

May 10, 2013

Tim Bousquet  
The Coast  
5567 Cunard Street  
Halifax, NS B3K 1C5

Dear Mr. Bousquet:

**Re: Application for Access to a Record – File # FIN-12-16**

I am writing regarding your application for access to a record under the Freedom of Information and Protection of Privacy (FOIPOP) Act. Specifically you requested:

- *“copy of the agreement between the province and IBM related to the outsourcing of the province’s SAP operations to IBM including all schedules.*
- *Ministerial briefing notes related to the above”*

We advised you in a letter on March 18, 2013 that a third party had filed a review of our decision to grant partial access to the records you requested. That review of our decision by the FOIPOP Review Officer is currently underway. We are now able to provide you with the records that are not currently the subject of the review.

In our letter of February 26, 2013, we provided you with our decision on access to the information. I will detail that for you again in this letter.

Enclosed is a copy of the Master Services Agreement (pages 1 to 145 including table of contents). Access to this record is granted in full. At this time, however, some information has been severed from this document. The information that has been severed is the subject of the third party review and we cannot release that information because it is under review. Where information has been severed it is marked in the document.

Enclosed are copies of the schedules to the Master Services Agreement and ministerial briefing notes relating to the agreement. In accordance with the Section 7(2) of the FOIPOP Act, the Department of Finance has decided you are entitled to access part of the record you requested. We have removed some information from this record. The



severed information falls under exemption provisions according to subsection 5(2) of the Act. We refuse access to the severed parts of the record for the following reasons:

Confidential Information (S. 21(1)(a)(i)(ii)(b)(c)(i)(ii)(iii)) – The head of a public body shall refuse to disclose to an applicant information that would reveal, trade secrets or commercial, financial or labour relations information of a third party that is supplied implicitly or explicitly in confidence and the disclosure of which could reasonably be expected to, harm significantly the competitive position or interfere significantly with the negotiating position of the third party or result in similar information no longer being supplied to the public body when it is in the public interest to do so or could reasonably be expected to result in undue financial loss or gain to any person or organization.

Personal information (S. 20(1)) - The head of a public body shall refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.

Financial or economic interests (S.17(1) (a)(b)(c)(d)(e)) – The head of a public body may refuse to disclose to an applicant information the disclosure of which could reasonably be expected to harm the financial or economic interests of a public body or the Government of Nova Scotia or the ability of the Government to manage the economy. The head of the public body may refuse to disclose trade secrets of a public body or to disclose financial, commercial information that belongs to a public body. The head may refuse to disclose information which relates to the administration of a public body that have not yet been implemented or made public or information the disclosure of which could reasonably be expected to result in the premature disclosure of a proposal or project or undue financial loss or gain to a third party or is information about negotiations carried on by or for a public body.

Law enforcement (15(1)(k)) – The head of the public body may refused to disclose information which could harm the security of any property or system, including a building, a vehicle, a computer system or a communications system.

Advice to public body or minister (S. 14(1)) - The head of a public body may refuse to disclose information to an applicant that would reveal advice, recommendations or draft regulations developed by or for a public body or a minister.

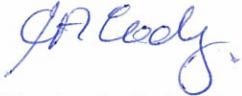
You have the right to request a review of this decision by the Review Officer appointed pursuant to the Act. The request for review must be filed in writing (see attached Form 7) within sixty days of receiving this letter. Send the completed form to FOIPOP Review Officer, P.O. Box 181, Halifax, Nova Scotia, B3J 2M4.

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T. Bousquet  
May 10, 2013

If you have any questions regarding the processing of your application, you may contact Kathy Hartlen, Manager, Information Management at 424-7932.

If you have questions regarding the review process under the FOIPOP Act, you should direct those questions to the FOIPOP Review Office at 424-4684.

Yours truly,

A handwritten signature in blue ink, appearing to read "E. A. Cody".

Elizabeth A. Cody  
Deputy Minister

enclosure

c: Kathy Hartlen, Manager, Information Management  
Mary Kennedy, FOIPOP Review Office



**Form 7**  
**Request for Review**  
**Province of Nova Scotia**  
*Freedom of Information and Protection of Privacy Act*  
**Subsection 32(1)**  
**(Applicant)**

TO: Review Officer  
P.O. Box 181  
Halifax, NS  
B3J 2M4

1. This Request for Review arises out of an Application for Access to a Record or Request for Correction of Personal Information submitted to \_\_\_\_\_ (*specify public body*) on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, a copy of

which Application or Request is attached to this Request for Review.

2. The applicant requests that the review officer review the following decision, act or failure to act of the head of the public body;

Check where applicable

\_\_\_\_\_ (a) decision dated or made on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, a copy of which is attached to this Request for Review;

\_\_\_\_\_ (b) (*specify act or failure to act*) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

3. The applicant requests that the review officer recommend that

Check where applicable

\_\_\_\_\_ (a) the head of the public body give access to the record as requested in the Application for Access to a Record;

\_\_\_\_\_ (b) the head of the public body correct the personal information as requested in the Request for Correction of Personal Information;

\_\_\_\_\_ (b) (*specify other recommendation or recommendations, if any, you consider appropriate*)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

# Briefing Note

## IBM Global Delivery Centre Opportunity

### Current Situation:

s21(u)(a)(ii)(b)  
(c)(i)(ii)(iii)

### Background:

Internationally IBM has many divisions. IBM's Global Services Division (IBM-GSD). It employs people in countries. IBM-GDS delivers services from multiple centers located around the world.

There are three levels of delivery centers (Centers of Competencies, Regional Offices and Global Delivery Centers). Centers of Competencies tend to be smaller and deliver niche services to targeted markets. Global Delivery Centers are much larger locations that are globally networked and offer a full spectrum of services to global customers.

s21(u)(a)(ii)(b)  
(c)(i)(ii)(iii)

NSBI has been working with IBM since 2009 to encourage and incent the company to expand in Nova Scotia. IBM's local office has employees.

s21(u)(a)(ii)(b)(c)(i)(ii)(iii)

### Recommendation/Advice:

s21(u)(a)(ii)(b)  
(c)(i)(ii)(iii)

s14(u)  
s17(u)(b)(c)(d)(e)



PREPARED BY: Gerald Lawson  
DATE: November 28, 2011  
CONTACT: glawson@nsbi.ca

S140  
S1701(b)(c)(d)(e)  
S210(a)(ii)(b)(c)  
(i)(ii)(iii)



**ISSUE:** SAP Service Review

**Connect:**

[

]

\$140

**Contrast:**

[

]

\$170(x)  
\$140

**Solve:**

[  
•

]

\$140  
\$170(x)

**CAUTIONARY NOTE:**

[

]

\$140  
\$170(x)



**ISSUE:** *IT Staff – Impacts of IBM contract*

**Connect:**

[

]

S.14(U)  
S.17(C)(e)

**Contrast:**

[

]

S.14(U)  
S.17(U)(e)  
(d)(e)

**Solve:**

[

]

S.17(U)  
(c)(d)(e)  
S.14(U)  
S.21(U)(a)(i)  
(b)(c)(i)  
(ii)

**CAUTIONARY NOTE:**

[

]

S.14(C)  
S.17(C)  
(d)(e)

**ISSUE:** *SAP Service Review*

**Connect:**

[ • ]

] S14(U)

**Contrast:**

[ • ]  
[ • ]

] S17(U)(c) (d)(e)  
] S14(U)

**Solve:**

[ • ]

] S14(U)  
] S17(U)(e)

**CAUTIONARY NOTE:**

[ ]

] S14(U)  
] S17(U)(c)

Contact Name: Michelle R. Lucas

Phone Number: 424-8787 cell: 456-3576



CONFIDENTIAL

**MASTER SERVICES AGREEMENT**

**BETWEEN**

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NOVA SCOTIA AS  
REPRESENTED BY THE MINISTER OF FINANCE**

**AND**

**IBM CANADA LIMITED**

**MADE AS OF**

**NOVEMBER 1, 2012**

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**MASTER SERVICES AGREEMENT**

