

FORM OF AGREEMENT

BETWEEN:

COLLEGE OF NEW CALEDONIA

(referred to as "CNC")

AND:

XXXXXXXXXXXXXX

(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:

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

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

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

College of New Caledonia

Signature: _____

Name: Surinder Bains

Title: Director Procurement & Ancillary Services

Date of Signature: _____

I have the authority to bind CNC.

XXXXXXXXXXXXXXXXXXXX

Signature: _____

Name: _____

Title: _____

Date of Signature: _____

I have the authority to bind the Supplier.

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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 CNC has elected to be closed for business.

“CNC Representative” is as set out in Schedule 2 (Schedule of Deliverables, Rates and Specific Provisions).

“CNC Confidential Information” means all information of CNC that is of a confidential nature, including all confidential information in the custody or control of CNC, 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, CNC Confidential Information shall: (a) include: (i) all new information derived at any time from any such information whether created by CNC, the Supplier or any third-party; (ii) all information (including Personal Information) that CNC 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 CNC 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;

“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 CNC 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;

“Deliverables” means everything developed for or provided to CNC while performing under the Contract or agreed to be provided to CNC 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 2, including but not limited to any goods or services or all Intellectual Property and all concepts, techniques, ideas, information, documentation, and other materials, however recorded, developed or provided;

“Effective Date” is as set out in Schedule 2 (Schedule of Deliverables, Rates and Specific Provisions).

“FOIPPA” means the *Freedom of Information and Protection of Privacy Act*, Revised Statutes of British Columbia 1996, Chapter 165, as amended.

“Indemnified Parties” means CNC and CNC’s 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 CNC;

“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.

“Newly Created Intellectual Property” means any Intellectual Property created by the Supplier during 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 2 (Schedule of Deliverables, Rates and Specific Provisions);

“Record”, for the purposes of the Contract, means any recorded information, including any Personal Information, in any form: (a) provided by CNC to the Supplier, or provided by the Supplier to CNC, 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 2 (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 2 (Schedule of Deliverables, Rates and Specific Provisions); and

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

ARTICLE 2 – GENERAL TERMS

2.01 No Indemnities from CNC

Notwithstanding anything else in the Contract, any express or implied reference to CNC providing an indemnity or any other form of indebtedness or contingent liability that would directly or indirectly increase the indebtedness or contingent liabilities of CNC beyond the obligation to pay the Rates in respect of Deliverables accepted by CNC, whether at the time of entering 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 regarding 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 CNC 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 CNC 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 this 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, CNC 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 of British Columbia and the federal laws of Canada applicable therein.

ARTICLE 3 – NATURE OF RELATIONSHIP BETWEEN CNC AND SUPPLIER

3.01 Supplier's Power to Contract

The Supplier represents and warrants that it has the full right and power to enter the Contract and there is no agreement with any other Person which would in any way interfere with the rights of CNC under this 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 CNC or to assume or create any obligation or responsibility, express or implied, on behalf of CNC. The Supplier shall not hold itself out as an agent, partner, or employee of CNC. Nothing in the Contract shall have the effect of creating an employment, partnership or agency relationship between CNC 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 CNC on a non-exclusive basis. CNC makes no representation regarding the volume of goods and services required under the Contract. CNC 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 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 this 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 CNC. Such consent shall be in the sole discretion of CNC and subject to the terms and conditions that may be imposed by CNC. Without limiting the generality of the conditions which CNC may require prior to consenting to the Supplier's use of a subcontractor, every contract entered by the Supplier with a subcontractor shall adopt all the terms and conditions of this 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 CNC.

3.07 Duty to Disclose Change of Control

If the Supplier undergoes a change in control the Supplier shall immediately disclose such change in control to CNC and shall comply with any terms and conditions subsequently prescribed by CNC 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 CNC 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 CNC to resolve any Conflict of Interest. In addition to all other contractual rights or rights available at law or in equity, CNC 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 CNC to resolve a Conflict of Interest; or (c) the Supplier's Conflict of Interest cannot be resolved to the satisfaction of CNC. 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 CNC.

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 CNC, are inadequately provided or require corrections, the

Supplier shall forthwith make the necessary corrections at its own expense as specified by CNC 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, all applicable occupational health and safety laws and regulations in relation to the performance of the Supplier's obligations under the Contract. The Supplier shall provide CNC with evidence of the Supplier's compliance with this section upon request by CNC.

4.04 Shipment of Goods

To the extent that the Deliverables include the shipment of goods to CNC, all such goods shall be Delivered Duty Paid (DDP) (Incoterms 2010) to CNC's 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 CNC, unless specifically agreed by CNC 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 CNC. Receipt of the Deliverables at CNC's location does not constitute acceptance of the Deliverables by CNC. The Deliverables are subject to CNC's inspection and acceptance within a reasonable period after delivery. If any of the Deliverables, in the opinion of CNC, are inadequately provided or require corrections, the Supplier shall make the necessary corrections at its own expense as specified by CNC in a rectification notice.

