

## FORM OF AGREEMENT

**BETWEEN:**

**THE UNITED COUNTIES OF LEEDS AND GRENVILLE**

(referred to as the "Counties")

**AND:**

**ALPHABET®**

(referred to as the "Supplier")

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

### **1. Contract Documents**

The contract between the parties in respect of:

#### **Tourism Initiatives**

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

- (a) this Agreement;
- (b) the Schedule of Deliverables, Rates and Specific Provisions, attached hereto as Schedule 1;
- (c) the Standard Terms and Conditions, attached hereto as Schedule 2; and
- (d) all the documentation submitted by the Supplier in response to the Solicitation Document (the "Supplier's Submission").

### **2. Interpretive Value of Contract Documents**

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

**3. Execution**

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

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

**THE UNITED COUNTIES OF LEEDS AND GRENVILLE**

Signature:

Name: Sheena Earl

Title: Clerk

Date of Signature:

I have the authority to bind the Counties.

Signature:

Name: Nancy Peckford

Title: Warden

Date of Signature:

I have the authority to bind the Counties.

**Alphabet®**

Signature:

Name: Cathy Kirkpatrick

Title: Partner

Date of Signature:

I have the authority to bind the Supplier.

## Schedule 1 – Schedule of Deliverables, Rates and Specific Provisions

### A. Description of Deliverables

#### Product and Experience Development

- Create 2-3 quality clustered / trail experiences to broaden product offerings
  - o Access current assets already available in the region to determine clustered / trail experience with innovative opportunities for product development
  - o Develop product guidelines and promotional materials
  - o Experiences must support local businesses and would evolve digitally and have the potential for virtual reality as content development for future regional promotions

#### Regional Identity / Branding / Marketing

- Development of the tourism brand – 1000 Islands and Rideau Canal Waterways and marketing plan that will allow the region to become cohesive in its promotion. This will support the development and implementation of tourism recovery and build key marketplace positioning both domestically and globally.
  - o Brand visualization and implementation
    - Tourism Branding Guide inclusive of new visual design and elements, templates and applications to digital and non-digital properties and materials. Identification of how this brand will work with municipal and counties brands.
  - o Creation and implementation of Counties first tourism marketing campaign in print and digital social media channels

### B. Rates and Disbursements

#### B.1 Maximum Fee

Notwithstanding anything else in the Contract, the total amount payable by the Counties to the Supplier under the Contract shall not exceed \$90,000.

#### B.2 Personnel and Rates

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

N/A

### C. Payment Terms

The payment terms for the Contract are as follows: Upon signing of contract \$45,000 with remaining prior to December 31, 2022.

All the invoices shall be sent to [AccountsPayable@uclg.on.ca](mailto:AccountsPayable@uclg.on.ca) and cc to Ann Weir – [ann.weir@uclg.on.ca](mailto:ann.weir@uclg.on.ca) by email or, to the following address by mail:

Accounts Payable,  
United Counties of Leeds and Grenville  
25 Central Ave W, Suite 100  
Brockville, ON K6V 4N6

**D. Counties and Supplier Representatives**

The Counties Representative and contact information for the Contract is:

Ann Weir, Economic Development Manager  
United Counties of Leeds and Grenville  
32 Wall Street, Suite 300  
Brockville, ON K6V 4R9

The Supplier Representative and contact information for the Contract is:

Cathy Kirkpatrick, Partner  
Alphabet®  
80 Aberdeen Street, Suite 401  
Ottawa, ON K1S 5R5

**E. Term of Contract**

The Contract shall take effect on Monday, December 19, 2022 (the “**Effective Date**”) and shall be in effect for a period until March 31, 2023 from the Effective Date, unless it is terminated earlier in accordance with the terms of the Contract or otherwise by operation of law.

