

**RFB Tender #9939**

**ATTACHMENT #2 - FORM OF AGREEMENT**

**Master Agreement**

**Between**

**Her Majesty the Queen in right of Ontario  
as represented by the Minister of Government and  
Consumer Services**

**and**

**[\*\*insert Legal Name of Vendor\*\*]**

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**For Security Guard Services**

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**Effective Date: December 2, 2018**

**Agreement No.: Tender #9939**

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11.01 Publication of Data and Consent

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## Master Agreement

This Master Agreement (the “Master Agreement”), made in triplicate, for Security Guard Services is effective as of December 2, 2018 (“Effective Date”),

### Between:

Her Majesty the Queen in right of Ontario  
as represented by the Minister of Government and Consumer Services

(referred to as “MGCS”)

### And:

**[\*\*insert Legal Name of Vendor\*\*]**

(referred to as the “Vendor”)

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

## Article 1 – Interpretation and General Provisions

### 1.01 Defined Terms

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

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

“**Bid**” means all the documentation submitted by the Vendor in response to the RFB;

“**Bidder**” means the legal entity that submits a Bid in response to the RFB;

“**Business Day**” means any working day, Monday to Friday inclusive, but excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day which the Ministry has elected to be closed for business;

“**Client**” means any entity falling within the Ontario Public Service, or Provincially Funded Organization that has opted to utilize this vendor of record arrangement;

“**Conflict of Interest**” includes, but is not limited to, any situation or circumstance where:

- (a) in relation to the RFB process, the Bidder has an unfair advantage or engages in conduct, directly or indirectly, that may give it an unfair advantage, including, but not limited to (i) having or having access to information in the preparation of its Bid that is confidential to the Crown and not available to other Bidders; (ii) communicating with any person with a view to influencing preferred treatment in the RFB process including the giving of a benefit of any kind, by or on behalf of the Bidder to anyone employed by, or otherwise connected with, the Ministry; or (iii) engaging in conduct that compromises or could be seen to compromise the integrity of the open and competitive RFB process and render that process non-competitive and unfair; or
- (b) in relation to the performance of its contractual obligations in a Crown contract, the Vendor's other commitments, relationships or financial interests (i) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgement; or (ii) could or could be seen to compromise, impair or be incompatible with the effective performance of its contractual obligations;

**“Contract”** means the aggregate of: (a) the Master Agreement, including Schedule 1 (Schedule of Deliverables, Rates and Supplementary Provisions), and any other schedule attached at the time of execution; (b) the assignment-specific Statement of Work; (c) the RFB, including any addenda; (d) the Bid; and (e) any amendments executed in accordance with the terms of the Master Agreement;

**“Deliverables”** and **“Deliverable”** means everything developed for or provided to MGCS or any Client in the course of performing under the Contract or agreed to be provided to MGCS or any Client under the Contract by the Vendor or the Vendor's Personnel, as further defined, but not limited by Schedule 1, including but not limited to any goods or services or any and all Intellectual Property and any and all concepts, techniques, ideas, information, documentation and other materials, however recorded, developed or provided;

**“Direct Deposit”** means the electronic transfer of funds by the Client to the financial institution identified by the Vendor, in accordance with the Direct Deposit Protocols;

**“Direct Deposit Protocols”** means the protocols set out at [[Doing Business with Ontario](#)], which may be amended from time to time as required by Ontario;

**“Employer”** means a person who employs one or more workers or contracts for the services of one or more workers and includes a contractor or subcontractor who performs work or supplies services and a contractor or subcontractor who undertakes with an owner, contractor or subcontractor to performance work or supply services.

**“Expiry Date”** means **December 1, 2021** or, if the original term is extended, the final date of the extended term;

**“FIPPA”** means the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended;

**“Fiscal Year”** means the period running from April 1 in one calendar year to, and including, March 31 in the next calendar year;

**“Indemnified Parties”** means each of the following and their directors, officers, advisors, agents, appointees and employees: Ontario and the members of the Executive Council of Ontario;

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

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

**“Losses”** means liabilities, costs, damages and expenses (including legal, expert and consulting fees);

**“Ministry Address”** and **“Ministry Representative”** mean:

Ministry of Government and Consumer Services  
Enterprise Procurement Branch  
222 Jarvis Street, 8<sup>th</sup> Floor  
Toronto, M8Z 1S7

Ministry Representative: **Bertha Chang**  
Telephone: **416-327-2254**  
E-mail: **bertha.chang@ontario.ca**

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

**“Ontario”** means Her Majesty the Queen in right of Ontario;

**“Ontario Public Service”** and **“OPS”** means the ministries and other administrative units of Ontario over which the ministers of Ontario preside and includes agencies, boards and commissions.

**“OPS Confidential Information”** means all information of the Ontario Public Service that is of a confidential nature, including all confidential information in the custody or control of the OPS, regardless of whether it is identified as confidential or not, and

whether recorded or not, and however fixed, stored, expressed or embodied, which comes into the knowledge, possession or control of the Vendor in connection with the Agreement. For greater certainty, OPS Confidential Information shall:

- (a) include: (i) all new information derived at any time from any such information whether created by the OPS, the Vendor or any third-party; (ii) all information (including Personal Information) that the OPS is obliged, or has the discretion, not to disclose under provincial or federal legislation or otherwise at law; but
- (b) not include information that: (i) is or becomes generally available to the public without fault or breach on the part of the Vendor of any duty of confidentiality owed by the Vendor to the OPS or to any third-party; (ii) the Vendor can demonstrate to have been rightfully obtained by the Vendor, without any obligation of confidence, from a third-party who had the right to transfer or disclose it to the Vendor free of any obligation of confidence; (iii) the Vendor can demonstrate to have been rightfully known to or in the possession of the Vendor at the time of disclosure, free of any obligation of confidence when disclosed; or (iv) is independently developed by the Vendor; but the exclusions in this subparagraph shall in no way limit the meaning of Personal Information or the obligations attaching thereto under the Contract or at law;

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

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

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

**“Procurement Card”** means the corporate charge card(s) used by the Ministry, as may be changed from time to time;

**“Procurement Card Protocols”** means the manner in which the Vendor is required to process any payments under the Contract that the Client elects to make by way of Procurement Card, which shall include the requirement to: (a) collect the authorized employee's name, the abbreviated Client name, the expiry date, and the employee's authorization; (b) contact the financial institution identified on the Procurement Card each time the Procurement Card is used for payment; (c) receive payment from the financial institution named on the Procurement Card once that institution authorizes payment; and (d) bear the cost of any and all charges relating to the use of the Procurement Card, including the financial institution's charges for payment through the Procurement Card;

**“Provincially Funded Organizations”** and **“PFO”** means: a) any public sector entity of the Province of Ontario; or (b) any other entity designated by MGCS as a Provincially Funded Organization, which designation may be amended from time to time at the sole discretion of MGCS, but excludes (i) Ontario, as represented by a ministry of Ontario over which a minister of the Crown, as appointed by the Lieutenant

Governor under the Executive Council Act, R.S.O. 1990, c. E.25, presides, or any combination of such ministries; and (ii) OPS entities;

**“Rates”** and **“Rate”** means the applicable price, in Canadian funds, to be charged for the applicable Deliverables, as set out in Schedule 1, representing the full amount chargeable by the Vendor for the provision of the Deliverables, including, but not limited to: (a) all applicable duties and taxes, excluding Ontario Harmonized Sales Tax (HST); (b) all labour and material costs; (c) all travel and carriage costs; (d) all permit, licence and approval costs (e) all insurance costs; and (f) all other overhead including any fees or other charges required by law;

**“Record”**, for the purposes of the Contract, means any recorded information in the custody or control of MGCS or any Client, including any Personal Information, in any form: (a) provided by MGCS or any Client to the Vendor, or provided by the Vendor to MGCS or any Client, for the purposes of the Contract; or (b) created by the Vendor in the performance of the Contract; and shall exclude any information specifically described in Schedule 1;

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

**“RFB”** means the Request for Bids, which includes the Qualification, Technical, and Commercial Envelopes as set out on the Ontario Tenders Portal eTendering System, as well as any addenda and attachments to it; dated Thursday, October 4, 2018 for Security Guard Services, reference number Tender 9939, issued by MGCS for the Deliverables;

**“Statement of Work”** means a sub-agreement entered into between the Vendor and a Client pursuant to a second stage invitational process setting out specific Deliverables;

**“Subcontractors”** means in the case of each party, any contractor of that party or any of its subcontractors at any tier of subcontracting;

**“Vendor Address”** and **“Vendor Representative”** mean:

**[\*\*insert name of Vendor\*\*]**

**[\*\*insert address of Vendor\*\*]**

Vendor Representative: **fill in**  
Telephone: **fill in**  
Facsimile: **fill in**  
E-mail: **fill in**

**“Vendor’s Intellectual Property”** means Intellectual Property owned by the Vendor prior to its performance under the Contract or created by the Vendor during the Term



of the Contract, independently of the performance of its obligations under the Contract;

**"Vendor's Personnel"** includes the directors, officers, employees, agents, partners, affiliates volunteers or Subcontractors of the Vendor;

**"Term"** means the period of time from the Effective Date up to and including the earlier of: (i) the Expiry Date or (ii) the date of termination of the Contract in accordance with its terms;

**"Third-Party Intellectual Property"** means any Intellectual Property owned by a party other than Her Majesty the Queen in right of Ontario or the Vendor.

### **1.02 No Indemnities from MGCS or Clients**

Notwithstanding anything else in the Contract, any express or implied reference in any document (including subcontracts) related to the Deliverables under the Contract, to MGCS or any Client providing an indemnity or any other form of indebtedness or contingent liability that would directly or indirectly increase the indebtedness or contingent liabilities of Ontario, whether at the time of execution of the Agreement or at any time during the Term, shall be void and of no legal effect.

### **1.03 Entire Agreement**

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

### **1.04 Severability**

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

### **1.05 Interpretive Value of Contract Documents**

In the event of a conflict or inconsistency in any provisions in the Contract: (a) the main body of the Master Agreement shall govern over the Schedules to the Agreement; (b) the Master Agreement (including its Schedules) shall govern over any Statement of Work; (c) the Master Agreement (including its Schedules) and a Statement of Work shall govern over the RFB and the Bid; and (d) the RFB shall govern over the Bid.

### **1.06 Interpretive Value of Headings**

The headings in the Contract are for convenience of reference only and in no manner modify, interpret or construe the Contract.

### **1.07 Force Majeure**

Neither party shall be liable for damages caused by delay or failure to perform its obligations under the Contract where such delay or failure is caused by an event

beyond its reasonable control. The parties agree that an event shall not be considered beyond one's reasonable control if a reasonable business person applying due diligence in the same or similar circumstances under the same or similar obligations as those contained in the Contract would have put in place contingency plans to either materially mitigate or negate the effects of such event. Without limiting the generality of the foregoing, the parties agree that force majeure events shall include natural disasters and acts of war, insurrection and terrorism but shall not include shortages or delays relating to supplies or services. If a party seeks to excuse itself from its obligations under the Contract due to a force majeure event, that party shall immediately notify the other party of the delay or non-performance, the reason for such delay or non-performance and the anticipated period of delay or non-performance. If the anticipated or actual delay or non-performance exceeds fifteen (15) Business Days, the other party may immediately terminate the Contract by giving notice of termination and such termination shall be in addition to the other rights and remedies of the terminating party under the Contract, at law or in equity.

#### **1.08 Notices by Prescribed Means**

Notices shall be in writing and shall be delivered by postage-prepaid envelope, personal delivery, email or facsimile and shall be addressed to, respectively, the MGCS Address to the attention of the MGCS Representative and to the Vendor Address to the attention of the Vendor Representative. Notices shall be deemed to have been given: (a) in the case of postage-prepaid envelope, five (5) Business Days after such notice is mailed; or (b) in the case of personal delivery, email or facsimile one (1) Business Day after such notice is received by the other party. In the event of a postal disruption, notices must be given by personal delivery, email or by facsimile. Unless the parties expressly agree in writing to additional methods of notice, notices may only be provided by the methods contemplated in this section. Notices relating to a particular Statement of Work shall also be governed by this paragraph, but shall be delivered to the particular representatives and addresses established under a specific Statement of Work. Unless the parties expressly agree in writing to additional methods of notice, notices may only be provided by the methods contemplated in this section.