4.05 Use and Access Restrictions

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

4.06 Notification by Supplier to CNC

During the Term, the Supplier shall advise CNC 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.

4.07 Supplier to Comply With Reasonable Change Requests

CNC 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 CNC 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 CNC 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.

4.08 Pricing for Requested Changes

Where a CNC change request includes an increase in the scope of the previously contemplated Deliverables, CNC 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 CNC 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.

4.09 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 CNC, 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.

4.10 Time

Time is of the essence.

4.11 CNC Rights and Remedies and Supplier Obligations Not Limited to Contract

The express rights and remedies of CNC 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 CNC 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

CNC 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

CNC may hold back payment or set off against payment if, in the opinion of CNC 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 CNC 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

CNC 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 Term, the Supplier shall permit and assist CNC in conducting audits of the operations of the Supplier to verify (a) and (b) above. CNC 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 CNC. CNC 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 CNC without the prior written consent of CNC. 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 CNC.

6.02 CNC Confidential Information

During and following the Term, the Supplier shall: (a) keep all CNC Confidential Information confidential and secure; (b) limit the disclosure of CNC 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 CNC 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 CNC and (ii) in respect of any CNC Confidential Information about any third-party, the written consent of such third-party; (d) provide CNC Confidential Information to CNC on demand; and (e) return all CNC Confidential Information to CNC before the end of the Term, with no copy or portion kept by the Supplier.

6.03 Restrictions on Copying

The Supplier shall not copy any CNC 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 CNC promptly upon the discovery of loss, unauthorized disclosure, unauthorized access, or unauthorized use of CNC Confidential Information.

6.05 Injunctive and Other Relief

The Supplier acknowledges that breach of any provisions of this Article may cause irreparable harm to CNC or to any third-party to whom CNC owes a duty of confidence, and that the injury to CNC or to any third-party may be difficult to calculate and inadequately compensable in damages. The Supplier agrees that CNC 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 CNC Confidential Information, the Supplier will provide CNC with prompt notice to that effect in order to allow CNC to seek one or more protective orders or other appropriate remedies to prevent or limit such disclosure, and it shall co-operate with CNC 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 CNC 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 CNC) that such CNC 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 CNC Confidential Information subject to those terms and conditions.

6.07 FOIPPA Records and Compliance

The Supplier and CNC acknowledge and agree that FOIPPA 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 CNC within seven (7) calendar days of being directed to do so by CNC for any reason including an access request or privacy issue; (c) not to access any Personal Information unless CNC determines, in its sole discretion, that access is permitted under FOIPPA 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 CNC; (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 CNC 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 CNC 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 CNC may be disclosed by CNC where it is obligated to do so under FOIPPA, 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 CNC 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 CNC to the Supplier shall always remain the sole property of CNC.

7.02 No Use of CNC Insignia

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

7.03 Ownership of Intellectual Property

CNC shall be the sole owner of any Newly Created Intellectual Property. The Supplier irrevocably assigns to and in favor of CNC and CNC 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 favor of CNC 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 CNC a license 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 CNC.

7.04 Supplier's Grant of License

For those parts of the Deliverables that are Supplier Intellectual Property, the Supplier grants to CNC 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 CNC.

7.05 No Restrictive Material in Deliverables

The Supplier shall not incorporate into any Deliverables anything that would restrict the right of CNC to modify, further develop or otherwise use the Deliverables in any way that CNC deems necessary, or that would prevent CNC from entering 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 during performance of the Supplier’s obligations under, or otherwise in connection with, the Contract. The Supplier further agrees to indemnify and hold harmless the Indemnified Parties for any incidental, indirect, special, or consequential damages, or any loss of use, revenue, or profit, by any person, entity, or organization, including, without limitation, CNC, claimed or resulting from such Claims. 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 **\$5,000,000** per occurrence and including products and completed operations liability the policy is to include the following:
 - CNC as an additional named insured with respect to liability arising during performance of the Supplier’s obligations under, or otherwise in connection with, the Contract
 - contractual liability coverage
 - cross-liability and severability of interest’s clause

- employer's liability coverage
- 30 day written notice of cancellation, termination, or material change
- tenant's 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 CNC with proof of the insurance required by this Contract in the form of valid certificates of insurance that reference this Contract and confirm the required coverage. The Supplier shall provide CNC with renewal replacements on or before the expiry of any such insurance. Upon the request of CNC, a copy of each insurance policy shall be made available to it. 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 CNC and Indemnified Parties are named as additional insured with respect to any liability arising during performance of the subcontractor's obligations under the subcontract for the provision of the Deliverables.

