



Prepared For **Sample Report - Internal Use Only**

About

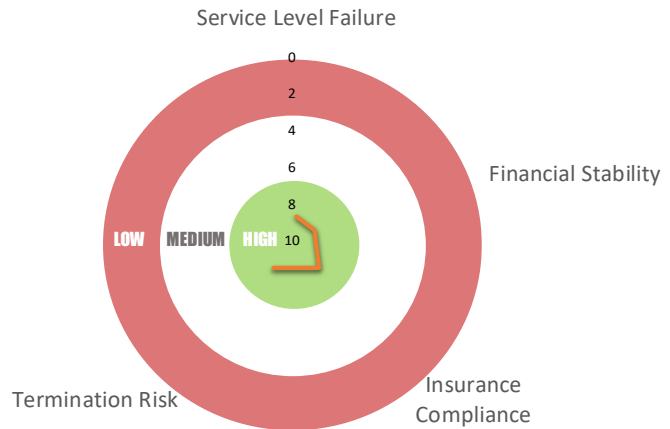
The Master Hosted System and Services Agreement, effective September 1, 2016, involves a contract between The Corporation of the City of Townsville (referred to as the 'City') and Smart Company Ltd (the 'Vendor'), an eLearning service provider. The agreement outlines the City's procurement of an online learning management system, course content, and related eLearning services from the Vendor, in accordance with the City's procurement policies.

CONTRACT SCORE = C+

The Contract Score is based on over 35 contractual factors, such as clarity of language, legal risks, enforceability, fairness, and ethical considerations. Each factor is assessed for its impact and graded accordingly.

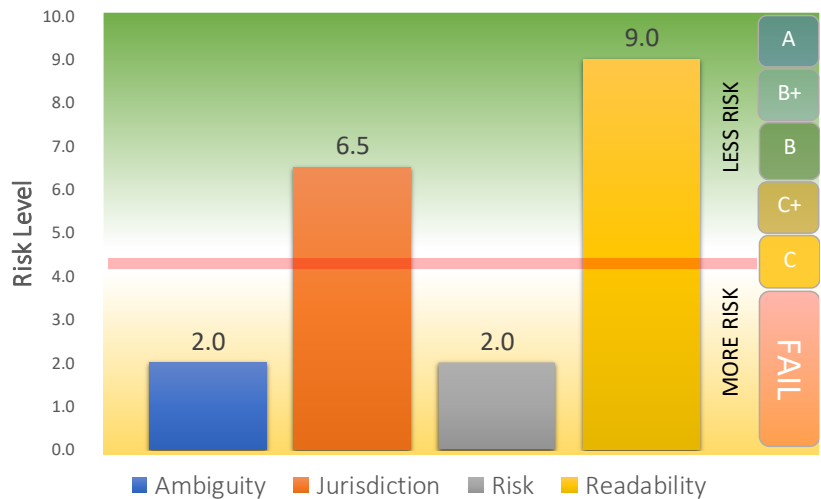
Risk Severity Chart

This chart is what they call a radar chart, a graphical method of displaying multiple variables to assess where potential issues might arise in real estate transactions. The chart maps out different risks such as defaults by the buyer or seller, errors in financial documents, and legal challenges to property titles. Each axis represents a different risk category, and the distance from the center indicates the severity level of that risk. This visual tool is useful for quickly identifying which areas in a transaction may need closer scrutiny or risk mitigation strategies.



General Score Chart

The Contract Agreement Score Bar Chart simplifies the evaluation of contracts by scoring Risk, Ambiguity, Jurisdictional Risks, and Reading Ease on a scale from 1 to 10, where a score around 5 or 6 suggests manageable concerns. This visual tool helps identify and prioritize areas needing attention in contract review and negotiation, highlighting moderate risks that are typically addressable with standard management strategies. By distinguishing between manageable and high-risk areas, it enables stakeholders to make informed decisions, ensuring a balanced approach to managing contractual relationships and mitigating potential issues effectively.



EXECUTIVE REPORT SUMMARY:

The following is a succinct summary and analysis of the contract agreement, highlighting key areas such as risks, ambiguities, and jurisdictional aspects. It serves as a precursor to the more detailed report that will follow.

The contract between The Corporation of the City of Townsville and Smart Company Ltd outlines the terms for acquiring an online learning management system and associated services. It establishes mutual obligations, rights, and a framework for performance and compliance. However, several critical issues need to be addressed to enhance the clarity and effectiveness of the agreement.

Key Elements of the Contract

1. **Performance Metrics**: The contract emphasizes the need for clear performance metrics. This is essential to ensure that both parties have a mutual understanding of expectations and can measure success objectively.
2. **Indemnification Provisions**: The indemnification clauses are significant, as they allocate liability between the parties. However, the current language may impose excessive liability on the Vendor, particularly concerning actions taken by subcontractors. This could create challenges for the Vendor in managing risk and ensuring compliance.
3. **Compliance with Laws**: The contract requires adherence to "all laws and regulations." While this is a standard clause, it raises concerns about the Vendor's obligations and the potential for unintentional violations. A more precise definition of applicable laws would mitigate this risk.

Identified Risks

1. **Ambiguous Language**: The contract contains vague terms, particularly regarding the undefined concept of 'Service Levels.' This ambiguity could lead to subjective interpretations of performance, increasing the risk of disputes and potentially allowing for premature termination of the contract.
2. **Termination Clauses**: The termination provisions are particularly concerning. The broad language allows the City to terminate the contract without cause, which could leave the Vendor vulnerable to sudden contract termination. This lack of clarity in termination rights necessitates a more defined process to protect the Vendor's interests.
3. **Liability Exposure**: The absence of a clear limitation of liability clause exposes the Vendor to potentially unlimited financial liability. This is a significant risk that could have severe financial implications for the Vendor, especially in the event of a breach or dispute.
4. **Subjective Standards**: Terms such as 'reasonable satisfaction' and vague definitions of acceptable replacements for systems or software complicate contract interpretation. These ambiguities can lead to disputes over compliance and performance, ultimately affecting the enforceability of the contract.

Jurisdictional Considerations

The contract must comply with Australian Consumer Law, particularly regarding breach of contract and misleading conduct. The lack of clarity in termination rights and the absence of a change of control clause could complicate dispute resolution and enforcement of the contract's terms. It is crucial that the contract aligns with these legal principles to avoid potential legal challenges.

RECOMMENDATIONS for Improvement

1. **Clarify Ambiguous Terms**: It is essential to define key terms and performance metrics clearly. This will help both parties understand their obligations and reduce the likelihood of disputes.
2. **Revise Termination Clauses**: The termination provisions should be revised to include specific grounds for termination and a notice period. This will provide the Vendor with greater security and predictability.
3. **Limit Liability**: Introducing a limitation of liability clause will help protect the Vendor from excessive financial exposure. This clause should clearly outline the maximum liability in the event of a breach.
4. **Specify Compliance Obligations**: The contract should specify which laws and regulations apply to the Vendor's obligations. This will help mitigate the risk of unintentional violations and provide clarity on compliance requirements.
5. **Enhance Clarity and Specificity**: Overall, the contract should prioritize clarity and specificity in its language. This will foster a more positive and collaborative relationship between the parties, ultimately leading to a more successful partnership.

Conclusion

In summary, addressing the identified ambiguities and risks is crucial for safeguarding the Vendor's interests and preventing potential disputes. The effectiveness of the contract relies on clear definitions and well-defined obligations. By prioritizing clarity and specificity, both parties can mitigate risks and enhance the enforceability of the agreement, leading to a more successful collaboration.

This report provides a comprehensive analysis of critical components within the document, with the objective of evaluating the total effort necessary for a thorough review. Furthermore, it identifies specific sections that may warrant revision.

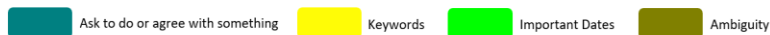
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THE FOLLOWING KEYWORDS WERE FOUND:

Services Provided(2) Performance Standards(1) Termination(40) Confidentiality(2) Data Protection(1) Intellectual Property(16) Indemnification(6) Notices(2) Assignment(5) Force Majeure(1) Waiver(4) Entire Agreement(2) Amendment(2) Quality Assurance(1) Warranties(6) Maintenance(8) Support Services(2) Business Continuity(1)

There was a total of 102 instances of legal keywords within your document that are Highlighted in Yellow. Our contract analysis highlights critical keywords such as 'dispute,' 'costs,' and 'delays' to pinpoint potential risks

Page3



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and obligations. These terms are key to understanding the agreement's implications and ensuring your interests are protected. We advise a thorough review of these keywords to grasp fully the contract's impact. This approach aids in making informed decisions and managing legal or financial exposures effectively.

READABILITY SCORE:

Very Easy - Likely too simplistic for typical legal documents. It might underestimate necessary legal details or provide an overly simplified overview that could miss critical nuances required in legal contexts.

NOTE: The complexity of a document significantly affects the time and effort required for review and comprehension, not just for lawyers but also for key stakeholders. Complex contracts demand meticulous examination to ensure thorough understanding, impacting overall review timelines and stakeholder engagement.

THE FOLLOWING HYPERLINKS WERE DETECTED:

<http://www.mississauga.ca/certifica...>

tel:(905)

NOTE: If these are links to documents or are part of, or are references, these should be read and fully understood.

COMPLEX LANGUAGE AND LEGALEASE TRASLATION:

Outlined below are plain language interpretations of any identified legal or complex language, enhancing understanding, promoting inclusivity, and facilitating informed decision-making.

COMPLEX LANGUAGE: The City shall be permitted to conduct such review and testing of the System or any part thereof as it deems appropriate. Where the City, acting reasonably, notifies Vendor in writing of any deficiency, error or malfunction ('Non-Conformance Notice') identified during its review and testing which the City considers any deviation from the Agreement, Vendor will have five (5) Business Days in which to correct each item in the Non-Conformance Notice or deliver and begin to implement a plan reasonably acceptable to the City to promptly correct the problem. In such case, any applicable acceptance test period will be extended by the number of Business Days elapsed from the date of the Non-Conformance Notice until the City's receipt of written notice that the items in the Non-Conformance Notice have been corrected along with receipt of the corrected item, plus an additional ten (10) Business Days to permit validation of corrections by the City. The City shall make good faith, reasonable efforts to conduct such validation as soon as possible after receiving the corrected item.

SUGGESTED REWRITE: The City can review and test the System as it sees fit. If the City finds any problems and informs the Vendor in writing, the Vendor has five business days to fix the issues or provide a plan to address them. The time allowed for acceptance testing will be extended by the number of days it takes for the Vendor to correct the problems, plus an extra ten days for the City to check that the fixes are satisfactory. The City will try to validate the corrections as quickly as possible after receiving them.

COMPLEX LANGUAGE: Vendor shall, both during and following the Term of this Agreement, save harmless, defend and fully indemnify the City and its selected officials, officers, employees, agents, representatives, successors and assigns (the 'Indemnified Persons') from and against all costs, actions, suits, claims, and demands whatsoever which may be brought against or upon the City and/or any of the Indemnified Persons, against any loss, costs, damages or expenses which the City and/or any of the Indemnified Persons may sustain, suffer, incur or be liable for, resulting from, arising from or in any way related to or as a result of: any breach, violation, or non-performance of the terms, covenants representations, warranties and obligations on the part of Vendor, Subcontractors, employees, workers or agents as set out in this Agreement or under any related agreement; any property damage, either real or personal and either owned by the City or others, howsoever occasioned, by Vendor, Subcontractors, employees, workers or agents performing work under this Agreement or under any related agreement; any personal or bodily injury to any person or persons, including death resulting at any time therefrom, howsoever occasioned by Vendor, Subcontractors, employees, workers or agents performing work under this Agreement or under any related agreement; Vendor's fraud, negligence or wilful misconduct of Vendor, Subcontractors, employees, workers or agents in the performance of its obligations under this Agreement or under any related agreement; and any breach, violation or non-performance of the obligations described in section 6.4 (Privacy).

SUGGESTED REWRITE: The Vendor agrees to protect the City and its officials, employees, and agents from any claims, costs, or damages that may arise during or after the term of this Agreement. This includes any issues caused by the Vendor or its workers not following the terms of the Agreement, any damage to property, any personal injuries, or any violations of privacy laws. The Vendor is responsible for covering all costs related to these claims.

COMPLEX LANGUAGE: The Vendor shall at its sole cost and expense, obtain and maintain in full force and effect at all times throughout the term or extended term(s) of this Agreement, insurance satisfactory to the City, with financially sound and reputable insurance companies licensed to underwrite insurance in the Province of Ontario. The Vendor shall be responsible for payment of all amounts within the deductible or self-insured retention under each policy of insurance. All Insurance policies required pursuant to this clause shall be primary and shall not call into contribution any insurance available to the City.

SUGGESTED REWRITE: The Vendor must pay for and keep active insurance that meets the City's standards for the entire duration of this Agreement. This insurance must be with reliable companies authorized to provide insurance in Ontario. The Vendor is responsible for any costs that fall within the deductible amounts of their insurance policies. The insurance policies must be the primary coverage and cannot rely on any insurance the City has.

COMPLEX LANGUAGE: The City may, in its discretion, immediately terminate this Agreement by written notice to Vendor in any of the following circumstances (Events of Default): Vendor fails for any reason to provide the Services or any part thereof in accordance with this Agreement; Vendor fails for any reason to perform its obligations under this Agreement in a manner satisfactory to the City; or Vendor breaches any material terms of this Agreement or the Maintenance and Support Agreement and such default continues for ten (10) days following notice thereof to the Vendor.

SUGGESTED REWRITE: The City can end this Agreement right away by notifying the Vendor in writing if any of the following happens: The Vendor does not provide the Services as required; The Vendor does not meet their obligations to the City; or The Vendor breaks important terms of this Agreement and does not fix the issue within ten days after being notified.

COMPLEX LANGUAGE: EXCEPT FOR THE INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 6.1 (CONFIDENTIAL INFORMATION), SECTION 8.1 (b) (e) (INDEMNITY FROM VENDOR TO THE CITY) AND SECTION 8.2 (INTELLECTUAL PROPERTY INDEMNITY), IN NO EVENT SHALL THE PARTIES, THEIR DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS OR AFFILIATES, BE LIABLE FOR ANY CLAIM FOR: (A) INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES; or (B) DAMAGES FOR LOSS OF PROFITS OR REVENUE.

SUGGESTED REWRITE: Except for the obligations related to confidentiality, indemnity to the City, and intellectual property, neither party, nor their representatives, will be responsible for claims related to indirect, special, or punitive damages, or for any loss of profits or revenue.

SENTIMENT ANALYSIS:

Sentiment analysis of a contract agreement provides critical insights into the emotional undertones and implicit attitudes embedded in the text, which are often overlooked in traditional legal reviews. By quantifying sentiment from various sections of a contract, parties can identify potential risk areas, better understand the priorities and concerns of those involved, and fine-tune the language to reflect the intended tone and clarity. This analysis not only aids in smoothing negotiations by highlighting contentious points but also helps in managing risk by flagging clauses that carry a negative sentiment, thus ensuring a more balanced and mutually agreeable contract.

The sentiment analysis of the contract reveals a predominantly neutral tone, characterized by formal and legalistic language. This neutrality serves to establish a clear and unambiguous framework for the obligations and rights of the parties involved, minimizing the potential for misunderstandings or emotional bias. Notably, aspects such as clarity of obligations, mutual commitments, and well-defined indemnification provisions contribute positively to the overall sentiment, indicating a cooperative spirit between the parties.

However, the analysis also highlights areas of concern, including the presence of ambiguity in language and the complexity of certain terms, which could lead to differing interpretations. This complexity may introduce risks that could undermine the contract's effectiveness and create potential disputes. Additionally, jurisdictional considerations are crucial for enforcing the contract and ensuring compliance with relevant legal standards. Overall, while the contract lays a solid foundation for the partnership, addressing the identified ambiguities

and complexities will enhance the clarity and robustness of the agreement, enabling a more positive and collaborative sentiment moving forward.

AMBIGUITY ANALYSIS:

The items listed below are the result of a thorough analysis of the contract. They pinpoint sections with ambiguous language and offer revised text to clarify terms and conditions. These instances are also highlighted in Teal with White fonts for quick reference.

1. **AMBIGUITY FOUND:** "the reasonable satisfaction of the City's Contract Manager"

EXPLANATION: The term "reasonable satisfaction" introduces a subjective standard for evaluating performance, lacking a clear, objective criterion. This could lead to disputes regarding compliance and execution, as the Vendor's performance may be subject to varying interpretations.

2. **AMBIGUITY FOUND:** "in compliance with all laws and regulations, statutory or otherwise, including by-laws and policies of the City"

EXPLANATION: The phrase "all laws and regulations" is overly broad and lacks specificity, leading to uncertainty about the Vendor's exact legal obligations. This ambiguity raises concerns about potential unintentional violations of unspecified laws.

3. **AMBIGUITY FOUND:** "the then current industry standards"

EXPLANATION: The term "then current industry standards" lacks a precise definition, which may lead to differing interpretations. This vagueness can result in disputes about whether the Vendor has satisfied its obligations according to the City's perception of industry standards.

4. **AMBIGUITY FOUND:** "replace same with an equally suitable, functionally equivalent, compatible, non-infringing System or Software, as applicable."

EXPLANATION: The terms "equally suitable," "functionally equivalent," and "compatible" are subjective and vague, leading to varying interpretations of what constitutes an acceptable replacement. This lack of clarity could result in disputes regarding the Vendor's obligations.

5. **AMBIGUITY FOUND:** "the Vendor shall be responsible for payment of all amounts within the deductible or self-insured retention under each policy of insurance."

EXPLANATION: The lack of clarity regarding the amounts or conditions for "deductibles" and "self-insured retention" introduces ambiguity. This could lead to disputes over unexpected costs that are not explicitly outlined in the agreement.

6. **AMBIGUITY FOUND:** "the City may immediately terminate this Agreement and any related agreements in their entirety should Vendor fail to meet any Service Levels for any two (2) consecutive months within a 12 month period starting from the date of Final Acceptance."

EXPLANATION: The undefined term "Service Levels" creates ambiguity around acceptable performance metrics. This could result in conflicting interpretations and risks premature termination of the contract based on different understandings of service expectations.

7. **AMBIGUITY FOUND:** "the City shall have no further financial obligations or other obligation, including any payment of any Fees, early termination fees or charges as of the date of termination except for any Fees related to Services and Deliverables actually delivered to the City and that have been accepted by the City."

EXPLANATION: The phrase "Services and Deliverables actually delivered to the City and that have been accepted by the City" lacks a clear definition for "acceptance." This ambiguity risks misinterpretation and could lead to disputes over financial obligations related to service acceptance.

JURISDICTION ANALYSIS:

Outlined below identifies clauses that may be subject to your jurisdiction.

JURISDICTIONAL ISSUE: Breach of Contract

EXPLANATION: Under Australian law, a breach of contract occurs when one party fails to fulfill their obligations under a legally binding agreement. The common law principles governing breach of contract are outlined in the Contract Law framework, primarily under the principles of the Australian Consumer Law (ACL) and various state-based contracts legislation. In instances of breach, remedial actions may involve damages, specific performance, or rescission of the contract.

JURISDICTIONAL ISSUE: Misleading or Deceptive Conduct

EXPLANATION: The Australian Consumer Law prohibits misleading or deceptive conduct in trade or commerce. Section 18 of the ACL provides that a person must not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive. This legal provision aims to protect consumers and ensure fair trading practices across various industries.

JURISDICTIONAL ISSUE: Non-Disclosure Agreements

EXPLANATION: Non-disclosure agreements (NDAs) are governed by common contractual principles in Australia. The validity of NDAs relies on the existence of consideration, a mutual understanding of confidentiality obligations, and clear terms outlining what constitutes confidential information. Under the principles established in the case law, it is crucial for parties to define the scope and limitations of the NDA to enforce its terms effectively.

JURISDICTIONAL ISSUE: Termination of Contract

EXPLANATION: The Right to terminate a contract in Australia is typically governed by the contract's specific terms or relevant statutes. The common law allows a party to terminate a contract for a serious breach, while the ACL provides consumers the right to terminate contracts in certain circumstances, such as unfair contract terms under the Australian Consumer Law. Clarity in termination clauses is essential to avoid disputes.

JURISDICTIONAL ISSUE: Consumer Guarantees

EXPLANATION: The ACL outlines specific consumer guarantees that apply to the supply of goods and services in Australia. Sections 54 to 60 articulate guarantees relating to acceptable quality, fitness for purpose, and corresponding warranties for goods and services. These guarantees provide consumers with additional rights beyond those typically granted under common law, ensuring protections against the risk of defective products or inadequate services.

TERMS AND CONDITIONS ANALYSIS:

In this analysis we evaluate the 'terms and conditions' of the contract, focusing on clarity, transparency and plain language.

