (or, if not an individual, on its behalf by its authorized signatory or signatories): <u>Deryck Weaver</u> Signature(s) <u>Deryck Weaver</u> Print Name(s) <u>VP Sales</u> Print Title(s)	SIGNED on the <u>20</u> day of <u>March</u>, 20<u>13</u> on behalf of the Province by its duly authorized representative: <u>Bruce Winter</u> Signature <u>Bruce Winter</u> Print Name <u>Manager - EWAS</u> Print Title
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Schedule A – Services

PART 1. TERM:

1. Subject to section 2 of this Part 1, the term of this Agreement commences on March 18, 2013 and ends on March 31, 2018.
2. This Agreement may be renewed at the sole discretion of the Province on the same terms and conditions including any revised pricing agreed to by the Province during the Term, on a year to year basis (each a "Renewal Term") by giving to the Contractor written notice of any such renewal not later than thirty (30) days prior to the end of the initial Term or the then-current renewal Term, as the case may be.

PART 2. SERVICES:

Background

1. The Province issued a Request for Proposals Number: ITP-RFP-11206 on BCbid on January 17, 2013 (the "RFP"). That RFP was for a "COTS Application: Freedom of Information Requests" and included requirements for the application, maintenance, support and professional services (the requirements of the RFP are incorporated by reference into this Agreement). The Contractor submitted a proposal in response to the RFP (the "Proposal") and all representations made in that Proposal regarding the proposed application and its maintenance, support and enabling professional services can be relied on by the Province under this Agreement and are incorporated by reference into and form a part of this Agreement.
2. As outlined in the RFP, the Province intends to make an initial purchase (the "Initial Order" as defined in Schedule B) but the Province is under no obligation to make any subsequent purchases under this Agreement.

The Application

3. The Contractor will supply ATIPXpress licences and any such other software modules or additional functionality associated with ATIPXpress, such as the PAL Web Portal, ScanXpress and RedactXpress, that the Province requests by way of purchase orders signed by the Province. The parties acknowledge that the number of licences ("Seats") may change. The terms and conditions that will apply for the license of the Seats will be as set out in the Software License Terms attached as Additional Terms in Schedule F to this Agreement.

Maintenance

4. Maintenance of the Initial Order of ATIPXpress will begin April 1, 2013 and will terminate March 31, 2014. On an annual basis, according to the pricing set out in Schedule B, the Province will have the right to purchase ongoing maintenance for ATIPXpress and for other related software supplied by the Contractor to the Province.
5. At a minimum the Contractor's annual maintenance will provide fixes for bugs, upgrades and five (5) technical support calls related to software upgrades, updates, installations and patches. New software releases and version updates of ATIPXpress will not require a full re-installation of the software, but will be accomplished with simple patches.

Support Services

6. Support will be supplied by the Contractor's customer support centre. The support centre will keep such documentation of the Province's technical environment(s) as required to support all ATIPXpress licences purchased by the Province.
7. Help desk support by the Contractor will be available to the Province during the business hours of 8AM to 5PM Pacific Time on each Business Day. The Province may purchase additional support calls for end user help desk according to the rates set out in Schedule B.

8. User support questions and requests for technical assistance will follow the escalation process, and will adhere to the service level targets, detailed below.
 - Level 1 Help Desk response time is within four (4) hours. If Level 1 Help Desk staff cannot resolve the problem, it will be escalated to Level 2 informing the applicant of the need to escalate the problem.
 - Level 2 staff will work with the applicant to resolve the problem on a timely basis. Level 2 requests will be completed within two days unless the nature of the issue being resolved requires diagnostic trouble shooting over a longer period; the Contractor will inform the Province of the need for such trouble shooting and will provide daily updates to the applicant on the progress and results the diagnostics.
 - If Level 2 staff determines that there is a software bug, it will be escalated to Level 3 for resolution.
9. In the event, a request for technical support that is "time critical" because it impacts productivity or security, the Contractor will:
 - (a) escalate it immediately to the appropriate level;
 - (b) ensure the Contractor's management is informed of the problem; and
 - (c) keep the Province informed on the assessment/nature of the problem, time estimated to fix the problem, and progress in identifying a solution should it go beyond the estimated time.
10. Each call for support will include up to two hours of support time. Multiple support calls can be used for a single incident or case that exceeds two hours. Each support call may take multiple phone conversations as long as they are pertaining to the same issue.

Implementation Services

11. The Contractor will follow the implementation methodology described in their Proposal. The Province will create a deployment schedule in consultation with the Contractor. Project management documentation including implementation and integration schedules, systems, context diagrams, roles, responsibilities, deliverables, processes, technical and functional requirements and so forth that once they are agreed to and signed by both the Contractor and the Province will form part of this Agreement and for administrative purposes will be appended to this Agreement by the Province as part of Appendix A1 *Implementation Documentation, Change Orders and Purchase Orders*.

Training Approach

12. The Contractor will utilize a mix of role-based and train-the-trainer training approaches. Initial meetings with the Province's identified user group will identify the system 'power-users' that will be utilizing the full breadth of the new system's capabilities and 'role' users that will only utilize certain system modules and delivery customized trainings to each of these groups. The exact mix of the training strategies below will depend on the breakdown of users provided by the Province.
 - *Power User Training*
These trainings will be conducted in person, onsite and will cover all aspects of ATIPXpress, from request receipt, to delivery of responsive documents, reports, proactive disclosure etc. The Province will supply the training facility and client machine for each student.
 - *Train the Trainer*
Once trained, power users will be able to provide training to the IAO user base.
 - *Role-Based Training*
Role-based trainings will be customized to a user's specific role and therefore may cover only a sub-section of ATIPXpress capabilities. Role-based trainings may be conducted via web-ex (electronic meeting software).

Training

13. The Province may purchase training as required and according to the pricing detailed in Schedule B. When requested, the Contractor will train the Province's system administrators, end users and IT support staff on the operation and functionality of ATIPXpress.

14. ATIPXpress end user training consists of a two-day class that reviews all features and functions of ATIPXpress. The Contractor will supply an expert training instructor to take end users through all FOI processing steps from request receipt to delivery of responsive documents. This training will be tailored to the Province's unique business processes. As part of the training program, the Contractor will provide training handouts and lab material containing screen-shots involved in the operation of the ATIPXpress software, as well as hands-on learning labs.
15. The Contractor will provide knowledge transfer during the configuration phase to the Province's system administrator. Administrators will receive training on how to maintain and make changes to their system configuration.