**THIS MASTER SERVICES AGREEMENT** is made as of November 1, 2012 (“Effective Date”)

BETWEEN

**Her Majesty the Queen in Right of the PROVINCE OF NOVA SCOTIA as represented by the Minister of Finance (the “Province”)**

- and -

**IBM Canada Limited, a corporation incorporated under the laws of Canada (“Service Provider”)**

**RECITALS**

- A. The Province conducted a consultation for purposes of establishing a contractual business alliance with an experienced and qualified third party to, among other things, provide SAP development, maintenance, support and configuration services to the Province and, indirectly, the Broader Public Sector, and to develop a centre of expertise within Nova Scotia dedicated to that purpose;
- B. To develop that centre of expertise, the Service Provider will establish a Global Delivery Centre in Nova Scotia providing, among other services SAP development, maintenance, support and configuration services;
- C. To further develop such expertise within Nova Scotia, the Province and the Service Provider intend to establish partnerships or education programs with universities or colleges located in Nova Scotia;
- D. To anchor that Global Delivery Centre of the Service Provider within Nova Scotia and support its growth and development, the Province selected Service Provider to provide such SAP services to the Province and the Broader Public Sector, subject to, and in accordance with, the terms of this Agreement;

**IN CONSIDERATION** of the foregoing and the mutual covenants and agreements contained in this Agreement, and subject to the terms and conditions hereof, the Parties covenant and agree as follows:

## ARTICLE 1 - INTERPRETATION AND GENERAL MATTERS

### **1.01**        Definitions

Certain defined terms used in this Agreement have the meaning set out in Schedule 29 (*Definitions*)

### **1.02**        Recitals

The recitals to this Agreement are intended to be a general introduction to this Agreement and are not intended to expand the scope of the Parties' obligations under this Agreement or to alter the plain meaning of the terms and conditions of this Agreement.

### **1.03**        Headings

The division of this Agreement into Articles, Sections, Subsections, paragraphs, clauses and Schedules, and the insertion of headings, are for convenience of reference only and will not affect the construction or interpretation of this Agreement.

### **1.04**        Interpretation

In this Agreement, unless expressly stated to the contrary:

- (a) the terms "this Agreement", "the Agreement", "hereof", "hereunder", "hereto" and similar expressions refer, unless otherwise specified, to this Agreement taken as a whole and not to any particular Article, Section, Subsection, paragraph, clause or other portion of this Agreement;
- (b) words importing the singular number only will include the plural, and vice versa, and words importing gender will include all genders;
- (c) unless something in the subject matter or context is inconsistent therewith, all references in this Agreement to Articles, Sections, Subsections, paragraphs, clauses and Schedules refer to Articles, Sections, Subsections, paragraphs, clauses and Schedules of this Agreement;
- (d) words and phrases denoting inclusiveness (such as "including" or "includes"), whether or not stated as being without limitation, are not limited by their context or the words or phrases which precede or succeed them;
- (e) unless otherwise provided in this Agreement, whenever the words "discretion", "option", "determine", "election" and other similar words or any variations thereof are used with respect to a Party, they will be deemed to mean such Party's sole and absolute discretion, option, determination, election or other such similar act;



- (f) any reference to a statute will be deemed to refer to the statute and any regulations made thereunder in force as at the date hereof, as the same may be subsequently amended, expanded, added-to, supplemented or otherwise changed or replaced from time to time, unless otherwise expressly provided in this Agreement; and
- (g) unless specifically provided otherwise in this Agreement, any reference to "knowledge" of the Service Provider or any officer or other personnel of the Service Provider means the knowledge of the Service Provider after having made due enquiry, and if the Service Provider fails to make such due enquiry, then the knowledge that the Service Provider would have had if the Service Provider had conducted reasonable enquiry into the subject matter.

#### **1.05 Acting Reasonably**

(1) With respect to the Service Provider, any requirement set forth in this Agreement for the Service Provider to act reasonably, use reasonable efforts, or any variations thereof, will mean the use of reasonable commercial efforts having regard to the surrounding circumstances, unless specifically provided otherwise.

(2) With respect to the Province, any requirement set forth in this Agreement for the Province to act reasonably, use reasonable efforts, or any variations thereof (including, without limitation, any requirement for Approvals by the Province not to be unreasonably withheld), will not require the Province to act in a manner that is contrary to, or is inconsistent with, any policies, directives, executive directions, Treasury Board or Executive Council decisions, rules, regulations, or legislation of the Province. In addition, the Service Provider expressly acknowledges and confirms that nothing contained in this Agreement will be construed or otherwise interpreted in any manner that would or could cause the Province to fetter its discretion, but the foregoing does not release the Province from its obligations under this Agreement.

#### **1.06 Accounting Policy**

(1) In this Agreement all references to "GAAP" refer, unless otherwise specified, to generally accepted accounting principles from time to time approved by the Canadian Institute of Chartered Accountants (or any applicable successor institute thereto or other recognized independent accounting standards body) as at the date on which such calculation is made or required to be made, consistently applied, except as noted in the Service Provider's or International Business Machines Corporation's consolidated Financial Statements.

(2) Unless otherwise provided in this Agreement, all accounting, record keeping, book keeping and other actions of the Service Provider contemplated in this Agreement will be performed and carried out in a manner that is consistent with GAAP.

#### **1.07 Calculation of Time Periods**

Unless otherwise specified in this Agreement, when calculating the period of time within or following which any act is to be done or any step taken, the date that is the reference date for

starting the calculation of such period will be excluded and the final date for completing such act or step will be included.

**1.08**            **Currency References**

Unless otherwise specified, all dollar references in this Agreement are deemed to refer to lawful money of Canada.

**1.09**            **Time**

Time will be of the essence of this Agreement. The Parties acknowledgment that time is of the essence of this Agreement does not supersede the specific time periods (including cure periods and Service Levels) set forth in this Agreement for the performance by the Parties of their obligations set forth herein.

**1.10**            **Schedules**

The following are the Schedules attached to this Agreement, which are incorporated into this Agreement by reference and are deemed to be an integral part of this Agreement:

- Schedule 1 – Transition Agreement
- Schedule 2 – Transition Plan
- Schedule 3 – Transition Management and Governance
- Schedule 4 – Work-In-Progress Activities
- Schedule 5 – SAP Services
- Schedule 6 – Project Work
- Schedule 7 – Quality Management
- Schedule 8 – Specific Laws and Policies
- Schedule 9 – Service Locations
- Schedule 10 – Transformation Projects
- Schedule 11 – Transformation Plan
- Schedule 12 – Service Levels
- Schedule 13 – Service Level Failures
- Schedule 14 – Conditions of Use of Province Marks
- Schedule 15 – Communications Plan and Processes
- Schedule 16 – Governance
- Schedule 17 – Key Positions
- Schedule 18 – Subcontractors
- Schedule 19 – Non-Disclosure Agreements



- Schedule 20 – Reporting Requirements
- Schedule 21 – Records Protocols
- Schedule 22 – Fees
- Schedule 23 – Privacy and Security Obligations
- Schedule 24 – Insurance
- Schedule 25 – Termination Fees
- Schedule 26 – Service Provider Code of Conduct
- Schedule 27 – Province Shared Infrastructure
- Schedule 28 – Employment Matters
- Schedule 29 – Definitions
- Schedule 30 – Hiring Commitment

#### **1.11 Document Conflicts**

The main body of this Agreement and the Schedules attached to this Agreement are to be interpreted so that all of the provisions are given as full effect as possible. In the event of a conflict among the foregoing, and unless expressly stated to the contrary, the order of precedence will be as follows:

- (a) first, the main body of this Agreement;
- (b) second, any Schedules attached to this Agreement; and
- (c) third, any other Transaction Documents.