This report evaluates the clarity, transparency, and understandability of the Master Hosted System and Services Agreement between The Corporation of the City of Townsville and Smart Company Ltd, as well as the terms and conditions from the service agreement between these parties. The assessment focuses on the procurement of an online learning management system and relevant services, emphasizing the accessibility of the language used for individuals lacking specialized legal knowledge.

The assessment methodology considered four criteria: legibility, use of plain language, clarity of presentation, and accessibility. The findings indicate well-written sections that provide a clear overview of the parties involved and the purpose of the agreements. However, the documents contain complex language and legal jargon that may confuse a general audience, exemplified by terms such as "mutual covenants" and "indemnify and hold harmless." Long sentences with multiple clauses contribute to a lack of clarity, making comprehension challenging.

Additionally, certain defined terms lack context, leading to ambiguities that may result in misunderstandings regarding their implications. The overall text is dense, potentially overwhelming readers who are unfamiliar with legal documents, which detracts from engagement and increases the likelihood of misinterpretation.

To improve clarity and understandability, several recommendations are proposed. It is advised to simplify language by replacing complex legal terms with simpler alternatives, such as changing "indemnify and hold harmless" to "protect and compensate." Sentences should be shortened for better clarity, and examples should be provided where applicable to illustrate complex terms, enhancing comprehension. A glossary for defined terms is recommended to allow easy reference without disrupting the text flow. Incorporating bullet points and tables would facilitate quicker comprehension of key points, especially in sections that list multiple requirements.

Implementing the suggested revisions would enhance the document's clarity, transparency, and understandability, making it more accessible to individuals without specialized legal knowledge. Prioritizing plain language and clear organization will better serve the purpose of the agreements and promote effective communication between the involved parties.

RECOMMENDATIONS:

Simplify language by replacing complex terms with simpler alternatives such as changing "good and valuable consideration" to "mutual benefits" and simplifying phrases like "howsoever occasioned" to "regardless of how it happened."

Shorten lengthy sentences into more digestible statements, particularly breaking down complex definitions into clearer components.

Use examples to ground definitions in practical terms, facilitating a better understanding of complex concepts.

Organize defined terms into a glossary at the end of the document to enhance navigation and understanding.

Incorporate bullet points or tables for sections with multiple items to improve readability and comprehension of key points.

ENFORCEABILITY ANALYSIS:

In the outlined instances that could raise enforceability concerns, it's important to note the possibility of false positives. These are cases where the analysis might incorrectly flag clauses as problematic when they do not actually contravene local laws, statutes, and codes. A careful review is essential to distinguish between genuine issues and false positives, ensuring the contract's terms are both compliant and enforceable.

Certainly! Please provide the text you would like me to summarize and revise for clarity and legal compliance.

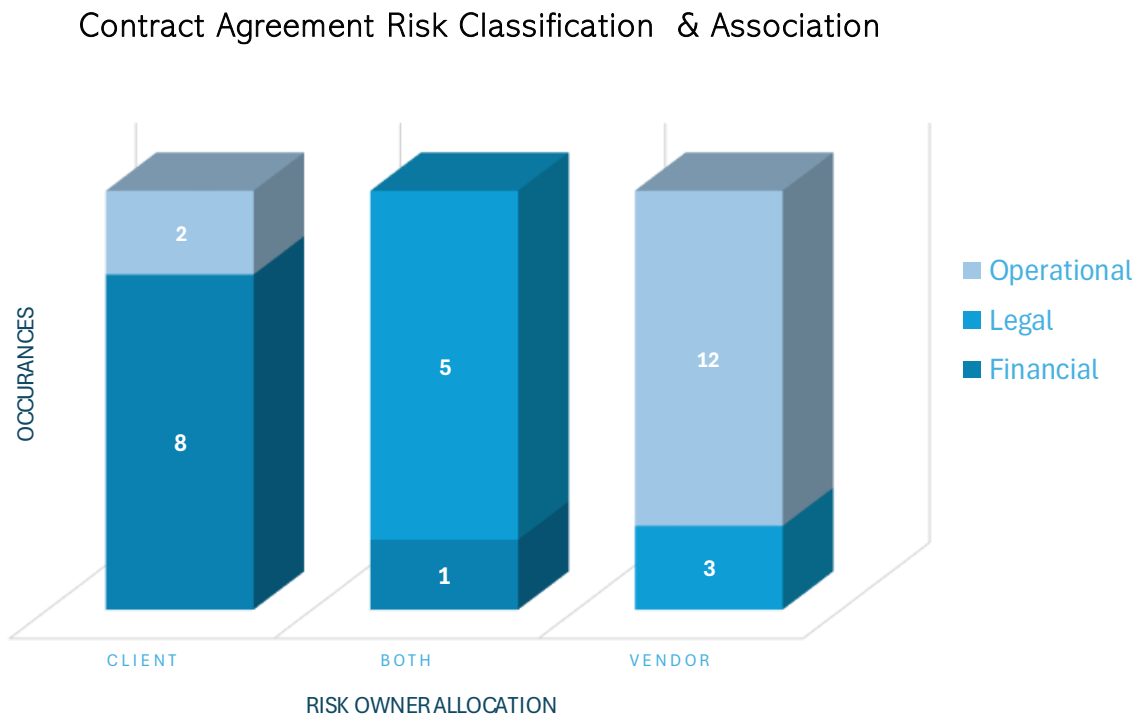
ENTIRE AGREEMENT CLAUSE:

Outlined below identifies if an Entire Agreement Clause exists within the contract. An entire agreement clause confirms that the contract fully represents the agreement between the parties, superseding all prior discussions or agreements. It's important because it prevents the parties from later asserting that there were additional, unwritten agreements or understandings outside of the contract's text, ensuring clarity and reducing the risk of disputes over alleged external terms.

1. Instance: [1] Entire Agreement Clause Found: "Except as expressly provided otherwise herein, this Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and cancels and supersedes any prior understandings and agreements between the Parties hereto with respect thereto. The parties shall not be bound by any shrinkwrap, web-wrap or other electronic agreement or contract of adhesion in connection with this Agreement or System, Each Party acknowledges that it is entering into this Agreement solely on the basis of the agreements and other provisions contained herein, and that it has not relied upon any representations, warranties, or inducements of any kind, whether oral or written, and from any source, other than those that are expressly contained within this Agreement. Each Party, respectively, acknowledges that it is entering into this Agreement for its own purposes and not for the benefit of any third party."

RISK CLASSIFICATION AND ASSOCIATION ANALYSIS:

The chart below delineates the distribution of risks across three key categories: operational, legal, and financial. It illustrates how responsibilities are allocated between the client, the vendor, and when shared by both. This segmentation ensures clarity in understanding who bears the onus for specific types of risks under the contract. The 'Contract Agreement Risk Classification & Association' chart provides a visual breakdown of risk ownership, aiding parties in recognizing their individual and joint responsibilities. Insights derived from this analysis are vital for all stakeholders to preemptively manage and mitigate potential challenges, and these specifics will be further elaborated in the subsequent section, titled 'General Risk Analysis.'



GENERAL RISK ANALYSIS:

Outlined below identifies contractual risks that may be at issue with this contract. The importance of assessing these risks lies in our proactive approach to safeguard the interests of all parties involved. By analyzing the potential issues beforehand, we can anticipate and strategize against any complications that might arise during the contractual period. This not only minimizes the chances of disputes but also ensures a smoother transaction process. Understanding these risks is vital for a well-informed contractual agreement and serves as a cornerstone for the integrity and success of the deal.

RISK: 'save harmless, defend and fully indemnify the City and its selected officials, officers, employees, agents, representatives, successors, and assigns (the Indemnified Persons) from and against all costs, actions, suits, claims, and demands whatsoever which may be brought against or upon the City and/or any of the Indemnified Persons.'

EXPLANATION: This provision poses a high risk as it imposes substantial liability on the Vendor, potentially leading to disputes over the scope of indemnification and the nature of claims covered. The risk allocation is heavily skewed in favor of the City, which could result in significant financial strain on the Vendor.

RISK TYPE: Financial

RISK: The Vendor shall indemnify and hold harmless the City for all costs and damages from errors, omissions, negligence, misconduct or other actions of the Subcontractors or any of them.

EXPLANATION: This clause presents a significant risk because it imposes extensive liability on the Vendor for the actions of its subcontractors, which may be challenging to control or predict. Given that subcontractors may not always be adequately vetted or managed, the likelihood of disputes arising from their actions is notably high. Consequently, the risk allocation is heavily skewed in favor of the City, placing the Vendor in a precarious position.

RISK TYPE: Financial

RISK: The absence of a clear limitation of liability clause in this agreement exposes the Vendor to the risk of unlimited liability.

EXPLANATION: The lack of a limitation of liability clause means that the Vendor could be held liable for all damages, including consequential and indirect damages, which can be substantial. This creates a significant risk for the Vendor, as it may face unforeseen financial burdens.

RISK TYPE: Financial

RISK: IN NO EVENT SHALL THE PARTIES... BE LIABLE FOR ANY CLAIM FOR (A) INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES; or (B) DAMAGES FOR LOSS OF PROFITS OR REVENUE.

EXPLANATION: This clause significantly limits the Vendor's liability, which could result in substantial losses for the City in the event of a breach. The high probability of disputes arising from this limitation, particularly in cases of negligence or failure to deliver services, renders it a critical risk area. While the risk is shared, the City may face greater exposure due to the limitations imposed.

RISK TYPE: Financial

RISK: The agreement lacks specificity regarding the grounds for termination and the consequences thereof.

EXPLANATION: This vagueness can result in significant operational and financial risks for both parties as it can lead to disputes about the rights of the parties upon termination.

RISK TYPE: Operational

RISK: The City may in its absolute discretion at any time and without cause, terminate this Agreement... by providing not less than ninety (90) days written notice.

EXPLANATION: This clause grants the City broad termination rights, which could lead to disputes over what constitutes 'cause' and the implications of termination without cause. The probability of disputes is high, especially if the Vendor has made significant investments based on the contract. The risk allocation is heavily in favor of the City, potentially leaving the Vendor vulnerable.

RISK TYPE: Financial

RISK: Without a change of control clause, if the Vendor is sold or undergoes a significant change, the City may be left with an unvetted new party.

EXPLANATION: The absence of such a clause can create uncertainty regarding the continuity of the agreement, potentially affecting service delivery and compliance with the agreement.

RISK TYPE: Legal

RISK: No explicit change of control clause is present in the contract.

EXPLANATION: The lack of a change of control provision creates a risk that either party could be sold or merged without the other party's consent, potentially leading to disputes regarding the continuation of the contract.

RISK TYPE: Legal

RISK: The agreement does not include provisions for liquidated damages.

EXPLANATION: This could result in disputes over the calculation of damages in the event of a breach. This lack of clarity can create significant financial uncertainty for both parties.

RISK TYPE: Financial

RISK: The absence of a clear change of control clause can lead to uncertainty and potential disputes.

EXPLANATION: The impact could be significant if the new entity does not honor the original terms.

RISK TYPE: Legal

SPECIALIZED CONTRACT REQUIREMENTS - COMPLIANCE AND PERFORMANCE:

This section provides a detailed analysis of additional requirements and performance standards tailored to the unique aspects of your contract. Specific elements and compliance obligations will be addressed as identified.

Risk Management and Community Engagement Obligations

The contract lacks explicit requirements for the Vendor to create a risk management plan and a community engagement strategy. This omission may lead to unaddressed risks impacting service delivery and community satisfaction, ultimately harming the City's reputation.

Performance Metrics and Reporting Requirements

The contract does not provide clear performance metrics or reporting requirements. This absence may result in disputes over the Vendor's performance and complicate the City's ability to evaluate service obligations, potentially leading to unsatisfactory service delivery.

Change Management Process

While a change management process is outlined, there is no clarity on what constitutes a "substantial modification." This ambiguity could result in conflicts regarding required approvals for changes, affecting service alignment with the City's needs.

Insurance Coverage Requirements

The contract does not define the necessary types and amounts of insurance coverage for the Vendor. This lack of detail could expose both parties to financial risks from claims and liabilities pertaining to the Vendor's services.

Compliance with Industry Standards

The contract mentions compliance with "then current industry standards" but fails to define these standards or assessment methods. This lack of specificity could lead to differing interpretations and disputes regarding the Vendor's performance.

Transition and Continuity of Services

Provisions for transitioning services post-termination or expiration are absent. This could disrupt service delivery and create challenges if a new Vendor must be engaged, thus risking service interruptions.

Post-Termination Obligations

The contract does not outline the Vendor's responsibilities regarding the return or destruction of City data after contract termination. This lack of clarity may lead to conflicts about data management and poses risks of data breaches or unauthorized information use.

Training and Support Obligations

The contract does not specify the Vendor's duties concerning training and support for City personnel. This may result in insufficient training, hindering staff effectiveness in utilizing the Vendor's services.

Environmental and Sustainability Considerations

There are no provisions addressing environmental and sustainability considerations related to the Vendor's services. This could result in practices misaligned with the City's sustainability goals or regulations.

Governing Law and Jurisdiction

The contract indicates it is governed by Ontario law, which may pose jurisdictional issues for parties outside Ontario, potentially leading to heightened legal costs and complexities in dispute resolution.

Communication Protocols

The contract lacks established communication protocols between the City and the Vendor. This could result in misunderstandings or delays in addressing contract issues, hindering effective collaboration.

OVERALL CONTRACTUAL CLARITY ANALYSIS:

Our analysis aims to scrutinize many key elements of the contract, from the definition of scope to ethical considerations. Through this meticulous examination, we identify potential ambiguities, elucidate terms, and offer insights into the responsibilities and rights of each party

CLIENT SPECIFIC ANALYSIS:

Risk Management and Community Engagement require strategic planning and community involvement. The Vendor is mandated to create and implement a detailed risk management plan identifying potential risks related to the Services under the Agreement. This plan must incorporate actionable strategies for risk mitigation, which should be regularly reviewed and updated to account for changes in circumstances, emerging risks, and new information over the Agreement's duration. Training in relevant risk management practices for all personnel involved in the Services is essential, with an emphasis on ongoing education to adapt to evolving risks and best practices.

Community engagement is a vital component of preparedness efforts associated with the Services. The Vendor is responsible for actively participating with the community through various initiatives, such as conducting workshops designed to educate residents about the Services and the risks involved, providing accessible informational resources detailing preparedness strategies, and facilitating open discussions to capture community input. This participation should ensure that community perspectives are incorporated into planning processes. Collaborative efforts with the City will be critical for integrating feedback into the planning and implementation stages, thereby fostering trust and enhancing the effectiveness of preparedness initiatives.

The Vendor must deliver regular, comprehensive reports to the City concerning risk management initiatives and community engagement activities. Reporting should contain measurable metrics to assess the effectiveness of employed strategies, alongside adjustments made in response to community feedback or newly recognized risks. The frequency and format of these reports must be established mutually to promote transparency and accountability. The integration of risk management and community engagement in the Service Agreement aligns with best practices in service delivery and community involvement. Ensuring all modifications to the Agreement are reviewed thoroughly is crucial for mutual understanding and legal validity, strengthening the document's robustness while fostering a proactive approach to risk management and community collaboration.

IMPORTANT DATES AND ITEMS TO MAKE NOTE OF:

Significant Dates and Deadlines reflect essential timelines and obligations associated with the agreement. The Effective Date is set as September 1, 2016, marking the start of all contractual rights and responsibilities. The Initial Term of the Agreement spans from September 1, 2016, to August 31, 2019, highlighting the expected duration of the parties' commitments and performance evaluations.

A Renewal Notice Period requires written notice from the City to the Vendor at least 60 days before the conclusion of the initial or any renewal term to express intent for renewal. Professional Liability Insurance must be maintained by the Vendor for 12 months following the completion of work, with an obligation to routinely submit renewal certificates throughout the contract term. In case of any changes affecting insurance status, the Vendor is required to inform the City in writing at least 30 days before such changes take effect.

The Vendor must also submit evidence of good standing with the Workplace Safety and Insurance Board every two months until the agreement's expiration. Upon receiving a notice of default from the City, the Vendor is afforded a 10-day period to rectify any breaches. Additionally, a two-month Service Level Compliance Period is enforced; failure to meet established levels during this time may result in termination of the Agreement.

Change Request Response requires the Vendor to respond in writing within 5 Business Days, while the City has 15 Business Days to reply to any change proposals made by the Vendor. The Vendor must address deficiencies noted in a Non-Conformance Notice within 5 Business Days. Moreover, an extra 10 Business Days can be granted to the City for validation of corrections post-receipt of corrected items.

Circulation of project management meeting minutes must occur within 48 hours, and Bi-Weekly Status Reports are mandated at least once every two weeks. The text indicates no specified deadline for Termination Notice, which may create ambiguity around the termination process.

This analysis underscores the necessity for both parties to maintain accurate records and timely reminders concerning these critical dates and obligations. Furthermore, clarification regarding any unspecified deadlines is recommended to bolster the agreement's clarity and enforceability.

CRITICAL CONTRACTUAL TERMS AND CONDITIONS:

The analysis of the 'MASTER HOSTED SYSTEM AND SERVICES AGREEMENT' identifies several key risks associated with Insurances and Indemnities, highlighting critical areas that require attention. The absence of explicit insurance provisions within the agreement exposes both parties to potential financial liabilities from unforeseen events, including accidents or breaches of contract. This lack of insurance coverage could result in significant financial repercussions for the involved parties, particularly concerning claims related to the services rendered.

Additionally, the agreement fails to incorporate clear indemnity clauses that define the responsibilities of each party in the event of third-party claims. This omission raises concerns regarding effective risk management, potentially leading to unforeseen liabilities that could have considerable financial implications during disputes or claims. Furthermore, the absence of limitations of liability represents a major oversight. Without such

limitations, both parties may face unlimited liability, threatening their financial stability should a breach or failure to perform occur. The unpredictable nature of financial exposure in such cases could jeopardize the interests of both parties involved.

The report also notes the missing favorable termination conditions. The lack of clearly defined termination rights may prevent parties from exiting the agreement without incurring heavy penalties, posing challenges should a party need to terminate the contract due to breaches or significant issues. Another notable absence is the change of control clause, vital for safeguarding the interests of both parties during mergers, acquisitions, or ownership changes. Without this clause, parties may confront risks stemming from significant changes in the other party that could alter the contractual relationship.

Lastly, the agreement does not reference most favored nation clauses, which could be advantageous in ensuring equitable terms for one party. The absence of such a clause may diminish the negotiating leverage of one party, leading to potentially inequitable terms. Consequently, the analysis emphasizes critical gaps along these lines, underscoring the absence of insurances, indemnities, limitations of liability, and favorable termination conditions. These deficiencies pose significant risks to both parties involved and necessitate further discussions to address these issues and strengthen the overall integrity of the agreement.

CONTRACTUAL CONTRADICTIONS:

reduce the potential for disputes between the parties involved.

The effective date of the agreement is September 1, 2016, with a defined term of three years and options for renewal. Clarity in the definition of the term is necessary to avoid confusion regarding the commencement and conclusion of obligations. The Intellectual Property Rights clause states that modifications to the City's Background IP remain the City's exclusive property, while the License Grant permits the Vendor to utilize this IP for specified purposes. To avoid contradictions, the License Grant must delineate the Vendor's rights without infringing on the City's ownership rights.

Data Security measures mandate robust protections for Personal Information, and the Access and Compliance clause allows for audits to ensure adherence. Specific compliance metrics should be integrated into the Data Security clause to streamline audits. The Limitation of Liability clause caps financial exposure for both parties, while the Indemnity Clause necessitates Vendor indemnification of the City against breaches. It is essential that the Indemnity Clause clarifies that indemnity obligations are not confined by the Limitation of Liability clause to ensure the City's protection against specific claims.

The No Obligation and Non-Exclusivity clause indicates that future work engagement is not guaranteed, which may conflict with the Vendors reliance on designated Key Personnel. Transition provisions for Key Personnel responsibilities should be included if the City chooses to discontinue the relationship. The Survival of Terms clause stipulates that certain terms persist post-termination, whereas the Termination Effects clause indicates no claims can arise against the City post-termination. Explicit listing of obligations that survive termination in the Survival of Terms clause will enhance mutual understanding of rights and responsibilities.

Modification Restrictions require prior consent for substantial modifications, which may delay service delivery. The Contract Change Management clause should clearly define 'substantial modifications' and provide an efficient process for requesting changes. Both parties must protect confidential information as outlined in the Confidential Information clause, while the Exceptions to Confidentiality clause must specify allowable disclosures to prevent disputes over confidentiality breaches.