#### **1.09 Governing Law**

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

#### **1.10 Currency**

All references to currency in the Master Agreement shall be to Canadian dollars.

## **Article 2 – Nature of Relationship Between MGCS/ Client and Vendor**

### **2.01 Vendor's Power to Contract**

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

### **2.02 Representatives May Bind the Parties**

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

### **2.03 Vendor Not a Partner, Agent or Employee**

The Vendor shall have no power or authority to bind MGCS or any Client or to assume or create any obligation or responsibility, express or implied, on behalf of MGCS or any Client. The Vendor shall not hold itself out as an agent, partner or employee of MGCS or any Client. Nothing in the Contract shall have the effect of creating an employment, partnership or agency relationship between MGCS or any Client and the Vendor (or any of the Vendor's Personnel) or constitute an appointment under the *Public Service of Ontario Act, 2006*, S.O. 2006, c. 35, Schedule A, as amended.

### **2.04 Responsibility of Vendor**

The Vendor agrees that it is liable for its acts and those of the Vendor's Personnel. This section is in addition to any and all of the Vendor's liabilities under the Contract and under the general application of law. The Vendor shall advise these individuals and entities of their obligations under the Contract and shall ensure their compliance with the applicable terms of the Contract. This section shall survive the termination or expiry of the Contract.

### **2.05 No Subcontracting or Assignment**

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

### **2.06 Duty to Disclose Change of Control**

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

## **2.07 Conflict of Interest**

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

## **2.08 Contract Binding**

The Contract shall enure to the benefit of and be binding upon the parties and their successors, executors, administrators and their permitted assigns.

## **Article 3 – Performance by Vendor**

### **3.01 Vendor Performance and Statement of Work**

This Master Agreement sets out terms and conditions in connection with the acquisition of Deliverables and contemplates the execution by the Vendor and the Clients, during the Term, of one or more Statement of Works for the purpose of providing specific Deliverables. Furthermore, with respect to Statement of Works:

- (a) Only Clients as defined under the Master Agreement may obtain Deliverables on the terms and conditions provided for in the Contract, and only by entering into a Statement of Work executed by duly authorized representatives of the Clients and the Vendor for which OPS Clients shall use the OPS Form of Statement of Work;
- (b) Deliverables shall be provided only pursuant to a Statement of Work and in accordance with the Contract;
- (c) The Vendor shall not, under the Contract, sell or offer to sell any Deliverables to any person or organization that is not a Client as defined in the Master Agreement, except in the case of Provincially Funded Organizations as provided in Article 9 below;
- (d) The terms and conditions of the Master Agreement shall apply to each Statement of Work and the same terms and conditions that apply between the Vendor and MGCS under the Master Agreement shall also apply between the Vendor and each Client under each Statement of Work and, without limiting this paragraph, the duties owing to MGCS under the Master Agreement shall also be owing to the Clients under the particular Statement of Work and the rights exercisable by MGCS under the Master Agreement shall also be exercisable by the Clients under the particular Statement of Work;
- (e) Each Statement of Work shall refer to this Master Agreement by setting out the Agreement number set out on the first page of this Master Agreement, and shall, at minimum, also include (i) the name or description of each Deliverable, along with

the related names of the individual(s) performing the services, the Rates payable and delivery dates; (ii) the type, term and commencement date of each assignment; (iii) the name and contact information for the Clients and Vendor for the purposes of the particular Statement of Work and (iv) any other terms and conditions agreed upon by the parties in accordance with the Contract; and,

(f) The terms and conditions set out in a Statement of Work shall have no effect on any other Statement of Work and shall only apply to the provision of Deliverables under that particular Statement of Work.

### **3.02 Performance Warranty**

The Vendor hereby represents and warrants that the Deliverables shall be provided fully and diligently in a professional and competent manner by Persons qualified and skilled in their occupations and furthermore that all Deliverables will be provided in accordance with: (a) the Contract; (b) Industry Standards; and (c) Requirements of Law. If any of the Deliverables, in the opinion of MGCS or a Client, are inadequately provided or require corrections, the Vendor shall forthwith make the necessary corrections at its own expense, as specified by MGCS or a Client in a rectification notice issued pursuant to Section 8.02.

### **3.03 Use and Access Restrictions**

The Vendor acknowledges that unless it obtains specific written preauthorization from MGCS or a Client, any access to or use of OPS property, technology or information, that is not necessary for the performance of its contractual obligations with MGCS or a Client, is strictly prohibited. The Vendor further acknowledges that MGCS or a Client may monitor the Vendor to ensure compliance with this section. This section is in addition to and shall not limit any other obligation or restriction placed upon the Vendor.

### **3.04 Notification by Vendor to MGCS/ Client**

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

### **3.05 Condonation Not a Waiver**

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

### **3.06 Changes By Written Amendment Only**

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

### **3.07 Vendor to Comply With Reasonable Change Requests**

MGCS may, in writing, request changes to the Contract, which may include altering, adding to, or deleting any of the Deliverables. The Vendor shall comply with all reasonable MGCS change requests and the performance of such request shall be in accordance with the terms and conditions of the Contract. If the Vendor is unable to comply with the change request, it shall promptly notify MGCS and provide reasons for such non-compliance. In any event, any such change request shall not be effective until a written amendment reflecting the change has been executed by the parties. This paragraph shall also apply to any change requests made by the Clients as they relate to a particular Statement of Work.

### **3.08 Pricing for Requested Changes**

Where a MGCS change request includes an increase in the scope of the previously contemplated Deliverables, MGCS shall set out, in its change request, the proposed prices for the contemplated changes. Where the Rates in effect at the time of the change request:

(a) include pricing for the particular type of goods or services contemplated in the change request, the Vendor shall not unreasonably refuse to provide those goods or services at prices consistent with those Rates; or

(b) are silent to the applicable price for the particular goods or services contemplated in the change request, the price shall be negotiated between MGCS and the Vendor within a reasonable period of time;

and in any event, such change request shall not become effective until a written amendment reflecting the change has been executed by the parties. This paragraph shall also apply to any change requests made by a Client as they relate to a particular Statement of Work.

### **3.09 Non-Exclusive Contract, Work Volumes**

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

### **3.10 Performance by Specified Individuals Only**

The Vendor agrees that, to the extent that specific individuals are named in the Contract as being responsible for the provision of the Deliverables, only those individuals shall provide the Deliverables under the Contract. The Vendor shall not replace or substitute any of the individuals named in the Contract without the prior written approval of MGCS, which may not arbitrarily or unreasonably be withheld. Should the Vendor require the substitution or replacement of any of the individuals named in the Contract, it is understood and agreed that any proposed replacement must possess similar or greater qualifications than the individual named in the Contract. The Vendor shall not claim fees for any replacement individual greater than the Rates established under the Contract. This paragraph shall also apply to any

replacement or substitution of specific individuals as they relate to a particular Statement of Work.

### **3.11 Security Clearance**

The Vendor shall, upon request from MGCS, require those Persons providing services under the Master Agreement to submit to security checks and the Vendor may be required to obtain and pay for security clearance. Where such security checks are required MGCS will provide information on how the Vendor can obtain them.

The Vendor shall provide to MGCS, upon request, the names, addresses, dates of birth and consents of its Persons for whom security checks are required. The Vendor shall designate a chief security officer as the contact for this purpose. Any Person who is unable to obtain security clearance, or who refuses to consent to such security checks, shall not be permitted to perform services under the Master Agreement.

Security clearance may be suspended or revoked if any Person fails to maintain security clearance or security standards required pursuant to the Master Agreement. The Vendor shall notify MGCS of any personnel changes, behaviours, or circumstances for which security clearance may require reconsideration.

Security clearance is not awarded in perpetuity. MGCS may perform, or re-perform, security checks against any Person providing services under the Master Agreement at any time, and will notify the Vendor of this requirement.

The Vendor shall be considered in default of the Master Agreement if it fails to comply with the requirements of this section or if any security clearance results received by MGCS are found, in the sole discretion of MGCS, to be incompatible with the proper and impartial provision of the Deliverables in accordance with the terms and conditions of the Master Agreement.

### **3.12 Accessibility Requirements**

The Vendor's delivery of the Deliverables shall comply with all applicable requirements, specifications and standards for accessibility established in accordance with the Ontario *Human Rights Code (HRC)* R.S.O. 1990, c. H.19, the *Ontarians with Disabilities Act*, S.O. 2001, c. 32, and the *Accessibility for Ontarians with Disabilities Act, 2005*, S.O. 2005, c. 11 (Integrated Accessibility Standards), any regulations made thereto and any direction from MGCS. The Vendor must meet the Government of Ontario's requirements on the Government of Ontario's schedule under the Integrated Accessibility Standards Regulation as directed by MGCS.

### **3.13 MGCS/ Client Rights and Remedies and Vendor Obligations Not Limited to Contract**

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

## **Article 4 – Payment for Performance and Audit**

### **4.01 Payment According to Contract Rates**

The Ministry shall, subject to the Vendor's compliance with the provisions of the Contract, pay the Vendor for the Deliverables provided at the Rates established under the Contract. MGCS shall not be responsible for any payment under the Contract except for those Rates payable to the Vendor in accordance with a Statement of Work that MGCS may enter into as a Client under the Contract.

### **4.02 Default Billing and Payment Process**

Unless the parties expressly set out an alternative billing and payment process in a particular Statement of Work, the following process shall govern:

- (a) the Vendor shall provide the Client with a monthly billing statement no later than ten (10) Business Days after the end of each month and that billing statement shall include: (i) the reference number assigned to the Statement of Work by the Client; (ii) a brief description of the Deliverables provided for the relevant month; and (iii) taxes, if payable by the Client, identified as separate items.
- (b) the Client shall approve or reject the billing statement within fifteen (15) Business Days of receipt of the statement and in the event that the Client rejects the billing statement, it shall so advise the Vendor promptly in writing and the Vendor shall provide additional information as required by the Client to substantiate the billing statement;
- (c) each billing statement is subject to the approval of the Client before any payment is released and payment shall be made within thirty (30) Business Days of such approval;
- (d) it is acknowledged and agreed that the Client may require that the Vendor include additional information in the billing statement, upon notice to the Vendor; and
- (e) the Client may, in its discretion, make payments under the Contract by way of the following methods:
  - i. Direct Deposit and the Vendor shall accept and process any such payments in accordance with the Direct Deposit Protocols; or,
  - ii. Procurement Card and the Vendor shall accept and process any such payments in accordance with Procurement Card Protocols.
- (f) the Client will make payments under the Contract by way of the following methods:
  - i. Direct deposit to the Supplier's bank account. The supplier will enroll for direct deposit in advance of submitting the first billing by completing the registration form located at [www.ontario.ca/directpayment](http://www.ontario.ca/directpayment) (English) or [www.ontario.ca/paiementdirect](http://www.ontario.ca/paiementdirect) (French). Completed forms along with



a void cheque must be mailed or couriered to the following address:

Ministry of Government Services  
Ontario Shared Services  
Financial Processing Operations Branch  
Central Control Unit  
77 Wellesley Street West, Box 700  
Toronto, ON M7A 1N3

- ii. Alternatively, the client may make payments by way of Procurement Card and the Supplier shall accept and process any such payments in accordance with Procurement Card Protocols;

and any paragraph set out above, that is not expressly replaced in a Statement of Work with an alternative provision, shall remain in full force and effect.

**4.03 Hold Back or Set Off**

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

**4.04 No Expenses or Additional Charges**

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

**4.05 Payment and Collection of Taxes and Duties**

The Vendor shall pay or charge and remit, as required, all applicable taxes, including excise taxes incurred by or on the Vendor's behalf with respect to the Contract.

**4.06 Withholding Tax**

MGCS or a Client shall withhold any applicable withholding tax from amounts due and owing to the Vendor under the Master Agreement and shall remit it to the appropriate government in accordance with applicable tax laws. This section shall survive any termination or expiry of the Contract.