#### **1.12 Joint Drafting**

The Parties have jointly contributed to the drafting of this Agreement, the Schedules attached to this Agreement and the Transaction Documents. Accordingly, it is the intention of the Parties that the principle of *contra proferentem* will not apply with respect to interpretation matters in respect of this Agreement or the other Transaction Documents.

#### **1.13 Objectives of the Parties**

- (1) The Parties acknowledge and agree that the primary objectives and guiding principles of their contractual relationship under this Agreement are as follows:
  - (a) achievement of continuous reduction of the Province's total costs for the Province's SAP related services and technologies;
  - (b) creation of many long term employment positions with the Service Provider relating to the provision of services at its Global Delivery Centre to be established and maintained in Nova Scotia for the Term;

- (c) receipt by the Province of the benefit of Service Provider's SAP related services expertise to improve the Province's end-to-end SAP processes and operations;
- (d) to allow the Service Provider to meet or exceed the Province's service delivery requirements and service levels as described in this Agreement with respect to the Services, and to continually seek improvement in the delivery of all aspects of the Services, including the Province's service delivery requirements and service levels;
- (e) provision by Service Provider of a pricing structure that is flexible and responsive to the current and future business requirements of the Province and that permits the Province to better manage its costs;
- (f) provision of scalable, extensible and reliable services and Systems for the Province and other Clients;
- (g) to develop a long term and mutually beneficial business relationship characterized by, among other things, mutual cooperation, good faith and flexibility to allow for the addition or removal of services within the scope of the Services described in (and in accordance with) this Agreement, as well as the flexibility to make such adjustment to the Services as may be necessary or otherwise required as a result of any unforeseen conditions or circumstances;
- (h) increased access by the Province to SAP- related new technology, skills, and resources that will improve the Province's ability to respond to the needs of Clients and will enable the Province to capitalize on advances in the industry and remain competitive in the marketplace;
- (i) access to Service Provider's leading edge technologies, services, Systems, processes and other innovations relating to the Services, which technologies, services, Systems, processes and other innovations will continue to evolve and change over time and, at a minimum, remain consistent with the practices of a global market-leading supplier of services similar to the Services;
- (j) provision by Service Provider of reliable and cost-effective business continuity and disaster recovery services when providing the Services;
- (k) implement strategic transformation opportunities that will address business challenges and operational risks associated with SAP application development, SAP maintenance and support services, and systems integration services that align with the long term business objectives of government, and transform the current service delivery structure to meet the future needs of government and the Broader Public Sector;
- (l) provision of reliable services and Systems for the Province and other Clients that will, where practical, employ technology platforms and have the ability to interface and interoperate with industry standard technology platforms and Systems;



- (m) to protect the privacy, security and confidentiality of the Province Data;
- (n) to enable the Province to add additional or new services to the Services provided by Service Provider quickly and in an efficient and cost effective manner; and
- (o) to transition the Services provided by Service Provider to the Province or any Alternative Service Provider designated by the Province upon expiry or earlier termination (in whole or part) of this Agreement in a manner that is efficient, enables to the extent possible continued and uninterrupted delivery of such Services during such transition, and minimizes any Adverse Impact on the Province's business in connection therewith.

(2) The Parties acknowledge and agree that the above noted objectives and guiding principles are not, as such, intended to create legal obligations for the Parties, but instead, are intended to document the mutual primary objectives of the Parties in entering into this Agreement. The specific provisions of this Agreement and the other Transaction Documents are to be interpreted according to their plain meaning; provided that where there is uncertainty concerning the meaning of any specific provision, then such provision is to be interpreted in light of the objectives and guiding principles set forth in this Section.

#### **1.14 Non-Exclusive Relationship with Service Provider**

(1) This Agreement will not be interpreted to grant to Service Provider exclusive rights or to bind the Province in any way to an exclusive relationship with Service Provider. Service Provider is not the exclusive provider to the Province of any of the Services. For greater certainty, nothing in this Agreement will restrict the Province from:

- (a) in-sourcing or procuring from any other Person, or itself developing or providing, the Services, Software, Systems, Content, Documentation or other products or equipment relating to, interfacing with or otherwise to be used as part of or in connection with, or in substitution for, any Deliverables or the Services; or
- (b) procuring from any other Person, or itself providing, services substantially similar to, or services that interface with or that are otherwise to be used in connection with, the Services or any Deliverables.

(2) Except as provided in Schedule 17 (*Key Positions*), Article 20 (*Intellectual Property and Proprietary Rights*) and Section 23.04 (*Growth and Marketing*), nothing in this Agreement shall prevent Service Provider, Service Provider Subcontractors, or their Personnel from entering into agreements with others, or from developing or providing hardware, software or services to others. Personnel providing Services to the Province under this Agreement may perform similar services for others and this Agreement will not prevent Service Provider from using the Personnel provided to the Province under this Agreement for such purposes unless so stated in this Agreement.

### 1.15 Agreement as to Risk Allocation

Each Party agrees that:

- (1) the terms and conditions set out in this Agreement reflect, in part, the bargained-for allocation of risk under this Agreement and each Party actively considered such terms and conditions in determining the specific risks that it assumed in agreeing to its obligations under this Agreement and the Fees payable under this Agreement; and
- (2) the remedies of each Party set out in this Agreement are reasonable in light of the damages to the Province or other Party in the event of a failure to comply with the terms and conditions of this Agreement, and are not intended in any case to be, nor will be construed as, a penalty.

## ARTICLE 2 - AGREEMENT TERM AND RENEWAL

### 2.01 Initial Term of the Agreement

(1) The initial term of this Agreement (the “**Initial Term**”) will commence on Effective Date and will continue until the earlier of:

- (a) the date upon which this Agreement is terminated in accordance with the provisions of this Agreement; or
- (b) the day immediately preceding the tenth (10) anniversary of the Hand-Over Date.

(2) The Initial Term may be extended in accordance with Section 2.04 (*Renewal Option*) and Section 2.06 (*One Year Extension*).

### 2.02 No Renewal Assurances

The Province is giving no assurances whatsoever to the Service Provider, expressed or implied, that this Agreement will be renewed or extended beyond the expiry of the Initial Term. The Service Provider specifically acknowledges and affirms that it shall arrange its business affairs on the assumption that this Agreement will terminate at the end of the Initial Term and the Service Provider acknowledges that this Agreement may terminate prior to the Initial Term in accordance with the provisions of Article 28 (*Default and Termination*) or other provisions of this Agreement that expressly provide for a right of termination.

### 2.03 Intentionally Deleted



**2.04 Renewal Option**

The Province, at its sole option and acting in its discretion, may elect to renew the Services for one (1) additional renewal term of three (3) years expiring on the day immediately preceding the thirteenth (13) anniversary of the Hand-Over Date (the “**Renewal Term**”) (on terms, including Fees, with respect to any extension period that are mutually agreed by both Parties) by delivering written notice of such renewal to the Service Provider in accordance with the provisions of Section 2.05 (Renewal Notice).

**2.05 Renewal Notice**

Where the Province intends to renew the Services for a Renewal Term, the Province will provide the Service Provider with eighteen (18) months’ prior written notice of such intention. If the Province does not deliver such notice to the Service Provider on or before such date, or the Parties have not reached agreement on the terms including Fees by twelve (12) months prior to the expiry of the Initial Term, then the Province will be deemed to have elected not to renew the Services.



**2.08**            **Termination Assistance**

In connection with the expiry of the Initial Term or the Renewal Term (as the same may be renewed or extended as contemplated under this Agreement), or earlier termination thereof, the Service Provider will provide the Termination Services to the Province in accordance with Article 29 (*Termination Services*).

**2.09**            **Effect of Termination**

The expiry or earlier termination of this Agreement will cause, and will be deemed to cause, the expiry or earlier termination of all other Transaction Documents as of the same date, except for those provisions in this Agreement and in the other Transaction Documents, which are stated to survive Termination.