Insurance Requirements mandate that the Vendor maintain relevant insurance coverage, aligned with the Indemnity Clause which requires indemnification of the City against claims. Both clauses should ensure that insurance includes coverage for all potential indemnity claims. The Governing Law clause states that the agreement is governed by Ontario law and the Legal Action clause requires disputes to be resolved in Ontario courts. A reconciliation of these clauses will ensure consistency in legal interpretation and address potential jurisdictional issues. Addressing these factors will enhance clarity and stability within the contractual relationship.

SCOPE DEFINITION:

The contract encompasses a comprehensive definition of 'Services' which includes Hosting Services, online Course Content Services, Consulting Services, Maintenance and Support Services, Warranty Period Services, alongside training, inspection, and installation services. This definition is instrumental in minimizing ambiguity and ensuring mutual understanding of the services to be provided. The Statement of Work (SOW) explicitly outlines the project specifics, detailing the components ordered by the City, responsibilities of each party, a Project Plan with defined milestones, a pricing schedule, and payment terms, which are crucial for preventing misunderstandings related to deliverables and timelines.

The Project Plan acts as a detailed roadmap, specific to the delivery, installation, implementation, conversion, performance milestones, and Acceptance Testing, with realistic milestones highlighted in Schedule A to avoid delays. The 'System' is identified as the eLearning management system including its Portal, course content, Software, and other specified components, maintaining a broad yet precise definition to avoid confusion. Specifications include the operational and technical details of the System, outlined in Schedule A, necessitating clarity in measurable criteria for performance and functionality to mitigate non-compliance risks.

The Vendor is responsible for executing the Project Plan and delivering Services that comprise eLearning courses and related materials, with clear expectations vital to prevent misunderstandings. They must also provide a comprehensive design for the System's implementation, conduct testing phases, and supply thorough documentation throughout the project lifecycle. Contract Change Management stipulates that any modifications must originate from the City via a written change request, with the Vendor obliged to respond with estimated costs and timelines to manage potential scope creep effectively.

The Vendor's responsibilities entail fulfilling all infrastructure and software application needs for the City's access to the System and Portal, with prior City approval necessary for changes that might disrupt operations. Maintenance and Support Services demand that the Vendor repair or replace defective components and ensure regular software updates and security patches, essential for the Systems durability. Security and Data

Protection obligations require that the Vendor comply with reasonable standards to protect City Data and Confidential Information.

Continuous improvement of the System is mandated throughout the Agreement's term for optimal performance alignment with best practices. The City has designated responsibilities critical for the Vendor's Service performance, which must be adhered to diligently. Optional Services can be provided under a Statement of Work, subject to negotiation and execution by both parties. Should there be a transition to a new eLearning system platform, the Vendor is committed to maintaining course content services to ensure service continuity. This analysis underscores the significance of clear definitions and structured processes within the contract to mitigate risks and ambiguities, thus fostering a successful partnership through mutual understanding of obligations and expectations.

DISPUTE RESOLUTION:

The report provides a detailed examination of the processes governing dispute resolution within the contract. It establishes that any legal action arising from the agreement must be exclusively litigated in the federal or provincial courts of Ontario, clarifying the jurisdictional framework for resolving disputes. This specification ensures that all parties are aware of the designated venue for potential litigation.

The contract stipulates that the prevailing party in any legal action has the right to recover costs on a substantial indemnity basis. This provision serves as an incentive for parties to engage in good faith negotiations and remain aware of the merits of their claims before resorting to litigation, as it permits the recovery of a higher level of costs than typically allotted under standard cost rules.

A notable aspect of the agreement is the absence of any mention of alternative dispute resolution processes such as mediation or arbitration. This lack of ADR options could constrain the parties' ability to resolve disputes amicably, potentially leading to higher litigation expenses and extended conflict durations.

The exclusive jurisdiction clause is significant, particularly for parties outside Ontario, as it may impose logistical challenges and increased costs on them. While the substantial indemnity costs provision promotes responsible litigation, it raises concerns regarding the financial burden on parties with limited resources. The omission of ADR mechanisms points towards a trend that might incite more adversarial legal engagements, suggesting that the incorporation of such processes could foster improved efficiency and cooperation in resolving disputes.

Overall, the report underscores the significance of the specified jurisdiction, cost recovery provisions, and the implications of the absence of ADR strategies in shaping the dispute resolution landscape associated with the contract. These elements contribute substantially to a clear understanding of the contractual obligations and the framework available for addressing conflicts.

EXIT STRATEGY:

The contract agreement establishes distinct exit strategies for both parties in the event of termination or necessary renegotiation. The City possesses the authority to terminate the Agreement immediately by providing written notice to the Vendor under specific circumstances, known as 'Events of Default.' These

circumstances encompass unsatisfactory service delivery, breach of material terms, failure to meet established service levels for two consecutive months, financial distress such as bankruptcy or receivership of the Vendor, lapses in required insurance coverage, misrepresentation of capabilities or compliance by the Vendor, non-compliance with applicable laws and regulations, ongoing judicial or arbitral proceedings affecting the Vendor's performance, and breach of non-collusion requirements.

Following termination due to an Event of Default, specific consequences are outlined. The City is relieved of all financial obligations to the Vendor immediately upon termination. Furthermore, the City retains the right to engage a new Vendor to rectify service deficiencies, with the authority to recover the associated costs incurred in this replacement from the original Vendor. Post-termination, the Vendor is prohibited from making any claims against the City, aside from payments owed prior to the termination date. This framework delineates the conditions for contract termination and the subsequent implications, thereby protecting the interests of the City and promoting accountability from the Vendor.

OBLIGATIONS AND RESPONSIBILITIES:

The obligations and responsibilities outlined in the Master Hosted System and Services Agreement distinctly establish the roles of both the City and the Vendor.

The City holds several specific responsibilities, including the development of a comprehensive Acceptance Test Plan to ensure quality assurance across all system components. The City is obligated to provide all relevant City Data necessary for the Vendor's effective service delivery while also clearly defining its contributions to the project to prevent misunderstandings. Adequate training for City employees on the use of the System is another critical obligation.

Conversely, the Vendor is required to deliver an eLearning management system, including necessary course content and related services. The Vendor must create and provide all documents and course content as specified in the agreement, perform essential consulting services such as engineering and professional support, and comply with specified Service Levels while offering ongoing maintenance. It is also the Vendor's responsibility to ensure the System functions according to agreed Specifications and to provide necessary Software.

Both parties share mutual responsibilities pertaining to Confidential Information, which must be kept confidential throughout the negotiation and performance phases of the Agreement. Compliance with the Statement of Work, which details each party's service-related duties, is essential.

Additional responsibilities for the Vendor include the execution of the Project Plan, system installation and maintenance, implementation of a business continuity plan, and conducting various testing phases accompanied by providing extensive documentation for City staff. The Vendor is tasked with organizing project management meetings and issuing bi-weekly status updates while ensuring adequate staffing and addressing the need to replace incompetent personnel at no further cost to the City. Any requests for contract changes from the City should be addressed within five business days by the Vendor, whose Contract Manager must maintain effective communication with the City's designated Contract Manager.

The City additionally bears the responsibility of providing relevant operational information to assist the Vendor and exercising its right to conduct acceptance testing, ensuring any deficiencies are reported in a timely manner. Approval for any change orders with financial implications rests with the City, which must respond to such requests within a specified timeframe of fifteen business days.

Both parties must adhere to mutual obligations, including the Vendor securing various forms of insurance, such as Commercial General Liability and Professional Liability. Compliance with applicable laws, particularly regarding privacy and data security, is mandated for both parties. Furthermore, the Vendor must indemnify the City against any claims or losses stemming from breaches of the Agreement.

This structured framework of obligations is designed to enhance accountability, compliance, and effective communication between the City and the Vendor, promoting an efficient and successful partnership through diligent execution of duties.

PAYMENT TERMS:

The report identifies significant deficiencies in the contract concerning payment terms that hinder clear understanding and financial transparency between the Vendor and the Client.

The lack of specification regarding standard fees creates uncertainty in financial expectations and obligations. Although hidden fees are not explicitly mentioned, the absence of a detailed fee structure raises concerns about potential undisclosed costs that may adversely affect budget planning. Furthermore, the text does not provide information on extra fees, potentially leading to disputes should either party claim additional fees were implied.

There is an absence of outlined penalty charges for non-compliance, resulting in undefined consequences for either party's failure to meet obligations. The only conditions that could invoke charges pertain to breaches of the Agreement, which may trigger liquidated damages. This clause is vital as it sets clear repercussions for non-compliance but does not address the broader context of payment structures.

Additionally, there is no detailed payment structure nor specified due dates, complicating cash flow management and financial planning for the Vendor. Refund policies are also left unaddressed, posing risks for the Client if services fall short of expectations. The indemnification clause introduces the potential for altered financial obligations, emphasizing the importance of understanding the implication of covering costs for claims made by the other party, which can lead to unforeseen financial liabilities.

Moreover, the potential for additional fees exists solely in instances of breaches, further emphasizing the report's concern regarding the vagueness surrounding other financial obligations and conditions. Overall, the lack of clarity in specific payment amounts, terms, and conditions raises ambiguity that could lead to challenges in contract enforcement and possible disputes.

The findings underscore the need for improved detail in the contract regarding payment terms to establish a clear mutual understanding of financial obligations, thereby minimizing risks and fostering a transparent contractual relationship. Addressing these gaps is essential for effective collaboration and to mitigate misunderstandings between the parties involved.

DURATION AND TERMINATION:

Upon a thorough examination of the 'MASTER HOSTED SYSTEM AND SERVICES AGREEMENT,' several key elements concerning the contract's duration and termination clauses have been identified. The agreement is established as of September 1, 2016, signifying the official commencement date from which all obligations and rights under the contract take effect. The term of the agreement, mentioned in Section 9.1, suggests a potential 'Renewal Term,' yet the current language lacks explicit details regarding the initial duration of the contract and the specific conditions under which a renewal may occur. This omission creates potential ambiguity, as parties may interpret the term's length and renewal process differently. Furthermore, the analysis highlights a significant gap in the contract concerning termination provisions. The absence of specific clauses that outline the conditions under which either party may terminate the agreement poses a notable risk. Without clear termination rights, parties may find themselves in a binding agreement longer than anticipated, which could lead to unwanted obligations or liabilities. Establishing clear grounds for terminations such as breach of contract, failure to perform, or mutual consent is essential to provide both parties with a clear exit strategy if circumstances change. The contract establishes an effective date and references a term with a potential renewal; however, it lacks comprehensive details on both the duration and conditions for termination. To mitigate the risks associated with ambiguity and to ensure both parties have a clear understanding of their rights and obligations, it is advisable to review the complete agreement, particularly Section 9.1 and any related sections that may address termination rights and procedures. This thorough review is necessary to clarify uncertainties and strengthen the contractual framework, ultimately fostering a more secure and predictable business relationship.

LIABILITY LIMITATIONS:

The report provides an in-depth examination of the liability and limitations in the contract agreement. Key findings highlight the broad indemnity clause, which requires the Vendor to save harmless, defend, and fully indemnify the City and its representatives, creating substantial financial risk for the Vendor for various potential liabilities, including legal fees and damages from breaches of contract.

A critical absence of specific liability limitation clauses is noted, exposing the parties to unlimited liability, which could result in significant financial repercussions if breaches or unforeseen circumstances arise. However, the contract does contain a limitation of liability clause that excludes indirect, special, consequential, or punitive damages, and caps the total liability for any claims at 100% of the total value of the agreement, thereby providing a measure of protection for both parties against extensive financial exposure.

The risk assessment indicates that the lack of liability limitations heightens the risk of claims arising from scenarios such as non-performance or delays. The report stresses the necessity of assessing the likelihood of these claims based on the contract's nature and the parties' relationship. Furthermore, ambiguous terms and complex language are identified as complicating factors in liability issues; thus, clear and precise language is crucial for ensuring mutual understanding of obligations and consequences of non-compliance.

Jurisdictional considerations are critical, as the contract's enforcement location can significantly affect the interpretation and enforceability of liability clauses, and local laws can treat the absence of limitation clauses

differently. To mitigate risks associated with liability limitations, the report recommends that the parties incorporate explicit liability clauses defining the extent of liability, including damage caps and recoverable losses. Additionally, it recommends clarifying ambiguous terms and simplifying complex language to enhance understanding and enforceability.

In conclusion, the report underscores the necessity for clearly defined liability and limitations within contracts to safeguard the interests of all parties and minimize the potential for disputes.

IN GOOD FAITH & ETHICAL CONSIDERATIONS:

The analysis of the 'Master Hosted System and Services Agreement' highlights significant elements indicative of the vendor's commitment to good faith and adherence to legal standards within the jurisdiction. Key findings include the establishment of transparency through clear recitals and definitions, which facilitate a mutual understanding of the parties' intentions and obligations, thereby minimizing the potential for disputes. Regular project management meetings and the requirement for detailed status reports further enhance this transparency, keeping both parties informed regarding project developments and performance.

The agreement demonstrates a balanced approach to risk distribution, as evidenced by provisions for City Contributions and Service Level Credits. These arrangements prevent the vendor from bearing all risks while granting the City recourse in the event of service failures. The vendor's obligation to meet or exceed industry standards, combined with the City's budget approval requirement, reflects a fair allocation of financial and operational risks.

Flexibility in service delivery is supported by the inclusion of an Acceptance Test Plan and the option to execute a Statement of Work, which allow both parties to adapt to changing needs and circumstances. Moreover, the structured process for managing scope changes ensures collaborative decision-making, preventing unilateral alterations that could compromise fairness.

The agreement prioritizes respect for privacy and data protection, with a clear definition of 'City Data' and robust provisions for safeguarding confidential information, aligning with privacy regulations. The vendor's responsibility to implement adequate safeguards for personal information underscores a serious commitment to data protection in the current digital landscape.

Although not explicitly stated, the structure of the agreement implies an expectation of good faith in fulfilling obligations, a critical aspect for maintaining the integrity of the contractual relationship. The vendor's accountability measures, including the obligation to replace personnel deemed incompetent, reaffirm an ethical commitment to effective service delivery and a positive working relationship.

The overall terms of the agreement promote fairness and reasonableness through well-defined roles, equitable responsibilities, and accountability measures. The emphasis on transparent communication and the structured approach to obligations signal a mutual expectation of good faith, essential for sustaining a successful partnership. The provisions for data protection and confidentiality further reinforce adherence to ethical standards, ensuring that sensitive information is handled responsibly. Thus, the agreement fosters a collaborative environment, encouraging both parties to navigate changing circumstances while maintaining

an equitable distribution of risks and benefits, ultimately aligning with the principles of good faith and fostering a balanced partnership between the vendor and the City.

DATA PROTECTION LAWS:

The report indicates that the vendor complies with data protection laws in several key areas.

Data collection and use is governed by a contract that authorizes the vendor to access, manage, disclose, and process personal information according to City instructions. This controlled framework aligns the vendor's activities with City policies, thus reducing the risk of unauthorized data usage and enhancing compliance with relevant regulations.

While the contract does not explicitly mandate obtaining consent from data subjects, it requires vendor employees with access to personal information to operate on a need-to-know basis and to agree to the contract's terms. This implies a mechanism for consent management, ensuring that sensitive data is handled only by authorized personnel. However, clarification on processes for obtaining explicit consent is recommended to strengthen compliance and transparency.

The vendor is tasked with implementing adequate safeguards to protect personal information from loss, theft, or unauthorized access, establishing a strong data security framework. Additionally, the requirement for the vendor to return or destroy all personal information upon the agreement's termination highlights the importance of proper data processing and storage practices, mitigating risks associated with retained data.

The contract requires the vendor to assist the City in addressing requests from data subjects for access, correction, blocking, suppression, or deletion of their personal information. This provision aligns with rights granted to data subjects under various data protection laws, such as the GDPR, ensuring individuals maintain control over their personal data and thereby enhancing compliance with legal obligations.

In the event of any breach of the agreement, the vendor must notify the City immediately and cooperate fully to remedy the situation. This establishes a clear protocol for data breach notification, which is essential for prompt response and damage mitigation. This requirement aligns with legal obligations to inform affected parties and regulatory authorities, thus minimizing the risk of penalties and reputational damage.

The contract details a comprehensive framework for compliance with data protection laws, highlighting the significance of safeguarding personal information, adhering to the City's instructions, and respecting data subjects' rights. The identified provisions reflect a commitment to responsible data management practices, though further clarification on aspects such as explicit consent could improve the overall robustness of the agreement. Addressing these considerations will enhance protection for both the City and the vendor against potential legal and operational risks related to data handling.

CONFIDENTIALITY:

The report identifies a lack of a clear and unambiguous confidentiality clause in the contract, underscoring several critical points regarding this deficiency. The absence of explicit confidentiality provisions raises

significant concerns about the protection of sensitive information exchanged between the parties, including proprietary information, trade secrets, and personal data.

The report outlines that without confidentiality provisions, there is an increased risk of unauthorized disclosure of sensitive information. This situation could lead to competitive disadvantages, legal liabilities, and reputational harm. Furthermore, the lack of formal obligations may undermine trust between the parties, thereby hindering collaboration.

Ambiguity stemming from the absence of clear definitions and obligations concerning confidential information can lead to differing interpretations between the parties, resulting in disputes and complicating the contractual relationship.

To address these risks, the recommendation emphasizes the necessity of incorporating comprehensive confidentiality clauses. Such clauses should clearly define what constitutes confidential information, outline the obligations of each party, specify the duration of these obligations, and detail the consequences of breaches. Additionally, it suggests that consideration of jurisdictional issues is vital to ensure compliance with relevant laws.

The report concludes that the inclusion of explicit confidentiality provisions is critical to protecting sensitive information and fostering a secure, trusting business relationship. The current deficiency poses significant risks that warrant proactive attention.

INTELLECTUAL PROPERTY:

The analysis of the contract agreement concerning Intellectual Property (IP) reveals significant components that necessitate careful consideration.

The agreement includes a comprehensive definition of 'Intellectual Property,' which encompasses tangible and intangible assets, such as software in both object code and source code formats, data compilations, documentation, reports, methodologies, processes, designs, inventions, and works of authorship. This broad definition is crucial as it ensures all forms of intellectual contributions from either party are recognized and protected. However, it may lead to disputes over ownership and rights if not clearly delineated in subsequent sections.

The term 'Intellectual Property Rights' is defined to include protections afforded under various laws, including patent law, copyright law, trademark law, and design patent law. This underscores the legal framework supporting IP protection under the agreement. The effectiveness of these protections can differ based on jurisdiction, making it important for parties to be aware of the specific legal landscape governing their rights. The agreement should outline procedures for enforcing these rights and the responsibilities of each party in protecting their respective intellectual property.

Section 4.2(a) addresses 'City Developed IP,' indicating a dedicated provision for intellectual property developed by the City regarding the services rendered under the agreement. This section is particularly critical as it delineates ownership and usage rights of the intellectual property created during the agreement, thus

preventing potential conflicts, especially when collaborating with external parties or utilizing pre-existing intellectual property.

The definition of 'Confidential Information' encompasses any proprietary information exchanged between the parties, covering aspects of intellectual property such as software, technical documentation, and business methods. This inclusion underscores the necessity for confidentiality in handling sensitive information impacting the competitive position of either party. The agreement should ideally specify obligations regarding the protection of confidential information, including the duration of confidentiality, permissible disclosures, and consequences for breaches.

Overall, the agreement illustrates a clear acknowledgment of the significance of intellectual property within the service context. It establishes foundational definitions and protections essential for safeguarding the interests of both parties. A thorough review of these provisions is vital to ensure adequate protection and address any potential ambiguities or risks proactively. Consideration should also be given to the possibility of disputes arising from the outlined definitions and rights, along with mechanisms for resolving such disputes should they occur. Further details or specific sections related to these definitions may be requested if necessary.

FORCE MAJEURE:

The analysis indicates the necessity of incorporating Force Majeure clauses within contracts, focusing on their role in managing unforeseen circumstances such as natural disasters and pandemics. The absence of these clauses creates significant risk for both contract parties, as unforeseen events could lead to non-performance liability, resulting in potential legal disputes and financial losses. A thorough risk assessment should be conducted, taking into account the likelihood of these events based on both the contract's context and geographical factors.

Without a clearly defined Force Majeure provision, contracts may become ambiguous, leading to disputes regarding obligations and consequences of non-performance. The report highlights that interpretations can vary by jurisdiction, which raises concerns about how courts might handle such contracts lacking these clauses. This inconsistency necessitates careful consideration of jurisdictional standards regarding contract law and performance.

Furthermore, the importance of clear and uncomplicated language in contracts is emphasized. Complex contractual language may obscure understanding of obligations, particularly when addressing unexpected events. Simplifying such language can proactively reduce the risk of disputes arising from misinterpretations.

In light of the identified issues, the recommendation is to integrate a well-defined Force Majeure clause into contracts. This clause should detail the events classified as Force Majeure, establish notifications procedures, and clarify the repercussions of such occurrences on contractual responsibilities. Addressing these aspects will fortify the contract against future disputes and ensure a more balanced and enforceable agreement. The analysis ultimately reveals a significant shortcoming in the contract due to the omission of Force Majeure provisions, emphasizing the critical importance of including them to mitigate risks, clarify responsibilities, and navigate jurisdictional nuances effectively.