**F. Specific Provisions**

n/a

## Schedule 2 - Standard Terms and Conditions

### Index

#### **Article 1 - Interpretation**

1.01 Defined Terms

#### **Article 2 - General Provisions**

2.01 No Indemnities from Counties  
2.02 Entire Contract  
2.03 Severability  
2.04 Failure to Enforce Not a Waiver  
2.05 Changes by Written Amendment Only  
2.06 Force Majeure  
2.07 Notices by Prescribed Means  
2.08 Governing Law

#### **Article 3 – Nature of Relationship Between Counties and Supplier**

3.01 Supplier’s Power to Contract  
3.02 Representatives May Bind Parties  
3.03 Supplier Not a Partner, Agent or Employee  
3.04 Non-Exclusive Contract, Work Volumes  
3.05 Responsibility of Supplier  
3.06 No Subcontracting or Assignment  
3.07 Duty to Disclose Change of Control  
3.08 Conflict of Interest  
3.09 Contract Binding

#### **Article 4 – Performance by Supplier**

4.01 Commencement of Performance  
4.02 Deliverables Warranty  
4.03 Health and Safety  
4.04 Accessibility Standards for Customer Service  
4.05 Shipment of Goods  
4.06 Use and Access Restrictions  
4.07 Notification by Supplier to Counties  
4.08 Supplier to Comply with Reasonable Change Requests  
4.09 Pricing for Requested Changes  
4.10 Performance by Specified Individuals Only  
4.11 Time  
4.12 Counties Rights and Remedies & Supplier Obligations Not Limited to Contract

#### **Article 5 - Payment for Performance and Audit**

5.01 Payment According to Contract Rates

5.02 Hold Back or Set Off  
5.03 No Expenses or Additional Charges  
5.04 Payment of Taxes and Duties  
5.05 Withholding Tax  
5.06 Interest on Late Payment  
5.07 Document Retention and Audit

#### **Article 6 – Confidentiality**

6.01 Confidentiality and Promotion Restrictions  
6.02 Counties Confidential Information  
6.03 Restrictions on Copying  
6.04 Notice of Breach  
6.05 Injunctive and Other Relief  
6.06 Notice and Protective Order  
6.07 MFIPPA Records and Compliance  
6.08 Survival

#### **Article 7 - Intellectual Property**

7.01 Counties Intellectual Property  
7.02 No Use of Counties Insignia  
7.03 Ownership of Intellectual Property  
7.04 Supplier’s Grant of Licence  
7.05 No Restrictive Material in Deliverables  
7.06 Supplier Representation and Warranty Regarding Third-Party Intellectual Property  
7.07 Survival

#### **Article 8 - Indemnity and Insurance**

8.01 Supplier Indemnity  
8.02 Insurance  
8.03 Proof of Insurance  
8.04 Workplace Safety and Insurance

#### **Article 9- Termination, Expiry and Extension**

9.01 Immediate Termination of Contract  
9.02 Dispute Resolution by Rectification Notice  
9.03 Termination on Notice  
9.04 Supplier’s Obligations on Termination  
9.05 Supplier’s Payment Upon Termination  
9.06 Termination in Addition to other Rights  
9.07 Expiry and Extension of Contract  
9.08 Evaluation of Performance

## ARTICLE 1 – INTERPRETATION

### 1.01 Defined Terms

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

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

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

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

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

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

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

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

**“Indemnified Parties”** means the Counties and the Counties’ officials, directors, officers, agents, employees and volunteers;

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

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

**“MFIPPA”** means the *Municipal Freedom of Information and Protection of Privacy Act*, Revised Statutes of Ontario 1990, Chapter M.56, as amended;

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

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

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

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

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

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

**“Requirements of Law”** mean all applicable requirements, laws, statutes, codes, acts, ordinances, orders, decrees, injunctions, by-laws, rules, regulations, official plans, permits, licenses, authorizations,

directions, and agreements with all Authorities that now or at any time hereafter may be applicable to either the Contract or the Deliverables or any part of them;