**ARTICLE 3 – TRANSITION IN****3.01**            **Hand-Over of Services**

Subject to the provisions of this Article 3 (*Transition In*), the Parties will transfer responsibility and accountability for the provision of the Services to the Service Provider (the “**Transition**”), with effect on the Hand-Over Date at 12.01 a.m. local time in Halifax, Nova Scotia pursuant to a transition agreement (the “**Transition Agreement**”) substantially in the form of the transition agreement attached to this Agreement as Schedule 1 (*Transition Agreement*) but with such amendments thereto as may be agreed to by the Parties in accordance with this Agreement. In connection therewith, the Service Provider will commence the delivery of the Services on the Hand-Over Date, other than those Services that are expressed in this Agreement as being Services that are to be commenced by the Service Provider on some date other than the Hand-Over Date (such as the Transition Services and the Termination Services).

**3.02**            **Transition Services**

(1) The Service Provider has developed in consultation with the Province a Transition Plan attached to this Agreement as Schedule 2 (*Transition Plan*), as such transition plan may be amended, modified and supplemented in accordance with the provisions of Section 3.03 collectively (the “**Transition Plan**”).

(2) For purposes of completing the Transition, and from and after the execution of this Agreement, the Service Provider will provide the following services to the Province (collectively, the “**Transition Services**”):

- (a) the complete and timely performance by the Service Provider of all matters required to be performed by or on behalf of the Service Provider, or for which the Service Provider is otherwise responsible, in accordance with Schedule 2 (*Transition Plan*) as such Transition Plan may be amended, modified, and supplemented (collectively, the “**Transition Plan**”) in a manner that will, to the greatest extent possible, ensure the continued, uninterrupted and efficient delivery of the Services throughout the Transition, and that will minimize any disruption to the business operations of the Province; and
- (b) the Service Provider will be responsible for the overall management and implementation of the Transition, including coordinating, planning and implementing the Transition in accordance with the Transition Plan and this Agreement.

### **3.03 Modifications to Transition Plan**

Notwithstanding the level of detail contained in the initial Transition Plan, the Parties acknowledge that the initial Transition Plan may require modifications after the execution of this Agreement. Such modifications will be agreed to by the Parties in accordance with the Transition Governance Process and the Change Order Process, and once agreed to through the Transition Governance Process, such modifications will be incorporated into the Transition Plan, and the Transition Plan will be deemed to be amended accordingly (including amending Schedule 2 (*Transition Plan*)). For greater clarification, the Parties confirm that any changes to the following in respect of the Transition Plan will require the joint Approval of the Parties:

- (a) the Hand-Over Date; and
- (b) the scope of the Services to be provided by the Service Provider as of the Hand-Over Date.

### **3.04 Transition Management and Reporting**

(1) During the Transition Period and for three months after the Hand-Over Date, each Party will assign a transition manager (each a “**Transition Manager**”), for issues related to Transition and any Transition information. The guiding principles, responsibilities and meeting process for meetings between the Transition Managers will be as set forth in Schedule 3 (*Transition Management and Governance*). For greater clarification, Schedule 3 (*Transition Management and Governance*) includes a governance process to monitor progress and identify any issues or circumstances that may impact the schedule set forth in the Transition Plan (the “**Transition Governance Process**”). Any potential delays or circumstances that may adversely affect the



Transition will be escalated in accordance with the Transition Governance Process in lieu of the Change Order Process.

(2) As part of the Transition Services to be provided by Service Provider and in accordance with the Transition Governance Process, Service Provider will report to the Province on the progress of the Transition and the Parties' achievement of the transition milestones set out in the Transition Plan.

### **3.05 Completion of Transition Plan**

(1) The transfer of the provision and performance of the Services to the Service Provider will be subject to the completion of the requirements of the Transition Plan in accordance with the dates set out in the Transition Plan and the execution by the Parties of the Transition Agreement. Such requirements of the Transition Plan will be completed at such time as:

- (a) all components of the Transition Plan that are required under the terms of the Transition Plan to be completed prior to the Hand-Over Date have been completed; or
- (b) the Service Provider and the Province, through the Transition Governance Process, have jointly waived the requirement to complete any such component of the Transition Plan in accordance with the dates set out in the Transition Plan, or have transferred the obligation of the Service Provider (or other applicable Person) to complete the same to such other period mutually agreed to by the Parties.

(2) The Service Provider will complete all components of the Transition Plan (if any) that are required under the terms of the Transition Plan to be completed after the Hand-Over Date, within the times indicated in the Transition Plan.

### **3.06 Transition Costs**

The Service Provider is responsible for all of the costs incurred by the Service Provider (or its Subcontractors) for completing the Transition Plan, including all direct and indirect costs incurred by the Service Provider (or its Subcontractors) in connection with the implementation of the Transition Plan, and the overall management of the Transition Plan, but excluding therefrom:

- (a) those costs, if any, identified in the Transition Agreement as being the responsibility of the Province;
- (b) those costs incurred by the Province in connection with the Transition Plan; and
- (c) Any increase or decrease in charges resulting from the modifications referenced in Section 3.03 (Modification of Transition Plan).

### 3.07 Work-in-Progress Activities

The Parties acknowledge that there are certain Work-in-Progress Activities existing as of the date of this Agreement that are described in Schedule 4 (*Work-in-Progress Activities*). The Parties will handle the Work-in-Progress Activities in accordance with the principles set out in Schedule 4. To the extent a Work-in-Progress Activity arises after the Effective Date but prior to the Hand-Over Date that will not be completed prior to the Hand-Over Date the Parties will amend Schedule 4 (*Work-in-Progress Activities*) in accordance with the Change Order Process.

## ARTICLE 4 - SCOPE OF SERVICES

### 4.01 Overview of Services

Except as may otherwise be agreed to by the Parties in accordance with the Change Order Process, and as may be transformed or changed in accordance with the provisions of this Agreement during the Term, the Service Provider will provide to the Province, and the Province will obtain from the Service Provider, the following services from and after the Hand-Over Date (or from and after such other date as is indicated below), upon the terms and conditions set forth in this Agreement (collectively, the “**Services**”):

- (a) the Transition Services, as more particularly described in Article 3 (*Transition In*), from and after the Effective Date;
- (b) the services described in Schedule 5 (*SAP Services*), as such Schedule may be amended and supplemented by the Parties from time to time in accordance with this Agreement;
- (c) the transformation services described in Article 6 (*Transformation*);
- (d) the project services described in Schedule 6 (*Project Work*) pursuant to and in accordance with Schedule 6 (*Project Work*);
- (e) the Termination Services, as more particularly described, and within the times indicated, in Article 29 (*Termination Services*);
- (f) such other services or additional services as may be agreed to by the Parties pursuant to the Change Order Process; and
- (g) all such other or additional services as set forth or otherwise described in this Agreement.

### 4.02 Included or Inherent Services

The Parties acknowledge that there are sub-functions or sub tasks not specifically listed or described in this Agreement: (i) that are inherent or necessary or ancillary part of the Services, or required for the proper performance and provision of the Services (as the same may be improved,



changed or transformed as contemplated under this Agreement); or (ii) as may otherwise be required to perform the Services that were performed prior to the Hand-Over Date. Such sub-functions or sub-tasks will be deemed to be implied or included in the scope of the Services to the same extent and in the same manner as if those sub-functions or sub-tasks had been specifically described in this Agreement. Notwithstanding the foregoing, this Section is not intended to expand the scope of the Services beyond the Services described in this Agreement, or to require a higher standard of Service delivery than that which is otherwise described in this Agreement and any such expanded scope or requirement for a higher standard will be subject to the Change Order Process.

#### **4.03            Language of Services**

The Service Provider will provide the Services in English except as otherwise provided in a Statement of Work.