DISPUTE RESOLUTION:

The report provides an analysis of the implications stemming from the absence of dispute resolution provisions in the contract agreement. A preference for litigation has been identified as the primary method for resolving disputes, as indicated by the exclusive jurisdiction granted to the courts of Ontario. This reliance on litigation is pivotal, suggesting that the parties may incur increased costs, face prolonged legal processes, and experience potential public exposure of disputes.

Several risks have been highlighted due to the lack of defined dispute resolution mechanisms. These include increased uncertainty, potential escalation of conflicts, and jurisdictional complications. The absence of alternative dispute resolution (ADR) methods, like mediation or arbitration, further underscores the heavy reliance on litigation, which may not represent the most efficient or cost-effective approach.

To improve the current situation, incorporating a comprehensive dispute resolution clause that specifies preferred methods for resolving disputes, including mediation or arbitration, is recommended. Establishing clear jurisdictional guidelines and escalation procedures is also suggested to enhance clarity and predictability for the parties involved.

The analysis emphasizes the need for a more structured approach to dispute resolution that includes ADR options. Such proactive measures can help mitigate risks, preserve business relationships, and foster a more collaborative environment for conflict resolution.

ASSIGNMENT AND SUBCONTRACTING:

The analysis of the 'MASTER HOSTED SYSTEM AND SERVICES AGREEMENT' provides significant insights regarding the definitions and implications surrounding Assignment and Subcontracting. The Agreement defines 'Subcontractor' broadly, including any individual or entity outside of the Vendor and its employees. This definition grants the Vendor flexibility in utilizing external resources to meet contractual obligations, yet it raises concerns about the quality of work and adherence to the Agreement's terms by these third parties.

A noteworthy observation is the lack of explicit provisions related to the assignment of rights or obligations within the Agreement. This absence means the Vendor may not transfer its responsibilities or benefits without the City's consent, thereby ensuring the Vendor's accountability for contract performance. However, this limitation may hinder the Vendor's resource management capabilities. Furthermore, there are no specific restrictions or conditions outlined for subcontracting, potentially exposing the City to risks if the Vendor engages subcontractors who do not align with the City's standards. The lack of clear guidelines may complicate the City's ability to ensure compliance with quality and performance expectations established in the Agreement.

The existing language surrounding subcontracting lacks clarity, leaving vital questions about subcontractor selection criteria and the extent of the City's approval rights open to interpretation. This ambiguity may lead to future disputes. To enhance clarity and effectiveness in the Agreement, it is recommended to include specific provisions concerning assignment rights, establishing a subcontractor approval process for City

review, and outlining performance standards for subcontractors to ensure accountability for the quality of third-party work.

In summary, while the Agreement provides a basic definition of 'Subcontractor,' it reveals potential risks and ambiguities that could affect its execution. Addressing these areas would fortify the Agreement, ultimately better protecting the interests of both the City and the Vendor, and promoting a more transparent contractual relationship.

WARRANTIES AND REPRESENTATIONS:

The analysis of the contract reveals an absence of explicit Warranties and Representations, which carries significant implications for the involved parties. Warranties and Representations are vital components of contract law, ensuring assurances about the truthfulness of statements made by the parties. Their inclusion establishes trust and can greatly impact the risk profile of the agreement. The lack of these provisions suggests a potential oversight in the drafting process, exposing both parties to unforeseen risks.

The absence of explicit Warranties and Representations introduces various risks. Without these clauses, there is uncertainty regarding the expectations and obligations, potentially leading to disputes about the intentions at contract formation. This absence may also limit the ability of an aggrieved party to seek recourse in the event of a breach or misrepresentation, making it difficult to claim damages or enforce remedies. Furthermore, without these provisions, a party's negotiating position may be weakened, as they lack specific assurances to reference, which could result in an imbalance in the contractual relationship.

Additionally, the lack of clear Warranties and Representations raises the potential for misinterpretation of the terms. Differing understandings of rights and obligations among parties could lead to conflicts that clearer language could have mitigated.

To address the identified risks, it is advisable to include explicit clauses that outline the Warranties and Representations made by each party, addressing aspects such as the accuracy of information provided and compliance with applicable laws. The language used in these clauses should be precise and straightforward to reduce the risk of misinterpretation, avoiding legal jargon where possible. A comprehensive review of the contract is essential to identify other areas needing clarification, ensuring all necessary terms and conditions are explicitly included.

The discovery of 'Nothing found' concerning Warranties and Representations is a significant concern that necessitates further attention. This oversight can lead to heightened risks, potential disputes, and a lack of clarity in the contractual relationship. Incorporating explicit Warranties and Representations will protect the interests of both parties and contribute to a more robust contractual framework.

THIRD-PARTY RIGHTS:

The examination of the agreement indicates provisions that may allow for indirect benefits to third parties, particularly in the context of the City's interactions with suppliers. The agreement enables the City to engage directly with the Vendor's third-party suppliers and manufacturers, which suggests that these third parties

could benefit indirectly from the City's contractual negotiations, potentially influencing the Vendor's supply chain management.

Additionally, the agreement specifies that it will benefit and bind heirs, executors, administrators, legal representatives, successors, and permitted assigns of the contracting parties. This provision implies that certain advantages or obligations could extend to specific individuals or entities associated with the parties involved, particularly in succession matters.

However, it is essential to note the inclusion of a clause wherein each party acknowledges that they enter into the agreement for their own benefit, distinctly stating that it does not serve to provide enforceable rights or benefits to any third party. This explicit declaration aims to clarify the intent of the parties and serves to mitigate the risk of unintended claims from external entities, thus reinforcing that the agreement is fundamentally designed to govern the relationship between the City and the Vendor without creating obligations towards third parties.

AMENDMENT PROCESS:

The contract includes a section on Contract Change Management detailing the procedures for amending or modifying the agreement. Key aspects of the amendment process are outlined to ensure clarity and effective communication between the City and the Vendor.

Change requests initiate the amendment process, allowing the City to submit a written request to the Vendor that clearly specifies the proposed modifications. In turn, the Vendor is obligated to provide a written response within five business days, indicating whether the change can be accommodated, including a detailed estimate of costs and implementation timeframes. This response should also address any potential impacts on overall fees, enabling the City to make a well-informed decision.

Following the Vendors response, the City has a period of fifteen business days to respond in writing. The City may either issue a formal change order to proceed based on the Vendor's estimates or withdraw the request. This timeframe is crucial for ensuring ongoing engagement throughout the amendment process.

Any change order that has financial implications requires written approval from the City's purchasing agent to be binding. This is a crucial safeguard that ensures thorough vetting and authorization of financial commitments before any implementation occurs. Furthermore, the contract stipulates that if additional work or changes to the services are necessary, new schedules or modifications to existing schedules must be incorporated, adhering to the established terms and conditions of the Agreement.

The authority to initiate change requests and approve change orders lies with the City, while the Vendor is responsible for responding to these requests and executing any approved changes. This clear division of authority is essential for maintaining an organized and efficient change management process.

The structured approach to modifications facilitates communication and minimizes risks associated with contract changes, ensuring that expectations and obligations remain aligned between the parties.

CONFLICT OF INTEREST:

The analysis of the Master Hosted System and Services Agreement identifies a critical gap in the provisions related to conflicts of interest between the City and the Vendor. The absence of an explicit conflict of interest clause presents a range of concerns vital for the integrity of the agreements execution.

The report underscores the lack of a defined framework for identifying, disclosing, and managing potential conflicts of interest. This omission poses risks where one party's interests could unintentionally compromise the integrity of the agreement, resulting in reputational damages or financial losses. Ambiguity in responsibilities emerges as a significant issue, as the lack of specific language relating to conflicts leads to uncertainty about each party's obligations. Such ambiguity may foster misunderstandings and disputes, especially if one party believes that the other has not acted in the projects best interest.

Additionally, the report highlights the heightened risk of undisclosed interests that may influence decision-making and performance, potentially undermining the essential trust within the partnership. The complexity of resolving conflicts of interest is another noteworthy concern; the absence of pre-established procedures could result in delays and increased costs in the project, should conflicts arise. Furthermore, both parties may face legal and ethical implications if a conflict emerges that is not managed effectively, raising the potential for claims of breach of contract or other legal repercussions.

In light of these findings, it is recommended that the parties reconsider the agreement to incorporate a comprehensive conflict of interest clause. This clause should explicitly define conflicts of interest, delineate the disclosure obligations of each party, and establish a structured process for managing and resolving any arising conflicts. Implementing such measures would enhance contract clarity and robustness, ultimately fostering a more transparent and trustworthy working relationship.

CONTRACTUAL AGREEMENT COMPLIANCY REPORT:

This report analyzes the compliance of a contract with its terms and regulations, identifying any deviations from standards and expectations. It aims to verify that all obligations are met, highlight discrepancies, and help stakeholders rectify non-compliances, thereby maintaining transparency and accountability in contractual relationships.

CONTRACTUAL CLAUSE DESCRIPTION		
CONTRACTUAL CLAUSE ANALYSIS	Parties to the Contract	7
	Definitions and Interpretations	7
	Scope	6
	Payment Terms	7
	Duration of the Contract	6
	Performance Standards	6
	Termination Conditions	7
	Compliance with Laws	6
	Indemnification	7
	Dispute Resolution	8
	Public Records and Transparency	4
	Entire Agreement	8
	Force Majeure	5

CONTRACTUAL ELEMENTS:

The illustration below depicts a "Contractual Elements Report," organized in a tabular format to evaluate different aspects of contract agreements. Each contract element is assessed and rated from "Fair" to "Good," reflecting the quality and robustness of these elements. This type of report is essential for scrutinizing the effectiveness and enforceability of contractual agreements, pinpointing potential risk areas, and ensuring all clauses meet the standards of clarity and compliance required. It serves as a valuable tool for legal teams, contract managers, and stakeholders to confirm that their agreements are fair, legally sound, and capable of minimizing future disputes and liabilities.

1. Clear Description of Deliverables	Good
2. Quality Standards	Good
3. Delivery Schedule	Good
4. Roles and Responsibilities	Good
5. Acceptance Criteria	Good
6. Revisions and Changes	Good
7. Dependencies and Constraints	Good
8. Payment Terms	Good
9. Risk Management	Good
10. Confidentiality and Data Security	Good
11. Termination Conditions	Good
12. Sign-off Procedures	Good
13. Communication Plan	Good

Performance Evaluation:

This section outlines key performance measures to assess the vendor's adherence to our project's standards and contractual obligations. These measures, weighted by their impact on project success, provide a clear metric for ongoing evaluation and ensure accountability throughout the project lifecycle.

PERFORMANCE MEASURE	WEIGHTING
Fulfillment of Obligations and Responsibilities	5
Compliance with Data Protection Laws	5
Quality of Service and Data Management	4
Timeliness of Deliverables	4
Compliance with Legal and Regulatory Standards	3
Adherence to Performance Metrics	3
Adherence to Confidentiality Obligations	3
Intellectual Property Rights Management	3

CASE LAW REPORT:

AMBIGUITY Sighting specific weaknesses in a contract and referencing case law are crucial steps in ensuring a comprehensive understanding and mitigation of potential legal issues within contractual agreements. This approach not only highlights the specific vulnerabilities that may exist within the contract but also leverages the authority of precedent, providing a solid foundation for addressing these deficiencies. By drawing on relevant case law, parties can understand the practical implications of similar past disputes, thereby gaining insights into how courts may interpret and enforce the terms of their agreement. This process not only educates the clients about the potential risks and legal standings but also equips them with the necessary tools to negotiate better terms or to prepare for possible litigation, ensuring a more secure and enforceable contract.

The following is Case Law pertaining to the main issues surrounding this contract agreement: Ambiguity in Contractual Agreements

Case Example: Codelfa Construction Pty Ltd v State Rail Authority of New South Wales (1982)

In the landmark case of Codelfa Construction Pty Ltd v State Rail Authority of New South Wales, the High Court of Australia dealt with the implications of ambiguous contractual terms. The case involved a dispute regarding the interpretation of a construction contract related to railway works. The original contract stipulated that work was to be completed "in a reasonable time," but the parties disagreed about what constituted a reasonable timeframe due to differing expectations regarding working conditions and site access.

The ambiguity in the phrase "reasonable time" led to a breakdown in negotiations and substantial delays. Ultimately, the High Court ruled that the ambiguity in the contract terms allowed for an interpretation that favoured the contractor, thereby allowing them to claim additional costs incurred due to delays not envisaged at the time of contracting. This decision underlined the necessity for precise drafting in contracts, as ambiguity can lead to significant financial repercussions for the parties involved, often resulting in unexpected liabilities.

Repercussions: Legal Certainty and Financial Liability

The outcomes of the Codelfa case illustrate the repercussions of ambiguous language in contracts. It emphasizes the importance of clear and precise wording to avoid legal disputes. The financial liability faced by the State Rail Authority due to unclear contract terms serves as a cautionary tale for other parties entering into agreements. It highlights how ambiguity can lead to prolonged litigation, increased legal expenses, and detrimental impacts on business relations. Clear definitions and specific terms can prevent such outcomes, thereby promoting legal certainty and fostering trust between contracting parties.

Conclusion

The Codelfa case exemplifies the critical nature of clarity in contractual agreements within Australian jurisdiction. Parties are encouraged to engage legal expertise during the drafting phase to mitigate any risk of ambiguity, which can lead to unintended consequences and financial repercussions in the event of a dispute.: Ambiguity in Contractual Agreements

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DISCLAIMER:

This analysis is provided for informational purposes only and is not a substitute for professional legal advice. While the report may offer insights and suggestions for potential revisions or considerations, these should not be interpreted as legal guidance. It is the responsibility of the recipient to ensure that all aspects of the document, including any suggested changes, are thoroughly reviewed and approved by qualified legal professionals. We strongly recommend consulting with legal counsel to obtain specific, tailored advice before making any decisions or entering into any contractual agreements.

MASTER HOSTED SYSTEM AND SERVICES AGREEMENT

THIS AGREEMENT is made as of September 1, 2016 (the 'Effective Date')

BETWEEN:

Article I. THE CORPORATION OF THE CITY OF TOWNSVILLEA

(hereinafter referred to as the 'City'),

- and -

SMART COMPANY LTD, a corporation incorporated under the laws of the Province of Ontario,

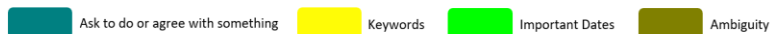
(hereinafter referred to as 'Vendor')

RECITALS:

1. WHEREAS the City wishes to procure an online learning management system and the online course content along with other related services;
2. WHEREAS the Vendor, an eLearning service provider that provides eLearning services and course content services, provided a detail eLearning proposal to the City in response to the City's request ('Response'), a copy of which has been attached and forms part of the Appendix of this Agreement;
3. WHEREAS the City wishes to procure the eLearning management system and the course content from the Vendor and the requirements outlined in the City's Purchasing By-Law 374-06 shall apply to all procurement processes conducted to secure goods and/or services on behalf of the City.

NOW THEREFORE, in consideration of the mutual covenants contained in this Agreement and the good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Vendor agree as follows:

Page37

 Ask to do or agree with something Keywords Important Dates Ambiguity

Disclaimer: This information is provided for informational purposes only and does not constitute legal advice.

ARTICLE 1 INTERPRETATION

1.1 Definitions

‘**Acceptance Test Plan**’ means the test plan documentation to be developed by the City that identifies the scope, testing strategy, test cases and activities, and estimates resources and schedules, to formally test and accept each and every element of the System, including **quality assurance** testing.

‘**Acceptance Testing**’ means testing carried out **in accordance with** the Acceptance Test Plan and/or any other verification and testing on the Services, System or Deliverables, as determined by the City, **from time to time**.

‘**Agreement**’ means this agreement, including its recitals, schedules, appendices and addendums annexed hereto together with all instruments in **amendment** or confirmation thereof.

‘**Business Day**’ means Monday to Friday inclusive, except statutory or civic holidays observed in TOWNSVILLE, Ontario.

‘**City Contributions**’ has the meaning given to it in Section 2.17(a).

‘**City Data**’ means all information, records, files, reports, Personal Information and other data relating to the City that is received, used, stored, created, generated or transmitted in connection with the Services or System, provided under the Agreement; for greater certainty, the City Data includes all the existing data stored by the Vendor since the date the City starts its use of the Vendor’s eLearning system in 2004.

‘**City Developed IP**’ has the meaning ascribed to it in Section 4.2(a).

‘**Confidential Information**’ means any information, data, software, pricing, documentation or other information (whether in **material** or electronic format) of a confidential or proprietary nature which is disclosed or made available by one Party to the other Party in connection with the negotiation, preparation or performance of this Agreement and the design, installation, delivery, integration or implementation of the Services and shall be deemed to include passwords, server logs, business plans, systems, programs, software, user lists, usage data, product information, proprietary technical documentation and financial and asset inventory data of the Parties. For greater certainty, **Confidential Information** shall include any City Data, Deliverables and City Personal Information.

‘**Consulting Services**’ means the consulting, engineering and professional services.

‘**Deliverable**’ shall mean all documents, course content, plans, reports, assessments, analysis architecture diagrams and scripts, software, systems, interfaces, designs, specifications, training manuals, created by Vendor in order to implement the functions and requirements described in the

Agreement and shall include, without limitation, related documentation and media created by Vendor under this Agreement.

'Embedded Software' has the meaning ascribed to it in Section 7.2(i).

'Fees' has the meaning ascribed to it in Section 5.1.

'Final Acceptance' has the meaning ascribed to it in Section 2.8(b).

'Hosting Services' has the meaning ascribed to it in Section 2.11 and shall include Hosting **Maintenance** and Support Services.

'Hosting Maintenance and Support Services' has the meaning ascribed to it in Section 2.12.

'Intellectual Property' means all tangible and intangible intellectual and industrial property created, developed or reduced to practice by a Party including, without limitation: software in object code and source code form, compilations of data, computer databases, documentation, reports, studies, abstracts, summaries, specifications, technical information, tools, methodologies, processes, techniques, analytical frameworks, algorithms, formulas, designs, industrial designs, know-how, business methods, **confidential information**, works of authorship, mask works, integrated circuit topographies, inventions, improvements, models, drawings, products, schemas, prototypes, architectural plans and all other related **material**;

'Intellectual Property Rights' means any and all rights, in any jurisdiction, provided under: (a) patent Law; (b) copyright Law (including moral rights); (c) trade-mark Law (including Laws governing trade-marks, trade names and logos); (d) design patent or industrial design Law; (e) semi-conductor chip or mask work Law; or (f) any other statutory provision (including Laws governing domain names) or common Law principle (including trade secret Law, **confidential information** Law, and Law relating to information of the same or similar nature and protected in the same or similar way) governing Intellectual Property, whether registered or unregistered, and including rights in any and all applications and registrations in respect of the foregoing;

'Key Personnel' has the meaning ascribed to it in Section 11.19.

'Object Code' means all present and future versions of the machine readable code which represents any of the Software.

'Statement of Work' means a form executed or otherwise agreed to in writing by both Parties, that contains a firm order by the City for any components of System that may include: (i) a list of Services to be ordered from Vendor; (ii) a statement of work that outlines each Party's responsibilities with respect to the Services ordered; (iii) a Project Plan with milestones in respect of the Services ordered; (iv) a price schedule for any hardware, Software, and/or Services that are ordered; and (v) terms of payment for Services that are ordered;

'Personal Information' has the meaning given to it in the *Municipal Freedom of Information and*

Protection of Privacy Act (Ontario), as amended.

‘Project Plan’ means the detailed schedule of timely delivery, installation, implementation, conversion, performance milestones and Acceptance Testing in respect of the Services as set out in Schedule A of this Agreement.

‘Parties’ means the City and the Vendor and **‘Party’** means either one of them.

‘System’ means the eLearning management system and is comprised of the System Portal, the course content, the Software and shall include any other components of the system as described in the Schedule A or in any Statement of Work, together with any modifications, enhancements, upgrades and updates thereto.

‘System Portal’ means a hosted web based solution that allows the City employee to conduct the eLearning and allows the City to collect and analysis the data.

‘Security Requirement’ has the meaning ascribed to it in Section 2.13.

‘Services’ means all of the applicable services including but not limited to the Hosting Services, the online Course Content Services, Consulting Services, **Maintenance** and Support Services, **Warranty Period** Services, training, inspection and installation services, functions and responsibilities described in this Agreement, including the Schedules and Appendices.