**4.07 Interest on Late Payment**

If a payment is in arrears through no fault of the Vendor, the interest charged by the Vendor, if any, for any late payment is subject to required approvals under the *Financial Administration Act*, R.S.O. 1990, c. F.12 and shall not exceed the pre-judgment interest rate established under Section 127(2) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, in effect on the date that the payment went into arrears.

**4.08 Document Retention and Audit**

For seven (7) years after the Expiry Date or any date of termination of the Contract, the Vendor shall maintain all necessary records to substantiate (a) all charges and payments under the Contract and (b) that the Deliverables were provided in accordance with the Contract and with Requirements of Law. During the Term, and for seven (7) years after the Term, the Vendor shall permit and assist MGCS or a Client in conducting audits of the operations of the Vendor to verify (a) and (b) above.

MGCS or a Client shall provide the Vendor with at least ten (10) Business Days prior notice of its requirement for such audit. The Vendor's obligations under this section shall survive any termination or expiry of the Contract.

## **Article 5 – Confidentiality and Freedom of Information and Protection of Privacy Act**

### **5.01 Confidentiality and Promotion Restrictions**

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

### **5.02 OPS Confidential Information**

During and following the Term, the Vendor shall: (a) keep all OPS Confidential Information confidential and secure; (b) limit the disclosure of OPS Confidential Information to only those of the Vendor's Personnel who have a need to know it for the purpose of providing the Deliverables and who have been specifically authorized to have such disclosure; (c) not directly or indirectly disclose, destroy, exploit or use any OPS Confidential Information (except for the purpose of providing the Deliverables, or except if required by order of a court or tribunal), without first obtaining: (i) the written consent of MGCS or a Client and (ii) in respect of any OPS Confidential Information about any third-party, the written consent of such third-party; (d) provide OPS Confidential Information to MGCS or a Client on demand; and (e) return all OPS Confidential Information to MGCS or a Client before the end of the Term, with no copy or portion kept by the Vendor.

### **5.03 Restrictions on Copying**

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

### **5.04 Injunctive and Other Relief**

The Vendor acknowledges that breach of any provisions of this Article may cause irreparable harm to MGCS or a Client or to any third-party to whom MGCS or a Client owes a duty of confidence, and that the injury to MGCS or a Client or to any third-party may be difficult to calculate and inadequately compensable in damages. The Vendor agrees that MGCS or a Client is entitled to obtain injunctive relief (without proving any damage sustained by it or by any third-party) or any other remedy against any actual or potential breach of the provisions of this Article.

### **5.05 Notice and Protective Order**

If the Vendor or any of the Vendor's Personnel become legally compelled to disclose any OPS Confidential Information, the Vendor will provide MGCS or a Client with prompt notice to that effect in order to allow MGCS or a Client to seek one or more protective orders or other appropriate remedies to prevent or limit such disclosure, and it shall co-operate with MGCS or a Client and its legal counsel to the fullest extent. If such protective orders or other remedies are not obtained, the Vendor will disclose only that portion of OPS Confidential Information which the Vendor is legally compelled to disclose, only to such Person or Persons to which the Vendor is legally compelled to disclose, and the Vendor shall provide notice to each such recipient (in co-operation with legal counsel for MGCS or a Client) that such OPS Confidential Information is confidential and subject to non-disclosure on terms and conditions equal to those contained in the Master Agreement and, if possible, shall obtain each recipient's written agreement to receive and use such OPS Confidential Information subject to those terms and conditions.

### **5.06 FIPPA Records and Compliance**

The Vendor and MGCS or a Client acknowledge and agree that FIPPA applies to and governs all Records and may require the disclosure of such Records to third parties. Furthermore, the Vendor agrees:

- (a) to keep Records secure;
- (b) to provide Records to MGCS or a Client within seven (7) calendar days of being directed to do so by MGCS or a Client for any reason including an access request or privacy issue;
- (c) not to access any Personal Information unless MGCS or a Client determines, in its sole discretion, that access is permitted under FIPPA and is necessary in order to provide the Deliverables;
- (d) not to directly or indirectly use, collect, disclose or destroy any Personal Information for any purposes that are not authorized by MGCS or a Client;
- (e) to ensure the security and integrity of Personal Information and keep it in a physically secure and separate location safe from loss, alteration, destruction or intermingling with other records and databases and to implement, use and maintain the most appropriate products, tools, measures and procedures to do so;
- (f) to restrict access to Personal Information to those of the Vendor's Personnel who have a need to know it for the purpose of providing the Deliverables and who have been specifically authorized by MGCS or a Client Representative to have such access for the purpose of providing the Deliverables;
- (g) to implement other specific security measures that, in the reasonable opinion of MGCS or a Client, would improve the adequacy and effectiveness of the Vendor's measures to ensure the security and integrity of Personal Information and Records generally; and

(h) that any confidential information supplied to MGCS or a Client may be disclosed by MGCS or a Client where it is obligated to do so under FIPPA, by an order of a court or tribunal or pursuant to a legal proceeding;

and the provisions of this section shall prevail over any inconsistent provisions in the Contract.

#### **5.07 Survival**

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

### **Article 6 – Intellectual Property**

#### **6.01 Ontario Intellectual Property**

The Vendor agrees that all Ontario Intellectual Property and every other right, title and interest in and to all concepts, techniques, ideas, information and materials, however recorded, (including images and data) provided by MGCS or a Client to the Vendor, shall remain the sole property of Her Majesty the Queen in right of Ontario at all times.

#### **6.02 Newly Created Intellectual Property**

Ontario shall be the sole owner of any Newly Created Intellectual Property. The Vendor irrevocably assigns to and in favour of the Client and the Client accepts every right, title and interest in and to all Newly Created Intellectual Property in the Deliverables, immediately following the creation thereof, for all time and irrevocably waives in favour of the Client all rights of integrity and other moral rights to all Newly Created Intellectual Property in the Deliverables, immediately following the creation thereof, for all time.

#### **6.03 Vendor Intellectual Property**

Subject to Section 6.04, the Client agrees that all Intellectual Property and every other right, title and interest in and to all concepts, techniques, ideas, information and materials, however recorded, (including images and data) provided by the Vendor to the Client that is not: (i) Ontario Intellectual Property; (ii) Newly Created Intellectual Property or, (iii) Third Party Intellectual Property shall remain the sole property of the Vendor at all times.

#### **6.04 Presumption Governing Intellectual Property Ownership**

If the Vendor's Intellectual Property or Third Party Intellectual Property forms any part of the Deliverables, the Vendor shall notify the Client of such prior to the delivery of the particular Deliverable containing any such Vendor Intellectual Property or Third Party Intellectual Property. In the absence of any such notice, the presumption governing the Contract shall be that Ontario is the sole owner of any Intellectual Property in any form contained in any of the Deliverables.

#### **6.05 Vendor's Grant of Licence**

To the extent that the Deliverables contain, in whole in part, Vendor Intellectual Property or Third Party Intellectual Property, the Vendor grants to the Client, a perpetual, world-wide, non-exclusive, irrevocable, transferable, royalty free, fully paid up right and licence: (a) to use, modify, reproduce and distribute, in any form, those

Deliverables; and (b) to authorize other Persons, including agents, contractors or sub-contractors, to do any of the former on behalf of the Client, the total consideration for which shall be payment of the Rates to the Vendor by the Client.

**6.06 No Restrictive Material in Deliverables**

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

**6.07 Vendor Representation and Warranty Regarding Third-Party Intellectual Property**

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

**6.08 Assurances Regarding Moral Rights**

At the request of the Client, at any time or from time to time, the Vendor shall execute and agrees to cause the Vendor's Personnel to execute an irrevocable written waiver of any moral rights or other rights of integrity in the applicable Deliverable(s) in favour of Ontario, such waiver to be in a form acceptable to the Client, and which waiver may be invoked without restriction by any person authorized by the Client to use the Deliverables. The Vendor shall deliver such written waiver(s) to the Client within ten (10) Business Days of the receipt of the request from the Client.

**6.09 Copyright Notice**

The Vendor shall place a copyright notice on all recorded Deliverables it provides to the Client under the Contract in the following form: "© Queen's Printer for Ontario, 2018"

**6.10 Further Assurances Regarding Copyright**

At the request of the Client, at any time or from time to time, the Vendor shall execute and agrees to cause the Vendor's Personnel to execute, a written assignment of copyright in the applicable Deliverable(s) to Ontario in a form acceptable to the Client. The Vendor shall deliver such written assignment(s) to the Client within ten (10) Business Days of the receipt of the request from the Client. The Vendor shall assist the Client in preparing any Canadian copyright registration that the Client considers appropriate. The Vendor will obtain or execute any other document reasonably required by the Ministry to protect the Intellectual Property of Ontario.

### **6.11 No Use of Ontario Government Insignia**

The Vendor shall not use any insignia or logo of Her Majesty the Queen in right of Ontario except where required to provide the Deliverables, and only if it has received the prior written permission of the Client to do so.

### **6.12 MGCS/ Client May Prescribe Further Compliance**

MGCS or a Client reserves the right to prescribe the specific manner in which the Vendor shall perform its obligations relating to this Article.

### **6.13 Survival**

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

## **Article 7 – Indemnity and Insurance**

### **7.01 Vendor Indemnity**

The Vendor shall indemnify and hold harmless the Indemnified Parties from and against all Losses and Proceedings, by whomever made, sustained, incurred, brought or prosecuted, arising out of, or in connection with, anything done or omitted to be done by the Vendor or the Vendor's Personnel, in the course of the performance of the Vendor's obligations under the Contract or otherwise in connection with the Contract. The obligations contained in this section shall survive the termination or expiry of the Agreement.

### **7.02 Vendor's Insurance**

The Vendor hereby agrees to put in effect and maintain insurance for the Term, at its own cost and expense, with insurers having a secure A.M. Best rating of B + or greater, or the equivalent, all the necessary and appropriate insurance that a prudent person in the business of the Vendor would maintain including, but not limited to, the following:

- (a) commercial general liability insurance on an occurrence basis for third party bodily injury, personal injury and property damage, to an inclusive limit of not less than **\$2,000,000** per occurrence, **\$2,000,000** products and completed operations aggregate with the endorsements identified. The policy is to include the following:
  - i. the Indemnified Parties as additional insureds with respect to liability arising in the course of performance of the Vendor's obligations under, or otherwise in connection with, the Contract;
  - ii. contractual liability coverage;
  - iii. cross-liability clause;
  - iv. employers liability coverage (or compliance with the section below entitled "Proof of W.S.I.A. Coverage" is required);
  - v. 30 day written notice of cancellation, termination or material change;
  - vi. tenants legal liability coverage (if applicable and with applicable sub-limits); and,
  - vii. non-owned automobile coverage with blanket contractual coverage for hired automobiles; and,

### **7.03 Proof of Insurance**

The Vendor shall provide MGCS with certificates of insurance, or other proof as may be requested by MGCS, that confirms the insurance coverage as provided for in Section 7.02, and renewal replacements on or before the expiry of any such insurance. Upon the request of MGCS, a copy of each insurance policy shall be made available to it. The Vendor shall ensure that each of its Subcontractors obtains all the necessary and appropriate insurance that a prudent person in the business of the Subcontractor would maintain and that the Indemnified Parties are named as additional insureds with respect to any liability arising in the course of performance of the Subcontractor's obligations under the subcontract for the provision of the Deliverables.

### **7.04 Proof of W.S.I.A. Coverage**

If the Vendor is subject to the *Workplace Safety and Insurance Act, 1997*, S.O. 1997, c. 16, Schedule A ("WSIA"), it shall submit a valid clearance certificate of WSIA coverage to MGCS prior to the execution of the Master Agreement by MGCS. In addition, the Vendor shall, from time to time at the request of MGCS, provide additional WSIA clearance certificates. The Vendor covenants and agrees to pay when due, and to ensure that each of its Subcontractors pays when due, all amounts required to be paid by it/its Subcontractors, from time to time during the Term, under the WSIA, failing which MGCS or a Client shall have the right, in addition to and not in substitution for any other right it may have pursuant to the Contract or otherwise at law or in equity, to pay to the Workplace Safety and Insurance Board any amount due pursuant to the WSIA and unpaid by the Vendor or its Subcontractors and to deduct such amount from any amount due and owing from time to time to the Vendor pursuant to the Contract together with all costs incurred by MGCS or a Client in connection therewith.