#### **4.04            Standard of Care**

The Service Provider has expertise in the field of SAP application development, SAP application maintenance and support services, systems integration and IT consulting. The Service Provider has available, and shall have available at all times during the Term, the technology, personnel, Software, Systems, resources, knowledge and expertise necessary to perform its obligations under this Agreement in an efficient, cost-effective manner with a high degree of quality and responsiveness.

#### **4.05            Services and Program Changes**

All changes, modifications, amendments or supplements to the Services provided by the Service Provider to the Province under this Agreement will be undertaken in accordance with the Change Order Process and any other express provisions of this Agreement that contemplate changes to the Services.

#### **4.06            Quality Management**

- (1) In providing the Services to the Province during the Term, the Service Provider will:
- (a) be responsible for implementing and carrying out continuous improvement and quality management for all of the Services;
  - (b) establish quality assurance programs that encompass continuous improvement of the Services in addition to an ongoing quality assessment of the Services; and
  - (c) maintain an ongoing focus on the satisfaction of the Province and Clients as well as other users of the Services, by monitoring and evaluating trends that develop in the performance of the Services (as indicated through complaint processes or otherwise), and by making recommendations to the Province in respect thereof;

all in accordance with Service Provider's quality management program described in Schedule 7 (*Quality Management*).

(2) Such activities will be performed entirely by the Service Provider at its own expense and will not require the resources of the Province or the payment of any additional Fees without the Approval of the Province.

**4.07 Compliance with Laws and Policies**

(1) Without limiting the generality of any other provisions of this Agreement, at all times during the Term, and in the performance of the Services under this Agreement, the Service Provider will, and will cause its Personnel and its Subcontractors and their External Personnel to:

- (a) comply with Applicable Laws whether or not listed in Schedule 8 (*Specific Laws and Policies*) that apply to the Service Provider in its performance of the Services ("**Service Provider Applicable Laws**");
- (b) comply with the policies, processes, procedures and standards of the Province set out in Schedule 8 (*Specific Laws and Policies*) (the "**Province Policies**") as such policies, processes, procedures and standards may be changed or supplemented from time to time in accordance with the provisions of this Agreement;

(2) The Service Provider acknowledges that it is familiar with the Applicable Laws and the Province Policies as they apply to the Services, the Service Provider and the Service Provider's performance of the Services. The Province will endeavor to advise the Service Provider of the Province Applicable Laws that the Province wants the Service Provider to comply with and any changes to such Province Applicable Laws and to provide direction and interpretation of such Province Applicable Laws and any changes thereto pursuant to the Change Order Process. Subject to the provisions of this Agreement, the Service Provider will be responsible for complying with any new or changes in the Service Provider Applicable Laws and the costs thereof. Notwithstanding Service Provider's obligation under this Section 4.07, the Province



acknowledges that it will at all times remain solely responsible for (i) ensuring that the Services as set out in this Agreement meets the requirements for the Province's compliance with all Province Applicable Laws; and (ii) compliance with the Province's legal and regulatory requirements under Province Applicable Laws.

(3) The Province may amend any Province Policies or add new requirements as Province Policies, in its discretion. If the Province amends any Province Policy or adds any new requirements as a Province Policy, the Province will promptly provide notice of such amendment or new Province Policy to Service Provider. If the amendment or new Province Policy does not require a Change, then Service Provider will comply with the Province Policies, as amended, or with the new Province Policies, as applicable, promptly following receipt of notice of the amendment or new Province Policy. If the amendment or new Province Policy does require a Change, then Service Provider will make the Change in accordance with the Change Order Process

#### 4.08 Documentation

(1) The Service Provider will deliver to the Province a detailed and comprehensive operational procedures manual in respect of the Services (the "**Operations Manual**"), in a form and substance that is subject to the Province's prior consultation, and containing the matters referred to in Section 4.09 (*Operations Manual Requirements*), within three (3) months after the Hand-Over Date. The Service Provider will periodically, but not less frequently than semi-annually in the first Contract Year and annually thereafter, unless otherwise agreed by the Parties, update the Operations Manual to reflect changes in the operations or procedures described in the Operations Manual. The Service Provider will provide the Province with the updates to the Operations Manual on a timely basis, and within the period required for such updates to be made, for consultation with the Province.

(2) The Parties acknowledge that the Operations Manual is intended to describe to the Province how the Services will be performed, and will in no event be interpreted so as to relieve the Service Provider of any of its performance obligations under this Agreement.

#### 4.09 Operations Manual Requirements

The Operations Manual will describe or include the following:

- (a) the procedures associated with the business processes and technology support services that the Service Provider will undertake in order to provide the Services;
- (b) the methods of operation and procedures the Service Provider will use to perform the Services, such as network topologies, security administration, system configurations, call centre processes, human resource functions, business processes and associated documentation that provides further details of such



activities, as applicable (including, for example, user support manuals, job scheduling procedures, specifications and updates of such materials); and

- (c) current documentation with respect to the Systems, business processes, and processes in support of the operations and procedures used to deliver the Services (which documentation will be sufficient to enable the Province, or an Alternative Service Provider that is reasonably skilled in the provision of services similar to the Services, to fully assume the provision of the Services), and the Operations Manual will detail how such documentation will be maintained.

#### **4.10 Knowledge Transfer**

(1) The Service Provider acknowledges that the Province needs to retain an appropriate level of understanding regarding the manner in which the Services are delivered throughout the Term and has included efforts to provide such knowledge transfer as part of the Services. As part of the Services, the Service Provider will provide the Province with ongoing knowledge transfer with respect to the Services in the manner Approved through the Governance Process or the Change Order Process or as otherwise requested by the Province from time to time. The Service Provider will provide such knowledge transfer to the Province at the level of information and detail as may be reasonably required by the Province to ensure that the Province is a well-informed customer regarding the manner in which the Services are delivered.

(2) Service Provider will provide the Province and its staff with information and general training sessions regarding and in the manner Approved through the Governance Process or the Change Order Process as follows: (i) any significant process or Systems changes that may occur in respect of the Services throughout the Term; (ii) concerning new modules or software implemented by the Service Provider; and (iii) the Service Provider's ticketing system or other tools used by the Service Provider in delivering the Services.

#### **4.11 Province Retained Responsibilities**

(1) During the Term (and without limiting any other provisions of this Agreement regarding the responsibilities of the Province), the Province will remain responsible for and will retain control of the following:

- (a) setting all Province Policies and guidelines including, without limitation, those relating to the Services, records management and privacy and security;
- (b) agreements with Third Parties (including Clients) referred to in Schedule 5 but, for greater certainty, not including agreements with Service Provider Subcontractors or Suppliers;



- (c) all media relations, including the Approval of the Service Provider media communications and Client communication in accordance with Article 10 (*Branding and Communications*);
- (d) the exercise of powers for and on behalf of Her Majesty the Queen in Right of the Province of Nova Scotia, as represented by the Minister of Finance;
- (e) all relations with Clients and the Broader Public Sector; and
- (f) such other direct responsibilities as may be expressly contemplated in this Agreement.

(2) The Parties acknowledge that these responsibilities are vested solely in the Province. The Service Provider has no right or obligation to exercise any responsibilities of the Province set forth in this Section and is not accountable for actions taken by the Province in respect of the same. For greater clarification, where the Province exercises its responsibilities under this Section 4.11 (*Province Retained Responsibilities*) and such exercise affects the Service Provider in the manner contemplated in the Change Order Process, then the provisions of Article 7 (*Change Order Process*) will apply.

