

APPENDIX E: AGREEMENT TERMS AND CONDITIONS

Note to Agreement Terms and Conditions:

The terms set out in this Appendix E: Agreement Terms and Conditions shall be incorporated in any Agreement entered into with the recommended Proponent substantially in the form as presented in this Appendix E: Agreement Terms and Conditions. These terms are mandatory and are not negotiable.

These Appendix E: Agreement Terms and Conditions are deemed to be incorporated into and take precedence over the terms of any purchase order issued in connection with this REOI.

1. Compliance with Laws

The Proponent will be required to comply, at its sole expense, with all federal, provincial and municipal laws, rules and regulations (including, without limitation, the City's Fair Wage and other policies or by-laws applicable to the City's suppliers, the Ontario Fire Code, the Ontario Employment Standards Act, the Ontario Human Rights Code, the Ontario Labour Relations Act, the Workplace Safety and Insurance Act, the Income Tax Act and Occupational Health and Safety requirements) in relation to the provision of any Services, including the obtaining of all necessary permits and licences, and shall submit proof of such compliance to the City, upon request, and the Proponent shall indemnify and save the City harmless from any liability or cost suffered by it as a result of the Proponent's failure to comply with this provision.

2. Non-Exclusivity

The awarding of an Agreement to a Proponent shall not be a guarantee of exclusivity.

3. Confidentiality

The Proponent shall treat as confidential all information of any kind which comes to the attention of the Proponent in the course of carrying out the Services and shall not disseminate such information for any reason without the express written permission of the City or otherwise in accordance with MFIPPA, PHIPPA or other applicable privacy law. The Proponent may be required to enter into a detailed confidentiality and conflict of interest agreement in a form satisfactory to the City Solicitor.

4. Conflict of Interest

The Proponent shall: (a) avoid any Conflict of Interest in the performance of its contractual obligations; (b) disclose to the City 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 City to resolve any Conflict of Interest. In addition to all other contractual rights or rights available at law or in equity, the City may immediately terminate the Contract upon giving notice to the Proponent where: (a) the Proponent fails to disclose an actual or potential Conflict of Interest; (b) the Proponent fails to comply with any requirements

prescribed by the City to resolve or manage a Conflict of Interest; or (c) the Proponent's Conflict of Interest cannot be resolved to the City's reasonable satisfaction.

5. Indemnities

The Proponent shall indemnify and save harmless the City of Toronto, its Mayor, Members of Council, officers, employees, and agents from and against any losses, liens, charges, claims, demands, suits, proceedings, recoveries and judgements (including legal fees and costs) arising from or related to the Proponent's performance or non-performance of its obligations, including payment obligations to its approved subcontractors and suppliers and others, and including breach of any confidentiality obligations under this Agreement.

Upon assuming the defence of any action covered under this section the Proponent shall keep City of Toronto reasonably informed of the status of the matter, and the Proponent shall make no admission of liability or fault on City of Toronto's part without City of Toronto's written permission.

6. Intellectual Property Indemnity

The Proponent shall indemnify and save harmless the City of Toronto, its Mayor, Members of Council, officers, employees, and agents from and against any losses, liens, charges, claims, demands, suits, proceedings, recoveries and judgements (including legal fees and costs) arising from infringement, actual or alleged, by the Proposal, its use or misuse, or by any of the deliverables developed or provided or supplied under or used in connection with the Services (including the provision of the Services themselves), of any Canadian, American or other copyright, moral right, trade-mark, patent, trade secret or other thing with respect to which a right in the nature of intellectual/industrial property exists.

7. Employment & WSIB Indemnity

Nothing under this Agreement shall render the City responsible for any employment, benefit or termination liability (including those under or in connection with the Workplace Safety and Insurance Act, 1997 or any successor legislation ("WSIA"), whether statutorily required, at common law or otherwise, resulting from Services supplied under this Agreement by persons employed or otherwise engaged by the Proponent. In the event that employment related costs, or other related responsibility falls to the City for any reason whatsoever, the Proponent agrees to indemnify the City for such costs.

8. No Assignment

The Proponent shall not assign any part of the project that may be awarded to it under the Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld. However, such written consent shall not under any circumstances relieve the Proponent of its liabilities and obligations under this RFP and the Agreement.