‘System Service Levels’ has the meaning ascribed to it in Section 2.15(a);

‘Service Level Credits’ has the meaning ascribed to it in Section 5.2(a);

‘Software’ means all software applications and computer programs (including configuration files, installation kits and similar facilities and tools) licenses or supplies to the City pursuant to this Agreement, including which may be required for the System to function, operate and perform **in accordance with** this Agreement.

‘Specifications’ means the detailed description of the operational and technical specifications and functionality of the System or any component thereof, as set out in Schedule A;

‘Subcontractor’ means any person other than Vendor and its own employees, officers and directors, which Vendor employs, engages, retains and/or utilizes in connection with this Agreement, including persons or entities identified in the Response as collaborating with Vendor, if any, and any subcontractor, supplier, manufacturer or agent.

‘Taxes’ has the meaning ascribed to it in Section 5.1(d).

‘Term’ has the meaning ascribed to it in Section 9.1, and shall include the Renewal Term if applicable.

'Training' means the training of the City's employees in connection with use of the System, as set forth in the Training Plan.

'Training Plan' means the detailed schedule of training to be provided by the Vendor set out in Schedule A.

'Updates' means an improvement to the Software which provides bug fixes and minor enhancements to the System that Vendor makes available at no cost to the City;

'Upgrades' is a purchase and replacement to newer minor and major version of Software to the System that Vendor makes available at no cost to the City;

1.2 Schedules and Appendices

The following schedules ('Schedules') and appendices ('Appendices') are annexed hereto or initialled for identification and form an integral part of this Agreement:

Schedule A	-	System and Services Specifications
Schedule B	-	Price Schedule
Appendix 1	-	Vendor Response

1.3 Sections and Headings

The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement. The terms 'this Agreement', 'hereof', 'hereunder' and similar expressions refer to this Agreement and not to any particular Article, Section or other portion hereof. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles, Sections and Schedules are to Articles and Sections of and Schedules to this Agreement.

1.4 Number, Gender, Person

Unless inconsistent with the subject matter or context:

- (a) Words importing gender shall include the masculine, feminine and neuter genders;
- (b) Words importing the singular number shall include the plural and vice versa;

- (c) Words importing persons shall include individuals, partnerships, associations, trusts, municipal corporations, unincorporated organizations and corporations and vice versa; and
- (d) The term ‘**including**’ or ‘**includes**’ means ‘including without limiting the generality of the foregoing’.

1.5 Order of Precedence

In the event of any conflict between the main body of this Agreement, the Schedules and Appendices, the provisions of this Agreement shall prevail in the following order of precedence:

1. The main body of this Agreement
2. Schedule A - System and Services Specifications
3. Schedule B - Price Schedule
4. Appendix 1 - Vendor Response

1.6 Currency

Unless otherwise indicated, all dollar amounts referred to in this Agreement herein are to lawful money of Canada.

1.7 Invalidity and Waiver

If any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force and effect. The **waiver** by either Party of a breach of any provision of this Agreement will not operate as a **waiver** of any other breach. No delay or failure of the City or Vendor to exercise any right or remedy will operate as a waiver, except where specifically provided to the contrary.

1.8 Governing Law and Choice of Language

This Agreement shall be governed by and construed **in accordance with** the laws of the Province of Ontario and the federal laws of Canada applicable therein and shall be treated in all respects as an Ontario contract. The Parties submit to an exclusive jurisdiction of the courts of Ontario for the resolution of any and all disputes relating to this Agreement or any of its terms.

The parties have required that this Agreement and all documents relating thereto be prepared in English.

1.9 Recitals

The Recitals form an integral part of this Agreement.

1.10 Calculations

Wherever in this Agreement reference is made to a calculation to be made or an action to be taken **in accordance with** generally accepted accounting principles, such reference will be deemed to be to the

generally accepted accounting principles **from time to time** approved by the Canadian Institute of Chartered Accountants, or any successor institute, applicable as at the date on which such calculation or action is made or taken or required to be made or taken.

1.11 Statutory References

In this Agreement, unless something in the subject matter or context is inconsistent therewith or unless otherwise herein provided, a reference to any statute is to that statute as now enacted or as the same may **from time to time** be amended, re-enacted or replaced and includes any regulations made thereunder.

ARTICLE 2 PERFORMANCE OF THE SERVICES

2.1 Performance of Work

Vendor shall:

- (a) Carry out the Project Plan and all related Services, providing eLearning courses, course development, course content and other Hosting Services, **in accordance with** the terms and conditions of this Agreement and Schedule A;
- (b) Supply, install and make operable the System and the System Portal;
- (c) Support and maintain the System and the System Portal **in accordance with** the terms and conditions of this Agreement. ;
- (d) Provide the Deliverables **in accordance with** the Project Plan;
- (e) Do and fulfill everything required on its part to be done and fulfilled by this Agreement; and
- (f) Perform the **business continuity** plan to ensure the continued operations of the City's business upon the occurrence of a **force majeure** Event or some other unplanned disruption out of the normal course of business.

2.2 Scope of Work September 1, 2016 ' For testing

In carrying out the Project Plan, Vendor shall provide to the City the following, all **in accordance with** the terms of this Agreement:

- (a) detailed design for implementation of the System in the City's current technical environment;
- (b) testing, including but not limited to pre-installation and pre-cutover testing, proof of performance testing and Acceptance Testing, **in accordance with** the Acceptance Test Plan to be developed by Vendor and approved by the City;

- (c) documentation for the System, including user documentation and support manuals;
- (d) training of City staff **in accordance with** the Training Plan;
- (e) maintenance and support the System **in accordance with** the Hosting **Maintenance** and **Support Services** as specified in section 2.12

2.3 Performance of Project Plan

In carrying out the Project Plan, and in providing the Services, Vendor shall make every effort and take all **appropriate** steps to develop, install and deliver the System:

- (a) in a professional and timely manner that meets or exceeds **industry standards**;
- (b) to the **reasonable** satisfaction of the City's Contract Manager;
- (c) in such a manner as is in the best interest of the City; and
- (d) **in compliance with all laws and regulations, statutory or otherwise, including by-laws and policies of the City.**

Vendor shall as soon as Vendor is aware of a delay in respect of any milestone specified in the Project Plan, inform the City thereof in writing stating the reason for the delay and the effect of the delay on the Project Plan.

2.4 Project Management

Project management meetings are to be held in connection with the Project Plan. At each meeting the next meeting shall be scheduled. Vendor shall produce minutes of each project management meeting and circulate these within 48 hours of the meeting. At the option of the City, the project leaders from the City and Vendor shall be in day-to-day contact. Vendor shall provide status reports to the City at least bi-weekly. At a minimum this shall include a comparison of tasks required to be completed under the Project Plan and those actually completed since the last status report, and a list of all problems and issues that have arisen. The City shall be entitled to perform or to have its authorized agent perform audits of the same and Vendor will correct any deficiencies found during any such audit.

2.5 Staffing

The Vendor shall provide and dedicate the level and quality of staffing, project management and physical and personnel resources necessary to ensure the successful and timely completion of its obligations **in accordance with** this Agreement. Vendor is obliged to replace, without un**reasonable** delay and at no cost to the City, any member of the personnel whom the City, acting reasonably, considers lacking the necessary competence or with whom the City, acting reasonably, finds it manifestly difficult to collaborate. Vendor shall replace any of its personnel who commits any breach involving any human rights legislation, or breach of any of the City's written policies. **Notwithstanding** any degree of supervision exercised by the City over Vendor's personnel assigned to deliver the Services such personnel

shall at all times be deemed to be the employees of Vendor and in no circumstances shall the relationship of employer and employee be deemed to arise between the City and Vendor's personnel.

2.6 Contract Change Management

No change to the scope of this Agreement shall be made except as follows:

- (a) the City may submit to Vendor a change request in writing detailing the change requested;
- (b) Vendor shall respond to the City in writing within five (5) Business Days of receipt of such change request, stating whether the change may be made and, if so, specifying the estimated cost and time required to implement the change and the impact, if any, of the change on the Fees;
- (c) the City shall respond to Vendor in writing within fifteen (15) Business Days of receipt of Vendor's response either by a change order advising Vendor to proceed with the change based on the estimated cost and time schedule specified in Vendor's response or by withdrawing the change request;
- (d) any Vendor response or City change order shall be reflective of the pricing for optional Services as set forth in Schedule B;
- (e) any change order which has financial implications for the City requires the written approval of the City's purchasing agent to be binding on the City; and
- (f) to the extent any additional work or changes to the Services are made, additional Schedules or Addenda or modifications to existing Schedules (as the case may be) shall be added to and become a part of this Agreement and such additional work and changes shall be provided **in accordance with** the terms and conditions of this Agreement. No claim for an addition to or deduction from the Services or to any work shall be valid unless ordered by the City **in accordance with** this Section 2.6.

2.7 Contract Managers

The City and Vendor shall each **promptly** designate a responsible individual, reasonably acceptable to the other Party, as its prime contact in respect of the Services and this Agreement ('**Contract Manager**'). The Contract Manager for Vendor shall be the person identified as such in the Response, unless the City approves any subsequent change in writing. Each Contract Manager shall have an equal authority and competence to serve as project leader and deal with the other Party with respect to all aspects of the Project Plan. The City's Contract Manager shall also be responsible for providing or co-ordinating the provision of such information about the City and its operations and procedures and such other information as Vendor may reasonably require in order to perform its obligations hereunder. Vendor's Contract Manager shall be responsible for advising the City's Contract Manager with respect to overseeing of the various steps of the Project Plan to ensure its effective and timely completion. These steps shall include Vendor's Contract Manager being responsible for advising the City's Contract Manager with

respect to the delivery and installation of the Software, and overseeing the various stages of the Project Plan to ensure its effective and timely completion

2.8 Acceptance Testing

- (a) The City shall be permitted to conduct such review and testing of the System or any part thereof as it deems **appropriate**. Where the City, acting reasonably, notifies Vendor in writing of any deficiency, error or malfunction (**‘Non-Conformance Notice’**) identified during its review and testing which the City considers any deviation from the Agreement, Vendor will have five (5) Business Days in which to correct each item in the Non-Conformance Notice or deliver and begin to implement a plan reasonably acceptable to the City to **promptly** correct the problem. In such case, any applicable acceptance test period will be extended by the number of Business Days elapsed from the date of the Non-Conformance Notice until the City's receipt of written notice that the items in the Non-Conformance Notice have been corrected along with receipt of the corrected item, plus an additional ten (10) Business Days to permit validation of corrections by the City. The City shall make **good faith, reasonable efforts** to conduct such validation as soon as possible after receiving the corrected item. The City shall issue a notice to the Vendor advising when it is satisfied with its review and testing and has accepted the Interim Deliverables, such notice not to be unreasonably withheld.
- (b) Final acceptance by the City of the Services and Deliverables completed pursuant to the Project Plan (**‘Final Acceptance’**) shall only be achieved if the following have occurred:
- (i) quality assurance testing has been completed **in accordance with** the Acceptance Test Plan and/or other Acceptance Testing;
 - (ii) **each and every** element of the System are functioning properly and error free **in accordance with** the Acceptance Test Plan and/or other Acceptance Testing;
 - (iii) all applicable user manuals and support **materials** have been delivered to the City; and
 - (iv) the City has stated in writing to the Vendor that the System is operating **in accordance with** the Specifications.

2.9 Planning and Design Services

- (a) Vendor shall, in collaboration and consultation with City, perform the planning and design services concerning the System, including System Portal design, set out in Schedule A hereof. Without limiting the foregoing, the System design **must** comply with the specifications, standards, and attributes, all of which are requirements in Schedule A, including load capacity, redundancy specifications, and the robust functionality or **efficiency** of the System (**‘ System Design’**).

2.10 Installation and Implementation Services

- (a) If required by the City, Vendor shall construct, build-out, install, implement, migrate and create the System, including any applicable hardware, Software or any components thereof, **in compliance with** the completed System Design described in this Agreement, including the Schedules hereof. Vendor shall construct, create, install and implement the System to operate, function, and perform **in accordance with** all of the operational, technical and architectural requirements, attributes and specifications that are set out in this Agreement, including in the Schedules hereof.
- (b) Each of the specific and incremental System construction and implementation milestone phases that are expressly identified in the System Design shall be **subject to** City's review, consideration and acceptance.

2.11 Hosting Services

- (a) All infrastructure requirements and all software applications required by Vendor to enable the City to access and use the System and System Portal remotely, including the hosting, operation and connection of the System to the internet (collectively, the 'Hosting Services') shall be the responsibility of the Vendor and there shall be no charge for such Hosting Services other than as specifically set forth in this Agreement. The Hosting Services will be provided at the Vendor's data centre located at 224 Kerr Street Oakville, Ontario, L6K3A8. Except as may be necessary on an emergency basis to maintain the continuity of the Services, Vendor shall not, without the City's written approval, move the location where the System is located or modify in any **material** respect:
 - (i) the composition or nature of the Services; or
 - (ii) the manner in which the Services are provided or delivered, if such modification(s) could have a **materially** adverse effect on the operation of the System and System Portal.

2.12 Hosting **Maintenance** and Support Services

- (a) During the Term, as part of the Hosting Services, Vendor shall:
 - (i) replace or repair any defective component of the System that does not the function or meet all the requirements of Services;
 - (ii) if, for any reason, the security technologies or protocols of the System become outdated or vulnerable, at no additional cost to the City, update the System or any part thereof using new security and privacy technologies and protocols that meet **the then current industry standards**;

- (iii) assess, develop, test, provide, and install all applicable Software ‘patches’, Updates or Upgrades that become necessary to remedy faults or ‘bugs’ in respect of the System Portal that may be identified; and
- (iv) assess, develop, test, provide, and install, all available version Updates and Upgrades, patches, and error corrections in respect of the System as they become reasonably commercially available; and
- (v) allow the City to access and download City Data at any time during the Term at no charge and in a format reasonably required by the City.

2.13 Data Security

Vendor shall perform this Agreement **in accordance with** **reasonable** security, **data protection** and encryption standards and practices that are used within Canada for the purpose of preventing, mitigating, detecting, not permitting, protecting against, and otherwise securing the Services and City Data and City **Confidential Information** from any harm, damage, sabotage, hacking, interference, interception, unauthorized access, corruption, or fraudulent use by any person (**‘Security Requirements’**). As part of the Security Requirements, Vendor shall provide physical and logical protection that meets or exceeds: (i) City Security Requirement; and (ii) **reasonable** information processing **industry standards** of Canada, for the protection of networks and data in connection with the provision of the Services to ensure that no third party will be able to hack into, access or use any City Data. This may include, without limitation, the use of: (i) a security force; (ii) gates and other barriers; (iii) electronic or physical locks; (iv) biological identification systems, such as fingerprint scanners; (v) system identifiers and passwords; (vi) database locks and passwords; (vii) periodic security checks; (viii) encryption; (ix) intrusion detection/prevention systems; (x) firewalls; and (xi) anti-virus/malicious code protection.

2.14 Technology Refreshes and Improvements

Vendor agrees that it shall, throughout the Term and at no additional cost, improve, refresh, upgrade, implement and enhance the System, so that the performance, operations and functionality of the System remains reasonably current and up-to-date with the best practices of monitoring systems in North America of similar size and functionality.

2.15 Consulting Service Levels

- (a) If the City requires Consulting Services, the Vendor shall perform the Consulting Services **in accordance with** the performance specifications, service levels and **performance standards** (including providing all applicable remedies for breach of such operational requirements, performance specifications, service levels and performance standards). (**‘Service Levels’**).

- (b) In the event Vendor fails to perform any Consulting Services (including by failing to achieve all specified Service Levels) or otherwise breaches its Services obligations under this Agreement, Vendor shall diligently and promptly (upon becoming aware of such failure or breach) report same to City with reasonably complete and accurate information concerning same. Unless otherwise requested by City, and without limiting any Service Level Credits, shall take, at its sole cost and expense, all steps necessary to correct any failure to perform any Services (including by failing to achieve all specified Service Levels) or breaches of its Services obligations under this Agreement to bring the performance of such Services, obligations or duties into compliance with this Agreement as soon as reasonably possible.

2.16 System Performance Specifications and Levels

- (a) Vendor shall ensure that the System performs, functions and operates within the operational requirements, technical and functional levels and performance specifications and standards stipulated in Schedule A (“System Service Levels”).
- (b) In the event the System fails to comply with the System Service Levels, Vendor shall diligently and promptly (upon becoming aware of such failure or breach) report same to City with reasonably complete and accurate information concerning same. Unless otherwise requested by City, and without limiting any Service Level Credits, shall take, at its sole cost and expense, all steps necessary to correct System Service Level breach, to bring the performance of the System into compliance with this Agreement as soon as reasonably possible.
- (c) Without limiting Sections 2.16 (a) and 2.16(b) acknowledges and agrees that various components of the System may be provided by third parties and it is Vendor’s sole responsibility to manage the relationship with those third parties to ensure the provision of those components and to meet the requirements stipulated in Section 2.16(a) and 2.16(b) above.
- (d) Vendor shall correct, maintain, repair and replace the System's technology, infrastructure and equipment, at no cost or expense to City, in order for the System to meet, and perform in accordance with, System Service Levels.

2.17 City Contributions

- (a) Provided that Vendor is not in default under this Agreement, City agrees that it shall provide Vendor with the contributions and other assistance that are expressly specified under the City responsibilities/contributions sections, for the purpose of facilitating the performance of Services and provision of Software by Vendor (“City Contributions”).
- (b) City Contribution reliance

- (i) Vendor confirms, acknowledges and agrees that the City Contributions are the complete, definitive, and exhaustive delineation of all of the activities, obligations, duties, contributions, assistance, and cooperation that Vendor requires of, or from, City in any connection with this Agreement, City shall have no further or additional obligations, duties, or responsibilities (whether contractual or otherwise) to assist, facilitate or cooperate with Vendor beyond the City Contributions.
- (ii) City agrees that Vendor shall be relieved and released from any failure to perform, or for any delay in performing, any part of Vendor's obligations under this Agreement only to the limited extent that any such breach of this Agreement by Vendor is directly caused by such failure of City to perform or provide any City Contributions pursuant to this Agreement.
- (iii) The parties acknowledge and agree that any failure or deficiency of City to provide or perform all or any part of the City Contributions shall not, in any manner or to any extent whatsoever, constitute any default or breach of either this Agreement or breach of any other duty (whether in tort, negligence, equity, or otherwise), and that any such failure by City shall not give rise to any liability of City, or of any remedy, compensation right, demand, cause of action, claim, or entitlement by Vendor, or any other person, against City.

2.18 Optional Services

- (a) The Parties agree that throughout the Term, additional Services and Product may be performed or provided (at the prices stipulated in Schedule B, if applicable) and additional Software may be provided (at the prices stipulated in Schedule B, if applicable) and shall be described in, and **subject to**, a Statement of Work. Upon negotiation, execution and delivery by each Party, any Statements of Work shall become a part of this Agreement (and for greater certainty shall not form a separate and independent agreement) and the terms and conditions of each such Statement of Work shall be consistent with the terms, requirements and conditions of this Agreement, except as otherwise specifically and expressly stipulated therein.
- (b) All Services performed and Software provided under a Statement of Work will be **subject to** the acceptance and verification testing and procedures described in 2.8 and payment and invoicing procedures described in Article 5.
- (c) **Notwithstanding** any other provision of this Agreement whatsoever, the Parties agree that the City is under no obligation whatsoever to either propose, negotiate or enter into any Statement of Work. Without limiting the foregoing, the City may enquire into the availability of resources without being obligated to negotiate or enter into any Statement of Work related to same.

2.19 Course Content Services

If the City acquires the integrated talent management solution and moves to a new eLearning system platform during the Term of this Agreement, according to the City's request, Vendor will:

- (a) continue to provide the course content services to the City through a Vendor-provided API which allows the City's then eLearning system platform to link to the Vendor's course content; alternatively, the Vendor will provide a SCORM compliant learning management system ('LMS') which enables the City to continue to use the Vendor's course content;
- (b) provide all City Data in CVS or excel format or provide a SCORM compliant LMS.

ARTICLE 3 LICENCE

3.1 Grant of Licence

Vendor hereby grants to the City a perpetual, non-exclusive, enterprise-wide, unlimited user, right to use, operate the System, System Portal and Software therein for the City's use, including to test, configure, and process City Data and to operate the System so that the City may conduct its business or for the delivery of City services.





3.2 Use restrictions of the Software

- (a) The City shall not: (i) disassemble, reverse engineer, decompile, or otherwise attempt to derive source code from the Software; or (ii) modify, adapt, create derivative works based upon, or translate (collectively 'Customization') the Software, **notwithstanding** the foregoing and for greater certainty, the configuration, adaption, implementation, population or adjustment of any object oriented (i.e., built-in) functionality of the Software that does not alter or revise the source code thereof, shall constitute a 'Configuration' and shall not constitute a Customization pursuant to this Agreement; (iii) resell, distribute, or otherwise grant any rights in Software (except as expressly permitted hereunder) to any third party.