Consultation Services

16. The Contractor will supply consulting services related to their software as required and when purchased by the Province. It is anticipated that the bulk of the professional services that will be required will be "Integration Consulting" as defined in the Proposal as:
...business process analysis, integration design, development and maintenance for systems integration. This work is done both as part of the development of AINS' COTS products as well as under contract for government systems in a way that minimizes cost and maximizes flexibility. AINS uses Web Services heavily to this end. In addition, AINS has built a XML data connector that customers can use to integrate our Xpress product suite with an external application using XML data definition. At a broader scale of integration, AINS has considerable experience with tools such as the webMethods Enterprise Service Bus to provide robust, flexible integration among applications, which has been used at the U.S. Agency for International Development (USAID) to integrate the financial and acquisition systems.

Data Migration

17. The Contractor will work with the Province during implementation to manage the risks associated with complex system integration and data migration efforts.

Future Purchases: Licences, Maintenance, Support, Training, Professional Services

18. During the Term the Province may order the goods and services according to the pricing set out in Schedule B, or may request pricing for, and purchase, any of the Contractor's goods and services considered by the Province in its sole discretion to be in-scope of the RFP. All goods and services acquired that are not already described in this Agreement will be included and the purchase documentation will be appended by the Province to this Agreement in Appendix A1 *Implementation Documentation, Change Orders and Purchase Orders.*

PART 3. RELATED DOCUMENTATION

1. The following documentation is incorporated by reference into this Schedule A:
 - a) RFP; and
 - b) Proposal.
2. The following documentation once agreed to and signed by both the Contractor and the Province will form part of the Agreement and for administrative purposes will be appended to this Agreement by the Province as part of Schedule A as Appendix A1
 - a) *Implementation Documentation, Change Orders and Purchase Orders.*

PART 4 KEY PERSONNEL:

1. The Key Personnel of the Contractor are as follows:

- (a) Deryck Weaver
VP Sales
AINS, Inc.
301-670-2354
Cell: 571-289-0266
dweaver@ains.com

Maintenance and Support Contact Information

- (b) Level 1: Help Desk Staff
Support@ains.com – 301-670-2333 – www.ains.com/support
- (c) Level 2 : Subject matter expertise both functional and technical
Quyen Le – 301-670-2325 – Qle@ains.com
- (d) Level 3: Product Development Manager
GP Sinha –301-670-2302 – Gsinha@ains.com

Schedule B – Fees and Expenses

1. MAXIMUM AMOUNT PAYABLE:

Maximum Amount: Despite sections 2 and 3 of this Schedule, \$1,000,000 is the maximum amount which the Province is obliged to pay to the Contractor for fees and expenses under this Agreement (exclusive of any applicable taxes described in section 3.1(c) of this Agreement).

2. FEES:

Fees for goods and services under this Agreement are based on the assumptions listed below. The Province may ask the Contractor to submit pricing or provide fixed price quotes for goods or services not detailed below. The Contractor must have the prior written approval by the Province before the delivery of any goods or services to the Province.

A. Pricing Assumptions:

1. **ATIPXpress License:** Includes Document Management, Reporting, Correspondence Templates, Billing, Case Management and Records Management modules. Per the guidelines in the Proposal, the Contractor has not provided the cost for licensing the additional 200 public body users. This price can be provided by the Contractor upon request.
2. **ATIPXpress Maintenance:** Includes application upgrades and bug fixes. Includes five technical support calls for Contractor software upgrade/update installation and patches during the maintenance period. This does not cover end user help desk. There is a 3.5% annual escalation rate for maintenance.
3. **All Product Maintenance:** Billed in arrears.
4. **PAL Web Portal Module:** License cost waived.
5. **eCase eDiscovery for ATIPXpress Module:** Price is per named user. The Contractor assumes a centralized hosted solution by the Province that would require a minimum of three (3) licenses of the eDiscovery Module.
6. **eCase eDiscovery Configuration:** Includes set up, configuration and training.
7. **Help Desk:** The Contractor estimates 900 support hours per year. This can be increased or decreased according to the Province's specific needs.
8. **Training, Full Application:** Cost per training class for 15 users. All travel and training materials are built into this cost. This is live, hands on training in a classroom environment.
9. **Training, Role Based:** Training conducted via web ex. Cost per person.
10. **ScanXpress Module:** ScanXpress is a server-based application and may be provided at \$3,200.00/license (\$576.00 annual maintenance) beyond the Initial Purchase.
11. **RedactXpress Module:** RedactXpress standalone redaction module may be provided at \$650.00/license (\$117.00 annual maintenance) beyond the Initial Purchase.
12. **Data Migration:** As cost of data migration can vary greatly, data migration cost will be based on the sample data provided by the Province to the Contractor.
13. **FOI Applicant Users:** The Contractor will not charge per applicant for use of the PAL Web Portal module.
14. **Broader Public Users:** The Contractor will not charge per applicant for use of the PAL Web Portal module.

B. Initial Order:

	Initial Order	
QTY		Total
1 Lot	ATIPXpress License, not to exceed 115 users, PAL Web Portal, and eCase eDiscovery for ATIPXpress (also known as the FOIA/ATIP ADR module) not to exceed 3 users. Lot price includes configuration and installation of all 3 product modules and project management (509 hours). Lot price also includes first year maintenance for ATIPXpress, PAL and eCase eDiscovery for ATIPXpress.	\$317,400.00

C. Optional Services Related to the Initial Order

1 Lot	450 hours of end user Help Desk Support available on-line and via telephone (estimate based on starting in September 2013). The Help Desk hours become effective when training begins.	\$22,009.50
1 Lot	Training of 3 classes (each class is 2 days) – one class of trainer training, then two classes of end user training with the first class assisted by the Province's trained staff, and second class conducted by the Province's trained staff and assisted by the Contractor's trainers. Pricing is based on assumption that training will be done within two consecutive weeks (two classes in one week, the third in the second week or spanning the two weeks). Additional training can be purchased on an as-needed basis, and quotes provided upon request.	\$11,500.00

D. Ongoing Maintenance:

QTY	Year 2	Total
1 Lot	ATIPXpress Maintenance, PAL Maintenance and eDiscovery Maintenance.	\$56,500.00
	Year 3	
1 Lot	ATIPXpress Maintenance, PAL Maintenance and eDiscovery Maintenance. (Province may choose to purchase End User Help Desk Support at any time in any quantity).	\$58,477.50
	Year 4	
1 Lot	ATIPXpress Maintenance, PAL Maintenance and eDiscovery Maintenance. (Province may choose to purchase End User Help Desk Support at any time in any quantity).	\$60,524.21
	Year 5	
1 Lot	ATIPXpress Maintenance, PAL Maintenance and eDiscovery Maintenance. (Province may choose to purchase End User Help Desk Support at any time in any quantity).	\$62,642.56

E. Unit Pricing:

The Province may wish to purchase additional software and related services from the Contractor from time to time. The table below is provided as a pricing guideline to the Province. The Province will ask the Contractor to provide current pricing prior to placing an order additional software and related services.