9. Subcontractors

The Proponent shall be solely responsible for the payment of every subcontractor employed, engaged, or retained by it for the purpose of assisting it in the performance of its obligations under the Agreement. The Proponent shall coordinate the services of its subcontractors in a manner acceptable to the City, and ensure that they comply with all the relevant requirements of the Agreement.

The Proponent shall be liable to the City for all costs or damages arising from acts, omissions, negligence or willful misconduct of its subcontractors.

10. Personnel and Performance

The Proponent shall make available appropriately skilled workers, consultants or subcontractors, as appropriate, and must be able to provide the necessary materials, tools, machinery and supplies to carry out the project.

The Proponent shall be responsible for its own staff resources and for the staff resources of any subcontractors and third-party service providers.

The Proponent shall ensure that its personnel (including those of approved sub-contractors), when using any City buildings, premises, equipment, hardware or software shall comply with all security policies, regulations or directives relating to those buildings, premises, equipment, hardware or software.

Personnel assigned by the Proponent to perform or produce the Services or any part of it, (including those of approved subcontractors) may, in the sole discretion of the City, be required to sign non-disclosure agreement(s) satisfactory to the City before being permitted to perform such services.

11. Independent Contractor

The Proponent and the City agree and acknowledge that the relationship between the City and the Proponent is one of owner and independent contractor and not one of employer-employee. Neither is there any intention to create a partnership, joint venture or joint enterprise between the Proponent and the City.

12. Insurance

(a) Without restricting the generality of any provision of this Agreement, the Proponent agrees to purchase and maintain in force, at its own expense the policies of insurance and coverages set out for the duration of this Agreement unless specified otherwise. Such insurance shall be provided by an insurer licensed to carry on the business of an insurer in Ontario or satisfactory to the City in its sole and absolute discretion.

The Proponent agrees to purchase and maintain in force:

a. Commercial General Liability provided that the policy:

- (i) is in the amount of not less than Five Million Dollars (\$5,000,000.00), per occurrence;
- (ii) adds the City as an additional insured;
- (iii) includes, non-owned Automobile Liability, Employer's Liability and/or Contingent Employer's Liability, Contractual Liability, Products-Completed Operations, Personal Injury, Advertising Injury, Owners and Contractors Protective Coverage, Cross Liability and Severability of Interest, and any other provision relevant to the Services;

b. Professional Liability coverage, provided that the policy:

- (i) is in the amount of not less than Two Million Dollars (\$2,000,000);
- (ii) will extend to infringement of copyright and other intellectual property, including misuse of trade secrets, if appropriate.
- (iii) shall be maintained for a period ending no sooner than twenty-four (24) months following the date of the earlier of the termination of this Agreement or the completion of the Project.

c. Automobile Liability insurance with a minimum limit of-Two Million Dollars (\$2,000,000) for all owned or leased licensed motorized vehicles used in the performance of Services.

(b) Five (5) Working Days prior to the execution of this Agreement, and twenty (20) Working Days prior to the expiration, amendment or extension of any then current insurance or any part thereof, the Proponent shall provide the City with:

- (i) certificates of insurance as proof of such coverage, in a form acceptable to the City, signed by the insurer or its authorized agent, without notice or request by the City;
- (ii) proof of professional liability insurance maintained by any Subconsultant engaged by the Proponent in relation to the Services, where such Subconsultant is under a legal or professional obligation to maintain the same, in a form and with an insurer acceptable to the City.

(c) The Proponent shall, at its cost, maintain such other forms of insurance as the City, acting reasonably, may require from time to time, in amounts and for risks against which a prudent Proponent would insure.

(d) The Proponent agrees that the insurance requested shall be primary and shall not call into contribution any insurance available to the City, and the insurance policies may be subject to reasonable deductible amounts, which deductible amounts shall be borne by the Proponent.

(e) It is understood and agreed that the coverage and limits of liability noted are not to be construed as the limit of liability of the Proponent in the performance of Services.

(f) The Proponent is responsible for any loss or damage whatsoever to any of its materials, goods, equipment or supplies and will maintain appropriate all-risk coverage as any prudent owner of such materials, goods, supplies and equipment. The Proponent shall have no claim against the City or the City's insurers for any damage or loss to its property and shall require its property insurers to waive any right of subrogation against the City.