#### 4.12 Failure of Province to Perform Retained Responsibilities

(1) In the event of (i) a failure by the Province to perform its obligations under this Agreement (other than a failure to make payments in accordance with Section 28.03 (Material Breach by Province)), or (ii) a failure by the Province to provide services to the Service Provider as specifically provided in this Agreement, if any, to the extent that the Services are contingent upon the performance by the Province thereof, then the following provisions will apply:

- (a) the Service Provider will notify the Province as soon as reasonably possible,
  - providing details with respect to such failure or infringement (such as the specific obligation or co-operation sought, the individuals from whom it was sought, and the date such request was made);
- (b) the Service Provider and the Province, through the Governance Process, will promptly meet in order to discuss and resolve, if possible, the failure;
- (c) unless the Province contests the Service Provider's assertion that such failure has occurred, the Province will address such failure promptly;
- (d) if such failure of the Province or infringement has a material impact on the delivery and performance of the Services or on the cost of providing the Services, then effective as of the date that the notice of the failure or infringement is delivered to the Province in accordance with paragraph 4.12(1)(a) above, the Service Provider and the Province will adjust the Fees, time frames for performance, Service Levels or Services, as applicable and to the extent affected, either on a temporary basis or a long term basis, in accordance with the Change Order Process;



- (e) if the Service Provider does not so notify the Province of the failure or infringement as set forth in this Section, then such failure or infringement on the part of the Province will not excuse the Service Provider's failure to perform its obligations under this Agreement; and
- (f) any failure of the Province Shared Infrastructure will not be governed by this Section but will instead be governed by the provisions set forth in Article 21 (*Province Shared Infrastructure*).

#### 4.13 Right to Suspend Performance

(1) The Province may, in its discretion, not more than [ ] during the Term of this Agreement require Service Provider to suspend its performance of all or any portion of any Services [ ]. If the Province requires such a suspension, the Province shall provide as much prior written notice to Service Provider as possible, which at a minimum will not be less than fifteen Business Days, except where it is not reasonably possible for the Province to provide fifteen Business Days prior written notice. The Province will use commercially reasonable efforts to include in the notice an estimate of the number of days' suspension it requires and to keep Service Provider up to date regarding any changes to such estimate.

(2) Upon receipt of the notice referred to in Section 4.13(1), Service Provider will suspend its performance of the Services referred to in the notice [ ]

commencing on the date for suspension specified in such notice, and will use all commercially reasonable efforts to minimize all costs incurred by Service Provider as a result of such suspension. [ ]

[ ] The Parties will act reasonably to take account of the impact of the suspension of services on Service Provider's ability to meet Service Levels.

(3) Within ten (10) Business Days following receipt of a suspension notice, Service Provider shall deliver to the Province a Change Proposal setting forth: (a) any proposed adjustments to the Services or additional Services that Service Provider reasonably requires solely and directly as a result of the suspension requested by the Province; and (b) any proposed adjustments to the Fees that are solely and directly attributable to the suspension requested by the Province, calculated in accordance with Schedule 22 (*Fees*). Following receipt of such Change Proposal, the Parties will negotiate the Change Order in accordance with Article 7 (*Change Order Process*).

(4) Upon the earlier of: (a) the expiration of the period of time during which the Province has required Service Provider to suspend performance; and (b) the receipt by Service Provider of notice from the Province terminating the suspension requirement, Service Provider will take steps to resume the provision of the suspended Services, and will resume the provision of the suspended Services as soon as reasonably possible.



(5) The remedy set out in this Section 4.13 is Service Provider's sole remedy in the event of a requirement by the Province that Service Provider suspend its performance of all or any portion of any Services.

## ARTICLE 5 - SERVICE AND DATA LOCATIONS

### 5.01 Overview of Service Locations

(1) No Services will be provided or performed by the Service Provider at any location other than the Service Provider locations set out in Schedule 9 (*Service Locations*) (collectively the "Service Locations").

(2) Any access to, or use, storage, transmittal, or otherwise making available of Province Data by Service Provider or its Subcontractors at or from the Service Provider Locations shall be Approved by the Province which Approval may include any Approvals expressly provided in Schedule 23 (*Privacy and Security*).

### 5.02 Location of Province Data

Subject to section 5.01 above, no Province Data will be accessed, used, stored, transmitted or otherwise made available in any manner outside of Canada, and no Person outside of Canada will have access in any manner to the Province Data, except as may be specifically permitted under Applicable Law and Approved in writing by the Province from time to time which Approval may include any Approvals expressly provided in Schedule 23 (*Privacy and Security*).

### 5.03 Service Location Policies

To the extent applicable, at all times while accessing any premises of the other Party (including the premises of any applicable subcontractors of the other Party) in connection with the Services being performed under this Agreement, or as may otherwise be contemplated under this Agreement, each Party will, and will cause their respective personnel, external personnel, subcontractors, representatives or other parties for whom they are responsible at law or under the terms of this Agreement to, comply with any standard workplace security, safety, operational and other similar policies and procedures applicable to visitors for such Party, as may be notified by each Party to the other from time to time. The foregoing will not in any way limit or otherwise prohibit the Province from exercising its rights under Article 22 (*Audit Rights*).

## ARTICLE 6 - TRANSFORMATION

### 6.01 Transformation Program

Each party will be responsible for their respective obligations in connection with the transformation projects (the "**Transformation Projects**") identified in and in accordance with the provisions set forth in Schedule 10 (*Transformation Projects*).

### 6.02 Transformation Plan

The Transformation Projects will be conducted in accordance with the transformation plan prepared by the Service Provider, including the completion dates set forth in the transformation plan, an initial copy of which is attached as Schedule 11 (*Transformation Plan*), and as such initial transformation plan may be amended, modified and supplemented as contemplated in Section 6.03 (*Modifications to Transformation Plan*) (collectively, the "**Transformation Plan**"). Any such modifications to the Transformation Plan, once agreed to by the Parties in accordance with Section 6.03 (*Modifications to Transformation Plan*), will be incorporated into the Transformation Plan, and the Transformation Plan will be deemed to be amended accordingly (including amending Schedule 11 (*Transformation Plan*)).

### 6.03 Modifications to Transformation Plan

Notwithstanding the level of detail contained in the initial Transformation Plan attached as Schedule 11 (*Transformation Plan*), the Parties acknowledge that the initial Transformation Plan may require modifications after the execution of this Agreement. Such modifications will be agreed to by the Parties in accordance with the Change Order Process, and once agreed to



through the Change Order Process, any such modifications will be incorporated into the Transformation Plan, and the Transformation Plan will be deemed to be amended accordingly. In connection with any such modifications to the Transformation Plan, the Parties will ensure that the Transformation Plan, as so modified, adequately addresses the following:

- (a) policy compliance and operational impact;
- (b) standards adherence and privacy and security;
- (c) a detailed description of each stage and applicable completion dates for each stage Transformation Projects; and
- (d) such other matters as may be applicable in the circumstances.

#### **6.04 Disputes Regarding the Transformation Plan**

If modifications are required to be made to the Transformation Plan as contemplated under Section 6.03 (*Modification to Transformation Plan*), and the Parties are unable to agree upon all or any matter relating to such modifications to the Transformation Plan in accordance with the Change Order Process, then the matter will be deemed to be a Dispute and will be settled between the Parties in accordance with the process described in Section 27.03 (*Expedited Dispute Resolution*).

### **ARTICLE 7 - CHANGE ORDER PROCESS**

#### **7.01 Ordinary Course Changes**

(1) The Parties acknowledge and agree that the services, operations and activities of the Province that are the subject of the delivery of Services pursuant to this Agreement are subject to changes in the ordinary course of such operations and activities, which changes do not have a material impact;

- (a) on the delivery and performance of the Services; or
- (b) on the cost of providing the Services;

(collectively, the “**Ordinary Course Changes**”).

(2) Ordinary Course changes include: i) changes implemented by the Service Provider to the Service Provider Systems other than those changes implemented as a result of a Change Order, and ii) such other changes agreed to by the Parties.

(3) The Ordinary Course Changes are within the scope of the Services contemplated under this Agreement and will not result in additional Fees being payable by the Province to the Service Provider. The Ordinary Course Changes may be implemented without the need for a formal Change Order. Notwithstanding the foregoing, the Service Provider will maintain a

record of each Ordinary Course Change that occurs in the Services, and will provide the Province, through the Governance Process, with reports detailing the same.