### **7.05 Vendor Participation in Proceedings**

The Vendor shall, at its expense, to the extent requested by MGCS or a Client, participate in or conduct the defence of any Proceeding against any Indemnified Parties referred to in this Article and any negotiations for their settlement. MGCS or a Client may elect to participate in or conduct the defence of any such Proceeding by notifying the Vendor in writing of such election without prejudice to any other rights or remedies of MGCS or a Client under the Contract, Master Agreement, at law or in equity. Each party participating in the defence shall do so by actively participating with the other's counsel. The Vendor shall not enter into any settlement unless it has obtained the prior written approval of MGCS or a Client. If the Vendor is requested by MGCS or a Client to participate in or conduct the defence of any such Proceeding, MGCS or a Client agrees to co-operate with and assist the Vendor to the fullest extent possible in the Proceedings and any related settlement negotiations. If MGCS or a Client conducts the defence of any such Proceedings, the Vendor agrees to co-operate with and assist MGCS or a Client to the fullest extent possible in the Proceedings and any related settlement negotiations. This section shall survive any termination or expiry of the Contract.

## **Article 8 – Termination, Expiry and Extension**

### **8.01 Immediate Termination of Contract**

MGCS may immediately terminate the Contract upon giving notice to the Vendor where:

- (a) the Vendor is adjudged bankrupt, makes a general assignment for the benefit of its creditors or a receiver is appointed on account of the Vendor's insolvency;
- (b) the Vendor breaches any provision in Article 5 (Confidentiality and FIPPA) of the Master Agreement;
- (c) the Vendor breaches the Conflict of Interest paragraph in Article 2 (Nature of Relationship Between MGCS/ Client and Vendor) of the Master Agreement;
- (d) the Vendor, prior to or after executing the Master Agreement, makes a material misrepresentation or omission or provides materially inaccurate information to MGCS;
- (e) the Vendor undergoes a change in control which adversely affects the Vendor's ability to satisfy some or all of its obligations under the Contract;
- (f) the Vendor subcontracts for the provision of part or all of the Deliverables or assigns the Contract without first obtaining the written approval of MGCS; or
- (g) the Vendor's acts or omissions constitute a substantial failure of performance;

and the above rights of termination are in addition to all other rights of termination available at law, or events of termination by operation of law.

### **8.02 Dispute Resolution by Rectification Notice**

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

### **8.03 Termination on Notice**

MGCS reserves the right to terminate the Contract, without cause, upon thirty (30) calendar days prior notice to the Vendor.

### **8.04 Termination for Non-Appropriation**



If the Contract extends into a Fiscal Year subsequent to its execution, continuation of the Contract is conditional upon an appropriation of moneys by the Legislature of Ontario (the "Legislature") sufficient to satisfy payments due under the Contract. In the event that such moneys are not available as a result of: (i) non-appropriation by the Legislature for the Fiscal Year in which payment becomes due; and (ii) the payment being neither charged nor chargeable to an appropriation of the Legislature for a previous Fiscal Year, MGCS may terminate the Contract upon giving notice to the Vendor. Termination shall become effective on the date of the beginning of the first Fiscal Year for which funds have not been appropriated.

#### **8.05 Termination of Statement of Work on Notice**

Any Client may terminate any Statement of Work entered into under this Master Agreement, without cause, immediately upon written notice to the Vendor.

#### **8.06 Vendor's Obligations on Termination**

On termination of the Contract, the Vendor shall, in addition to its other obligations under the Contract and at law:

- (a) at the request of MGCS, provide MGCS with any completed or partially completed Deliverables;
- (b) provide MGCS with a report detailing: (i) the current state of the provision of Deliverables by the Vendor at the date of termination; and (ii) any other information requested by MGCS pertaining to the provision of the Deliverables and performance of the Contract;
- (c) execute such documentation as may be required by MGCS to give effect to the termination of the Contract; and
- (d) comply with any other instructions provided by MGCS, including, but not limited to, instructions for facilitating the transfer of its obligations to another Person.

This section shall survive any termination of the Contract.

#### **8.07 Vendor's Payment Upon Termination**

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

#### **8.08 Scope of Termination Rights**

The termination rights under this Article may be exercised (a) by a Client for the purposes of terminating one or more Statement of Works between the Vendor and that particular Client; (b) by MGCS for the purposes of terminating one or more Statement of Work between the Vendor and a specific Client or Clients; or (c) by MGCS for the purposes of terminating the Master Agreement and the Contract, which

shall have the effect of terminating all Statement of Works between the Vendor and the Clients. The express rights of termination in the Master Agreement are in addition to and shall in no way limit any rights or remedies of MGCS or the Clients under the Contract, at law or in equity.

#### **8.09 Expiry and Extension of Contract**

The Contract shall expire on the original Expiry Date, unless MGCS exercises its option to extend the Contract for two further terms of up to two years each, such extension to be upon the same terms (including the Rates in effect at the time of extension), conditions and covenants contained in the Contract, excepting the final option to renew. The option shall be exercisable by MGCS giving notice to the Vendor not less than thirty (30) days prior to the original Expiry Date. The notice shall set forth the precise duration of the extension.

The term of any Statement of Work executed prior to the end of the Term of the Master Agreement may continue beyond the Term of the Master Agreement, for the term specified in the particular Statement of Work (which, including any extension rights, shall not exceed one year from the expiry of the Term of the Master Agreement). The Contract terms shall accordingly survive the expiry of the Term of the Master Agreement for the purposes of any such Statement of Works..

### **Article 9 – Provincially Funded Organizations**

#### **9.01 Provincially Funded Organization Agreements**

If the Vendor wishes to provide products and services to Provincially Funded Organizations, the Vendor may only do so under a separate agreement with a Provincially Funded Organization. If the Vendor receives a request from any Provincially Funded Organization to supply products and services to the Provincially Funded Organization that are the same as the Deliverables , the Vendor shall: (a) prior to engaging in negotiations with that Provincially Funded Organization, provide the Provincially Funded Organization with a copy of the acknowledgement as attached as Schedule 2 to this Master Agreement (“Provincially Funded Organization Notice”); and (b) subject to the Vendor’s compliance with subsection (a) above, use commercially reasonable efforts to negotiate with that Provincially Funded Organization for the purpose of entering into a mutually agreeable agreement for the supply to the Provincially Funded Organization of products and services that are the same as the Deliverables (“Provincially Funded Organization Agreement”) based on the same or similar terms (including price and the length of the term) of this Master Agreement.

The Vendor agrees that the Vendor and the Provincially Funded Organization remain solely responsible for negotiating the terms and conditions (including all business, legal and other terms as may be necessary or desirable for the Vendor and the Provincially Funded Organization) of the Provincially Funded Organization Agreement and for any resulting or related relationships and agreements between the Vendor and the Provincially Funded Organization.

#### **9.02 Status of Provincially Funded Organizations**

Provincially Funded Organizations cannot enter into any Statement of Work or any other subordinate agreement to this Master Agreement to acquire any Deliverables or any other products and services under this Master Agreement.

### **9.03 Ontario Not Liable for Vendor's Relationship with Provincially Funded Organizations**

The Vendor acknowledges and agrees as follows:

(a) Ontario does not endorse, recommend or approve the suitability of: (i) any Provincially Funded Organization as a customer of the Vendor; and (ii) the terms and conditions of this Master Agreement (or any subordinate agreement under this Master Agreement) as a basis for, in whole or in part, any Provincially Funded Organization Agreement or any other resulting or related relationships or agreements between the Vendor and any Provincially Funded Organization. The Vendor is solely responsible for conducting its own independent assessment (including obtaining its own professional advice as may be necessary and appropriate in the Vendor's specific circumstances) to determine the suitability of the above.

(b) Ontario makes no representation, assurance, warranty, or guarantee: (i) that any Provincially Funded Organizations will acquire products or services from or consider the products or services of the Vendor; or (ii) of the value or volume of products or services that may or will be ordered, if any, by any or all Provincially Funded Organizations.

(c) Ontario will not, in respect of any Provincially Funded Organization Agreement or any resulting or related relationships or agreements between the Vendor and any Provincially Funded Organization: (i) be or be deemed to be a party to, or a guarantor of any obligations or liability of any party under, any Provincially Funded Organization Agreements or any such relationships or agreements; or (ii) be responsible or liable to the Vendor or any third party for any costs, obligations, liabilities or covenants of the Provincially Funded Organization, and nothing in any agreement between the Vendor and any Provincially Funded Organization shall have the effect of imposing or resulting in the imposition of any costs, obligations, liabilities or covenants on Ontario.

(d) The Vendor shall not, in relation to or under any Provincially Funded Organization Agreement or under any resulting or related relationships or agreements between the Vendor and any Provincially Funded Organization, bring any Proceedings against Ontario or any of its Personnel or any Indemnified Party as a result of: (i) any act, error or omission of the parties to the Provincially Funded Organization Agreement; or (ii) any act, error or omission of Ontario or any of its Personnel.

(e) The Vendor is solely responsible for its own contract administration with each Provincially Funded Organization and shall not direct any issues that may arise with any Provincially Funded Organization to Ontario.

(f) For the purposes of any Provincially Funded Organization Agreement, the Vendor acknowledges that Provincially Funded Organizations have no power or authority to

bind Ontario or to assume or create any obligation or responsibility, express or implied, on behalf of Ontario.

(g) Despite any provision in this Agreement to the contrary, the Vendor shall be responsible for any and all Losses suffered by any Indemnified Party arising out of or in connection with any Provincially Funded Organization Agreement or any breach by the Vendor of this Article 9 (Provincially Funded Organizations).

#### **9.04 Disclosure of Information**

(a) Ontario may, from time to time and at its sole discretion, inform any or all Provincially Funded Organizations of: (i) the Vendor's status as a Vendor of Record; (ii) the products and services of the Vendor that are available to Ontario under this Master Agreement; and (iii) the Vendor's obligation under this Section 9.4 and under Section 9.1. In addition, Ontario and any OPS Entity may disclose, and the Vendor consents to the disclosure, to Provincially Funded Organizations of this Master Agreement or any part of it (including pricing), as amended. For the purposes of the disclosure under this Section 9.4, the Vendor agrees that neither this Master Agreement or any part of it is considered Confidential Vendor Information and no notice to or further consent of the Vendor is required prior to disclosure to any Provincially Funded Organization.

(b) If the Vendor is requested by a Provincially Funded Organization to do so, the Vendor shall provide to that Provincially Funded Organization the following documents and information: (i) the RFB and other related procurement documents that were publicly issued; and (ii) the Vendor's Bid in response to the RFB, but only to the extent that it does not include OPS Confidential Information.

(c) The Vendor agrees to provide to Ontario, at Ontario's request, data and information regarding Provincially Funded Organization access to and acquisition of products and services from the Vendor.

(d) The Vendor consents to Ontario receiving data and information from a Provincially Funded Organization of such Provincially Funded Organization's request for access to and acquisition of products and services from the Vendor.

### **Article 10 – Occupational Health and Safety Requirements**

#### **10.01 Compliance with the Occupational Health and Safety Act**

The Vendor must ensure that any subcontractor hired by the Vendor works in accordance with the *Occupational Health and Safety Act* R.S.O. 1990, c. O.1 (OHSA) and its regulations and any applicable Ontario Public Service (OPS) and site-specific health and safety requirements. The Vendor acknowledges that it is the Employer of the subcontractor. The Vendor shall include in any of its agreements with its subcontractors, the ability to terminate the subcontractor for non-compliance with OHSA or its regulations, with the rules and policies of the Vendor or for failing to protect the safety of its workers.

MGCS or a Client may stop the work where the Vendor fails to comply with OHSA or its regulations and an immediate danger to worker health and safety is observed. Failure or refusal by the Vendor to correct the observed violation, or willful or repeated non-compliance may, subject to Article 8 – Termination, Expiry and Extension, result in termination of the Contract.