	Cost Per Unit
ATIPXpress License	\$2,000.00
ATIPXpress Maintenance	\$400.00
ATIPXpress Configuration	Quote per project
ATIPXpress Installation	\$3,000.00
PAL Web Portal Module	\$25,000.00
PAL Configuration	\$4,000.00
PAL Maintenance	\$3,000.00
eCase eDiscovery for ATIPXpress	\$7,500.00
eCase eDiscovery Configuration	\$5,000.00
eCase eDiscovery Maintenance	\$2,500.00
Help Desk per user	\$48.91
Training Full Application (each)	\$4,500.00
Training Role Based (each)	\$150.00
Client Users & 3rd Party Users	
ATIPXpress License	\$1,250.00
ATIPXpress Maintenance	\$225.00

F. Professional Services:

The Province may purchase various consulting services related to the ATIPXpress suite of applications supplied by the Contractor. To purchase professional services the Province will provide a description of the work required and the Contractor will provide in response a quotation for the work. Approval by the Province and the subsequent purchase order will have the effect of a change order that amends this Agreement.

3. EXPENSES:

No expenses will be paid by the Province to the Contractor pursuant to this Agreement.

4. STATEMENTS OF ACCOUNT:

Statement of Account: In order to obtain payment of any fees and expenses under this Agreement, the Contractor must deliver to the Province after the delivery of the Initial Order, after Contractor completion of any ordered Services, and at the end of the Term, a written statement of account in a form satisfactory to the Province containing:

- (a) the Contractor's legal name and address;
- (b) the date of the statement;
- (c) the Contractor's calculation of all fees claimed under this Agreement, including a declaration that the Services for which the Contractor claims fees have been completed;

- (d) a chronological listing, in reasonable detail, of any expenses claimed by the Contractor with receipts attached, if applicable, and, if the Contractor is claiming reimbursement of any GST or other applicable taxes paid or payable by the Contractor in relation to those expenses, a description of any credits, rebates, refunds or remissions the Contractor is entitled to from the relevant taxation authorities in relation to those taxes;
- (e) the Contractor's calculation of all applicable taxes payable by the Province in relation to the Services;
- (f) a description of this Agreement to which the statement relates;
- (g) a statement number for identification; and
- (h) any other billing information reasonably requested by the Province.

Unless the Province instructs otherwise, written statements of account from the Contractor must be sent in duplicate to:

Attention – Enterprise-wide Application Services
Bruce Winter, Manager Business and Operations
PO Box 9412 Stn. Prov. Govt.
Victoria, BC V8W 9V1

5. PAYMENTS DUE:

Payments Due: Within 30 days of the Province's receipt of the Contractor's written statement of account delivered in accordance with this Schedule, the Province must pay the Contractor the fees and expenses (plus all applicable taxes), claimed in the statement if they are in accordance with this Schedule. Statements of account or contract invoices offering an early payment discount may be paid by the Province as required to obtain the discount.

Schedule C – Approved Subcontractor(s)

Not applicable

Schedule D – Insurance

1. The Contractor must, without limiting the Contractor's obligation or liabilities and at the Contractor's own expense, purchase and maintain throughout the Term the following insurances with insurers licensed in Canada in forms and amounts acceptable to the Province:
 - (a) Commercial General Liability in an amount not less than \$2,000,000 inclusive per occurrence against bodily injury, personal injury and property damage and including liability assumed under this Agreement and this insurance must:
 - (i) include the Province as an additional insured,
 - (ii) be endorsed to provide the Province with 30 days advance written notice of cancellation or material change, and
 - (iii) include a cross liability clause; and
 - (b) Professional Errors and Omissions Liability insuring the Contractor's liability resulting from errors or omissions in the performance of the Services in an amount per occurrence, and in the aggregate, calculated as follows:
 - (i) not less than \$1,000,000, if the "Maximum Amount" set out in Schedule B is less than \$500,000; and
 - (ii) not less than \$2,000,000, if the "Maximum Amount" set out in Schedule B is \$500,000 or greater.
2. All insurance described in section 1 of this Schedule must:
 - (a) be primary; and
 - (b) not require the sharing of any loss by any insurer of the Province.
3. The Contractor must provide the Province with evidence of all required insurance as follows:
 - (a) within 10 Business Days of commencement of the Services, the Contractor must provide to the Province evidence of all required insurance in the form of a completed Province of British Columbia Certificate of Insurance;
 - (b) if any required insurance policy expires before the end of the Term, the Contractor must provide, within 10 Business Days of the policy's expiration, evidence of a new or renewal policy meeting the requirements of the expired insurance in the form of a completed Province of British Columbia Certificate of Insurance; and
 - (c) despite paragraph (a) or (b) above, if requested by the Province at any time, the Contractor must provide to the Province certified copies of the required insurance policies.
4. Despite section 1(b) of this Schedule, if in the Province's sole discretion, the Province has approved in writing either a fronted self-insurance program or a duly licensed captive insurer as an alternative to the Professional Liability Insurance requirement set out in section 1(b), then the Contractor must maintain throughout the Term that alternative in accordance with the terms of the approval.

Schedule E – Privacy Protection Schedule

Definitions

1. In this Schedule,
 - (a) "access" means disclosure by the provision of access;
 - (b) "Act" means the *Freedom of Information and Protection of Privacy Act*;
 - (c) "contact information" means information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual;
 - (d) "personal information" means recorded information about an identifiable individual, other than contact information, collected or created by the Contractor as a result of the Agreement or any previous agreement between the Province and the Contractor dealing with the same subject matter as the Agreement but excluding any such information that, if this Schedule did not apply to it, would not be under the "control of a public body" within the meaning of the Act.

Purpose

2. The purpose of this Schedule is to:
 - (a) enable the Province to comply with the Province's statutory obligations under the Act with respect to personal information; and
 - (b) ensure that, as a service provider, the Contractor is aware of and complies with the Contractor's statutory obligations under the Act with respect to personal information.

Collection of personal information

3. Unless the Agreement otherwise specifies or the Province otherwise directs in writing, the Contractor may only collect or create personal information that is necessary for the performance of the Contractor's obligations, or the exercise of the Contractor's rights, under the Agreement.
4. Unless the Agreement otherwise specifies or the Province otherwise directs in writing, the Contractor must collect personal information directly from the individual the information is about.
5. Unless the Agreement otherwise specifies or the Province otherwise directs in writing, the Contractor must tell an individual from whom the Contractor collects personal information:
 - (a) the purpose for collecting it;
 - (b) the legal authority for collecting it; and
 - (c) the title, business address and business telephone number of the person designated by the Province to answer questions about the Contractor's collection of personal information.