8.04 WorkSafe BC Requirements

The Supplier warrants and agrees that it has complied and will comply with all applicable workplace safety and insurance laws and regulations and, if the Supplier is subject to the Workers' Compensation Act, will provide proof of valid coverage by means of a current WorkSafeBC clearance certificate to CNC 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 the Workers' Compensation Act during the Term. The Supplier further agrees to indemnify CNC for 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 WorkSafeBC.

_____ agrees that it shall, at its own expense, procure and carry, or cause to be procured, carried, and paid for, full Workers' Compensation Board of BC coverage for itself and all workers, employees, servants, and others engaged in or upon any work or service which is the subject of this Agreement. Please provide your WorkSafeBC# _____.

The contractor shall observe and enforce all safety measures required by the Workers' Compensation act of British Columbia and attendant regulations, the safety requirements of the College of New Caledonia and all applicable statutes. In the event of a discrepancy between such provisions the most stringent provision shall apply.

This will ensure that CNC's risk is mitigated and managed and that the contractor has WSBC coverage and is directed and compliant with the Worker's Compensation Act for safety standards and prevention.

ARTICLE 9 – TERMINATION, EXPIRY AND EXTENSION

9.01 Immediate Termination of Contract

CNC 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 CNC 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 CNC; (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 CNC; 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, CNC 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 CNC. If the Supplier fails to either comply with that rectification notice or provide a satisfactory rectification plan, CNC 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 CNC to immediately terminate the Contract.

9.03 Termination on Notice

CNC 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 CNC, provide CNC with any completed or partially completed Deliverables; (b) provide CNC 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 CNC pertaining to the provision of the Deliverables and performance of the Contract; (c) execute such documentation as may be required by CNC to give effect to the termination of the Contract; and (d) comply with any other instructions provided by CNC, 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, CNC 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, CNC 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 CNC 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 CNC 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 CNC 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.

Schedule 2 – Schedule of Deliverables, Rates and Specific Provisions

A. Description of Deliverables

B. Rates and Disbursements

B.1 Maximum Fee

Notwithstanding anything else in the Contract, the total amount payable by CNC to the Supplier under the Contract shall not exceed:

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: Net 30 days.

D. CNC and Supplier Representatives

CNC Representative and contact information for the Contract is:

The Supplier Representative and contact information for the Contract is:

E. Term of Contract

The Contract shall take effect on the (the **“Effective Date”**) and shall be in effect for a period of [years or months] from the Effective Date, with an option in favour of CNC to extend the term for and additional period of [years or months] extensions, unless it is terminated earlier in accordance with the terms of the Contract or otherwise by the operation of law.

Schedule 3 – Privacy Protection Schedule

Definitions

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

Purpose

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

Collection of personal information

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

Accuracy of personal information

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

Requests for access to personal information

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

Correction of personal information

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

Protection of personal information

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

Storage and access to personal information

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

Retention of personal information

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

Use of personal information

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

Disclosure of personal information

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

Notice of foreign demands for disclosure

18. In addition to any obligation the Contractor may have to provide the notification contemplated by section 30.2 of the Act, if in relation to personal information in the custody or under the control of the Contractor, the Contractor:
 - (a) receives a foreign demand for disclosure;
 - (b) receives a request to disclose, produce or provide access that the Contractor knows or has reason to suspect is for the purpose of responding to a foreign demand for disclosure; or
 - (c) has reason to suspect that an unauthorized disclosure of personal information has occurred in response to a foreign demand for disclosurethe Contractor must immediately notify the College of New Caledonia and, in so doing, provide the information described in section 30.2(3) of the Act. In this section, the phrases "foreign demand for disclosure" and "unauthorized disclosure of personal information" will bear the same meanings as in section 30.2 of the Act.

Notice of unauthorized disclosure

19. In addition to any obligation the Contractor may have to provide the notification contemplated by section 30.5 of the Act, if the Contractor knows that there has been an unauthorized

disclosure of personal information in the custody or under the control of the Contractor, the Contractor must immediately notify the College of New Caledonia. In this section, the phrase “unauthorized disclosure of personal information” will bear the same meaning as in section 30.5 of the Act.

Inspection of personal information

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

Compliance with the Act and directions

21. The Contractor must in relation to personal information comply with:
 - (a) the requirements of the Act applicable to the Contractor as a service provider, including any applicable order of the commissioner under the Act; and
 - (b) any direction given by the College of New Caledonia under this **Schedule**.
22. The Contractor acknowledges that it is familiar with the requirements of the Act governing personal information that are applicable to it as a service provider.

Notice of non-compliance

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

Termination of Agreement

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

Interpretation

25. In this Schedule, references to sections by number are to sections of this Schedule unless otherwise specified in this Schedule.

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