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

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

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

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

## **ARTICLE 2 – GENERAL TERMS**

### **2.01 No Indemnities from the Counties**

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

### **2.02 Entire Contract**

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

### **2.03 Severability**

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

### **2.04 Failure to Enforce Not a Waiver**

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

### **2.05 Changes by Written Amendment Only**

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



2.06 **Force Majeure**

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

2.07 **Notices by Prescribed Means**

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

2.08 **Governing Law**

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

**ARTICLE 3 – NATURE OF RELATIONSHIP BETWEEN COUNTIES AND SUPPLIER**

3.01 **Supplier's Power to Contract**

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

3.02 **Representatives May Bind the Parties**

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

3.03 **Supplier Not a Partner, Agent or Employee**

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

3.04 **Non-Exclusive Contract, Work Volumes**

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

3.05 **Responsibility of Supplier**

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

3.06 **No Subcontracting or Assignment**

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

3.07 **Duty to Disclose Change of Control**

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

3.08 **Conflict of Interest**

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

3.09 **Contract Binding**

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

## **ARTICLE 4 – PERFORMANCE BY SUPPLIER**

### **4.01 Commencement of Performance**

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

### **4.02 Deliverables Warranty**

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

### **4.03 Health and Safety**

Without limiting the generality of section 4.02, the Supplier warrants and agrees that it has complied with and will comply with, and ensure that any subcontractors comply with, the *Occupational Health and Safety Act*, R.S.O. 1990, c.O.1 and Regulations, as amended, as well as any other applicable occupational health and safety laws, regulations and standards in relation to the performance of the Supplier's obligations under the Contract. The Supplier shall provide the Counties with evidence of the Supplier's compliance with this section upon request by the Counties.

### **4.04 Accessibility Standards for Customer Service**

The Supplier shall ensure that any of its employees or agents and any of the Supplier's subcontractors' employees or agents that may provide work, or provide services or goods on behalf of the Counties shall abide by and comply with the Counties' Accessibility Policy, the Accessibility for Ontarians with Disabilities Act, 2005 and the Integrated Accessibility Standards (Ontario Regulation 191/11).

### **4.05 Shipment of Goods**

To the extent that the Deliverables include the shipment of goods to the Counties, all such goods shall be delivered F.O.B. Destination, Freight Prepaid to the Counties' place of business or such other location as may be specified in the Contract. No transportation or delivery charges of any kind, including, without limitation, packing, boxing, storage, cartage or customs brokerage charges, shall be paid by the Counties, unless specifically agreed by the Counties in writing. The Deliverables will be suitably packed in such a manner as will ensure their safe transportation undamaged to their destination. The Deliverables will remain at the risk of the Supplier until the Deliverables are received by the Counties. Receipt of the Deliverables at the Counties' location does not constitute acceptance of the Deliverables by the Counties. The Deliverables are subject to the Counties' inspection and acceptance within a reasonable period of time after delivery. If any of the Deliverables, in the opinion of the Counties, are inadequately provided or require corrections, the Supplier shall make the necessary corrections at its own expense as specified by the Counties in a rectification notice.

### **4.06 Use and Access Restrictions**

The Supplier acknowledges that unless it obtains specific written preauthorization from the Counties, any access to or use of the Counties property, technology or information that is not necessary for the performance of its contractual obligations with the Counties is strictly prohibited. The Supplier further

acknowledges that the Counties may monitor the Supplier to ensure compliance with this paragraph. This paragraph is in addition to and shall not limit any other obligation or restriction placed upon the Supplier.

**4.07 Notification by Supplier of Discrepancies**

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

**4.08 Supplier to Comply with Reasonable Change Requests**

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

**4.09 Pricing for Requested Changes**

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

**4.10 Performance by Specified Individuals Only**

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

**4.11 Time**

Time is of the essence of the Contract.

**4.12 Counties Rights and Remedies and Supplier Obligations Not Limited to Contract**

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

## **ARTICLE 5 – PAYMENT FOR PERFORMANCE AND AUDIT**

### **5.01 Payment According to Contract Rates**

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

### **5.02 Hold Back or Set Off**

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

### **5.03 No Expenses or Additional Charges**

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

### **5.04 Payment of Taxes and Duties**

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

### **5.05 Withholding Tax**

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

### **5.06 Interest on Late Payment**

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

### **5.07 Document Retention and Audit**

For seven (7) years after the Expiry Date or any date of termination of the Contract, the Supplier shall maintain all necessary records to substantiate (a) all charges and payments under the Contract and (b) that the Deliverables were provided in accordance with the Contract and with Requirements of Law. During the Term, and for seven (7) years after the expiry or termination of the Contract, the Supplier shall permit and assist the Counties in conducting audits of the operations of the Supplier to verify (a) and (b) above. The Counties shall provide the Supplier with at least ten (10) Business Days prior notice of its requirement for such audit. The Supplier's obligations under this paragraph shall survive any termination or expiry of the Contract.

## **ARTICLE 6 – CONFIDENTIALITY**

### **6.01 Confidentiality and Promotion Restrictions**

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

**6.02 Counties Confidential Information**

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

**6.03 Restrictions on Copying**

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

**6.04 Notice of Breach**

The Supplier shall notify the Counties promptly upon the discovery of loss, unauthorized disclosure, unauthorized access or unauthorized use of Counties Confidential Information.