Accuracy of personal information

6. The Contractor must make every reasonable effort to ensure the accuracy and completeness of any personal information to be used by the Contractor or the Province to make a decision that directly affects the individual the information is about.

Requests for access to personal information

7. If the Contractor receives a request for access to personal information from a person other than the Province, the Contractor must promptly advise the person to make the request to the Province unless the Agreement expressly requires the Contractor to provide such access and, if the Province has advised the Contractor of the name or title and contact information of an official of the Province to whom such requests are to be made, the Contractor must also promptly provide that official's name or title and contact information to the person making the request.

Correction of personal information

8. Within 5 Business Days of receiving a written direction from the Province to correct or annotate any personal information, the Contractor must annotate or correct the information in accordance with the direction.
9. When issuing a written direction under section 8, the Province must advise the Contractor of the date the correction request to which the direction relates was received by the Province in order that the Contractor may comply with section 10.
10. Within 5 Business Days of correcting or annotating any personal information under section 8, the Contractor must provide the corrected or annotated information to any party to whom, within one year prior to the date the correction request was made to the Province, the Contractor disclosed the information being corrected or annotated.
11. If the Contractor receives a request for correction of personal information from a person other than the Province, the Contractor must promptly advise the person to make the request to the Province and, if the Province has advised the Contractor of the name or title and contact information of an official of the Province to whom such requests are to be made, the Contractor must also promptly provide that official's name or title and contact information to the person making the request.

Protection of personal information

12. The Contractor must protect personal information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or disposal, including any expressly set out in the Agreement.

Storage and access to personal information

13. Unless the Province otherwise directs in writing, the Contractor must not store personal information outside Canada or permit access to personal information from outside Canada.

Retention of personal information

14. Unless the Agreement otherwise specifies, the Contractor must retain personal information until directed by the Province in writing to dispose of it or deliver it as specified in the direction.

Use of personal information

15. Unless the Province otherwise directs in writing, the Contractor may only use personal information if that use is for the performance of the Contractor's obligations, or the exercise of the Contractor's rights, under the Agreement.

Disclosure of personal information

16. Unless the Province otherwise directs in writing, the Contractor may only disclose personal information inside Canada to any person other than the Province if the disclosure is for the performance of the Contractor's obligations, or the exercise of the Contractor's rights, under the Agreement.
17. Unless the Agreement otherwise specifies or the Province otherwise directs in writing, the Contractor must not disclose personal information outside Canada.

Notice of foreign demands for disclosure

18. In addition to any obligation the Contractor may have to provide the notification contemplated by section 30.2 of the Act, if in relation to personal information in the custody or under the control of the Contractor, the Contractor:
 - (a) receives a foreign demand for disclosure;
 - (b) receives a request to disclose, produce or provide access that the Contractor knows or has reason to suspect is for the purpose of responding to a foreign demand for disclosure; or
 - (c) has reason to suspect that an unauthorized disclosure of personal information has occurred in response to a foreign demand for disclosure

the Contractor must immediately notify the Province and, in so doing, provide the information described in section 30.2(3) of the Act. In this section, the phrases "foreign demand for disclosure" and "unauthorized disclosure of personal information" will bear the same meanings as in section 30.2 of the Act.

Notice of unauthorized disclosure

19. In addition to any obligation the Contractor may have to provide the notification contemplated by section 30.5 of the Act, if the Contractor knows that there has been an unauthorized disclosure of personal information in the custody or under the control of the Contractor, the Contractor must immediately notify the Province. In this section, the phrase "unauthorized disclosure of personal information" will bear the same meaning as in section 30.5 of the Act.

Inspection of personal information

20. In addition to any other rights of inspection the Province may have under the Agreement or under statute, the Province may, at any reasonable time and on reasonable notice to the Contractor, enter on the Contractor's premises to inspect any personal information in the possession of the Contractor or any of the Contractor's information management policies or practices relevant to the Contractor's management of personal information or the Contractor's compliance with this Schedule and the Contractor must permit, and provide reasonable assistance to, any such inspection.

Compliance with the Act and directions

21. The Contractor must in relation to personal information comply with:
 - (a) the requirements of the Act applicable to the Contractor as a service provider, including any applicable order of the commissioner under the Act; and
 - (b) any direction given by the Province under this Schedule.

22. The Contractor acknowledges that it is familiar with the requirements of the Act governing personal information that are applicable to it as a service provider.

Notice of non-compliance

23. If for any reason the Contractor does not comply, or anticipates that it will be unable to comply, with a provision in this Schedule in any respect, the Contractor must promptly notify the Province of the particulars of the non-compliance or anticipated non-compliance and what steps it proposes to take to address, or prevent recurrence of, the non-compliance or anticipated non-compliance.

Termination of Agreement

24. In addition to any other rights of termination which the Province may have under the Agreement or otherwise at law, the Province may, subject to any provisions in the Agreement establishing mandatory cure periods for defaults by the Contractor, terminate the Agreement by giving written notice of such termination to the Contractor, upon any failure of the Contractor to comply with this Schedule in a material respect.

Interpretation

25. In this Schedule, references to sections by number are to sections of this Schedule unless otherwise specified in this Schedule.
26. Any reference to the "Contractor" in this Schedule includes any subcontractor or agent retained by the Contractor to perform obligations under the Agreement and the Contractor must ensure that any such subcontractors and agents comply with this Schedule.
27. The obligations of the Contractor in this Schedule will survive the termination of the Agreement.
28. If a provision of the Agreement (including any direction given by the Province under this Schedule) conflicts with a requirement of the Act or an applicable order of the commissioner under the Act, the conflicting provision of the Agreement (or direction) will be inoperative to the extent of the conflict.
29. The Contractor must comply with the provisions of this Schedule despite any conflicting provision of this Agreement or, subject to section 30, the law of any jurisdiction outside Canada.
30. Nothing in this Schedule requires the Contractor to contravene the law of any jurisdiction outside Canada unless such contravention is required to comply with the Act.

Schedule F – Additional Terms

SOFTWARE LICENSE TERMS

The Contactor grants to the Province a non-exclusive right to use the Software purchased by the Province from the Contractor pursuant to this Agreement on the following Terms and Conditions. In this Schedule, "Company" means the Contractor and Licensee means the Province.