**7.03****Other Changes**

(1) In addition to the Ordinary Course Changes, the Parties acknowledge that certain changes may be required or desirable which exceed or are otherwise outside of the definition of Ordinary Course Changes. Such changes may include the following:

- (a) changes to the material Services;
- (b) changes to a Service Level (including the addition or removal of Services Levels) in accordance with Schedule 12 (*Service Levels*);
- (c) a material change to a SAP Application which is not a SAP Service Enhancement;
- (d) a change that has an impact on the Privacy and Security Obligations;
- (e) a change in the locations from where the Services are primarily performed;
- (f) Projects to be performed by Service Provider as part of the Project Services;
- (g) changes { in accordance with Section 5 (*Additional or Reduced Resources*) in Schedule 22 (*Fees*);
- (h) a change for the addition or removal of Clients;



- (i) any change to the Intellectual Property Indemnifications under Section 25.04 and Section 25.05 required by a Party with respect to any Third Party Intellectual Property identified in a Change Order; and
- (j) any other matter that the Parties may agree as properly being the subject of the Change Order Process.

(2) The Parties agree that changes addressed by this Article do not include SAP Service Enhancements, Standard Operational Changes, or changes as a result of Break/Fix activity under Schedule 5 (SAP Services), except to the extent that such changes are implemented as Mandatory Changes.

#### **7.04 Change Request**

Either Party may initiate the change process described in Sections 7.04 (*Change Request*) to 7.13 (*Record of Changes*) (collectively, the “**Change Order Process**”) in connection with a change described in Section 7.03 (*Other Changes*) or in respect of any other matter referred to in the Agreement as being subject to the Change Order Process by submitting to the other Party, through the Governance Process, a written notice signed by the initiating Party, which notice will include all relevant information reasonably required for the proper consideration of such change or for the commencement of the Change Order Process in respect thereof (each, a “Change Request”).

#### **7.05 Change Request Process**

- (1) Following the delivery of a Change Request by one Party to the other, the following will apply:
  - (a) the Parties will meet together through the Governance Process to clarify the Change Request and confirm the requirements of the Change Request including details regarding the time requirements to consider the Change Request (it being acknowledged by the Parties that the time required may vary depending upon the nature and complexity of the proposed change);
  - (b) upon receipt of a Change Request from the Province, the Service Provider will prepare a proposal (the “**Change Proposal**”) within five (5) Business Days (or such longer or shorter period of time as agreed to by the Parties through the Governance Process, acting reasonably and having regard to the nature and complexity of the Change Request in question), which Change Proposal will include a privacy assessment of the collection, use, disclosure and retention of Personal Information and a threat and risk assessment (in such form as may be required by the Province), as well as a description of the impact of the proposed change on the following (to the extent applicable having regard to the nature of the proposed change):
    - (i) the charges required for implementation,

- (ii) the rights and obligations of the Parties under this Agreement with respect to, or as a result of, the proposed change,
- (iii) the Services,
- (iv) the Service Levels,
- (v) any technology, Systems or operations of the Service Provider used in the Services and likely impacting the Province, the Clients, the Broader Public Sector or any customers of the Services,
- (vi) the Privacy and Security Obligations;
- (vii) an increase or decrease to the Fees payable under this Agreement, and
- (viii) any other relevant matter related to this Agreement that Service Provider believes will be materially impacted (both positively and negatively).

If the number of Change Requests exceeds the Service Provider's reasonable capacity to prepare a Change Proposal within the specified period the Parties will consult to prioritize Change Requests, for the Province to authorize the payment of additional Fees for responding to such additional Change Requests, or to otherwise address the number of Change Requests.

The last two paragraphs in section 7.05 (b) do not apply to Service Provider's effort to prepare proposals for Project work.

- (c) if the Service Provider initiates the Change Request, then the Service Provider will prepare and deliver a Change Proposal to the Province within a period of time as agreed to by the Parties through the Governance Process, acting reasonably and having regard to the nature and complexity of the Change Request in question) following the meeting of the Parties to clarify the Change Request, as contemplated in paragraph 7.05(1)(a) above;
- (d) the Province will provide the Service Provider with a written response to the Change Proposal within ten (10) Business Days (or such longer or shorter period of time as agreed to by the Parties through the Governance Process) of receipt of the Change Proposal from the Service Provider, indicating the Province's Approval of the Change Proposal, its rejection of the Change Proposal (indicating the reasons therefor), or the terms of a counter proposal acceptable to the Province;



- (e) any Change Proposal Approved by the Province will constitute a Change Order, and will be implemented by the Service Provider in accordance with the particulars of the Change Order;
- (f) the Service Provider will be required to respond to all Change Requests received from the Province and to prepare a Change Proposal in respect thereof;
- (g) the Service Provider will not reject a Change Request initiated by the Province unless the Service Provider is unable to make the changes contemplated in the Change Request as a result of technical impediments that are commercially unreasonable to overcome, or the Change Request will have an Adverse Impact on the Service Provider. The Service Provider will provide the Province with a written explanation of any Adverse Impact stating in detail the particulars of the Adverse Impact and suggesting reasonable alternatives or workarounds (to the extent possible) for consideration by the Province in respect thereof; and
- (h) if the Province requires that the Change Request be implemented as requested, notwithstanding the Adverse Impact to the Service Provider, then the impact of the Change Request on the Fees, the Service Levels, the Privacy and Security Obligations or other material terms and conditions of this Agreement will be addressed through the Governance Process. If a mutually acceptable resolution is not reached in respect of the proposed Change Request, then the matter will be treated as a Dispute to be resolved pursuant to the Dispute Resolution Process set forth in Article 27 (*Dispute Resolution*).

#### **7.06 Change Request Impact on Fees**

If a Change Request has an impact on the Fees that may result in either an increase or decrease to the Fees, then the Parties will determine any increase or decrease to be made to the Fees as a result of such impact in a manner that is consistent with the determination of the amounts as set forth in Schedule 22 (*Fees*) including in appropriate circumstances agreeing that Services adjustments will be provided during an interim period on a time and materials basis to provide a baseline that can be used in order to fix price the Services adjustment. If a mutually acceptable increase or decrease to the Fees is not reached in respect of the proposed Change Request, then the matter will be treated as a Dispute to be resolved pursuant to the Expedited Dispute Resolution Process set forth in Article 27.

#### **7.07 Mandatory Changes**

- (1) The Province may require the Service Provider to implement a Change Request before it has become a Change Order (each a “**Mandatory Change**”) in situations where:
  - (a) the Parties are unable to agree upon the Change Request and associated Change Proposal for any reason; or
  - (b) the Parties are unable to use, fully complete or otherwise commence the processes set forth in Sections 7.04 (*Change Request*) to Section 7.06 (*Change Request Impact on Fees*); or



- (c) due to legal, business or operational considerations relating to the Mandatory Change, the Province requires that the Service Provider implement the changes forthwith.

(2) The Mandatory Changes will be implemented by the Parties in accordance with the provisions of Section 7.08 (*Implementation of Mandatory Changes*).