(g) Each policy (except for the policy of automobile liability insurance) shall require the insurer(s) to notify the City in writing, by registered mail, at least thirty (30) Calendar Days (fifteen (15) Calendar Days if cancellation is due to non-payment of premium), prior to any cancellation of the Proponent's insurance.

13. Warranties and Covenants

The Proponent represents, warrants and covenants to the City (and acknowledges that the City is relying thereon) that any deliverable resulting from or to be supplied or developed under the Agreement will be in accordance with the City's functional and technical requirements (as set out in the RFP) and, if applicable, will function or otherwise perform in accordance with such requirements.

14. Third Party Software

Where the City is in possession of software containing or constituting confidential proprietary information belonging to third parties, the Proponent shall not, except in the usual incidental manner genuinely necessary for the intended use of such software on the equipment of the City,

- (a) analyze, copy, decompile, disassemble, translate, convert, reverse engineer or duplicate any physical embodiment or part thereof, or permit any person to do so; or

(b) divulge to any unauthorized person the ideas, concepts or techniques, or make any other improper use, of such software.

The Proponent shall fully defend, save harmless and indemnify the City from and against any loss or damages suffered by the City as a result of any failure by the Proponent, its officers, directors, partners, contract personnel, agents and employees or any of them to comply with the provisions hereof.

Should the Proponent include third party components within the Solution, the Proponent must secure the rights to use and repackage third party components and pass on those rights to the City without additional charges.

15. Ownership of Intellectual Property and Deliverables

The City will own all intellectual property rights, including (without limitation) copyright, in and to all deliverables provided by the Proponent and its subcontractors. All information, data, plans, specifications, reports, estimates, summaries, photographs and all other documentation prepared by the Proponent in the performance of the Services under the Agreement, whether they be in draft or final format, shall be the exclusive property of the City.

16. Payment Schedule

A payment schedule satisfactory to the City shall form part of the Agreement.

No fees or reimbursable expenses shall become payable to the Proponent pursuant to the Agreement other than pursuant to one or more signed schedules.

The Proponent shall submit invoices in such detail as may be required by the City, and the City reserves the right to require further proof or documentation from the Proponent in respect of services performed or expenses incurred by the Proponent and the Proponent shall provide, without delay, such further proof or documentation.

If the City does not approve of the Services which are the subject of the invoice, the City shall advise the Proponent in writing of the reasons for non-approval and the Proponent shall remedy the problem at no additional cost to the City before the City shall be obliged to pay the invoice or any part of it, as the case may be.

The Proponent shall be solely responsible for the payment of all personnel costs including statutory and otherwise (including without limitation subcontractors and suppliers and their respective personnel) made available by it and used for performance of any of the Services.

17. Termination Provisions

Upon giving the Proponent not less than thirty (30) days' prior written notice, the City may, at any time and without cause, cancel the Agreement, in whole or in part. In the event of such cancellation, the City shall not incur any liability to the Proponent apart from the payment for the goods, material, articles, equipment, work or services that have been satisfactorily delivered or performed by the Proponent at the time of cancellation.

Failure of the Proponent to perform its obligations under the Agreement shall entitle the City to terminate the Agreement upon ten (10) calendar days' written notice to the Proponent if a breach which is remediable is not rectified in that time. In the event of such termination, the City shall not incur any liability to the Proponent apart from the payment for the goods,

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material, articles, equipment, work or services that have been satisfactorily delivered or performed by the Proponent at the time of termination.

All rights and remedies of the City for any breach of the Proponent's obligations under the Agreement shall be cumulative and not exclusive or mutually exclusive alternatives and may be exercised singularly, jointly or in combination and shall not be deemed to be in exclusion of any other rights or remedies available to the City under the Agreement or otherwise at law.

No delay or omission by the City in exercising any right or remedy shall operate as a waiver of them or of any other right or remedy, and no single or partial exercise of a right or remedy shall preclude any other or further exercise of them or the exercise of any other right or remedy.