TERMS AND CONDITIONS

1. Definitions

- 1.1. "User" shall mean any person having authorized access to the application, regardless of the skill level, nature of use or position/job title (e.g. system administrator), to include both routine use and software/system administration.
- 1.2. "Additional User" shall mean Licensee's customer, vendor, agent, subcontractor or consultant.
- 1.3. "Annual Software Subscription Service" shall mean the annual maintenance subscription of upgrades and bug fixes which are developed by Company in the course of providing enhancements to licensed software.
- 1.4. "Confidential Information" shall mean the Software, Documentation, Upgrades, Bug Fixes, Developments, and all information that is marked as confidential or proprietary or which is disclosed verbally and identified as confidential or proprietary at the time of disclosure.
- 1.5. "Control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and operating policies of an entity through the ownership of voting securities (at least fifty-one percent (51%) of its voting or equity securities or the maximum allowed by law), contract, voting trust, or otherwise.
- 1.6. "Developments" shall mean any ideas, know-how or techniques (including any derivative works and modifications made to the Software or Documentation), which are developed by Company in the course of providing Services to Licensee.
- 1.7. "Company Licensors" shall mean third parties from whom Company has licensed software.
- 1.8. "Documentation" shall mean the user manuals relating to the use of the Software delivered by Company to Licensee in printed or electronic form.
- 1.9. "Licensee" shall mean an entity, and any affiliated entity which Controls, is Controlled by, or is under common Control with Licensee, provided all such entities ordering, installing or using Software licensed under this Agreement have agreed to be bound by the terms and conditions of this Agreement.
- 1.10. "Licensee Third Party Contract" shall mean a validly executed contract between Licensee and an additional User.

- 1.11. "Restricted Release" shall mean any version of the Software marked alpha, beta, or which is otherwise designated as a restricted release.
- 1.12. "Seat" shall mean a user designated by Licensee who is authorized to use the applicable Software licensed hereunder.
- 1.13. "Services" shall mean consulting services purchased by Licensee under this Agreement.
- 1.14. "Software" shall mean a machine executable copy of the object code of the software products and applications licensed by Company to Licensee under this Agreement, including all corrections or updates thereto.
- 1.15. "Platform Transfer" shall mean an operating environment supported by Company, which is different than the operating environment for which Software was originally licensed.

2. License

- 2.1 Subject to the terms and conditions of this Agreement, Company grants Licensee a perpetual, fully paid, non-exclusive, and non-transferable license to use licensed software, solely at Licensee sites for Licensee's internal purposes. The Software may only be used in accordance with the appropriate policies and procedures as defined in the provided documentation (including, but not limited to, the installation, system, and user manuals).
- 2.2 The license granted hereunder is limited to the maximum number of Seats, users, servers or CPUs specified in a purchase order.
- 2.3 Company reserves the right to audit, at its expense, Licensee's deployment and use of the Software for compliance with the terms of this Section 2 at any mutually agreeable time during Licensee's normal business hours. If Licensee's use of the Software is found to be greater than contracted for, Licensee will be invoiced for the additional Seats, users, servers or CPUs and the unpaid license fees shall be payable in accordance with this Agreement. If the resulting adjustments to the license and support fees owing by Licensee are greater than five percent (5%) of the license and support fees paid by Licensee under this Agreement, Licensee will pay the expenses associated with such audit in addition to the additional license and support fees.
- 2.4 Company shall provide Licensee with one (1) machine executable copy of the Software and Documentation. Licensee may make a backup copy of the Software and copies of the Documentation solely for Licensee's internal use. Licensee shall implement reasonable controls to insure that it does not exceed the maximum number of Seats, users, servers or CPUs licensed. Licensee may make a reasonable number of copies of the Software solely for archival or emergency back-up purposes. Company reserves the right to include means within the Software to limit, monitor, or both, Licensee's use of the Software to the licensed number of Seats, users, servers or CPUs.
- 2.5 The use of Application Programming Interfaces (APIs), macros and/or user interfaces not supported by Company and that interfere with the Software and/or its data in any respect shall be deemed an unauthorized modification of the Software.

- 2.6 If use of a Platform Transfer by Licensee requires that Company provide Licensee with a new machine executable copy of the Software, Licensee must be subscribing to support services and be current in the payment of its support service fees for such Software.
- 2.7 Licensee shall not commence an arrangement pursuant to a Licensee Third Party Contract under which an Additional User is permitted to use the Software without authorization from Company. Licensee, when authorized to permit such use, may install Software at an Additional User's site, either by allocation of Licensee's currently licensed Software or by Licensee's purchase of additional Software licenses, provided:
- (i) prior to any such use or installation an Additional User shall have agreed in writing to be bound by the terms and conditions of this Agreement regarding confidentiality and use of the Software, and
 - (ii) an Additional User is not charged a fee for such access, provided however that use of the Software may be a component of chargeable services rendered by Company, and
 - (iii) an Additional User is not granted rights to use Software except as expressly set forth in this Section 2.7, and
 - (iv) an Additional User's use of the Software is related solely to Licensee's internal purposes, and
 - (v) upon conclusion of a Licensee Third Party Contract, any Software in possession of an Additional User (including partial copies within modified versions) are returned to Licensee. Licensee agrees to indemnify Company and hold Company and its directors, employees and agents harmless from all costs, losses, liability and expenses (including court costs, attorney fees, and disbursements) incurred as a result of any claims or demands brought against Company or its directors, employees, or agents arising from or in connection with any Additional User's failure to abide by the terms and conditions of the Agreement.

3. License Exclusions

Except as expressly authorized herein, Licensee shall not cause or permit any:

- (i) copying or modification of the Software or Documentation;
- (ii) reverse engineering, recompilation, translation, disassembly, or discovery of the source code of all or any portion of the Software;
- (iii) distribution, disclosure, marketing, rental, leasing or transfer to any third party of the Software, training material or the Documentation, or use of the Software for any dial-up, remote access, interactive or other on-line service except as specifically provided and licensed as an integral part of the Software;
- (iv) disclosure of the results of Software performance benchmarks to any third party without Company's prior written consent;
- (v) export of the Software in violation of UN embargoes or US laws and regulations, including the Export Administration Act of 1979, as amended, and successor legislation, and the Export Administration Regulations issued by the Department of Commerce.

4. Titles, Protection and Equitable Relief

- 4.1 Company (or its licensors) retains all right, title and interest in the Software and Documentation and any copies thereof, provided, however, that title to the Software media, responsibility of shipment and risk of loss shall remain with Company until delivery of the media to Licensee at the address specified by Licensee. Except as otherwise expressly granted in this Agreement, no license, right or interest in any Company trademark, copyright, trade name or service mark is granted hereunder.
- 4.2 Licensee shall not remove any copyright and proprietary information notices as were affixed to the original Software or Documentation.
- 4.3 Subject to the Crown Proceeding Act (British Columbia), each party acknowledges that any breach of its obligations with respect to the proprietary rights of the other party or such party's licensors may cause such other party irreparable injury for which there may be inadequate remedies at law and that such other party and its licensors may be entitled to equitable relief, in addition to all other remedies available to it.