## Article 11 – Open Data

### 11.01 Publication of Data

It is Ontario’s intention, in accordance with the [Open Data Directive](#) and as part of its commitment to open data, to publish and allow the public to use:

- (i) procurement contract data, including the name of the Vendor and total contract value; and,
- (ii) data created or collected as an output of a contract,

except where Ontario chooses not to publish the data in accordance with the Open Data Directive, such as for privacy, confidentiality, security, legal or commercially-sensitive reasons.

**In Witness Whereof the parties hereto have executed the Agreement effective as of the date first above written.**

**Her Majesty the Queen** in right of Ontario  
as represented by the Minister of Government and  
Consumer Services

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date of Signature: \_\_\_\_\_

Pursuant to delegated authority

**[\*\*insert legal name of Vendor\*\*]**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date of Signature: \_\_\_\_\_

I have authority to bind the Vendor.

## Schedule 1: DESCRIPTION OF DELIVERABLES AND RATES

### A. Deliverables

#### 1.1 Objectives

This is a multi-vendor, enterprise-wide Vendor of Record (VOR) arrangement for Security Guard Services for a period of three years with an option to extend the VOR arrangement for two additional Terms of up to two years each.

The Ontario Government requires Vendors to provide Security Guard Services for various locations throughout the province of Ontario.

Security guards must provide an authoritative but courteous presence and will be required to provide reliable security services for buildings, people and assets in an efficient and professional manner in full compliance with, but not limited to, the ***Private Security and Investigative Services Act, 2005 (PSISA)*** and its regulations.

The VOR arrangement is open to all ministries covered by the Ontario Public Service (OPS) Procurement Directive and will be available on an optional use basis to Provincially Funded Organizations (PFO).

#### 1.2 Geographic Regions

The province has been divided into four geographic regions and Vendors will be required to provide security services across all facilities and sites within the geographic region(s) that they have been awarded.

#### 1.3 Historical Spend Statistics

Historical statistics are estimates based on available reports on previous usage. This information shall not be read in any way to constitute a guarantee of the value or volume of requests to be placed by Clients. Actual use will depend on future needs from individual Clients. These figures do not include PFO usage.

Geographic Region	Approximate Spend per Region in the past fiscal year
Central	\$2.3M
East	\$644K
Southwest	\$1.3M
North	\$159K

#### 1.4

## 1.5 General Service Requirements / Scope of Work

Outlined below are the general requirements to be fulfilled by the Vendor in order to safeguard the employees, visitors and property of the Province of Ontario. Further site specific requirements will be documented within the Request for Services (RFS) document:

- a. All security guards performing work under this Agreement must be licensed under the PSISA;
- b. Security guards, employees and representatives of the Vendor must be fluent in English (both oral and written) in order to communicate effectively with Ministry personnel and visitors. In certain cases, fluency in French is required (please see Section 1.20 – *French Language Services Act*);
- c. Security guards must understand the importance of providing a high level of customer service to employees, the public and all others they may encounter during the performance of their duties;
- d. Security guards must understand the principles of confidentiality and privacy and will be accountable for all confidential information to which they are exposed and must handle/protect confidential information as directed by the Client;
- e. Vendors must ensure that all security guards have a good understanding of and are familiar with OPS policies and procedures including but not limited to the *Ontario Human Rights Code*, *Accessibility for Ontarians with Disabilities Act, 2005*, *Occupational Health & Safety Act* and *Workplace Hazardous Material Information System*;
- f. Security guards must be familiar with the Federal and Provincial legislation listed in Section 1.16 – Federal and Provincial Legislation and Regulations;
- g. Vendors must furnish security guards with all equipment, materials and supervision necessary for the satisfactory performance of their duties;
- h. Security guards must possess the technical competency to operate electronic instruments and equipment including, but not limited to, access control systems, video surveillance equipment, life safety equipment such as fire panels and extinguishers, key control management systems, and alarm monitoring equipment;
- i. The process outlining the retention, request and disposal of the video surveillance footage will be provided by the Client and security guards must be ready to comply with all policies and procedures;
- j. All keys and access cards entrusted to the Vendor for the fulfillment of this contract must be fully protected at all times;
- k. All security guards must be trained and certified in emergency First Aid and One Rescuer CPR – Adult Level. This training must be delivered by a Workplace Safety and Insurance Board approved first aid trainer. This training is the responsibility of the Vendor who employs the security guard;
- l. Security guards will be required to respond to emergency situations including such things as medical emergencies, fire evacuations, electrical outages, hazardous material spills, etc.
- m. The Vendor acknowledges that the security guards will be assigned to sites on a permanent basis to ensure consistency and minimize training;
- n. The Vendor will work with the Client to provide detailed, customized written post orders (site instructions) for each security guard position and site. Each security

guard must read, understand and sign the post orders. Post orders must be current and updated any time there is a change required.

- o. There must be a Vendor's representative or delegate who will assume the role and responsibilities of a contract manager, and who will be given direction by and report to the Client, for the duration of the Statement of Work (SOW); and
- p. The Vendor will be ready to propose a technology solution that will have the capability to increase the efficiency of security guards by automating daily duties such as incident reporting, checking shift details, downloading information, etc.

## **1.6 Security Guard Duties and Responsibilities**

Outlined below are several examples of duties performed by security guards. Specific requirements for security guard services will be documented within the RFS document created by the Clients.

- a. Attending a post and/or patrolling an area according to a schedule determined by the Client. This may include visual and/or external checks from various locations;
- b. Prevention of theft, disorders and disturbances; infractions and damage to the Client's property, damage or harm to occupants and others;
- c. Ensure that no loitering or soliciting takes place in the building. All persons present in the building without good cause shall be politely asked to leave and such persons will be escorted out of the building. The Vendor will request assistance from the Client, including direction to contact local police, for all problem situations as prescribed in the site-specific instructions (Post Orders). All incidents are to be reported;
- d. Performing reception/inquiry duties, by answering telephone calls, taking messages, and relaying and/or acting upon them as required and defined in the Post Orders or site specific training provided by the Client;
- e. When authorized, receive, keep safe and hand over to appropriate persons, mail and packages;
- f. Ensure all persons entering the facility sign the visitors' log on arrival and departure;
- g. Provide visitor/contractor escort duties where/when required as per Post Orders or at Client's request;
- h. In the case of any emergency, the security guard must advise the appropriate authorities and Client's representatives from a list to be supplied by the Client;
- i. Monitoring and activating the Client's security system;
- j. Turn off all lights, which are not required by government staff and when the premises are vacated;
- k. If an alarm sounds (fire, panic, emergency assistance), security guards to follow Post Orders or site specific instructions provided by the Client, use critical thinking skills and perform emergency management if required;
- l. Security guards must assist with fire drills as required;
- m. Security guards must remain alert at ALL times and be physically fit to the extent that they are capable of conducting foot patrols, negotiating stairs, climbing ladders and performing other duties.
- n. No security guard shall be unfit for duty, while working, through the consumption of alcohol or drugs;
- o. Security guards must be able to work in a variety of weather conditions which facilities may be subjected to;



- p. All security guards will keep accurate and detailed notes/daily logs regarding incidents, observations and actions taken while performing their duties and will be required to create, log and process incident reports for all unusual or unexpected events as required. Copies of these notes and reports shall be provided to the Client upon request; and
- q. Perform additional duties unique to specific posts as required by the Client.

## **1.7 Security Guard Classifications**

The OPS has a number of locations where security guards are required and the responsibilities of the security guards at each location will vary. The level and responsibilities of security guard(s) will be determined by the OPS Client that requires the services.

The Level 1, Level 2 and Level 3 security guard descriptions below provide a general breakdown between the three levels. The skills and knowledge listed are provided to give bidders an understanding of the differences between the three levels. More specific details will be laid out in legislation and regulations and in the RFS document issued by the Client.

The Level 1 (Basic) security guard will need to have a valid Ontario Security Guard license including the 40-hour mandatory provincial security guard course. They must be familiar with the PSISA to ensure they follow the statute and regulations. They will also need to have a current Emergency First Aid certificate and One Rescuer CPR – Adult Level. Guards must be able to read, write and speak English and have well developed customer service skills and be capable of meeting the physical demands of the job.

The Level 2 (Intermediate) security guard must have all of the requirements of the Level 1 guard above with more than one year of experience as a guard, and, for example, additional training in areas such as emergency response, scene management and conflict resolution, and hold AED certification.

The Level 3 (Senior) security guard will have all of the qualifications of the Levels 1 and 2 guard with at least 3 years of experience in the field, and may also be required to have training in areas such as tactical communications, crisis intervention, and use of force and must have superior emergency response skills.

Bidders will be required to provide rates for each of the three security guard levels in the Commercial envelope.

## **1.8 Code of Conduct**

In performing the duties described above, the security guards are providing security services for the OPS and Ministry Clients and as such are expected to act in a manner conducive to good client relations. Behavior and/or conduct deemed inappropriate by the Ministry and/or Client will not be tolerated. The Vendor agrees to replace any security guards who display inappropriate conduct at the request of the Ministry and/or Client. The Vendor and security guards will abide by Ontario Regulation 363/07 - Code of Conduct. A licensed individual or Licensed Agency (the Vendor) found to be in contravention of the Code of Conduct Regulation could be charged and if found guilty could be liable to pay a

fine, or face potential revocation of their license. Additional information on the Code of Conduct Regulation can be found on the link below:

[http://www.e-laws.gov.on.ca/html/regs/english/elaws\\_regs\\_070363\\_e.htm](http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_070363_e.htm)

### **1.9 Employment Standards Act**

The Vendor must comply with the *Employment Standards Act, 2000* (ESA) and its regulations and any amendments thereto, including Part XIX (Building Services Providers) and Ontario Regulation 287/01 and Part XV (Termination and Severance of Employment). Electronic versions of the ESA and regulations are available at:

[www.e-laws.gov.on.ca](http://www.e-laws.gov.on.ca)

A summary guide to the Building Services Providers provisions of the ESA and regulations is available on the Ministry of Labour web site at:

<https://www.ontario.ca/document/your-guide-employment-standards-act-0/building-services-providers>

Note that this material is provided for convenience only, and the Vendor should refer to the actual provisions of the ESA and regulations thereunder for a statement of its rights and responsibilities.

### **1.10 Scheduling**

The Vendor will be responsible for ensuring that security services performed are scheduled in accordance with the Client's requirements as specified in the RFS.

The Vendor will ensure that scheduling hours are in accordance with the required hours per day. The Vendor may provide alternative scheduling options to meet the required daily hours and scheduling requirements.

The Vendor's personnel must be aware of their work schedule in advance and a copy of the schedule must be retained by the Client.

The scheduling and replacement for vacation, illness and other absences shall be the responsibility of the Vendor. The Vendor will be responsible to work with the Clients to coordinate and schedule training for backup personnel for replacement purposes.

### **1.11 Staffing**

- a. The Client will reserve the right, at its sole discretion, to require the Vendor to remove any guard for any lawful reason and request a suitable replacement from the Vendor. The Vendor shall replace the guard within 24 hours;
- b. The Vendor shall maintain a reserve of temporary replacement staff available on an on-call basis to cover all short-term and long-term absences of regularly scheduled staff. The temporary replacement staff must have the same experience, training and certification as the staff member they are replacing or the Client may not approve payment for that temporary replacement staff; and
- c. When requested by the Client, additional security guards may be required within 24 hours of notification.

## **1.12 Licensing Requirements**

The Vendor and all security guards providing the services must be licensed under and meet the requirements set out in the PSISA and associated regulations.

During the Term of the Agreement, the Vendor must confirm that the Vendor is a Licensed Agency and that all security guards are licensed prior to performing any services. The Vendor shall ensure they remain licensed for the duration of the Agreement and SOW. The Vendor shall provide a copy of its Ontario security guard agency license and a valid Ontario security guard license for each employee assigned to the Agreement and SOW upon request.

The Vendor shall ensure that any subcontractors have a valid Ontario security guard agency licence and are compliant with the PSISA and its regulations at the time of the subcontract and remain so through the term of the Agreement.