3.3 Delivery

- (a) Vendor shall, at its sole cost, enable the City to access the System and System Portal within five (5) Business Days following receipt of written confirmation that the System is available for Acceptance Testing.
- (b) Vendor shall throughout the Term, at its sole cost, deliver one (1) copy of each Update to the City or otherwise enable the City to access such Update, within ten (10) Business Days of the date that such Update is made commercially available by the Vendor.

Page51

 Ask to do or agree with something  Keywords  Important Dates  Ambiguity

Disclaimer: This information is provided for informational purposes only and does not constitute legal advice.

3.4 Outsourcing

The City may elect to outsource some or all of its data processing/information technology activities related to or impacting the System. In the event of such election, Vendor hereby consents to allow the City's designated outsourcing Vendor engaged to perform such activities for the City to use the System for the benefit of the City, to the same extent that the City may use the System under the licence herein granted.

ARTICLE 4 OWNERSHIP

4.1 Background IP

- (a) Except as hereafter provided, all Intellectual Property, including, without limitation, all **materials**, information, data, records, web pages, specifications, methods, know-how, work product, documentation, software programs and code, owned or licensed by a Party prior to the execution of this Agreement, and all **Intellectual Property** Rights therein (the 'Background IP') that is supplied or used by a Party to perform its obligations under this Agreement, shall continue to belong exclusively to such Party.
- (b) All modifications, enhancements, Updates, Upgrades (if applicable), additions and developments to any Background IP of the Vendor that are developed solely from the Background IP of the Vendor shall form part of the Vendor's Background IP and remain the **Intellectual Property** of the Vendor.
- (c) All modifications, enhancements, Updates, Upgrades, additions and developments to any Background IP of the City that are developed solely from the Background IP of the City shall form part of the City's Background IP and remain the **Intellectual Property** of the City. To the extent that the Vendor or its Personnel creates or develops any modifications, enhancements, updates, upgrades, additions and developments to any Background IP of the City, the Vendor shall provide a conveyance of all of its and its personnel's worldwide **Intellectual Property** Rights in and to such modifications, enhancements, updates, upgrades, additions and developments upon their completion, and shall execute such further assurances as the City may require to give effect to the foregoing. Vendor shall obtain waivers of moral rights from all individuals who may be considered as authors of such works.

4.2 City's Developed IP

- (a) The City shall own all **Intellectual Property** Rights in any new Deliverable created under this agreement, including City Data, the **Course content**, and any modifications, enhancements, Updates, additions and developments thereto ('City Developed IP') and Vendor hereby irrevocably assigns and agrees to assign to the City all its right, title and

interest in Canada, U.S. and worldwide in the City Developed IP, and all **Intellectual Property** Rights relating thereto. Vendor shall do all things necessary (including requiring all other persons, including Subcontractors) to protect and perfect City's ownership of City Developed IP, including any filings, registrations, execution and delivery of unconditional and irrevocable, moral rights waivers which it or any person or individual may have in City Developed IP.

4.3 Use of Each Party's IP

- (a) If applicable, the Vendor shall license all Background IP of the Vendor (including modification, enhancements, additions and developments therein), back to the City pursuant to the grant of license terms set forth in Section 3.1.
- (b) If applicable, the City shall license the City Background IP and City Developed IP to the Vendor pursuant to a revocable, non-exclusive, non-transferable, fully paid-up, and royalty-free license for the Term of this Agreement to use, reproduce, display, perform, modify, enhance, and create derivative works of the Background IP and City Developed IP for the sole and limited purpose of performing Services for the City pursuant to this Agreement.

ARTICLE 5 PRICE AND PAYMENT

5.1 Fees Payable

The City shall pay the Vendor for Services at the rate(s) specified in Schedule B, subject in any event to the total maximum price specified for each Section of the work and the total maximum price for all Services and Deliverables hereunder as set forth in Schedule B. The charges, expenses and/or fees (the 'Fees') payable by the City for the performance of the Services and provision of the System and Deliverables authorized under this Agreement shall be determined **in accordance with** the following terms and conditions:

- (a) **Standard Rates** - All Fees for the System provided, Services performed or to be performed by the Vendor shall be identified in Schedule B. The Vendor shall not be entitled to charge and the City shall not be responsible or liable for any charges, expenses and/or fees that are not identified under Schedule B. No extra or additional charges shall be permitted for disbursements, travel or incidental expenses of any kind which have not been specifically identified in Schedule B. **Notwithstanding** the foregoing, all such disbursements, travel or incidental expenses identified in Schedule B shall require City's prior review and written approval before any reimbursement is provided by the City.
- (b) **Invoices** - Vendor shall invoice for all applicable Fees. In order to qualify for payment, all invoices must provide clear, detailed information and must specify that the City's contract number, **as applicable**, and show the HST separately with the applicable GST registration

- number. All invoiced amounts must be itemized in detail based on any applicable milestones and the successful Acceptance Testing to which the Services and Deliverables relate invoice relates.
- (c) Payment of Invoices - Any invoice submitted shall be due and payable within thirty (30) days from the date that the City accepts said invoice. For greater certainty, the City is under no obligation to accept any invoices until it has performed Acceptance Testing on the applicable Services and Deliverable to which such invoice relates and the City has provided written acceptance for such Services and Deliverables.
- (d) Taxes - The Fees are exclusive of all federal, provincial, state or other sales, goods and services, use, excise, or value added taxes and other similar charges ('**Taxes**') payable by City in connection with the receipt of Services and Deliverables. All invoices provided by Vendor with respect to Fees to be paid by City will separately state and detail the amount of any Taxes that Vendor claims is payable by City in connection with this Agreement.
- (i) City shall only be responsible for those Taxes that it is legally required to pay. Vendor shall collect such Taxes from City in the same manner it collects such tax from Vendor's other customers in the ordinary course of its business and Vendor shall be solely and directly responsible for remitting such Taxes to the relevant taxing authority. Each Party will be responsible for its own income taxes, capital taxes, employment taxes, business and property taxes. If it is determined that City paid Vendor an amount for Tax that was not due, Vendor will refund the amount (plus any interest) to City.
- (ii) Vendor represents, **warrants** and covenants to City that it is not a non-resident of Canada within the meaning of the Income Tax Act (Canada) and that it is duly registered for tax (including HST).
- (iii) If any taxing jurisdiction imposes after the Effective Date a new sale, value-added, services, consumption, or other Tax on the provision of the Services and/or Deliverables or any component thereof, the Parties shall cooperate in attempting to reduce the amount of such tax to the maximum extent feasible. **Notwithstanding** the foregoing, the Vendor shall not flow down or transfer to the City any such new sale, value-added, services, consumption, or other Tax unless legally required to do so.
- (e) City Budget Approval - The Vendor agrees that the fees payable for the provision of the Hosting Services and the obligation of the Vendor to provide such Services are fundamentally conditioned upon the City obtaining internal written budget approval or City being in the process of obtaining such approval, for the procurement of such Services for each such applicable year. For greater certainty and **subject to** Section 5.1(f), concerning Hosting Services and **Maintenance** and Support Services: (i) City shall not have any financial, including fee payment, obligation to Vendor until the foregoing condition precedent has been, or is in the process of being, satisfied and fulfilled; and, (ii) Vendor

shall not have any obligations to perform such Services until the foregoing condition precedent has been, or is in the process of being, fulfilled for each such applicable year.

- (f) In the event the City, at any time during the Term, is in the process of, delayed or unable to fulfil the condition precedent in 5.1(e) above, the Vendor agrees that it shall provide, and the City agrees that it shall procure, Hosting Services for the second year and onwards as stipulated in Schedule B on a **pro rata** advance month to month basis.
- (g) **Payment to be in Instalments** - The Fees are due and payable by the City in instalments **in accordance with** the payment schedule set out in Schedule B or the applicable Statement of Work and upon submission and City approval of a properly completed invoice **in accordance with** Section 5.1(c) above. Vendor may not invoice in respect of any Section until such Section has received the City's Acceptance in writing.

5.2 Service Level Credits

- (a) In the event that Vendor fails to meet the Service Levels, and in addition to any other right or remedy available to the City, the Vendor shall pay the City credits (**'Service Level Credits'**) **in accordance with** the Service Level Credit provisions stipulated in the Agreement.
- (b) Both Parties agree, acknowledge and confirm that the potential refund and/or reduction in payments as set out in Section 5.2(a) are fair and **reasonable** in the commercial circumstances of this Agreement and are considered by the Parties to be liquidated damages and not penalties. Each Party agrees that it would not have entered into this Agreement but for the Parties' agreement to address such liquidated damages in the manner, and to the extent, provided for herein.

ARTICLE 6

CONFIDENTIAL INFORMATION, PRIVACY AND PUBLICITY

6.1 **Confidential Information**

Subject to the Municipal Freedom of Information and Protection of Privacy Act, as amended (**'MFIPPA'**), both during and after the term of this Agreement, each of the Parties agrees:

- (a) that it will be necessary for each of them to disclose or make available to each other **Confidential Information** and that some **Confidential Information** may already have been disclosed prior to the date hereof.
- (b) to use and reproduce the **Confidential Information** of the other Party only as permitted under this Agreement or as needed to perform its duties hereunder. Except as provided for in this Agreement, each Party agrees not to disclose the **Confidential Information** of the

other Party without the other Party's written consent and agrees to take such care to protect the **confidentiality** of the **Confidential Information** as would be taken by a **reasonable** party to protect its own **confidential information** from disclosure. Furthermore, each Party shall indemnify and save the other harmless from any losses or damages directly or indirectly caused by the disclosure of **Confidential Information** by the Party or any of its agents, contractors, subcontractors, employees, successors or permitted assigns.

- (c) that use of the other party's **Confidential Information** in a manner contrary to the provisions of this Agreement would cause the other Party irreparable harm for which money damages could not make the injured party whole and hereby consents to the full extent that it is able to do so to any injunctive relief entered by any court of competent jurisdiction prohibiting it from such violation of this Agreement.
- (d) that each Party's rights and obligations under this Section shall survive any **termination** of this Agreement by either Party.

6.2 Exceptions

Information will not be considered to be **Confidential Information** if it:

- (a) becomes publicly available through no fault of the disclosing Party;
- (b) is lawfully received from a third-party having the right to disclose the information without restriction; or
- (c) has been independently developed without reference to the **Confidential Information**.

provided that any combination of the information which comprises part of the **Confidential Information** shall not be included in the foregoing exceptions merely because individual parts of the information become publicly available unless the combination itself becomes publicly available or was so received by the receiving Party.

6.3 Publicity

Neither Party nor their respective agents or subcontractors shall make, participate in, distribute or cause to permit to be distributed, any announcement, press release, interview, article, story, appearance, marketing **material** or advisement, whether in print, radio, television or any other medium or media, regarding this Agreement or the terms and conditions hereof without the other Party's written consent.

6.4 Privacy

- (a) Obligations

The Parties agree that, in the course of performing their duties under this Agreement, Vendor may obtain access to Personal Information through the City. With respect to such Personal Information, Vendor shall:

- (i) designate a representative who is responsible for all aspects of privacy and **confidentiality** required hereunder;
- (ii) collect, use and maintain Personal Information accurately and solely on behalf of the City for the purposes of and **in accordance with** the terms of this Agreement;
- (iii) use Personal Information only for the purposes necessary to fulfil its obligations under this Agreement;
- (iv) maintain Personal Information only for so long as required to fulfil the purposes for which it was collected (as advised by the City), or as may be required by law, whichever is longer;
- (v) **promptly** refer to the City any requests received for access to, **amendment** of or complaints about Personal Information within the care and control of Vendor, and to co-operate with the City in providing timely access to the same;
- (vi) amend, rectify, delete or update Personal Information only upon receiving instructions from the City to do so;
- (vii) employ **adequate** administrative, physical and technological safeguards to protect Personal Information in an environment secure against loss, theft, or unauthorized access, disclosure, copying, use or modification;
- (viii) not disclose, or permit any employee, contractor, agent or other third parties over whom Vendor exercises control to disclose any part thereof (other than to employees who have a need-to-know and who have agreed to abide by the terms of this section or as may be otherwise authorized by the City);
- (ix) abide by all other **reasonable** City rules and procedures, as amended and timely communicated to Vendor **from time to time**;
- (x) permit the City, on prior notice, to have **reasonable** access to Vendor's facilities (during normal business hours) and records to review security policies and procedures and to discuss the same with the designated representative in order to verify compliance herewith;
- (xi) notify the City immediately of any breach hereof and use its **best efforts** to co-operate with the City to remedy the same;

- (xii) at any time upon the City's request, and in any event, upon **termination** of this Agreement, immediately return or destroy all originals, summaries and copies of Personal Information held in whatever form unless retention of such Personal Information is required by applicable law; and
- (xiii) not acquire any express or implied rights, title or interest in Personal Information, which shall at all times be deemed to remain the exclusive property of the City.

(b) Additional Obligations

In addition to the foregoing obligations in Section 6.4(a), Vendor represents, **warrants** and covenants that it will only access, use, manage, disclose to third parties, transfer overseas or otherwise process Personal Information **in accordance with** the City's instructions. Vendor will **promptly** assist the City in responding to requests to allow access to, correct, block, suppress or delete any Personal Information, including providing the City with a copy of all relevant Personal Information in tangible form. **VENDOR SHALL NOT TRANSFER ANY PERSONAL INFORMATION OUT OF CANADA.** The City may, upon **reasonable** advance notice and during normal business hours, audit and verify Vendor's compliance with the provisions of this Section. On **termination** of this Agreement, Vendor shall **promptly** return or erase all Personal Information in its custody or under its control.

ARTICLE 7 REPRESENTATIONS AND **WARRANTIES**

7.1 Vendor's Representations and **Warranties**

The Vendor represents, **warrants** and covenants to and in favour of the City and acknowledges that the City is relying thereon as follows:

- (a) The Vendor has full power and authority and has obtained all necessary approvals to execute, deliver and perform this Agreement. No consent of any person is or shall be required as a condition to the validity of this Agreement. All employees and consultants of the Vendor have waived all moral rights relating to the Services and the Deliverables.
- (b) The Vendor's execution, delivery and performance of this Agreement shall not constitute:
 - (i) a violation of any judgment, order or decree;
 - (ii) a default under any contract by which it or any of its **material** assets are bound; or
 - (iii) an event that would with notice or lapse of time, constitute such a default.

- (c) The Vendor resources assigned to provide Services hereunder are competent for the purpose and such Services will be performed in a professional manner consistent with the highest **industry standards** reasonably applicable to the performance of such obligations.
- (d) Vendor has good title to, or has the right to license all Software , as provided under this Agreement free of any liens, encumbrances and security interests whatsoever.
- (e) The Software and Services do not conflict with, infringe upon or violate and is not alleged by any person to conflict with, infringe upon or violate the **intellectual property** rights or any other rights, of any other person or business.
- (f) Vendor has in place and shall maintain throughout the Term, **appropriate** technical and security measures to prevent any destruction, loss, alteration, disclosure or access to City Data, except as permitted under this Agreement.
- (g) The consideration paid for the **Services provided** is the same or less than the generally available price received by the Vendor for a similar goods and services.
- (h) Vendor shall comply with all municipal, provincial and federal laws and regulations, including all privacy and security laws, and the Vendor shall obtain and at all times maintain any and all permits, consents, certificates or licences necessary for the Vendor's provision of the Services and the performance of its obligations hereunder.
- (i) That the Response is accurate and complete in all **material** respects.
- (j) That the Response was not made in connection with any other bidder submitting an offer for the same goods or services and was in all respects fair and without collusion or fraud and further, that no member of the City Council or any officer of the City is or will become interested directly or indirectly as a contracting party or otherwise in the performance of this Agreement or any related agreement, or in the supplies, work or business to which it relates or in any portion of the profits or monies to be derived therefrom.
- (k) Vendor, its partners, directors, officers, employees and agents shall not provide any services to the City or any person, group or organization funded in whole or in part by the City where the provision of such services, actually or potentially, creates a conflict of interest with the provision of services and products pursuant to this Agreement without Vendor first disclosing to the City the actual or potential conflict of interest with the City and obtaining approval from a City authorized representative to proceed.

7.2 System **Warranty**

- (a) The System shall operate in **material** compliance with any applicable technical, functional and operational requirements and specifications as described in this Agreement.

- (b) The System shall not contain any clock, timer, counter, or other limiting or disabling code in its design or routine that would cause the System or any part thereof to be erased, made inoperable or otherwise rendered incapable of performing **in accordance with** the City's requirements or otherwise limit or restrict the City's ability to have and use the System.
- (c) In addition to its other representations and **warranties** in this Agreement, Vendor represents and **warrants** that the System and the Software, including all components thereof, shall be of the kind and quality described in this Agreement, shall be fit for the purpose for which it is supplied to the City pursuant to this Agreement, and shall function, operate and perform at or in excess of all Specifications set forth herein without deficiency.
- (d) the physical and electronic media upon which the Software and any Third Party Software are inscribed shall be free from any physical defects upon Delivery;
- (e) in the event that any manufacturer or supplier **warranty** or guarantee for any component of the System extends beyond the **Warranty** Period, upon expiry of the **Warranty** Period, Vendor shall transfer all right and interest in such **warranty** or guarantee to the City;
- (f) all Software:
 - (i) shall not contain any undisclosed unauthorised code;
 - (ii) shall, for so long as the Software is under the **warranty** period or is covered by a **maintenance** and **support services** program, meet the Specifications outlined in Schedule A and any other Specifications stipulated in this Agreement;
 - (iii) shall accurately compile to its related object code;
 - (iv) at the time of the City's software installation, unless otherwise mutually agreed in writing shall be the most recent version commercially available;
- (g) all Documentation is accurate and provides sufficient instructions to the reader in the operation of the System;
- (h) The Software or any part thereof does not contain any programs which are intended to permit unauthorized access, or cause damage to other programs, data or hardware. In addition, the Software does not contain a copy protection feature which would in any way restrict copying or use of the Software by the City **in accordance with** this Agreement.
- (i) The Software may contain or be derived from portions of **materials** provided by third-party suppliers under license to Vendor (**'Embedded Software'**). Vendor represents and **warrants** to the City that it has the full and unencumbered right to grant to the City, and hereby grants to the City, all licenses and sublicenses in the Embedded Software, including updates, modifications of and/or enhancements thereto, and that the license to and use of

the Embedded Software by the City **in accordance with** the terms of this Agreement will not violate the terms of Vendor's agreements with its third-party licensors. Any sublicense of Embedded Software is not conditional on the existence of any head license between Vendor and the licensor of the Embedded Software and the City's sublicense shall survive the expiration or **termination** of the applicable head license.

ARTICLE 8 INDEMNITIES, LIMITATIONS AND INSURANCE

8.1 Indemnity from Vendor to the City

Vendor shall, both during and following the Term of this Agreement, save harmless, defend and fully indemnify the City and its selected officials, officers, employees, agents, representatives, successors and assigns (the '**Indemnified Persons**') from and against all costs, actions, suits, claims, and demands whatsoever which may be brought against or upon the City and/or any of the Indemnified Persons, against any loss, costs, damages or expenses which the City and/or any of the Indemnified Persons may sustain, suffer, incur or be liable for, resulting from, arising from or in any way related to or as a result of:

- (a) any breach, violation, or non-performance of the terms, covenants representations, **warranties** and obligations on the part of Vendor, Subcontractors, employees, workers or agents as set out in this Agreement or under any related agreement;
- (b) any property damage, either real or personal and either owned by the City or others, howsoever occasioned, by Vendor, Subcontractors, employees, workers or agents performing work under this Agreement or under any related agreement;
- (c) any personal or bodily injury to any person or persons, including death resulting at any time therefrom, howsoever occasioned by Vendor, Subcontractors, employees, workers or agents performing work under this Agreement or under any related agreement;
- (d) Vendor's fraud, negligence or wilful misconduct of Vendor, Subcontractors, employees, workers or agents in the performance of its obligations under this Agreement or under any related agreement or under any related agreement; and
- (e) any breach, violation or non-performance of the obligations described in section 6.4 (Privacy).

8.2 Intellectual Property Indemnity

- (a) Vendor shall defend, at its expense, any action brought against the City and the Indemnified Persons to the extent that the action is based on a claim that the operation or use of the Software (or any part thereof) infringes any third-party's **intellectual property** rights including, without limiting the generality of the foregoing, copyright, trade secret, patent

or industrial design rights and Vendor shall indemnify and hold the City harmless with respect to all resulting court costs, damages or settlements awarded against the City provided that:

- (i) the City notifies Vendor of any matter in respect of which the foregoing may apply and of which the City has knowledge;
 - (ii) Vendor has sole control over the defence, settlement or compromise of any such action; and
 - (iii) the action is not in respect of any content or data provided to Vendor or transmitted by the City using the System.
- (b) If the Software (or any part thereof) becomes, or in Vendor's opinion is likely to become, the subject of a claim based on an alleged infringement or breach as aforesaid, Vendor may, at its expense and option, with prior written notice to the City, do one of the following:
- (i) modify the applicable part of the Software so that there is no longer any infringement or breach, provided that such modification does not adversely affect the functional capabilities of the System or Software as set out herein;
 - (ii) procure for the City the right to continue to use the applicable part of the System or Software; or
 - (iii) replace same with an equally suitable, functionally equivalent, compatible, non-infringing System or Software, as applicable.