5. Patents and Copyright Indemnity

- 5.1 Company will defend and indemnify Licensee for all costs (including reasonable attorneys' fees) arising from a claim that Software furnished and used within the scope of this Agreement infringes a copyright or patent provided that:
 - (i) Licensee notifies Company in writing within thirty (30) days of the claim, and
 - (ii) Company has sole control of the defense and all related settlement negotiations, and
 - (iii) Licensee provides Company with the assistance, information, and authority necessary to perform the above. Reasonable expenses incurred by Licensee in providing such assistance may be reimbursed by Company.
- 5.2 Company shall have no liability for any claim of infringement based on:
 - (i) use of a superseded or modified release of the Software, except for such alteration(s) or modification(s) which have been made by Company or under Company's direction, if such infringement would have been avoided by the use of a current unaltered release of the Software that Company provided under a current Annual Software Subscription Service at no additional charge, or
 - (ii) the combination, operation, or use of any Software furnished under this Agreement with programs or data not furnished by Company if such infringement would have been avoided by the use of the Software without such programs or data.
- 5.3 In the event the Software is held or believed by Company to infringe, or Licensee's use of the Software is enjoined, Company shall have the option, at its expense, to:
 - (i) modify the Software to be non-infringing, or
 - (ii) obtain for Licensee a license to continue using the Software, or
 - (iii) substitute the Software with other software reasonably suitable to Licensee, or
 - (iv) if none of the foregoing remedies are commercially feasible, terminate the license for the infringing Software and refund the license fees paid for that Software, prorated over a three-year term from the effective date of the applicable GSA Schedule or purchase order. This Section 5 states Company's entire liability for infringement.

6. Warranty

6.1 Company warrants that it has title to and/or the authority to grant licenses of the Software.

6.2 Company warrants for a period of thirty (30) days from Licensee's receipt of the Software that the Software, unless modified by Licensee, will perform, in all material aspects, the functions described in the Documentation, when operated in accordance with Paragraph 2.2.

6.4 The warranties in Sections 6.2 shall not apply to:

- (i). Restricted Release(s), or to
- (ii). Software which has been modified by Licensee or any party other than Company, or to
- (iii). Software which has been improperly installed or used in a manner other than as authorized under this Agreement to the extent such modification(s) or improper installation cause the breach of warranty.

Company does not warrant that the Software will meet Licensee's requirements, or that the Software will operate in the combinations which Licensee may select for use, or that the operation of the Software will be uninterrupted or error-free, or that all Software errors will be corrected. Any claim submitted under this Section 6 must be submitted in writing to Company within the specified warranty period. Company's sole and exclusive obligation for warranty claims shall be to make the Software operate as warranted or to terminate the license for such Software and return the applicable license fees paid to Company for such Software, provided the claim is submitted within the specified warranty period.

6.5 THE WARRANTIES ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

7. Limitations or Liability

EXCEPT AS PROVIDED IN SECTION 5 (PATENT AND COPYRIGHT INDEMNITY), COMPANY'S LIABILITY FOR DIRECT DAMAGES UNDER THIS AGREEMENT SHALL IN NO EVENT EXCEED THE AMOUNT PAID BY LICENSEE TO COMPANY FOR THE SOFTWARE AS TO WHICH THE CLAIM AROSE. IN NO EVENT SHALL COMPANY BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST DATA OR LOST PROFITS, HOWEVER ARISING, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8. Confidentiality

8.1 The parties acknowledge that by virtue of their licensing, support services or consulting relationship the parties may have access to Confidential Information. The parties agree, both during the term of this Agreement and for a period of three (3) years after termination, to hold each other's Confidential Information in confidence. The parties agree not to make each other's Confidential Information available in any form to any third party (other than those of its employees or consultants under nondisclosure obligations) or to use each other's Confidential Information for any

purpose other than as contemplated by this Agreement. Each party agrees to take commercially reasonable steps to ensure that Confidential Information is not disclosed or distributed by its employees or agents in violation of the provisions of this Section 8. Nothing in this Agreement will interfere with the exercise by the Licensee or any agency controlled by the Licensee of any statutory power or duty.

8.2 Notwithstanding any provision contained in this Agreement, neither party shall be required to maintain in confidence any of the following information:

- (i) Information which, at the time of disclosure to the receiving party, is in the public domain;
- (ii) Information which, after disclosure, becomes part of the public domain, except by breach of this Agreement;
- (iii) Information which was in the receiving party's possession at the time of disclosure, and which was not acquired, directly or indirectly, from the disclosing party;
- (iv) Information which the receiving party can demonstrate resulted from its own research and development, independent of disclosure from the disclosing party;
- (v) Information which the receiving party receives from third parties, provided such information was not obtained by such third parties from the disclosing party on a confidential basis; or
- (vi) Information which is produced in compliance with applicable law or a court order, provided the other party is given reasonable notice of such law or order and an opportunity to attempt to preclude or limit such production.

9. Maintenance Services

9.1 Provided Licensee has paid the applicable Annual Software Maintenance Subscription fees, Company will provide or cause to be provided maintenance services for the Software (except for Restricted Release) in accordance with its support policies and procedures described in its then current technical support users guide.

9.2 Annual Software Maintenance Subscription fees shall be billed on an annual basis payable 30 days from date of invoice. The first year Annual Software Subscription Service is required with the purchase of Software.

9.3 Annual Software Maintenance Subscription

- (i) shall be provided for one (1) year prepaid from the effective date of the purchase order and
- (ii) at the Licensee's option, may be extended each year for an additional one (1) year term at the then-current rate.
- (iii) Licensee may terminate the service by giving written notice at least sixty (60) days prior to the end of the service term.

9.4 Company shall have no obligation to provide Annual Software Maintenance Subscription or maintenance services if Licensee fails to make any required payment or otherwise elects to discontinue said services. In order to reinstate or renew services, Licensee must first pay Company the then-current annual maintenance service fee and all past, unpaid maintenance services fees. In such event, Company shall not be liable or responsible for migrating any obsolete Licensee data to the new Software version.

9.5 Company shall have no obligation to provide support, and all warranties become null and void, under the following conditions:

- (i) altered, damaged or modified Software, to include any modification, adjustment, change, "tuning", "optimization", application programming interfaces (API's), interfaces with any other software, or any other action that in any way alters the precise structure and function of the database or application files as originally delivered.
- (ii) Software that is not the then-current or previous sequential release, or
- (iii) Software problems caused by Licensee's negligence, hardware malfunction or other causes beyond the control of Company, or
- (iv) Software installed in an operating environment for which the Software has not been licensed.