Upon termination, all originals and copies of data, plans, specifications, reports, estimates, summaries, photographs, and other documents that have been accumulated and/or prepared by the Proponent in performance of the Agreement shall be delivered to the City in a clean and readable format.

18. Right to Audit

The City may audit all financial and related records associated with the terms of the Agreement including timesheets, reimbursable out of pocket expenses, materials, goods, and equipment claimed by the Proponent. The Proponent shall at all times during the term of the contract, and for a period of 2 years following completion of the Agreement, keep and maintain records of the Work performed pursuant to this Agreement. This shall include proper records of invoices, vouchers, timesheets, and other documents that support actions taken by the Proponent. The Proponent shall at his own expense make such records available for inspection and audit by the City at all reasonable times.

19. Set Off

If the Proponent at any time fails to supply all goods or services to the City as specified within the Agreement, or fails to replace goods or services rejected by the City, then the City shall be permitted to procure such goods or services elsewhere and charge any additional costs incurred by the City to the Proponent, unless otherwise specified, and deduct such amounts from payments due to the Proponent or to otherwise collect such costs from the Proponent by any other method permitted by law.

20. Right to Retain Monies

The City shall have the right to retain out of monies payable to the Proponent under the Agreement the total amount outstanding for time to time of all claims arising out of the default of the Proponent of its obligations to the City. This shall include claims pursuant to this or any other contract or cause of action between the Proponent and the City which have not been settled between the City and the Proponent.

21. Occupational Health and Safety

- a. The Proponent shall comply with all federal, provincial or municipal occupational health and safety legislative requirements, including, and without limitation, the *Occupational Health and Safety Act*, R.S.O., 1990 c.0.1 and all regulations thereunder, as amended from time to time (collectively the "OHSA").

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- b. Nothing in this section shall be construed as making the City the "employer" (as defined in the OHSA) of any workers employed or engaged by the Proponent for the Services either instead of or jointly with the Proponent.
- c. The Proponent agrees that it will ensure that all subcontractors engaged by it are qualified to perform the Services and that the employees of subcontractors are trained in the health and safety hazards expected to be encountered in the Services
- d. The Proponent acknowledges and represents that:
 - i. The workers employed to carry out the Services have been provided with training in the hazards of the Services to be performed and possess the knowledge and skills to allow them to work safely;
 - ii. The Proponent has provided, and will provide during the course of the agreement, all necessary personal protective equipment for the protection of workers;
 - iii. The Proponent's supervisory employees are competent, as defined in the OHSA, and will carry out their duties in a diligent and responsible manner with due consideration for the health and safety of workers;
 - iv. The Proponent has in place an occupational health and safety, workplace violence and workplace harassment policies in accordance with the OHSA; and
 - v. The Proponent has a process in place to ensure that health and safety issues are identified and addressed and a process in place for reporting work-related injuries and illnesses.
- e. The Proponent shall provide, at the request of the Executive Director or their designate, the following as proof of the representations made in paragraph d(i) and d(iv):
 - i. documentation regarding the training programs provided or to be provided during the Services (i.e. types of training, frequency of training and re-training); and
 - ii. the occupational health and safety policy.
- f. The Proponent shall immediately advise the Executive Director or their designate in the event of any of the following:
 - i. A critical injury that arises out of Services that is the subject of this agreement;
 - ii. An order(s) is issued to the Proponent by the Ministry of Labour arising out of the Services that is the subject of this agreement;
 - iii. A charge is laid or a conviction is entered arising out of the Services that is the subject of this agreement, including but not limited to a charge or conviction under the OHSA, the *Criminal Code*, R.S.C 1985, c. C-46, as amended and the *Workplace Safety and Insurance Act*, 1997, S.O. 1997, c. 16, Sched. A, as amended.
- g. The Proponent shall be responsible for any delay in the progress of the Services as a result of any violation or alleged violation of any federal, provincial or municipal health and safety requirement by the Proponent, it being understood that no such delay shall be a force majeure or uncontrollable circumstance for the purposes of extending the time for performance of the Services or entitling the Proponent to additional compensation,

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and the Proponent shall take all necessary steps to avoid delay in the final completion of the Services without additional cost to the City.

- h. The parties acknowledge and agree that employees of the City, including senior officers, have no authority to direct, and will not direct, how employees, workers or other persons employed or engaged by the Proponent do work or perform a task that is the subject of this agreement.