It is the responsibility of the Vendor to ensure that security guards carry their security licence with them at all times. The Ministry will not be responsible for any costs or fines incurred by the Vendor for their security guards who are found not to be carrying their security guard license.

The Clients will have the right to refuse any individual who is deemed to be not qualified or licensed in accordance with PSISA.

If the Client is not satisfied with the competence of the security guards, the Vendor shall discharge such security guards from Client work and not re-employ the person for that particular assignment without the written consent of the Client.

For more information on the PSISA and Regulations visit:

[http://www.mcscs.jus.gov.on.ca/english/PSIS/ActRegulations/PSIS\\_Act.html](http://www.mcscs.jus.gov.on.ca/english/PSIS/ActRegulations/PSIS_Act.html)

## **1.13 Uniforms and Equipment**

All uniforms, materials, equipment, and vehicles necessary to satisfactorily perform security guard services in accordance with this RFB shall be provided by the Vendor.

The Vendor and security guards will comply with Ontario Regulation 362/07 – Uniforms. Vendors are responsible for ensuring that their employees are provided with a properly fitted uniform (shoes, socks, dress shirt, pants and jacket) that clearly creates the appearance that the individual's function is security, as requested and required by the Client. The Vendor's company name and logo must be on the uniform but must not be hidden by weather appropriate protective clothing. The uniforms must be clean and tidy, appropriately pressed and worn properly. The shoes/boots worn by the security guards must be clean and polished at all times. Socks matching the uniform must be worn at all times when on duty. Uniforms will be subject to inspection and approval by the Client. Additional information on the Uniform Regulation can be found on the link below:

[http://www.e-laws.gov.on.ca/html/reg/english/elaws\\_regs\\_070362\\_e.htm](http://www.e-laws.gov.on.ca/html/reg/english/elaws_regs_070362_e.htm)

Vendors must ensure that security guards have photo identification which attach properly to their uniforms in a readily visible manner.

The Vendor must supply all communication devices (eg. computer/laptop, cell phone), notebooks, flashlights, gloves, handcuffs, bullet resistant vests, batons and any personal protective equipment that the Vendor deems necessary for the security guard to perform his/her duties. The use of personal equipment is prohibited. All equipment shall be in accordance with Ontario Regulation 366/07. The equipment shall be maintained and in good working condition. The Ministry will not be liable for any loss, damage, theft, burglary or robbery of any personal belongings, equipment or vehicles of the security guard personnel of the Vendor. Additional information on the Equipment Regulation can be found on the link below:

[http://www.e-laws.gov.on.ca/html/regs/english/elaws\\_regs\\_070366\\_e.htm](http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_070366_e.htm)

All security guards assigned to work under this Agreement must be accessible by the Client via mobile phones at all times during their work shift.

#### **1.14 Training**

The Vendor must ensure appropriate pre-assignment training is completed at the Vendor's expense prior to assignment of a security guard to the Client. Note that any pre-assignment training requirements will be identified by the Client in the RFS.

It will be the Vendor's responsibility to provide complete training for new and replacement staff assigned to the facility site.

#### **1.15 Wages**

The *Government Contract Wages Act, 2018*, S.O. 2018, c.9 provides for the establishment of minimum government contract wages that shall be paid for building cleaning work and security services work provided for buildings owned and occupied by or, where prescribed, leased by, government entities, and for construction work provided under contracts with government entities.

At least the applicable minimum government contract wages must be paid for security services work if an order is made establishing such wages before the relevant contract was entered into or renewed.

In no event will the Vendor pay wages less than the minimum hourly wage required by law or in any other manner permit working conditions or other terms not in accordance with the law.

During the Term of this Agreement, the Vendor will be required to comply with any changes to legislation affecting this Agreement, including amendments to the minimum wage, and any corresponding posting, notification and record-keeping requirements. At the time of issuance of this RFB, no minimum government contract wages have been established.

To ensure compliance, a process will be developed to audit the salaries being paid to the security guards. Non-compliant vendors may face penalties and will be required to rectify

the salary and provide an explanation as to how the error occurred. Additionally, the Ministry of Labour will be permitted to undertake inspections and investigations which could result in penalties and or additional consequences.

### **1.16 Statutory and Government Holidays**

Ontario has nine public (statutory) holidays:

- New Year's Day
- Family Day
- Good Friday
- Victoria Day
- Canada Day
- Labour Day
- Thanksgiving Day
- Christmas Day
- Boxing Day (December 26)

The OPS has 12 holidays - all of the above noted holidays plus Easter Monday, Civic Holiday and Remembrance Day.

If a security guard is required to work on an Ontario public (statutory) holiday the Vendor will be compensated at two and half times the hourly Rate quoted in the Commercial envelope. However, if a security guard works on an OPS only holiday, the Vendor will only be compensated on the hourly Rate quoted in the Commercial envelope.

For non-holiday overtime, the Vendor will be compensated at one and half times the hourly Rate quoted in the Commercial envelope. Overtime hours are applicable as defined in the *Employment Standards Act, 2000*.

### **1.17 Federal and Provincial Legislation and Regulations**

Vendors must comply with OPS policies and with the requirements of all Federal and Provincial legislation and regulation enactments that may apply to the Deliverables. Legislation and regulations as well as governance structures within the private security industry are subject to change. Vendors are subject to comply with any legislative and/or regulation changes during the Term of the Agreement including any extensions. Vendors shall comply with any future additions or modifications to legislation as they become enacted to security standards.

The Vendors will ensure all security guards providing the services are familiar with the list of procedures and statutes noted below, but not limited to the following:

- Procedures for handling, storing, disseminating and destroying information of a personal nature;
- *Personal Information Protection and Electronic Documents Act (PIPEDA)* regarding the protection of personal information;
- *Emergency Management and Civil Protection Act*;
- *Freedom of Information and Protection of Privacy Act*;
- *French Language Services Act, 1990*;

- *Employment Standards Act, 2000;*
- *Labour Relations Act, 1995;*
- *Liquor Licence Act;*
- *Occupier Liability Act;*
- Ontario Building Code;
- Ontario Fire Code;
- *Provincial Offences Act;*
- *Residential Tenancies Act, 2006;*
- *Trespass to Property Act;*
- The Criminal Code of Canada:
  - The difference between indictable and summary criminal offences and a security guard's authority to arrest (e.g. citizen's arrest);
  - Familiarity with the most common offences encountered by security guards;
  - Sections of the Criminal Code regarding defense of property and defense of persons;
  - Understanding of criminal harassment, mischief, assault, theft, causing disturbances, breaking and entering and possession of stolen property under the Criminal Code; and
  - Common elements of tort law in security situations.

Upon request Vendors may be required to provide their policies or procedures to demonstrate compliance with legislation and/or regulations. During the Term of the Agreement failure by a Vendor to comply with legislative enactments, regulations and orders applicable to the Deliverables may result in the termination of the Agreement.

### **1.18 Subcontracting**

After award of the Agreement or subsequent SOW, the Vendor will not, without prior written consent of the Client, subcontract either the whole or any part of the Agreement or subsequent SOW. The Vendor is responsible for ensuring that all subcontracting meets all relevant legislation and regulations.

Every subcontract entered into by the Vendor will adopt all of the terms and conditions of this Agreement or subsequent SOW as applicable to the Subcontractor's work.

The Vendor will be held fully responsible to the Client for the acts and omissions of the Subcontractors and of persons directly or indirectly employed by them, as for the acts and omission of person directly employed by the Vendor.

Nothing contained in the Agreement or subsequent SOW will create any contractual relationship between any Subcontractor and the Client.

The Vendor will not assign the Agreement or subsequent SLA without the express written consent of the Client.

The Vendor is required to have a well-defined agreed upon procedure for notifying the Ministry Representative in the event of significant changes to its service delivery.

### **1.19 Compliance Inspections**

Vendors (including Subcontractors) may be subject to a Compliance Inspection during the Term of the Agreement. Compliance Inspectors will carry out an inspection on the Vendor and/or Subcontractors (licensed agency) to review all applicable sections of the PSISA and associated regulations. Inspections can include a review of the license display requirements, recordkeeping, uniforms, insurance, equipment used, vehicles, use of animals and training provisions. Vendors will have ten Business Days to rectify any areas found to be non-compliant.

### **1.20 Business Continuity Plan**

The Vendor will be required to have Business Continuity Plans in place to ensure the Vendor's own continuity of operations and ability to continue to provide to the Client the Deliverables during an emergency, disaster or disruption. The Business Continuity Plans will be required to specifically address the absence or reduction of staff, facilities and information technology and how these will be managed so as to ensure the supply chain is not disrupted in a manner that will prevent the delivery of the Deliverables to the Client.

Although the Ministry understands that business continuity plans may be adjusted from time to time to meet the changing needs of the business community and the capabilities of the Vendor, the Vendor is required to provide their current business continuity plan within sixty (60) days after the execution of the Agreement and any subsequent amendments as they appear. The Vendors may be requested, by the Ministry Representative, to provide evidence of successful testing of the business continuity plan.

### **1.21 French Language Services Act (FLSA)**

Under the *French Language Services Act* (FLSA), government agencies must provide services and communications to the public in French in the 26 areas designated under the Act. (Refer to Appendix A).

If a government agency is located in or serving an area of the Province of Ontario which has been designated in the Schedule to the *French Language Services Act*, R.S.O. 1990 c. F.32, the agency is required to comply with all of the following requirements:

- that any person may communicate with government employees at the premises in both the French and English languages; and
- that any person has the right to receive government services in French or English language.

Vendors of security services located in the government premises/buildings must be aware of the above government's obligations in order to adequately direct a client/person to personnel within the government office or reception counter that can provide the services in French as required. As required, the need for bilingual security staff will be identified in the RFS issued by the Client, if the location where security guards are required falls within the areas designated in Appendix A.

### **1.22 Second Stage Selection Process – Method of Acquiring Services**

Bidders who are awarded and enter into an Agreement will become a Vendor of Record and are pre-qualified to provide the services to Clients in accordance with the Terms of the

Master Agreement. The services to be performed under the VOR Arrangement will result from a Second Stage Selection process. The following is a description of the current internal administrative second stage process established by the Ministry for use by the OPS for acquiring services which may be amended from time to time by the Ministry at its sole discretion.

The Second Stage Selection process within the OPS will be managed by the Client with appropriate oversight from the Ministry of Government and Consumer Services (MGCS) as described below. Optional use of the Vendor of Record arrangement by Provincially Funded Organizations is set out in the Master Agreement.

- a. The Client User Guide for Security Guard Services will reside on the Ontario Shared Services (OSS) intranet site. The Client User Guide will provide a brief description of security guard services and applicable Vendors available from the Agreements per region along with associated pricing and Vendors' contact information.
- b. The scope and duration of assignments will be determined by the Client. The RFS will be facility/site specific and will detail the scope of the work, the anticipated time frame and the Rates.
- c. The successful Vendor will enter into a SOW. The Vendor will furnish a certificate of insurance meeting the insurance requirements set out in the Master Agreement, Article 7 - Indemnity and Insurance, or as modified by the SOW, prior to commencing performance under the SOW. In general, the Second Stage Selection process is as follows:
  1. The Client determines the specific details of each assignment, such as the type of services required, time frame, location, and estimated overall value of the Contract and receives approval to proceed with the assignment.
  2. The Client then issues a RFS to a selected number of Vendor(s) from the VOR Arrangement as outlined by OPS Procurement Directive identifying a time frame in which Vendors are to respond.
  3. The Vendor responds to the RFS within a prescribed deadline, outlining its capability of fulfilling the Client's requirements and Maximum Hourly Rate as quoted in the Commercial Envelope (note: the Vendor may bid less than the Maximum Hourly Rate but not more), total estimated price to be charged for the service (including other expenses and applicable taxes listed separately) and all other information requested by the Client.
  4. The Client reviews all RFS responses and selects the Vendor based on the criteria specified in the RFS. A SOW between the Client and the successful Vendor will then be entered into.
  5. If the Vendor decides not to submit a response to the RFS, the Vendor must inform the Client in a timely manner that no bid is being submitted, prior to the close of the RFS.

Vendors who respond to a RFS valued at \$25,000 or more may request a debriefing within 60 days after the award of the SOW. Vendors who provide "no bid" responses are not entitled to a debriefing.