10. Restricted Release

If Licensee is selected for participation and elects to participate in a Restricted Release ("BETA") program, Licensee agrees:

- 10.1 Company shall have no obligation to correct errors in, deliver updates to, or otherwise support a Restricted Release, and
- 10.2 Licensee will promptly report to Company any error discovered in the Restricted Release and provide Company with appropriate test data for the Restricted Release if necessary to resolve problems in the Restricted Release encountered by Licensee, and
- 10.3 The Restricted Release is for evaluation only, not to be used in a production environment, may contain problems and/or errors, and is being provided to Licensee on an as-is basis with no warranty of any kind, express or implied, and
- 10.4 Neither party will be responsible or liable to the other for any losses, claims or damages of whatever nature, arising out of or in connection with the Restricted Release.

11. Notices

All notices shall be in writing and sent by first class mail, overnight courier, or transmitted by facsimile and confirmed by mailing, to the addresses indicated on the first page of this Agreement, or such other address as either party may indicate by at least ten (10) days prior written notice to the other party. Notice shall be deemed to have been given upon personal delivery (in the case of overnight courier or facsimile) or five (5) business days after being sent by first class mail.

12. Assignment

Licensee may not assign this Agreement (by operation of law or otherwise) or sublicense the Software without the prior written consent of Company. Any prohibited assignment or sublicense shall be null and void. The foregoing notwithstanding, upon written notice to Company, Licensee may assign, or otherwise transfer this Agreement to (i) its parent company or (ii) any of its or its parent company's subsidiaries or affiliates as long as such subsidiary or affiliate is at least fifty-one percent (51%) owned by Licensee or Licensee's parent company, or (iii) the surviving entity as a result of a merger, acquisition or reorganization of all or substantially all of Licensee's assets or

stock provided such entity is not deemed by Company to be a direct competitor of Company and agrees in writing it will be bound by the terms and conditions of this Agreement.

13. Attorney Fees

In the event that any legal action, including arbitration, is required in order to enforce or interpret any of the provisions of this Agreement, the prevailing party in such action shall recover all reasonable costs and expenses, including attorney's fees, incurred in connection therewith.

14. Governing Law

This Agreement shall be governed and construed under the laws of the Province of British Columbia, Canada, as if performed exclusively in British Columbia by British Columbia residents and in no event shall this Agreement be governed by the United Nations Convention on Contracts for the International Sale of Goods.

15. General

15.1 The Software is a "commercial item", as that term is defined at 48 CFR 2.101 (Oct 1995), consisting of "commercial computer software" and "commercial computer software documentation", as such terms are used in 48 CFR 12.212 (Sept 1995) and is provided to the US Government only as a commercial end item. Consistent with 48 CFR 12.212 and 48 CFR 227.7202-1 through 227.7202-4 (June 1995), all US Government end users acquire the Software with only those rights set forth herein.

15.2 The parties acknowledge that the Software may include software licensed by Company from third party Company Licensors. Company Licensors may be direct and intended third party beneficiaries of this Agreement and may be entitled to enforce it directly against Licensee to the extent (i) this Agreement relates to the licensing of Company Licensors' software products, and (ii) Company fails to enforce the terms of this Agreement on Company Licensors' behalf.

15.3 The section headings herein are provided for convenience only and have no substantive effect on the construction of this Agreement. Neither party shall be liable for any failure to perform due to causes beyond its reasonable control. If any provision of this Agreement is held to be unenforceable, the parties shall substitute for the affected provision an enforceable provision which approximates the intent and economic effect of the affected provision. The failure by a party to exercise any right hereunder shall not operate as a waiver of such party's right to exercise such right or any other right in the future.

16. Restrictions on the Number of Users Permitted

16.1 The number of general users permitted is in accordance with the purchase order.

16.2 Administrative users may be created for the sole purpose of performing administrative (non-production, non-operational) functions.

Schedule G – Security Schedule

Definitions

1. In this Schedule,
 - (a) "Equipment" means any equipment, including interconnected systems or subsystems of equipment, software and networks, used or to be used by the Contractor to provide the Services;
 - (b) "Facilities" means any facilities at which the Contractor provides or is to provide the Services;
 - (c) "Information" means information
 - (i) in the Material, or
 - (ii) accessed, produced or obtained by the Contractor (whether verbally, electronically or otherwise) as a result of the Agreement;
 - (d) "Record" means a "record" as defined in the *Interpretation Act*;
 - (e) "Sensitive Information" means
 - (i) Information that is "personal information" as defined in the *Freedom of Information and Protection of Privacy Act*, or
 - (ii) any other Information specified as "Sensitive Information" in Appendix G6, if attached; and
 - (f) "Services Worker" means an individual involved in providing the Services for or on behalf of the Contractor and, for greater certainty, may include
 - (i) the Contractor or a subcontractor if an individual, or
 - (ii) an employee or volunteer of the Contractor or of a subcontractor.

Schedule contains additional obligations

2. The obligations of the Contractor in this Schedule are in addition to any other obligation in the Agreement or the schedules attached to it relating to security including, without limitation, the obligations of the Contractor in the Privacy Protection Schedule, if attached.

Services Worker confidentiality agreements

3. The Contractor must not permit a Services Worker who is an employee or volunteer of the Contractor to have access to Sensitive Information unless the Services Worker has first entered into a confidentiality agreement with the Contractor to keep Sensitive Information confidential on substantially similar terms as those that apply to the Contractor under the Agreement.

Services Worker security screening

4. The Contractor may only permit a Services Worker who is an employee or a volunteer of the Contractor to have access to Sensitive Information or otherwise be involved in providing the Services if, after having subjected the Services Worker to the personnel security screening requirements set out in Appendix G1 and any additional requirements the Contractor may consider appropriate, the Contractor is satisfied that the Services Worker does not constitute an unreasonable security risk. The Contractor must create, obtain and retain Records documenting the Contractor's compliance with the security screening requirements set out in Appendix G1 in accordance with the provisions of that appendix.

Services Worker activity logging

5. Subject to section 6, the Contractor must create and maintain detailed Records logging the activities of all Service Workers in relation to:

- (a) their access to Sensitive Information; and
 - (b) other matters specified by the Province in writing for the purposes of this section.
6. The Records described in section 5 must be made and maintained in a manner, and contain information, specified in Appendix G2, if attached.