22. Workplace Safety and Insurance Act

The Proponent shall secure, maintain and pay all costs for Workplace Safety and Insurance Board ("WSIB") workers' compensation coverage for its employees providing Services under this agreement, whether required statutorily or not under the Workplace Safety and Insurance Act, 1997.

The Proponent represents and warrants that it shall be in good standing with the WSIB throughout the term of this agreement. Prior to supplying the Services and prior to receiving payment, the Proponent shall produce a Clearance Certificate issued by the WSIB confirming that the Proponent has paid its assessment based on a true statement of the amount of its current payroll in respect of the Services and that the City is relieved of financial liability. Thereafter, throughout the period of Services being supplied, a new Clearance Certificate will be obtained from the WSIB by the Proponent and provided to the City every 90 days or upon expiry of the Certificate's validity period whichever comes first.

The Proponent shall ensure that any and all persons, including but not limited to volunteers, students, subcontractors and independent contractors, providing services under this agreement, have secured WSIB coverage, whether required statutorily or not, for the term of this agreement.

23. Accessibility Standards and Customer Service Training Requirements

The Proponent must ensure that all deliverables conform to the requirements of the Accessibility for Ontarians with Disabilities Act, 2005.

The Proponent shall require all applicable personnel (including those of its subcontractors) to fulfill the training requirements set out in the City's policy on Accessible Customer Service Training Requirements for Contractors, Consultants and other Services Providers. For a copy of the City of Toronto requirement, visit the website at

<https://www.toronto.ca/business-economy/doing-business-with-the-city/understand-the-procurement-process/purchasing-policies-legislation/accessible-customer-service-training-requirements/>

24. City of Toronto – Invoice/Billing Requirements

24.1 City of Toronto's Invoice and billing requirements

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To assist in prompt payment, it is essential that all required billing information is provided on the invoice submitted to the City of Toronto. If the billing information is missing from an invoice it will result in a payment delay and the invoice may be returned to you without payment.

It is the Proponent's responsibility to submit correct invoices for payment of goods /services delivered to the City of Toronto Divisions. If an incorrect invoice is submitted, the Proponent will be requested to issue a credit note and submit a new invoice. If the invoice in question offered an early payment discount, the re-issue date of the new invoice will be used to calculate the early payment discount terms.

Exceptions

The standard invoice billing requirement must be followed with the exception of Proponent invoices related to an approved capital project subject to construction lien holdbacks only. Billing requirement direction will be provided by the contract custodian or city divisional designate.

Electronic Invoices

To support an electronic payable environment, the City of Toronto Corporate Accounts Payable unit will accept electronic Proponent invoices submitted via email to APinvoice@toronto.ca. Electronic invoices submitted must be in a PDF format with either single or multiple invoice(s) per attachment.

Note: Do not send statements or past due invoices to this email address, only current invoices will be accepted. Do not send hard copy invoices to Corporate Accounts Payable if you have submitted an electronic invoice. If you have any questions regarding this process, please contact AP Customer Service at 416-397-5235 and follow the prompts.

24.2 Billing Requirements

- (1) All original Proponent invoices **must be** addressed and be sent **DIRECTLY** to:

City of Toronto
Accounting Services Division
Corporate Accounts Payable
55 John Street
14th Floor, Metro Hall
Toronto, ON
M5V 3C6

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- (2) Invoice/s submitted to the City of Toronto must have complete ship to information including:
- I. Name of City Division,
 - II. The City Division's contact name and phone number (the person ordering or picking up the goods and/or services),
 - III. Delivery location of goods and/or services (excluding pick-up order),
 - IV. Purchasing document information on the invoice (blanket contract number, contract release order number (CRO) purchase order (PO) or Divisional Purchase Order (DPO), or Schedule "A" must be clearly indicated on the invoice. (*This purchasing number should be provided by City staff at the time of order*)
 - V. Complete "Remit To" address is required on all submitted Proponent invoices

Invoices that do not contain the required billing information may be returned without payment to the Proponent for correction.