**6.05 Injunctive and Other Relief**

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

**6.06 Notice and Protective Order**

If the Supplier or any of its directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors become legally compelled to disclose any Counties Confidential Information, the Supplier will provide the Counties with prompt notice to that effect in order to allow the Counties to seek one or more protective orders or other appropriate remedies to prevent or limit such disclosure, and it shall co-operate with the Counties and its legal counsel to the fullest extent. If such protective orders or other remedies are not obtained, the Supplier will disclose only that portion of Counties Confidential Information which the Supplier is legally compelled to disclose, only to such person or persons to which the Supplier is legally compelled to disclose, and the Supplier shall provide notice to each such recipient (in co-operation with legal counsel for the Counties) that such Counties Confidential Information is confidential and subject to non-disclosure on terms and conditions equal to those contained in the Contract and, if possible, shall obtain each recipient's written agreement to receive and use such Counties Confidential Information subject to those terms and conditions.

**6.07 MFIPPA Records and Compliance**

The Supplier and the Counties acknowledge and agree that MFIPPA applies to and governs all Records and may require the disclosure of such Records to third parties. Furthermore, the Supplier agrees (a) to keep

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

**6.08 Survival**

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

**ARTICLE 7 – INTELLECTUAL PROPERTY**

**7.01 Counties Intellectual Property**

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

**7.02 No Use of the Counties Insignia**

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

**7.03 Ownership of Intellectual Property**

The Counties shall be the sole owner of any Newly Created Intellectual Property. The Supplier irrevocably assigns to and in favour of the Counties and the Counties accepts every right, title and interest in and to all Newly Created Intellectual Property in the Deliverables, immediately following the creation thereof, for all time and irrevocably waives in favour of the Counties all rights of integrity and other moral rights to all Newly Created Intellectual Property in the Deliverables, immediately following the creation thereof, for all time. To the extent that any of the Deliverables include, in whole or in part, the Supplier's Intellectual Property, the Supplier grants to the Counties a licence to use that Supplier Intellectual Property in the manner contemplated in this Article, the total consideration for which shall be payment of the Rates to the Supplier by the Counties.

**7.04 Supplier's Grant of License**

For those parts of the Deliverables that are Supplier Intellectual Property, the Supplier grants to the Counties a perpetual, world-wide, non-exclusive, irrevocable, transferable, royalty free, fully paid up right and license: (a) to use, modify, reproduce and distribute, in any form, those Deliverables; and (b) to

authorize other Persons, including agents, contractors or sub-contractors, to do any of the former on behalf of the Counties.

**7.05 No Restrictive Material in Deliverables**

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

**7.06 Supplier Representation and Warranty Regarding Third-Party Intellectual Property**

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

**7.07 Survival**

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

**ARTICLE 8 – INDEMNITIES AND INSURANCE**

**8.01 Supplier Indemnity**

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

**8.02 Insurance**

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

- (a) commercial general liability insurance on an occurrence basis for third party bodily injury, personal injury and property damage, to an inclusive limit of not less than **\$2,000,000** per occurrence and including products and completed operations liability The policy is to include the following:
  - the Counties as an additional named insured with respect to liability arising in the course of performance of the Supplier's obligations under, or otherwise in connection with, the Contract



- contractual liability coverage
- cross-liability and severability of interests clause
- employers liability coverage
- 30 day written notice of cancellation, termination or material change
- tenants legal liability coverage (if applicable and with suitable sub-limits)
- non-owned automobile coverage with blanket contractual coverage for hired automobiles

#### 8.03 **Proof of Insurance**

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

#### 8.04 **Workplace Safety and Insurance**

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

### **ARTICLE 9 – TERMINATION, EXPIRY AND EXTENSION**

#### 9.01 **Immediate Termination of Contract**

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

**9.02 Dispute Resolution by Rectification Notice**

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

**9.03 Termination on Notice**

The Counties reserves the right to terminate the Contract, without cause, upon thirty (30) calendar days prior notice to the Supplier.

**9.04 Supplier's Obligations on Termination**

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

**9.05 Supplier's Payment Upon Termination**

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

**9.06 Termination in Addition to Other Rights**

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

**9.07 Expiry and Extension of Contract**

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

9.08 **Evaluation of Performance**

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

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