Facilities and Equipment protection and access control

7. The Contractor must create, maintain and follow a documented process to:
- (a) protect Facilities and Equipment of the Contractor required by the Contractor to provide the Services from loss, damage or any other occurrence that may result in any of those Facilities and Equipment being unavailable when required to provide the Services; and
 - (b) limit access to Facilities and Equipment of the Contractor
 - (i) being used by the Contractor to provide the Services, or
 - (ii) that may be used by someone to access Information
- to those persons who are authorized to have that access and for the purposes for which they are authorized, which process must include measures to verify the identity of those persons.
8. If the Province makes available to the Contractor any Facilities or Equipment of the Province for the use of the Contractor in providing the Services, the Contractor must comply with any policies and procedures provided to it by the Province on acceptable use, protection of, and access to, such Facilities or Equipment.

Sensitive Information access control

9. The Contractor must:
- (a) create, maintain and follow a documented process for limiting access to Sensitive Information to those persons who are authorized to have that access and for the purposes for which they are authorized, which process must include measures to verify the identity of those persons; and
 - (b) comply with the information access control requirements set out in Appendix G3, if attached.

Integrity of Information

10. The Contractor must:
- (a) create, maintain and follow a documented process for maintaining the integrity of Information while possessed or accessed by the Contractor; and
 - (b) comply with the information integrity requirements set out in Appendix G4, if attached.
11. For the purposes of section 10, maintaining the integrity of Information means that, except to the extent expressly authorized by the Agreement or approved in writing by the Province, the Information has:
- (a) remained as complete as when it was acquired or accessed by the Contractor; and
 - (b) not been altered in any material respect.

Documentation of changes to processes

12. The Contractor must create and maintain detailed Records logging any changes it makes to the processes described in sections 7, 9 and 10.

Notice of security breaches

13. If Contractor becomes aware that:

- (a) unauthorized access, collection, use, disclosure, alteration or disposal of Information or Records containing Information; or
- (b) unauthorized access to Facilities or Equipment

has occurred or is likely to occur (whether or not related to a failure by the Contractor to comply with this Schedule or the Agreement), the Contractor must immediately notify the Province of the particulars of that occurrence or likely occurrence. If the Contractor provides a notification under this section other than in writing, that notification must be confirmed in writing to the Province as soon as it is reasonably practicable for the Contractor to do so.

Review of security breaches

14. If the Province decides to conduct a review of a matter described in section 13 (whether or not the matter came to the attention of the Province as a result of a notification under section 13), the Contractor must, on the request of the Province, participate in the review to the extent that it is reasonably practicable for the Contractor to do so.

Retention of Records

15. Unless the Agreement otherwise specifies, the Contractor must retain all Records in the Contractor's possession that contain Information until directed by the Province in writing to dispose of them or deliver them as specified in the direction.

Storage of Records

16. Until disposed of or delivered in accordance with section 15, the Contractor must store any Records in the Contractor's possession that contain Information in accordance with the provisions of Appendix G5, if attached.

Audit

17. In addition to any other rights of inspection the Province may have under the Agreement or under statute, the Province may, at any reasonable time and on reasonable notice to the Contractor, enter on the Contractor's premises to inspect and, at the Province's discretion, copy:

- (a) any Records in the possession of the Contractor containing Information; or
- (b) any of the Contractor's Information management policies or processes (including the processes described in sections 7, 9 and 10 and the logs described in sections 5 and 12) relevant to the Contractor's compliance with this Schedule

and the Contractor must permit, and provide reasonable assistance to, the exercise by the Province of the Province's rights under this section.

Termination of Agreement

18. In addition to any other rights of termination which the Province may have under the Agreement or otherwise at law, the Province may, subject to any provisions in the Agreement establishing mandatory cure periods for defaults by the Contractor, terminate the Agreement by giving written notice of such termination to the Contractor, upon any failure of the Contractor to comply with this Schedule in a material respect.

Interpretation

19. In this Schedule, unless otherwise specified:
 - (a) references to sections are to sections of this Schedule; and
 - (b) references to appendices are to the appendices attached to this Schedule.
20. Any reference to the "Contractor" in this Schedule includes any subcontractor retained by the Contractor to perform obligations under the Agreement and the Contractor must ensure that any such subcontractors comply with this Schedule.
21. The appendices attached to this Schedule are part of this Schedule.
22. If there is a conflict between a provision in an appendix attached to this Schedule and any other provision of this Schedule, the provision in the appendix is inoperative to the extent of the conflict unless the appendix states that it operates despite a conflicting provision of this Schedule.
23. If there is a conflict between:
 - (a) a provision of the Agreement, this Schedule or an appendix attached to this Schedule; and
 - (b) a documented process required by this Schedule to be created or maintained by the Contractorthe provision of the Agreement, Schedule or appendix will prevail to the extent of the conflict.
24. The obligations of the Contractor in this Schedule will survive the termination of the Agreement.

SCHEDULE G – Appendix G1 – Security screening requirements

The personnel security screening requirements set out in this Appendix G1 are for the purpose of assisting the Contractor determine whether or not a Services Worker constitutes an unreasonable security risk.

Verification of name, date of birth and address

1. The Contractor must verify the name, date of birth and current address of a Services Worker by viewing at least one piece of "primary identification" of the Services Worker and at least one piece of "secondary identification" of the Services Worker,* as described in the table following this section. The Contractor must obtain or create, as applicable, Records of all such verifications and retain a copy of those Records. For a Services Worker from another province or jurisdiction, reasonably equivalent identification documents are acceptable.

Primary Identification	Secondary Identification
Issued by ICBC: • B.C. driver's licence or learner's licence (must have photo) • B.C. Identification (BCID) card Issued by provincial or territorial government: • Canadian birth certificate Issued by Government of Canada: • Canadian Citizenship Card • Permanent Resident Card • Canadian Record of Landing/Canadian Immigration Identification Record	• School ID card (student card) • Bank card (only if holder's name is on card) • Credit card (only if holder's name is on card) • Passport • Foreign birth certificate (a baptismal certificate is not acceptable) • Canadian or U.S. driver's licence • Naturalization certificate • Canadian Forces identification • Police identification • Foreign Affairs Canada or consular identification • Vehicle registration (only if owner's signature is shown) • Picture employee ID card • Firearms Acquisition Certificate • Social Insurance Card (only if has signature strip) • B.C. CareCard • Native Status Card • Parole Certificate ID • Correctional Service Conditional Release Card

*It is not necessary that each piece of identification viewed by the Contractor contains the name, date of birth and current address of the Services Worker. It is sufficient that, in combination, the identification viewed contains that information.

Verification of education and professional qualifications

2. The Contractor must verify, by reasonable means, any relevant education and professional qualifications of a Services Worker, obtain or create, as applicable, Records of all such verifications, and retain a copy of those Records.