## **1.23 Management of the Vendor of Record Arrangement**

### **1.23.1 Contract Account Management**

The Vendor agrees to have its Vendor representative meet with the Ministry Representative on a regular basis, no less frequently than quarterly, to discuss any issues of mutual concern. Such communication may cover the entire scope of the Agreement including but not limited to opportunities to maximize value and reduce costs, administrative issues, and service and Vendor performance issues. The manner and time of communicating through meetings or teleconferences etc. will be arranged with the Vendor as required after the Agreement has been established.

### **1.23.2 Contract Management Committee and Senior Management Escalation**

During the Term of the Agreement, the Vendor and the Ministry shall participate in a Contract Management Committee, which shall consist of the Vendor's representative appointed by the Vendor with the authority to represent the Vendor in all phases of the implementation and delivery of the Deliverables and a representative of the Ministry with the authority to represent the Ministry in all phases of the development and delivery of the Deliverables. The individual representatives nominated to this Committee shall be notified, in writing, by each party to the other party within 10 days following the effective date of the Agreement.

### **1.23.3 Responsibilities and Meetings of the Contract Management Committee**

The major responsibilities of the Contract Management Committee include the following:

- a) Effective communications between the Ministry and the Vendor;
- b) Initial point of escalation with respect to resolving deficiencies in service levels;
- c) Quarterly performance reviews of the Vendor's fulfilment of the Deliverables; and
- d) Such other duties as the Ministry and the Vendor may mutually agree to assign to the Contract Management Committee.

In situations where the Vendor's representative and the Ministry Representative are unable to come to an adequate and suitable resolution to any particular issue, the issue will then be escalated to each party's respective management.

The Contract Management Committee shall meet at a regularly scheduled time by agreement or at the direction of the Ministry Representative, and upon 48 hours' notice by either of the parties to accommodate an emergency situation.

### **1.23.4 Mandatory Monthly Activity Report**

The Vendor will be required to provide to the Ministry Representative a monthly activity report no later than ten Business Days after the end of each month. Each report shall reflect all expenditure information as described below. The monthly activity report must also include all PFO activity.

Details of the format, layout, data to be collected and related process for management reporting shall be finalized during the implementation stage of the Agreement.

(a) Monthly Activity Report: The Vendor will be required to submit a mandatory monthly activity report that will reflect all expenditure activities under the Agreement pertaining to the provision of services to the Client.

Details of such reports can include but are not limited to information such as:

- Month and year the activity report is being submitted for
- Vendor name
- Date of service
- Client organization name
- Client contact name
- Client facility location
- Zone
- OPS/PFO identifier
- Description of service
  - Security guard level (1,2,3)
  - Supervisor
  - Bilingual premium
  - Vehicle premium
  - Additional services' premium
  - Other (describe in detail)
- Name of guard
- Rate charged
- Type of pay (regular, overtime, holiday)
- Description of service
- Number of hours worked
- Total cost

(b) Nil or Zero Activity Reporting: The Ministry does not guarantee any business or activity in any given month. However, the Vendor is still required to submit a monthly "Nil" or "zero activity" report to ensure monthly activity reporting compliance.

(c) Ad-Hoc Reporting: The Vendor may also be required to provide the Ministry Representative with other documentation requests or information. This may include other relevant reports on late deliveries, location updates, etc.

(d) PFO Clients: The Ministry requires the Vendor to update and maintain the same data relating to any PFO Clients adopting this VOR arrangement.

### **1.23.5 Submission of Monthly Activity Report**

Monthly activity reports must be submitted to the Ministry on a monthly basis via the Vendor Reporting Portal in Microsoft Excel format. The Ministry may change the method of reporting/submission at any time; however, the Ministry will give the Vendor notice prior to the next submission deadline.

The preparation of the report file and the input of all data shall be the responsibility of the Vendor. It is imperative that all data for reporting purposes are entered in a uniform and consistent manner. This will ensure that resulting reports are useable by the Ministry Representative for data analysis and further reporting.

The Vendor will bear any and all costs associated with establishing, preparing, supporting, producing, and submitting all such activity reports to the Ministry.

The Vendor will provide the Ministry Representative with other reasonable requests for documentation or that which is required by the Agreement.

### 1.23.6 Additional Reporting Requirements

The Province of Ontario is intending to implement enhancements to its vendor management performance processes and reports. These enhancements will consist of new tools (standardized reports and processes) and remedies designed to effectively and efficiently measure, report, and manage the level of service being provided to Clients.

Should changes to performance management processes and reporting be implemented during the Term of the Agreement, the Vendor shall cooperate fully with the Ministry in providing the information required and adapt existing processes to reflect the changes resulting from the implementation of these enhancements. The Vendor will comply with all Ministry change requests with regard to Vendor performance management and will adhere to any guidelines and processes established therein.

### 1.23.7 Performance Management and Service Level Expectations

During the Term of the Agreement, including any extension periods, the Vendor's performance will be measured based on, but not limited to, the criteria detailed below to ensure the Ministry receives quality services. Performance will be assessed by both Clients and the Ministry and they will be the sole entities to make the rating determination.

Excellent	The services exceeded the service level expectation
Good	The services were slightly above the service level expectation
Average	The services met the service level expectation
Below Average	The services fell slightly below the service level expectation
Poor	The services did not meet the service level expectation

Service Level Expectation	Target
Full complement of security guards on site at all times	Minimum score of Average
Timely and thorough incident reporting including escalation and resolution	Minimum score of Average
Appropriate response time to incidents and emergency situations	Minimum score of Average

Security guards must provide a high level of customer service, be polite and helpful and present a professional and neat appearance at all times	Minimum score of Average
Vendor is accessible and available throughout the term of the contract	Vendor must respond to client and ministry representatives within 24 hours of inquiry
Timely response to RFS	Vendor must respond within prescribed timelines
Compliance with Statement of Work	Minimum score of Average
Invoice accuracy – rates charged do not exceed VOR arrangement rates	Minimum score of Average
Timely and accurate monthly reporting	No later than ten Business Days after the end of each month
Compliance with PSISA standards	Minimum score of Average
Vendor demonstrated adaptability and flexibility to changing business situations throughout the assignment/Term of Agreement	Minimum score of Average
Vendor demonstrated collaboration with Client in finding innovative solutions which addressed Client needs.	Minimum score of Average

The Vendor is required to provide a performance report on Client satisfaction with the services at the end of each assignment. This report must capture and measure customer satisfaction with the services provided. This information will be made available to the Ministry for evaluating the Vendor's performance during the Term of the proposed Agreement.

### **1.23.8 Client Satisfaction Survey**

During the Term of the Agreement, including any extension periods, the Ministry may conduct Client satisfaction surveys to obtain feedback on the Deliverables and services provided under the Agreement.

The Ministry will review Client satisfaction surveys to ensure Vendor compliance to the Agreement and to assess Client satisfaction. The survey results may be discussed with the Vendor to obtain feedback and resolution of any issues arising out of the surveys. Results of the surveys may be made available to Clients on an annual basis.

### **1.24 Billing**

Amounts payable to Vendors will be based on the hours worked, with a minimum of four hours per shift or assignment, multiplied with the applicable Base Rate per hour quoted in the Commercial envelope.

There will be no other payable amount to the Vendor unless specifically outlined in the RFS document.

Vendors will be compensated only for the hours worked as per the applicable contractual rates. The contractual rate is inclusive of all extras, such as allowances for agency's overhead, employee holiday and vacation pay, EI, CPP, pension contribution, benefits, duties and taxes (excluding HST) and any other costs as per the applicable labour laws.

### **1.25 Invoice and Payment Methods**

The Bidder will review and understand the payment methods of the Province of Ontario, in particular, payments made through the Purchasing Card (Section 1.24.1 - Purchasing Card), Direct Deposit (Section 1.24.2 – Direct Deposit/Electronic Funds Transfer) and through invoicing (Section 1.24.3 - Integrated Financial Information System (IFIS) Invoice Payments). Regardless of the payment method used by the Client, the Vendor must provide the Client with a detailed and itemized invoice.

The invoice must contain, but not necessarily be limited to, the following information and costs for Deliverables provided:

- a) Identification of Client contact including ministry name, division, branch, unit/department, email address and phone number;
- b) OSS VOR arrangement number (Tender #9939);
- c) RFS number provided by the Client;
- d) Invoice number;
- e) Invoice date;
- f) Contract start date and end date and length of assignment;
- g) Site/Assignment location – geographical region and full street address;
- h) Description of assignment including role, number of hours, security guard level, shift, bilingual, etc. with charges and subtotals;
- i) Hourly pay rate to security guard;
- j) Applicable Harmonized Sales Tax (HST) as may be applicable; and
- k) Total invoice amount.

#### **1.25.1 Purchasing Card**

The Purchasing Card is one of the preferred method of acquisition and payment for low dollar value goods and services. Currently, the Purchasing Card service provider to the Province of Ontario is the Bank of Montreal MasterCard. However, the Vendor will also agree and accept that, should the Purchasing Card service provider change during the Term of the Agreement, it will accept the new Purchasing Card and shall promptly make appropriate arrangements with the new Purchasing Card service provider upon notice from the Ministry of such a change.

Vendors are required to accept the Purchasing Card prior to the commencement of the Agreement. Vendors shall ensure that all accounting systems and processes to accept the Purchasing Card are in place prior to the commencement of the Agreement; and Vendors will pay any standard bank charges that are incurred as a result of the normal acceptance of the Purchasing Card transaction.

#### **1.25.2 Direct Deposit/Electronic Funds Transfer (EFT)**

The Client may make payments under the Contract by way of Direct Deposit which is the electronic transfer of funds by the Client to the financial institution identified by the Vendor. The Vendor shall accept and process any such payments in accordance with the Direct Deposit Protocols set out at [[Doing Business with Ontario](#)]. The Direct Deposit Protocols may be amended from time to time as required by Ontario.

### **1.25.3 Integrated Financial Information System**

The Province of Ontario implemented IFIS, a financial management system based on Oracle Financials, across all ministries. The Vendors will be set up and maintained as a Vendor in IFIS. Payment transactions for services using the OPS Purchasing Card or using invoice based billing will be entered and recorded in IFIS.

When payment with the OPS Purchasing Card is not conducted, a purchase order/invoice process through IFIS is required. IFIS employs three-way matching of the information from the purchase order, the goods/services receipt (verification that services have been completed), and the invoice. All three components must be entered and validated in IFIS before a cheque is generated against the invoice.

The Vendor is solely responsible for all matters related to the collection of payment and resolution of other financial matters with the Client. The Ministry assumes no responsibility for any financial matter between the Vendor and Client. The Ministry reserves the right to approve all requests from the BPS Client(s) to establish an account with the Vendor under the Agreement.

All invoice errors, either identified by the Client and/or the Vendor, will be corrected by the Vendor within two Business Days of becoming aware of the error. Once the corrections are completed, the Vendor will advise the Ministry Representative of correction of the error.

### **1.26 Pricing**

Prices quoted shall be in Canadian funds and shall remain firm for the first three years of the Agreements. If the Ministry exercises the option to extend the Agreements for the fourth and fifth years and the sixth and seventh years the Rates quoted in the Commercial envelope will be firm for these extension periods.

If the minimum wage increases as a result of the *Government Contract Wages Act*, the Ministry reserves the right to permit Vendors, who bid below the new minimum wage, to adjust the hourly wages for the initial term submitted in the Commercial envelope to meet the minimum requirement. The wages for subsequent years may, at the Ministry's discretion, be adjusted by the same percentage.

Along with the mandatory rates requested in the Commercial Envelope, an additional section capturing a current market price has been requested for each hourly salary. This information will be used only to gather information and will not be publicly disclosed except if required by order of a court or tribunal, or with the bidder's consent. The Ministry may request this information at other times during the term of the Agreement.