8.3 Insurance

- (a) Without limiting the **indemnification** provisions of this agreement, the Vendor shall at its sole cost and expense, obtain and maintain in full force and effect at all times throughout the term or extended term(s) of this Agreement, insurance **satisfactory** to the City, with financially sound and reputable insurance companies licensed to underwrite insurance in the Province of Ontario. **The Vendor shall be responsible for payment of all amounts within the deductible or self-insured retention under each policy of insurance.** All Insurance policies required pursuant to this clause shall be primary and shall not call into contribution any insurance available to the City. The insurance shall include but not be limited to:
- (i) Commercial General Liability insurance for all services and operations of the Vendor as in this Agreement against claims for bodily injury, including personal injury and death, and property damage or loss, indemnifying and protecting the Vendor, their respective employees, servants, agents, sub-contractors, invitees or licensee's, to the inclusive limit of not less than Two Million (\$2,000,000.00) Dollars per occurrence. Such insurance shall specifically state by its wording or by endorsement that:

- i. the City, is included as additional insured under the policy with respect to the liability arising from all operations of the Vendor.
 - ii. the policy includes contractual liability, non-owned automobile liability, products and completed operations coverage, owners and Vendor's protective coverage, contingent employer's liability, and employees as additional insured's;
 - iii. the policy contains a cross-liability clause which shall have the effect of insuring each person, firm or corporation named in the policy as an insured in the same manner and to the same extent as if a separate policy had been issued to each;
 - iv. a **waiver** of subrogation rights which the insurers may have against the City and against those for whom the City is in law responsible.
- (ii) Professional Liability or Errors and Omissions Insurance in the amount of not less than Two Million (\$2,000,000) per occurrence and shall continue for twelve (12) months following completion of work.

AUTOMOBILE INSURANCE IS ONLY REQUIRED WHEN A VEHICLES IS REQUIRED FOR THE DELIVERY OF SERVICES BEING PROCURED.

- (iii) Automobile liability insurance with limits of not less than Two Million (\$2,000,000) dollars per occurrence, and must include Legal Liability for Damage to Non-owned Automobile coverage and/or Cargo Insurance. The policy must provide coverage for bodily injury or property damage arising out of the ownership use or operation of all owned and/or leased automobiles.
- (b) Prior to the award of any contract for service, the Vendor shall deliver to the City a completed City of TOWNSVILLEa Certificate of Insurance evidencing the insurance required under this Agreement. A PDF fillable City of TOWNSVILLEa Certificate of Insurance can be found at www.TOWNSVILLEa.ca/certificateofinsurance The certificate shall be addressed to: Mary Lynn Vesey, Human Resources Department.
- (c) Thereafter, throughout the term or extended term of this contract, the Vendor shall, deliver to the City any renewal certificate of insurance evidencing that the insurance required under this Contract continues in effect.

- (d) In the event the aforementioned policies are terminated, cancelled or materially altered, the Vendor shall provide written notice of such termination, cancellation or material alteration to the City at least Thirty (30) days before the effective date.

8.4 Occupational Health and Safety Act Requirements

Vendor shall conform to and enforce strict compliance with the *Occupational Health and Safety Act* of Ontario. During the course of implementing the Services and performing its obligations under this Agreement and any related agreement, Vendor shall, in a timely manner, furnish the City with a copy of all correspondence, reports, compliance orders or changes or the like under the *Occupational Health and Safety Act* and its regulations that apply to any of the activities conducted under the terms of this Agreement or any related agreement.

8.5 Workplace Safety Insurance Board

- (a) Throughout the Term, Vendor shall remain in good standing with the Workplace Safety and Insurance Board ('WSIB') and shall provide the City with evidence of good standing issued by the WSIB or applicable worker's compensation regime upon execution of this Agreement and every two (2) months thereafter until the expiry of this Agreement and any related agreement.
- (b) In the event that Vendor has submitted to the City a valid and duly authorized Declaration of Exemption from WSIB or applicable worker's compensation regime in accordance with City format and policy, the above sub-section (a) above shall not apply.

8.6 Limitation of Liability

EXCEPT FOR THE INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 6.1 (CONFIDENTIAL INFORMATION), SECTION 8.1 (b) – (e) (INDEMNITY FROM VENDOR TO THE CITY) AND SECTION 8.2 (INTELLECTUAL PROPERTY INDEMNITY), IN NO EVENT SHALL THE PARTIES, THEIR DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS OR AFFILIATES, BE LIABLE FOR ANY CLAIM FOR: (A) INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES; or (B) DAMAGES FOR LOSS OF PROFITS OR REVENUE.

EXCEPT FOR THE INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 6.1 (CONFIDENTIAL INFORMATION), SECTION 8.1 (b) – (e) (INDEMNITY FROM VENDOR TO THE CITY) AND SECTION 8.2 (INTELLECTUAL PROPERTY INDEMNITY), EITHER PARTY'S LIABILITY AND RESPONSIBILITY FOR ANY CLAIMS, DAMAGES, COSTS, OR LOSSES WHATSOEVER ARISING EITHER JOINTLY OR SOLELY FROM OR IN CONNECTION WITH THIS AGREEMENT OR USE OF THE ILS (WHETHER OR NOT IN THE MANNER PERMITTED BY THIS AGREEMENT), INCLUDING CLAIMS FOR BREACH OF CONTRACT, TORT, MISREPRESENTATION, OR OTHERWISE, WILL BE LIMITED TO ONE HUNDRED PERCENT (100%) OF THE VALUE OF THIS AGREEMENT.

ARTICLE 9 TERM AND TERMINATION

9.1 Term

Subject to any termination rights herein, this Agreement shall commence on the Effective Date which is September 1, 2016 and shall continue for three ('3') years until August 31, 2019 (the 'Term') and may be renewed, at the City's sole and absolute discretion providing at least sixty (60) days prior written notice to the Vendor, on the same terms and conditions up to two ('2') additional one ('1') year terms ('Renewal Term(s)').

9.2 Termination

The City may, in its discretion, immediately terminate this Agreement by written notice to Vendor in any of the following circumstances ('Events of Default'):

- (a) Vendor fails for any reason to provide the Services or any part thereof in accordance with this Agreement;
- (b) Vendor fails for any reason to perform its obligations under this Agreement in a manner satisfactory to the City; or
- (c) Vendor breaches any material terms of this Agreement or the Maintenance and Support Agreement and such default continues for ten (10) days following notice thereof to the Vendor; or
- (d) In addition to any other right to terminate this Agreement, the City may immediately terminate this Agreement and any related agreements in their entirety should Vendor fail to meet any Service Levels for any two (2) consecutive months within a 12 month period starting from the date of Final Acceptance;
- (e) Vendor is in default of any loan, is unable or unwilling to pay its debts as they become due, is in receivership, becomes bankrupt (whether voluntary or involuntary), makes an assignment for the benefit of, or compromise with its creditors, makes a plan of arrangement pursuant to the Companies Creditors' Arrangement Act, or is subject to a similar circumstance;
- (f) Vendor is wound up, dissolved or ceases to carry on business as a going concern;
- (g) Vendor fails to provide evidence of or maintain the insurance coverage required hereunder;
- (h) Any of Vendor's representations and warranties in this Agreement or any statement made to the City by Vendor are materially false, misleading or inaccurate;

- (i) Vendor or any of its Subcontractors:
 - (i) is not **in compliance with** all municipal laws and regulations as they pertain to the City in respect of the operation of its respective business;
 - (ii) is involved in judicial or arbitral proceedings against the City;
 - (iii) is involved in a claim against or by the City;
 - (iv) is charged with a statutory offence relating to the City; or
 - (v) is related to or controlled by another person to which (i), (ii), (iii) or (iv) immediately above applies;
- (j) Vendor fails to implement the Services within the timelines set out in this Agreement, including the Project Plan; or
- (k) The City discovers that there has been a breach of the non-collusion requirement contained in the RFP.

Any termination, as described above, shall be without prejudice to any other legal or equitable remedy otherwise available to the City upon such breach or failure.

9.3 Effect of Termination

In the event that the City terminates this Agreement due to an Event of Default, the following shall apply:

- (a) All payments hereunder by the City to Vendor shall cease as of the time that such **termination** becomes effective;
- (b) The City may replace Vendor from the time such **termination** becomes effective to rectify the **unsatisfactory** performance and to charge all costs to the Vendor, which the Vendor shall pay to the City either by set-off from any money due, or to become due to the Vendor, or by payment of the City's invoice therefore, and/or;
- (c) Vendor shall have no claim against the City except for payment for amounts owing prior to the time that such **termination** became effective;
- (d) Such **termination** shall not relieve Vendor from liability accrued prior to the time such **termination** became effective; and
- (e) Nothing in this Agreement shall limit the rights of the City to recover damages from Vendor.

9.4 Termination by City for Convenience

Notwithstanding any other provision herein, the City may in its absolute discretion at any time and without cause, terminate this Agreement and all the rights granted by it hereunder, without penalty or bonus, by providing not less than ninety (90) days written notice of such **termination** to the Vendor. For greater certainty, the City shall have no further financial obligations or other obligation, including any payment of any Fees, early **termination** fees or charges as of the date of **termination** except for any Fees related to Services and Deliverables actually delivered to the City and that have been accepted by the City, to the date of **termination** that are not **subject to** credit or set-off.

9.5 Termination by Vendor

The Vendor may terminate this Agreement if the City is in **material** breach of the terms and conditions contained herein and such breach is not cured within thirty (30) days of receiving notice from Vendor of such breach.

9.6 Transition Assistance

Upon the **termination** of this Agreement by the City or expiry of this Agreement, Vendor shall use **reasonable** commercial efforts to provide, at the City's request, all necessary assistance to transfer (including return City Data in a format as City required), within ninety (90) days, to an alternative systems platform(s) or an alternate service transition assistance Services shall include the provision of the Services that were provided by the Vendor immediately prior to such transition. The City shall pay for such Services as set out in this Agreement and the Vendor shall, during such period, continue to deliver such Services **in accordance with** the terms and conditions set out in this Agreement. The City agrees to pay the Vendor for any additional services not identified as Services, including but not limited to reconfiguration and technical assistance, at the standard rates set forth in Schedule B. During such transition period, Vendor shall continue to provide to the City Updates pursuant to Sections 2.2(e) and 3.3(b).

9.7 Return of **Confidential Information**

Upon expiry or **termination** of this Agreement, each party shall return to the other any **Confidential Information** in the possession or control of such Party at no additional cost and in a form acceptable to the City.

9.8 Survival of Terms

The terms and conditions of this Agreement that by their nature are intended to survive the expiry or **termination** of this Agreement for any reason shall survive this Agreement's expiry or other termination. Without limiting the generality of the foregoing, Articles 1, 3, 4, 6, 7, 8, 9, 10 and 11 herein and Section 5.2 shall survive expiry or other **termination** of this Agreement.

9.9 Notification of Events of Default

Vendor shall immediately notify the City as soon as it is aware that any of the Events of Default identified in this Article has occurred, is about to occur or is reasonably certain to occur.

ARTICLE 10 ACCOUNTS AND RIGHT OF AUDIT

10.1 Access to Accounts

- (a) The Vendor shall keep, **in accordance with** generally accepted accounting principles, consistently applied, such proper accounts, receipts, vouchers and other documents as will record to the satisfaction of the City, the services performed, items purchased, disbursements made and expenses incurred in respect of this Agreement. The Vendor shall retain all such accounts, records, receipts, vouchers and other documents during the term of this Agreement and at least seven (7) years following its **termination** or expiry.
- (b) If requested by the City, the Vendor shall make available to the City such accounts, records, receipts, vouchers and other documents as the Commissioner for the City considers necessary for the purpose of substantiating the Vendor 's invoices.

10.2 Audit

The City may, at any time and **from time to time** during the Term and seven (7) years following its **termination** or expiry, audit and inspect the Vendor's accounts, records, receipts, vouchers and other similar documents relating to performance of the Services and the provision of the Deliverables and shall have the right to make copies thereof and take extracts therefrom.

10.3 Cooperation with Audit

Vendor shall make available to the City the **materials** referred to in this Article in order that the City may carry out audits and inspections as provided in this Article and shall furnish the City and its authorized representatives with all such information as the City or such representatives may **from time to time** require with reference to such **materials**.

ARTICLE 11 GENERAL

11.1 No Obligation and Non-Exclusivity

Notwithstanding any provision of this Agreement, Vendor's **satisfactory** completion of the requirements of this Agreement shall not obligate the City to retain Vendor to undertake any subsequent work or other work. The Parties acknowledge and agree that the City shall have the right at any time and

from time to time, to acquire any services, software or hardware (or any component of the foregoing) from any entity.

11.2 Subcontractors

- (a) Vendor shall not employ, engage, retain or utilize any Subcontractor with respect to the Agreement or any related agreement without the prior written approval of the City or except as identified in the Response. The City reserves the right to reject all Subcontractors proposed by Vendor.
- (b) Vendor shall be solely responsible and liable for the payment of any Subcontractor employed, engaged, retained or utilized by it with respect to the Agreement or any related agreement.
- (c) Vendor shall co-ordinate all Subcontractors employed, engaged, retained or utilized by it with respect to the Agreement or any related agreement and shall ensure that such Subcontractors comply with all relevant requirements of this Agreement.
- (d) All Subcontractors are required to hold any necessary or applicable consents, authorizations or licences including without limitation any applicable City of TOWNSVILLEa licences for the work for which they have been hired and retained to perform in respect of this Agreement.
- (e) Vendor shall be liable to, and shall indemnify and hold harmless the City for all costs and damages from errors, omissions, negligence, misconduct or other actions of the Subcontractors or any of them.

11.3 Amendment

Except as otherwise provided, neither Party may amend this Agreement, other than by an instrument in writing executed by the authorized representatives of both Parties.

11.4 Assignment

Vendor shall not assign or transfer any or all of its rights or its duties or obligations hereunder without the prior written consent of the City. Any attempted assignment without such prior written consent shall be void.

11.5 No Authority to Bind

Vendor shall have no authority to bind the City.

11.6 City's Right to Deal Directly with Third Party Suppliers and Manufacturers

Nothing in this Agreement shall limit the City's right to deal or contract directly with Vendor's third-party suppliers and manufacturers of software, equipment, spare parts or other components in respect of the System if the City, in its discretion, deems it advisable to do so.

11.7 Further Assurances

Each of the City and Vendor will **from time to time** execute and deliver all such further documents and instruments and do all acts and things as the other Party may, either before or after the Effective Date reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement.

11.8 Fees and Commissions

Each of the City and Vendor will pay its respective legal and accounting costs and expenses incurred in connection with the preparation, execution and delivery of this Agreement and all documents and instruments executed pursuant hereto and any other costs and expenses whatsoever and howsoever incurred and will indemnify and save harmless the other from and against any claim for any broker's, finder's or placement fee or commission alleged to have been incurred as a result of any action by it in connection with the transactions hereunder.

11.9 Benefit of the Agreement

Subject to the restrictions on **assignment** contained in this Agreement, this Agreement will enure to the benefit of and be binding upon the respective heirs, executors, administrators, other legal representatives, successors and permitted assigns of the Parties hereto.

11.10 Entire Agreement

Except as expressly provided otherwise herein, this Agreement constitutes the **entire agreement** between the Parties with respect to the subject matter hereof and cancels and supersedes any prior understandings and agreements between the Parties hereto with respect thereto. The parties shall not be bound by any shrinkwrap, web-wrap or other electronic agreement or contract of adhesion in connection with this Agreement or System, Each Party acknowledges that it is entering into this Agreement solely on the basis of the agreements and other provisions contained herein, and that it has not relied upon any representations, **warranties**, or inducements of any kind, whether oral or written, and from any source, other than those that are expressly contained within this Agreement. Each Party, respectively, acknowledges that it is entering into this Agreement for its own purposes and not for the benefit of any third party.

11.11 Notices

Any notice request, demand, consent or other communication provided or permitted hereunder (**‘Notice’**) shall be in writing and given by personal delivery or sent by registered mail, or transmitted by fax or email addressed to the recipient as follows:

To the City:

The Corporation of the City of TOWNSVILLEa
300 City Centre Drive
TOWNSVILLEa, ON
L5B 3C1
Email: marylynn.vesey@TOWNSVILLEa.ca
Tel: 905-615-3200 ext. 5027
Attention: Mary Lynn Vesey

To the Vendor:

SMART COMPANY Ltd
224 Kerr Street
Oakville, ON, L6K 3A8

Jim Rapino, President & CEO
Tel: (905) 815 -1204 ext. 222
Fax: (905) 339-2602
Email: jrapino@SMART COMPANY.com

James Howe, Executive Vice President
Tel: (905) 815 - 1204 ext. 266
Email: james.howe@SMART COMPANY.com

or to such other address or individual as may be designated by Notice given by either Party to the other. Any Notice given by personal delivery will be conclusively deemed to have been given on the day of actual delivery thereof and, if given by registered mail, on the third (3rd) Business Day following the mailing thereof and, if given by facsimile or email, on the day of transmittal thereof if given during the normal business hours of the recipient, failing which, on the next following Business Day. In the event of actual or threatened disruption of postal services, **Notices** shall not be sent by mail.

11.12 Remedies Cumulative and Not Penalty

The right and remedies of the Parties hereunder are cumulative and are in addition to, and not in substitution for, any other rights and remedies available at law or in equity or otherwise. No single or partial exercise by a Party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that Party may be entitled. Without limiting section 5.2, all remedies expressly

provided in this Agreement shall not constitute, nor are they intended by either Party, to be penalties or to be punitive against Vendor. Both Parties agree and confirm that the remedies are liquidated damages to compensate City for losses and damages that will immediately be incurred by City for such breaches of this Agreement that are not possible to quantify or empirically determine, and that the remedies constitute a fair and reasonable estimate of the proximate and direct harm, loss and damage that City shall suffer and incur in any such occurrence. Both Parties agree and acknowledge that the remedies are justified, necessary and reasonable in the commercial circumstances of this Agreement and that the remedies constitute a material inducement for City to enter into this Agreement.

11.13 Counterparts

This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument.

11.14 Satisfactory Performance

The City, acting responsibly, shall determine if the performance of Vendor meets Vendor's obligations under this Agreement.

11.15 Time is of the Essence

Time is of the essence with respect to Vendor's performance of the Services, including Vendor's delivery of Deliverables hereunder.

11.16 Dispute Resolution

- (a) **Dispute** - Any dispute, controversy, claim or alleged breach arising out of or in connection with this Agreement (a 'Dispute') shall be dealt with in accordance with this Section.
- (b) **First Level Escalation** - In the event of any Dispute, the Dispute shall first be referred to the City's Contract Manager and Vendor's [INSERT TITLE] ('First Level').
- (c) **Second Level Escalation** - Should the Dispute not be resolved within five (5) days of its referral to the First Level, the Dispute will be escalated to the City's Director of Information Technology and Vendor's [INSERT TITLE] ('Second Level').
- (d) **Third Level Escalation** - Should the Dispute not be resolved within five (5) days of its referral to the Second Level, the Dispute will be escalated to the City's Commissioner of Corporate Services and the Vendor's [INSERT TITLE] ('Third Level').
- (e) **If No Resolution** - Should the Dispute not be resolved within fifteen (15) days of its referral to the Third Level, either party may exercise its rights available at law.
- (f) **Admissibility** - All negotiations and settlement discussions to resolve a Dispute shall be treated as compromise and settlement negotiations between the parties and shall not be subject to disclosure through discovery or any other process and shall not be admissible into evidence in any proceeding.

- (g) **Continued Performance** - Except where clearly prevented by the nature of the Dispute or in the event of the City's non-payment of any amounts due and owing to Vendor, the City and Vendor agree to continue performing their respective obligations under this Agreement while a Dispute is **subject to** the terms of this Section.
- (h) **Legal Action** - In the event a lawsuit is filed, the federal or provincial courts located in the Province of Ontario shall have exclusive jurisdiction over any legal action brought pursuant to this Agreement. The prevailing party will be entitled to costs on a **substantial** indemnity basis.

11.17 No Implied Terms

No implied representations, **warranties**, covenants, terms or obligations of any kind by, or on behalf of, any party shall arise from anything in this Agreement and only the express terms and conditions contained in this Agreement shall be binding upon the parties.