- (3) City purchases with the use of a credit card/PCard, are NOT to be sent to Corporate Accounts Payable. These invoices are considered paid.
- (4) Proponents are encouraged to provide packing slips and/or goods receipt confirmations directly to the ordering Division for goods/services delivered.
- (5) Proponents are to provide backup documentation directly to the ordering Division, not Corporate Accounts Payable.

24.3 Contract Release Order for Contract Purchases

A request for delivery in the form of a Contract Release Order (CRO) will be issued for each purchase against a contract.

All invoices submitted for payment of contract goods/services must contain:

- I. Blanket Contract Number
- II. Contract Release Order Number (CRO)

Under no circumstances are Contract Release Orders to be filled for commodities or services that are not included on a Contract.

The total value estimated on a Contract including all charges, excluding any applicable taxes, is not to be exceeded without authorization.

24.4 Discount Terms

The City will consider offers of early payment discount terms. If correct billing information has been indicated on the invoice, it is the City's policy to pay within Proponent's discount terms from the receipt date of the invoice in the Corporate Accounts Payable unit – Metro Hall, 55 John Street, 14th Floor.

Early Payment terms should be clearly indicated on the invoice.

Note: Discount terms for early payment cannot be earlier than 15 days from the receipt date of the invoice by the City of Toronto, Corporate Accounts Payable unit.

24.5 Direct Deposit

City of Toronto offers secure electronic deposit payments directly to your bank account through our “Direct Deposit” program. For more information and/or to enroll for this payment option, please email us at FASPDD@toronto.ca or contact the Direct Deposit program line at 416-392-9736 and follow the prompts.

Effective January 1, 2014, all new contracts for existing or new suppliers must be enrolled in the Direct Deposit program.

24.6 Construction Contracts & Consultant Assignments related to Capital Projects – With a Holdback only.

Invoices related to an approved capital project with a holdback and managed by a Contract Administrator (CA) must be forwarded to the CA for review and approval. Billing requirement direction will be provided by the contract custodian or city divisional designate prior to the start of the Agreement.

1) All invoices **must be** addressed and sent **DIRECTLY** to:

Contract Administrator

City of Toronto

Address

Contact Info: Phone #, E-mail address

Note: Contact Information of respective CA will be provided in writing, prior to the start of the contract.

2) Invoice/s submitted to the City of Toronto Contract Administrator must have complete information including:

- I. Contract/Project Number
- II. Name of City Division and Contract Administrator
- III. Proponent Number
- IV. Proponent Name and address
- V. The City Division’s contact name and phone number (the person ordering or picking up the goods and/or services),
- VI. Description of work/ Project Name
- VII. Location of work
- VIII. Bill through Dates(Work Done): from and to
- IX. Invoice Date
- X. Sub-total Amount: Excluding all taxes
- XI. Total Invoice Amount; Including all taxes

Purchasing document information on the invoice (blanket contract number, contract release order number (CRO) purchase order (PO) or Divisional Purchase Order (DPO), must be clearly indicated on the invoice. (*This purchasing number should be provided by City staff at the time of order*)

25. MFIPPA and PHIPPA Records and Compliance

The Proponent and the City acknowledge and agree that MFIPPA or PHIPPA applies to and governs all Records and may require the disclosure of such Records to third parties. Furthermore, the Proponent agrees:

- (a) to keep Records secure;
- (b) to provide Records to the City within seven (7) calendar days of being directed to do so by the City for any reason including an access request or privacy issue;
- (c) not to access any Personal Information or Personal Health Information unless the City determines, in its sole discretion, that access is permitted under MFIPPA or PHIPPA and is necessary in order to provide the Deliverables;
- (d) not to directly or indirectly use, collect, disclose or destroy any Personal Information or Personal Health Information for any purposes that are not authorized by the City;
- (e) to ensure the security and integrity of Personal Information or Personal Health 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 or Personal Health 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 the City 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 City would improve the adequacy and effectiveness of the Proponent's measures to ensure the security and integrity of Personal Information or Personal Health Information and Records generally; and
- (h) that any confidential information supplied to the City may be disclosed by the City where it is obligated to do so under MFIPPA, PHIPPA or by an order of a court or tribunal or pursuant to a legal proceeding;

This paragraph shall prevail over any inconsistent provisions in the Agreement