## **1.27 Contractor Security Clearance**

Upon notification from the Ministry, which may be either during the procurement process or during the term of any subsequent contract, the Vendor must obtain one or more of the following Security Screening Checks for any person, including directors, officers, employees, agents or sub-contractor, as applicable, engaged in the performance of the services:

- (i) General Check (Criminal Record Check – CPIC);
- (ii) Company Level Check;
- (iii) Driver’s Record Check;
- (iv) Out-of-Country Police Certificate (US and/or International);
- (v) Out-of-Country Driver’s Record Check (US and/or International);
- (vi) Other/Enhanced Level Security Screening Check; or
- (vii) Any other Security Screening Check as deemed necessary by the Ministry at its sole discretion.

The Vendor must obtain the Security Screening Checks set out above, excepting Other/Enhanced Checks which will be administered and coordinated by CSS, SCO, MGCS, at its own cost through the OPS Vendor of Record arrangement, local police, or an RCMP accredited third party agency.

If applicable, clearance checks must be completed before the Vendor and the Ministry enter into the Agreement.

All required information must be provided in a form acceptable to the Ministry.

## APPENDIX A

### Designated Areas under the French Language Services Act

Municipality or District	Area
City of Greater Sudbury	All
City of Hamilton	All of the City of Hamilton as it exists on December 31, 2000
City of Ottawa	All
City of Toronto	All
Regional Municipality of Niagara	Cities of: Port Colborne and Welland
Regional Municipality of Peel	City of Brampton City of Mississauga
Regional Municipality of York	City of Markham
County of Dundas	Township of Winchester
County of Essex	City of Windsor Towns of: Belle River and Tecumseh Townships of: Anderdon, Colchester North, Maidstone, Sandwich South, Sandwich West, Tilbury North, Tilbury West and Rochester
County of Frontenac	City of Kingston
County of Glengarry	All
County of Kent	Town of Tilbury Townships of: Dover and Tilbury East
County of Middlesex	City of London
County of Prescott	All
County of Renfrew	City of Pembroke Townships of: Stafford and Westmeath
County of Russell	All
County of Simcoe	Town of Penetanguishene Townships of: Tiny and Essa
County of Stormont	All
District of Algoma	All
District of Cochrane	All
District of Kenora	Township of Ignace
District of Nipissing	All
District of Parry Sound	Municipality of Callander
District of Sudbury	All
District of Thunder Bay	Towns of: Geraldton, Longlac and Marathon Townships of: Manitouwadge, Beardmore, Nakina and Terrace Bay
District of Timiskaming	All



## **B. Rates and Reimbursements**

### **B.1 Maximum Fee**

Notwithstanding anything else in the Contract, the total amount payable to the Vendor under the Contract shall not exceed a maximum amount for any items or services submitted by the Vendor in response to procurement RFB Tender #9939.

### **B.2 Rates**

The Rates for the Deliverables are set out below and shall remain fixed during the Term of the Contract (including any extension options):

**SCHEDULE 2 - ATTACHMENT TO MASTER AGREEMENT – NON-OPS ENTITY  
ACKNOWLEDGEMENT**

**LTCH PLEASE NOTE THIS HAS BEEN REPLACED WITH THE NON-OPS ENTITY  
SEPARATE AGREEMENT THAT HAS BEEN SHARED WITH YOU ON THE MLTCH  
PORTAL**

**[INSTRUCTION TO VENDOR: A signed copy of this Non-OPS Entity Acknowledgement must be received by the Vendor from the Non-OPS Entity (as defined in the Ontario Agreement referenced below) PRIOR TO responding to requests from that Non-OPS Entity. Aside from inserting the information in the applicable fields below, this Non-OPS Entity Acknowledgement may not be amended.]**

**TO:** HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO (“**Ontario**”)

**FROM:** [Instruction: Insert Legal Name of the Non-OPS Entity] (“**We**” or “**Us**” or “**Our**”)

**VOR LIST:** [Instruction: Insert VOR arrangement name, as well as any identifiers (i.e. VOR Arrangement number).] (“**VOR List**”)

**NAME OF VENDOR:** [Instructions: Insert Vendor’s Full Legal Name.] (“**Vendor**”)

**BACKGROUND:**

A. The Vendor and Ontario entered into an agreement for the Vendor, as a Vendor under the VOR List, to supply certain products or services, or both, (the “**Deliverable**”) to Ontario (the “**Ontario Agreement**”).

B. The Vendor is also required under the Ontario Agreement, subject to the terms of that Ontario Agreement, to consider requests from Non-OPS Entities (as defined in the Ontario Agreement) to make Deliverables available to Non-OPS Entities.

C. In order for the Vendor to consider requests from Us, as a Non-OPS Entity, to acquire Deliverables, We must first enter into this Non-OPS Entity Acknowledgement (“**Acknowledgement**”).

**INTENDING TO BE LEGALLY BOUND**, We acknowledge and agree as follows:

*Our Status in Relation to Ontario Agreements.* We acknowledge that we are not a party to the Ontario Agreement and that we cannot acquire any Deliverables as a “Client” under the Ontario Agreement. If we wish to acquire products and services from the Vendor, We acknowledge that we must enter into a separate agreement with the Vendor (“**Non-OPS Entity Agreement**”).

*Non-OPS Entity Agreement.* Despite any actions taken by Ontario to provide us with access to the Vendor and to the VOR List, We remain solely responsible for negotiating the terms and conditions of Our Non-OPS Entity Agreement, including the responsibility for ensuring that the Non-OPS Entity Agreement contains business, legal or other terms and conditions as may be necessary or desirable for us.

We acknowledge that legal and other professional advice provided to Ontario with respect to the establishment of the VOR List and the Ontario Agreement was solely for the benefit of Ontario to take into account Ontario’s specific legal and other concerns, and may not be applicable to or appropriate for, and may not address, in whole or in part, any of Our concerns or the concerns of any other third party.

We acknowledge that legal counsel for Ontario recommends that we obtain independent legal representation and receive independent legal advice, as well as other required independent professional advice, prior to executing any document or entering into any contract or agreement with, or acquiring any products or services from, the Vendor. Without limiting the generality of the above, We acknowledge that legal counsel for Ontario recommends that We should obtain independent legal advice about: the legal responsibilities and liabilities arising from so doing, the possible adverse consequences of so doing, the nature of those agreements and documents, and the clauses in those agreements and documents; and the opportunity to be advised independently by counsel against signing the documents or acquiring any products or services on the same or similar terms of the Ontario Agreement or under any arrangement.

*Procurement Processes.* We understand that the Vendor was selected by Ontario to enter into the Ontario Agreement pursuant to an open and competitive procurement process. We acknowledge that any differences between the terms and conditions of the Ontario Agreement and the terms and conditions of Our Non-OPS Entity Agreement may affect whether the selection of the Vendor and the procurements made under Our Non-OPS Entity Agreement meet the procurement rules, regulations, obligations or processes to which we are subject. We acknowledge that we are solely responsible for ensuring that the selection of the Vendor and the procurements made under Our Non-OPS Entity Agreement comply with any and all procurement rules, regulations, obligations and processes to which we are subject.

*Ontario Not Liable for Our Relationship with Vendors.* We acknowledge and agree as follows:

- (a) Ontario does not endorse, recommend or approve the suitability of, and We are solely responsible for conducting Our own independent assessment (including obtaining Our own professional advice (which may include legal and business

advice) as may be necessary and appropriate in Our specific circumstances) to determine the suitability of: (i) the Vendor as a Vendor to Us; (ii) the procurement process used to establish the VOR List or for ordering or acquiring Deliverables under the process established for any VOR List; and (iii) the terms and conditions of the Ontario Agreement as a basis for, in whole or in part, any Non-OPS Entity Agreement or any other resulting or related relationships or agreements between Us and the Vendor.

- (b) Ontario makes no representation, assurance, warranty, or guarantee: (i) that a Vendor will enter into a Non-OPS Entity Agreement with us; or (ii) of the value or volume of products or services that may or will be sold, if any, to us.
- (c) Ontario will not: (i) be or be deemed to be a party to, or a guarantor of any obligations or liability of any party under, any Non-OPS Entity Agreement or any resulting or related relationship or agreement between Us and the Vendor; or (ii) be responsible or liable to Us for, and nothing in any agreement between Us and any Vendor shall have the effect of imposing or resulting in the imposition of, any costs, obligation, liability or covenant on Ontario for any matter arising under or in connection with: (1) the VOR List; (2) any Deliverable; (3) the Ontario Agreement or any related documentation; (4) any access to the VOR List or the Ontario Agreement, or related documentation or information; (5) any Non-OPS Entity Agreement; (6) any act, error or omission of the Vendor (including the provision or non-provision of any Deliverables or other products or services by the Vendor); or (7) this Acknowledgement.
- (d) We shall not, in relation to or under any Non-OPS Entity Agreement or under any resulting or related relationship or agreement between Us and the Vendor, bring any cause of action, action, claim, demand or lawsuit against Ontario or any of its personnel as a result of: (i) any act, error or omission of the parties to any Non-OPS Entity Agreement; or (ii) any act, error or omission of Ontario or any of its personnel.
- (e) Any obligations, costs or liability arising under or in connection with any Non-OPS Entity Agreement or any resulting or related relationships or agreements between us and the Vendor shall remain with us and the Vendor.
- (f) We are solely responsible for our own contract administration with the Vendor and shall not direct any issues that may arise with the Vendor to Ontario.
- (g) For the purposes of any Non-OPS Entity Agreement, We acknowledge that we have no power or authority to bind Ontario or to assume or create any obligation or responsibility, express or implied, on behalf of Ontario.

*Data and Documentation.* We agree to provide to Ontario, at Ontario's request, any data and documentation about our acquisition of products and services from the Vendor. Despite any provision contained in any Non-OPS Entity Agreement, We consent to the disclosure, at any time and from time to time, by Ontario of such data and documentation to Ontario's directors, officers, advisors, agents, appointees and employees and to members of the Executive Council of Ontario, and their directors, officers, advisors, agents, appointees and employees.

Access to VOR Lists, Vendor/Ontario Agreements and Deliverables. Ontario, in its sole discretion, may delay, restrict or choose to not renew access by us to information regarding the VOR Lists, the Ontario Agreement and the products and services provided by the Vendors to Ontario on the VOR List.

Confidentiality. We acknowledge that information of a confidential nature to Ontario or the Vendor, regardless of whether it is identified as confidential or not (“**Confidential Information**”) may come into our knowledge, possession or control. We shall: (a) keep all Confidential Information confidential and secure; (b) limit the disclosure of Confidential Information to only those of Our directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors who have a need to know it for the purpose of acquiring or considering the acquisition of products and services from the Vendor (the “**Purpose**”) and who have been specifically authorized to have such disclosure; (c) not directly or indirectly disclose, destroy, exploit or use any Confidential Information (except for the Purpose, or except if required by order of a court or tribunal), without first obtaining: (i) the written consent of Ontario’s Ministry of Government and Consumer Services (“**MGCS**”) and (ii) in respect of any Confidential Information about the Vendor or any other third-party, the written consent of the Vendor and any such other third-party; (d) provide Confidential Information to MGCS on demand; and (e) return all Confidential Information to MGCS before the end of the term of the Ontario Agreement, with no copy or portion kept by Us. We shall not copy any Confidential Information, in whole or in part, unless copying is essential for the Purpose. On each copy made by Us, We shall reproduce all notices which appear on the original. If We or any of Our directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors become legally compelled to disclose any Confidential Information, We will provide MGCS with prompt notice to that effect in order to allow MGCS to seek one or more protective orders or other appropriate remedies to prevent or limit such disclosure, and We shall co-operate with MGCS and its legal counsel to the fullest extent. If such protective orders or other remedies are not obtained, We will disclose only that portion of Confidential Information which We are legally compelled to disclose, only to such person or persons to which We are legally compelled to disclose, and We shall provide notice to each such recipient (in co-operation with legal counsel for MGCS) that such Confidential Information is confidential and subject to non-disclosure on terms and conditions equal to those contained in this Acknowledgement and, if possible, shall obtain each recipient's written agreement to receive and use such Confidential Information subject to those terms and conditions.

The undersigned has read and understands this Acknowledgement and enters into it as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Non-OPS Entity:\_\_\_\_\_

By

(signature):

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Print

Name:

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Title:

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I have authority to bind the Non-OPS Entity