11.18 No Deemed Acceptance

Notwithstanding any other provision in this Agreement, there shall be no deemed acceptance or deemed Final Acceptance on behalf of the City.

11.19 Key Personnel

- (a) The key personnel shall be stipulated by the Vendor, who are the personnel the Parties recognize and agree are **material** and fundamental to the provision of Services **in accordance with** this Agreement ('Key Personnel'). Any replacement or substitution of a new individual for any Key Personnel as advised by Vendor **from time to time** in writing shall only occur with the prior written approval and consent of the City. City shall be entitled to review, in advance of their **assignment** to the Services, the resumes of all proposed replacement Key Personnel.
- (b) If City determines, acting fairly and reasonably, that the performance or conduct of any Key Personnel employed or retained by Vendor to perform any Services is **unsatisfactory** for any reason or is not **in compliance with** the provisions of this Agreement, City shall so notify Vendor in writing, with **reasonable** information concerning such determination, and upon City's request, Vendor shall replace such individual **promptly** with another individual who is at least as well qualified and experienced as the individual being replaced.

IN WITNESS WHEREOF, this Agreement has been read, understood, and signed by duly authorized officials of the Vendor and the City.

SMART COMPANY LTD

**THE CORPORATION OF THE CITY OF
TOWNSVILLEA**

By: _____
Name:
Date:

By: _____
Name:
Date:

I have authority to bind the Vendor.

I have authority to bind the City.

STRATEGEN - REVISION INSTRUCTIONS:

The following 'Revision Instructions' are 'proposed' amendments to enhance and clarify the contract agreement. Each proposal includes the issue description and explanation of the issue, proposed changes and where possible, the actual proposed changes to be made for direct integration into the contract. These proposed amendments are designed to improve clarity and effectiveness in the evaluation and decision-making processes. **PLEASE NOTE THAT THE CONTENT HEREIN IS FOR INFORMATIONAL PURPOSES ONLY AND SHOULD NOT BE CONSIDERED LEGAL ADVICE, AS STATED IN THE REPORT'S DISCLAIMER.**

ISSUE 1: Ambiguity in Performance Evaluation

The term reasonable satisfaction introduces a subjective standard for evaluating performance, which lacks a clear, objective criterion. This could lead to disputes regarding compliance and execution, as the Vendor's performance may be subject to varying interpretations.

REVISION REASONING: The term reasonable satisfaction introduces a subjective standard for evaluating performance, which lacks a clear, objective criterion. This could lead to disputes regarding compliance and execution, as the Vendor's performance may be subject to varying interpretations.

PROPOSED CHANGES:

The Vendor's performance shall be evaluated based on objective criteria established in Exhibit A, which includes specific metrics and benchmarks for performance.

ISSUE 2: Overly Broad Legal Obligations

The phrase all laws and regulations is overly broad and lacks specificity, leading to uncertainty about the Vendor's exact legal obligations. This ambiguity raises concerns about potential unintentional violations of unspecified laws.

REVISION REASONING: The phrase all laws and regulations is overly broad and lacks specificity, leading to uncertainty about the Vendor's exact legal obligations. This ambiguity raises concerns about potential unintentional violations of unspecified laws.

PROPOSED CHANGES:

The Vendor shall comply with all applicable federal, state, and local laws, regulations, by-laws, and policies of the City as specifically outlined in Exhibit B.

ISSUE 3: Undefined Industry Standards

The term then current industry standards lacks a precise definition, which may lead to differing interpretations. This vagueness can result in disputes about whether the Vendor has satisfied its obligations according to the City's perception of industry standards.

REVISION REASONING: The term then current industry standards lacks a precise definition, which may lead to differing interpretations. This vagueness can result in disputes about whether the Vendor has satisfied its obligations according to the City's perception of industry standards.

PROPOSED CHANGES:

The Vendor shall adhere to the industry standards defined in Exhibit C, which outlines the specific criteria and benchmarks relevant to the services provided.

ISSUE 4: Vague Replacement Criteria

The terms equally suitable, functionally equivalent, and compatible are subjective and vague, leading to varying interpretations of what constitutes an acceptable replacement. This lack of clarity could result in disputes regarding the Vendor's obligations.

REVISION REASONING: The terms equally suitable, functionally equivalent, and compatible are subjective and vague, leading to varying interpretations of what constitutes an acceptable replacement. This lack of clarity could result in disputes regarding the Vendor's obligations.

PROPOSED CHANGES:

The Vendor shall replace the System or Software with a product that meets the specifications outlined in Exhibit D, ensuring it is functionally equivalent and compatible with the City's existing systems.

ISSUE 5: Ambiguity in Insurance Responsibilities

The lack of clarity regarding the amounts or conditions for deductibles and self-insured retention introduces ambiguity. This could lead to disputes over unexpected costs that are not explicitly outlined in the agreement.

REVISION REASONING: The lack of clarity regarding the amounts or conditions for deductibles and self-insured retention introduces ambiguity. This could lead to disputes over unexpected costs that are not explicitly outlined in the agreement.

PROPOSED CHANGES:

The Vendor shall be responsible for all amounts within the deductible or self-insured retention as specified in each policy of insurance listed in Exhibit E.

ISSUE 6: Undefined Service Levels

The undefined term Service Levels creates ambiguity around acceptable performance metrics. This could result in conflicting interpretations and risks premature termination of the contract based on different understandings of service expectations.

REVISION REASONING: The undefined term Service Levels creates ambiguity around acceptable performance metrics. This could result in conflicting interpretations and risks premature termination of the contract based on different understandings of service expectations.

PROPOSED CHANGES:

The Vendor shall meet the Service Levels defined in Exhibit F, which outlines the specific performance metrics and expectations for service delivery.

ISSUE 7: Ambiguity in Financial Obligations Post-Termination

The phrase no further financial obligations is ambiguous and could lead to disputes regarding what constitutes Services and Deliverables actually delivered.

REVISION REASONING: The phrase no further financial obligations is ambiguous and could lead to disputes regarding what constitutes Services and Deliverables actually delivered.

PROPOSED CHANGES:

Upon termination, the City shall have no further financial obligations except for payment of Fees for Services and Deliverables that have been delivered and accepted by the City prior to the termination date, as detailed in Exhibit G.

ISSUE 8: Lack of Clear Definition for Acceptance

The phrase Services and Deliverables actually delivered to the City and that have been accepted by the City lacks a clear definition for what constitutes acceptance. This ambiguity risks misinterpretation and could lead to disputes over financial obligations related to service acceptance.

REVISION REASONING: The phrase Services and Deliverables actually delivered to the City and that have been accepted by the City lacks a clear definition for what constitutes acceptance. This ambiguity risks misinterpretation and could lead to disputes over financial obligations related to service acceptance.

PROPOSED CHANGES:

Services and Deliverables shall be deemed accepted by the City upon written confirmation from the City that the Services and Deliverables meet the specifications outlined in this Agreement.

ISSUE 9: Indemnification Clause Imposing Substantial Liability

The indemnification clause imposes substantial liability on the Vendor, which could lead to disputes over the scope of indemnification and the nature of claims covered. The risk allocation is heavily skewed in favor of the City, potentially resulting in significant financial strain on the Vendor.

REVISION REASONING: The indemnification clause imposes substantial liability on the Vendor, which could lead to disputes over the scope of indemnification and the nature of claims covered. The risk allocation is heavily skewed in favor of the City, potentially resulting in significant financial strain on the Vendor.

PROPOSED CHANGES:

The Vendor shall indemnify and hold harmless the City and its Indemnified Persons from and against all costs, actions, suits, claims, and demands arising solely from the Vendor's negligence or willful misconduct.

ISSUE 10: Liability for Subcontractors' Actions

The clause that requires the Vendor to indemnify the City for all costs and damages from errors, omissions, negligence, or misconduct of subcontractors imposes extensive liability on the Vendor for actions that may be challenging to control or predict.

REVISION REASONING: The clause that requires the Vendor to indemnify the City for all costs and damages from errors, omissions, negligence, or misconduct of subcontractors imposes extensive liability on the Vendor for actions that may be challenging to control or predict.

PROPOSED CHANGES:

The Vendor shall indemnify and hold harmless the City for costs and damages arising from the negligence or willful misconduct of its subcontractors, provided that the Vendor has exercised reasonable care in the selection and management of such subcontractors.

ISSUE 11: Absence of Limitation of Liability Clause

The absence of a limitation of liability clause exposes the Vendor to the risk of unlimited liability, which can lead to unforeseen financial burdens.

REVISION REASONING: The absence of a limitation of liability clause exposes the Vendor to the risk of unlimited liability, which can lead to unforeseen financial burdens.

PROPOSED CHANGES:

In no event shall the Vendor's liability for any claim exceed the total amount paid by the City to the Vendor under this Agreement, except in cases of gross negligence or willful misconduct.

ISSUE 12: Broad Termination Rights for the City

The clause granting the City broad termination rights without cause could lead to disputes over what constitutes cause and the implications of termination without cause, leaving the Vendor vulnerable.

REVISION REASONING: The clause granting the City broad termination rights without cause could lead to disputes over what constitutes cause and the implications of termination without cause, leaving the Vendor vulnerable.

PROPOSED CHANGES:

The City may terminate this Agreement without cause by providing not less than ninety (90) days written notice; however, the City shall provide a reason for termination upon request by the Vendor.

ISSUE 13: Absence of Change of Control Clause

The lack of a change of control clause creates uncertainty regarding the continuity of the agreement, potentially affecting service delivery and compliance.

REVISION REASONING: The lack of a change of control clause creates uncertainty regarding the continuity of the agreement, potentially affecting service delivery and compliance.

PROPOSED CHANGES:

In the event of a change of control of the Vendor, the Vendor shall notify the City in writing within thirty (30) days, and the City shall have the right to terminate this Agreement if it deems the new party unacceptable.

ISSUE 14: Lack of Liquidated Damages Provisions

The absence of provisions for liquidated damages can lead to disputes over the calculation of damages in the event of a breach. This lack of clarity can create significant financial uncertainty for both parties.

REVISION REASONING: The absence of provisions for liquidated damages can lead to disputes over the calculation of damages in the event of a breach. This lack of clarity can create significant financial uncertainty for both parties.

PROPOSED CHANGES:

In the event of a breach of this Agreement, the breaching party shall be liable to pay liquidated damages in the amount of insert specific amount or formula, which both parties agree represents a genuine pre-estimate of the loss likely to be suffered by the non-breaching party.

ISSUE 15: Broad Indemnity Obligations

Broad indemnity obligations may expose the client to excessive liability without clear limitations, which could lead to financial risks.

REVISION REASONING: Broad indemnity obligations may expose the client to excessive liability without clear limitations, which could lead to financial risks.

PROPOSED CHANGES:

The indemnity obligations of the Vendor shall be limited to direct damages arising from the Vendor's negligence or willful misconduct, and shall not extend to indirect, incidental, or consequential damages.

ISSUE 16: Unilateral Termination Rights Imbalance

The current unilateral termination rights may create an imbalance in the agreement, favoring one party over the other.

REVISION REASONING: The current unilateral termination rights may create an imbalance in the agreement, favoring one party over the other.

PROPOSED CHANGES:

Either party may terminate this Agreement upon insert number days' written notice to the other party, provided that such termination shall not be effective if the terminating party is in breach of any material obligation under this Agreement.

ISSUE 17: Unclear Calculation of Damages

Unclear terms regarding the calculation of damages can lead to disputes and uncertainty in the event of a breach.

REVISION REASONING: Unclear terms regarding the calculation of damages can lead to disputes and uncertainty in the event of a breach.

PROPOSED CHANGES:

In the event of a breach, damages shall be calculated based on the actual loss incurred by the non-breaching party, including but not limited to lost profits, costs incurred, and any other direct damages that can be reasonably quantified.

ISSUE 18: Potential Restrictions on Vendor's Future Business

Restrictions on the Vendor's future business may be overly broad and could hinder their ability to operate effectively.

REVISION REASONING: Restrictions on the Vendor's future business may be overly broad and could hinder their ability to operate effectively.

PROPOSED CHANGES:

The Vendor agrees not to engage in any business that directly competes with the Client's business for a period of insert number years following the termination of this Agreement, within a geographic area of insert specific area.

ISSUE 19: Dispute Resolution May Delay Remedies

The current dispute resolution process may lead to delays in obtaining remedies, which could be detrimental to the client.

REVISION REASONING: The current dispute resolution process may lead to delays in obtaining remedies, which could be detrimental to the client.

PROPOSED CHANGES:

In the event of a dispute arising from this Agreement, the parties agree to engage in mediation prior to pursuing any legal remedies. If mediation does not resolve the dispute within insert number days, either party may initiate legal proceedings.

ISSUE 20: Jurisdictional Issues Related to Breach of Contract

Clarity regarding the jurisdiction and applicable law is essential to avoid disputes over the interpretation of the contract.

REVISION REASONING: Clarity regarding the jurisdiction and applicable law is essential to avoid disputes over the interpretation of the contract.

PROPOSED CHANGES:

This Agreement shall be governed by and construed in accordance with the laws of insert jurisdiction, and any disputes arising under this Agreement shall be subject to the exclusive jurisdiction of the courts of insert jurisdiction.

ISSUE 21: Complexity of Language in Non-Conformance Notice Process

The current language is overly complex and may lead to misunderstandings regarding the process for addressing deficiencies identified by the City. Simplifying the language will enhance clarity and ensure that both parties understand their obligations and the timeline for addressing issues.

REVISION REASONING: The current language is overly complex and may lead to misunderstandings regarding the process for addressing deficiencies identified by the City. Simplifying the language will enhance clarity and ensure that both parties understand their obligations and the timeline for addressing issues.

PROPOSED CHANGES:

The City may review and test the System as it sees fit. If the City finds any issues (referred to as a 'Non-Conformance Notice') during its review, it will notify the Vendor in writing. The Vendor will then have five (5) Business Days to fix the issues mentioned in the Non-Conformance Notice or to provide a reasonable plan to correct them. The acceptance test period will be extended by the number of Business Days from the date of the Non-Conformance Notice until the City receives written confirmation that the issues have been resolved, plus an additional ten (10) Business Days for the City to validate the corrections.

ISSUE 22: Use of Legal Jargon (Indemnify and Hold Harmless)

The term indemnify and hold harmless is legal jargon that may not be easily understood by all parties. Replacing it with simpler language will improve comprehension and ensure that all parties are aware of their responsibilities.

REVISION REASONING: The term indemnify and hold harmless is legal jargon that may not be easily understood by all parties. Replacing it with simpler language will improve comprehension and ensure that all parties are aware of their responsibilities.

PROPOSED CHANGES:

The Vendor agrees to protect and compensate the City for any losses or damages that arise from the Vendor's actions or failures related to this Agreement.

ISSUE 23: Lengthy Sentences and Complex Definitions

Long sentences with multiple clauses can confuse readers and obscure the meaning. Breaking these sentences into shorter, clearer statements will improve readability and understanding.

REVISION REASONING: Long sentences with multiple clauses can confuse readers and obscure the meaning. Breaking these sentences into shorter, clearer statements will improve readability and understanding.

PROPOSED CHANGES:

The City will conduct a review and testing of the System. If the City identifies any deficiencies, it will send a written notice to the Vendor. The Vendor must then correct these deficiencies within five (5) Business Days or provide a reasonable plan to address them.

ISSUE 24: Lack of Context for Defined Terms

Certain defined terms lack context, which can lead to ambiguity. Providing examples or a glossary will clarify these terms and their implications.

REVISION REASONING: Certain defined terms lack context, which can lead to ambiguity. Providing examples or a glossary will clarify these terms and their implications.

PROPOSED CHANGES:

A glossary of defined terms will be included at the end of this Agreement to provide clear definitions and examples for terms used throughout the document.

ISSUE 25: Dense Text and Lack of Readability

The overall text is dense and may overwhelm readers. Incorporating bullet points or tables for sections with multiple items will enhance readability and comprehension.

REVISION REASONING: The overall text is dense and may overwhelm readers. Incorporating bullet points or tables for sections with multiple items will enhance readability and comprehension.

PROPOSED CHANGES:

The following items must be addressed by the Vendor:

- Correct any deficiencies identified in the Non-Conformance Notice within five (5) Business Days.
- Provide a reasonable plan for correction if immediate fixes are not possible.
- Allow for an extension of the acceptance test period as outlined above.

ISSUE 26: Indemnification Clause

The current language is overly complex and may lead to misunderstandings regarding the Vendor's obligations to indemnify the City. Simplifying the language will clarify the Vendor's responsibilities and make it more accessible.

REVISION REASONING: The current language is overly complex and may lead to misunderstandings regarding the Vendor's obligations to indemnify the City. Simplifying the language will clarify the Vendor's responsibilities and make it more accessible.

PROPOSED CHANGES:

The Vendor agrees to protect the City and its officials, employees, and agents from any claims, costs, or damages that may arise during or after the term of this Agreement. This includes any issues caused by the Vendor or its workers not following the terms of the Agreement, any damage to property, any personal injuries, or any violations of privacy laws. The Vendor is responsible for covering all costs related to these claims.

ISSUE 27: Insurance Requirements

The original clause is lengthy and uses legal jargon that may not be easily understood. A clearer rewrite will ensure that the Vendor understands their insurance obligations without ambiguity.

REVISION REASONING: The original clause is lengthy and uses legal jargon that may not be easily understood. A clearer rewrite will ensure that the Vendor understands their insurance obligations without ambiguity.

PROPOSED CHANGES:

The Vendor must pay for and keep active insurance that meets the City's standards for the entire duration of this Agreement. This insurance must be with reliable companies authorized to provide insurance in Ontario. The Vendor is responsible for any costs that fall within the deductible amounts of their insurance policies. The insurance policies must be the primary coverage and cannot rely on any insurance the City has.

ISSUE 28: Termination Clause

The termination clause is currently vague and could lead to disputes regarding the circumstances under which the City can terminate the Agreement. A more precise rewrite will help define the conditions clearly.

REVISION REASONING: The termination clause is currently vague and could lead to disputes regarding the circumstances under which the City can terminate the Agreement. A more precise rewrite will help define the conditions clearly.

PROPOSED CHANGES:

The City may immediately terminate this Agreement by providing written notice to the Vendor if any of the following occurs:

- (1) The Vendor fails to provide the Services as outlined in this Agreement;
- (2) The Vendor does not comply with any other terms of this Agreement.

ISSUE 29: Acceptance Testing

The acceptance testing language is convoluted and may create confusion regarding the timeline for addressing issues. A clearer rewrite will help both parties understand their responsibilities and timelines.

REVISION REASONING: The acceptance testing language is convoluted and may create confusion regarding the timeline for addressing issues. A clearer rewrite will help both parties understand their responsibilities and timelines.

PROPOSED CHANGES:

The City can review and test the System as it sees fit. If the City finds any problems and informs the Vendor in writing, the Vendor has five business days to fix the issues or provide a plan to address them. The time allowed for acceptance testing will be extended by the number of days it takes for the Vendor to correct the problems, plus an extra ten days for the City to check that the fixes are satisfactory. The City will try to validate the corrections as quickly as possible after receiving them.

ISSUE 30: Vendor's Obligations for Risk Management and Community Engagement

The current language imposes

STRATEGEN - SUGGESTED NEGOTIATIONS:

The subsequent 'Negotiation Tactics and Suggestions' section outlines proposed negotiations aimed at refining and improving the terms of the contract agreement. It is important to note that the information provided below is solely for strategic purposes and should not be construed as legal advice, as per the disclaimer included in the report.

KEY NEGOTIATION POINTS AND STRATEGIES:

1. Propose specific, measurable performance metrics to define acceptable standards, reducing the risk of disputes over performance evaluations.
2. Request a detailed list of applicable laws and regulations that the Vendor must comply with, providing clarity to avoid unintentional violations.
3. Negotiate to include a definition of what constitutes industry standards or reference specific industry guidelines to ensure mutual understanding.
4. Suggest defining acceptable replacement criteria in the contract to provide clarity and reduce disagreements over what constitutes an acceptable replacement.
5. Request clarification on specific amounts and conditions related to deductibles and self-insured retention to avoid unexpected financial burdens.
6. Propose a detailed schedule of service levels, including specific metrics and timelines for performance, along with a grace period for remediation before termination.
7. Negotiate to include a clear outline of financial obligations upon termination, specifying what fees are due and under what circumstances.
8. Propose a specific definition of acceptance that includes measurable criteria and timelines for acceptance to minimize ambiguity.
9. Negotiate to limit indemnification to instances of gross negligence or willful misconduct and seek to include a cap on indemnification amounts.
10. Advocate for the inclusion of a limitation of liability clause that caps damages to a specific amount and excludes indirect, special, or consequential damages.
11. Propose a mutual termination clause that requires cause for termination or at least a longer notice period to provide the Vendor with more security.
12. Request the inclusion of a change of control clause that requires the City's approval for any transfer of ownership or control of the Vendor.