#### **7.08 Implementation of Mandatory Changes**

(1) The Province may require the Service Provider to implement a Mandatory Change by the delivery of a written request (each, a “**Mandatory Change Request**”) to the Service Provider, in which case the following provisions will apply:

- (a) the Mandatory Change Request will comply with the requirements of Section 7.04 (*Change Request*);
- (b) the Service Provider will not reject a Mandatory Change Request initiated by the Province unless the Service Provider is unable to make the changes contemplated in the Change Request as a result of technical impediments that are commercially unreasonable to overcome or if the Change Request will have an Adverse Impact on the Service Provider;
- (c) the Approval or agreement of the Service Provider to the Mandatory Change Request is not required;
- (d) the Mandatory Change Request will immediately become a Change Order for the purposes of Section 7.09 (*Change Orders*) upon the issuance by the Province, and the Service Provider will implement the Mandatory Change following receipt of the Mandatory Change Request from the Province, as soon as reasonably practicable to do so. The Mandatory Change will be:
  - (i) treated as a Standard Operational Change in accordance with Schedule 5 (*SAP Services*) of this Agreement; or
  - (ii) if the Mandatory Change is not a Standard Operational Change it will be implemented as a Project on a time and materials basis in accordance with Schedule 22 (*Fees*);
- (e) the Parties will cause a record of each Mandatory Change and Mandatory Change Request to be maintained as contemplated in Section 7.13 (*Record of Changes*).

#### **7.09 Change Directives**

(1) The Service Provider will use all reasonable efforts to accommodate the Province’s Change Requests for new services reasonably related to the Services and will not decline to start the performance of new services under a Change Request from the Province during a Dispute related to the pricing of such Change Requests, unless:



- (a) there are technical impediments that are commercially unreasonable to overcome;
- (b) the Service Provider and its Subcontractors do not possess the technical skills or capacity to implement such Change Request;
- (c) the Change impacts the Service Provider's ability to perform the Services or meet the Service Levels; or
- (d) the Change Request would cause it to be in contravention of Applicable Laws.

(2) If the Province and the Service Provider cannot resolve a Dispute over the fees with respect to a Change Request within a reasonable period of time and the Province wishes to proceed with the Change Request, the Province may deliver to the Service Provider a change directive ("Change Directive"), and if the Change Directive is not a Standard Operational Change in accordance with Schedule 5 (SAP Services) of this Agreement, the Service Provider will commence the provision of services thereunder on a time and materials basis at rates referred to in Schedule 22 (*Fees*).

(3) Notwithstanding the issuance of a Change Directive by the Province, the Parties shall continue to negotiate mutually agreeable fees in connection with such Change Directive and any related Dispute. Once the Parties have settled such fees and other terms either through negotiations or in accordance with Section 27.03 (*Expedited Dispute Resolution*), the Parties shall execute an appropriate Change Order.

#### **7.10 Change Orders**

A Change Request or a Mandatory Change Request will become a "**Change Order**" when the requirements of the procedures to consider such Change Request or Mandatory Change Request set out in this Article 7 (*Change Order Process*) have been satisfied, and the Change Request or Mandatory Change Request is Approved by each of the Parties, where such Approval is required pursuant to this Article 7 (*Change Order Process*).

#### **7.11 Implementation of Change Orders**

The Service Provider will use commercially reasonable efforts to minimize disruption to the delivery of the Services and to the business operations of the Province and the Clients as the result of the implementation of a Change Order arising from a Change Request or a Mandatory Change Request. The cost of implementing a Change Order will be borne as set out in the Change Order or as otherwise provided in this Agreement.

#### **7.12 Consequential Amendments**

If the Parties proceed with a Change Order (whether as the result of a Change Request or a Mandatory Change Request), then the Change Order will constitute an amendment to this Agreement including the relevant Schedules to this Agreement. From and after the effective date of the implementation of a Change Order, this Agreement will be interpreted as amended by the Change Order, and this Agreement, as so amended, will continue in full force and effect for the remainder of the Term.

**7.13**      **Record of Changes**

The Parties will jointly maintain an accurate and complete record of all changes to the Services contemplated in this Article 7 (*Change Order Process*) including all Ordinary Course Changes, Change Requests, Mandatory Change Requests, Mandatory Changes, Change Directives, Material Business Changes and Change Orders. Such record may be maintained in such form as the Parties may agree pursuant to the Governance Process, including by way of a server-based record accessible by both Parties. Each Party will cooperate to make corrections to such records as the other Party may reasonably request to ensure that the record of all changes is accurate and complete, in all material respects, at all times throughout the Term.





## ARTICLE 8 - SERVICE LEVELS

### **8.01 Overview of Service Levels**

The Service Provider's obligation to perform the Services at standards and levels of performance that evolve over the Term, including as a result of the continuous improvement initiatives contemplated in this Agreement will apply to all of the Services, including those portions of the Services that are not specifically measured or otherwise monitored through the use of Service Levels.

### **8.02 General Compliance**

- (1) The Service Provider will perform the Services throughout the Term to a standard and level of performance which is required in order for the Service Provider to meet or exceed the Service Levels.
- (2) The Service Levels set out in this Agreement, as may be amended from time to time in accordance with this Agreement, are intended to be baseline performance standards and levels for the delivery and performance of the Services.
- (3) During the Term, the Service Provider will:



- (a) identify ways to improve or increase Service Level Performance including, without limitation, continually monitoring and evaluating changes and trends in the provision of SAP application maintenance, support and development services and monitoring and evaluating new and available technologies and service delivery processes and strategies that are applicable to the Services; and
- (b) [ ] improve the quality of the Services and the Service Level Performance in a manner consistent with the terms and intent of this Agreement, taking into account the cost of such improvement as compared to the benefit to be derived therefrom; and

(4) Any improvements in Service Level Performance or performance standards and levels achieved by the Service Provider in providing the Services, whether or not as part of any progressive improvement requirements contemplated in this Agreement, will not result in an increase in the Fees payable under this Agreement unless otherwise Approved by the Province.

**8.03 Effective Date of Service Levels**

The Service Levels will apply to the Services from and after the Hand-Over Date, as specified in Schedule 12 (*Service Levels*) and Schedule 13 (*Service Level Failures*).

**8.04 Restrictions on Changes to Service Levels**

The Service Provider acknowledges that the establishment of Service Levels including the Service Level Targets is a matter of fundamental importance for the Province. The Service Provider will not agree or purport to agree with any Client or other Person, whether in its own right or purportedly as agent for and on behalf of the Province, to amend, change or modify in any manner any of the Service Levels or Service Level Targets without the Approval of the Province.

## 8.06 Review and Changes to Service Levels

(1) The Parties acknowledge and agree that Service Levels are intended to be comprehensive, but not all inclusive, and accordingly, it is the intention of the Parties that during the Term the Parties may agree to different or additional Service Levels (including by adjusting the Service Level Minimums and Service Level Targets) in respect of any of the Services. Unless the Parties otherwise agree, on an annual basis during the Term, and pursuant to the Governance Process, the Parties will jointly review the following:

- (a) the then-current Service Levels including the Key Performance Indicators and the Critical Performance Indicators and the Service Level Performance achieved by the Service Provider during the prior twelve month period;
- (b) generally available information indicating industry-wide improvements in delivery of substantially similar services (including relevant Benchmarking's reports commissioned in accordance with Article 9 (*Benchmarking*), if any);
- (c) improved performance capabilities, including those associated with advances in technology and processes used to provide the Services; and
- (d) the evolution of Service Level reporting tools and measurements.

(2) On the basis of such review, but subject to Section 8.05, the Parties will discuss and agree upon whether any of the Service Levels, Service Level Minimums or Service Level Targets will be adjusted. Any such adjustment contemplated in this Section will be subject to the mutual agreement of the Parties in accordance with the Governance Process, or as a Change Order through the Change Order Process. Any such adjustments, whether agreed to by the Parties in writing and signed by both Parties through the Governance Process, or whether through a Change Order pursuant to the Change Order Process, and will be deemed to be an amendment to the Service Levels contained in Schedule 12 (*Service Levels*) of this Agreement.

## 8.07 Monitoring

From and after the Hand-Over Date, the Service Provider will establish and maintain in place, at all times, appropriate policies and procedures to monitor and evaluate the achievement of the Service Levels during the applicable measurement periods, in order to permit the Service Provider, and the Province (as applicable), to:

- (a) evaluate Service Level Performance;
- (b) satisfy the reporting obligations under this Agreement;
- (c) assist the Province in responding to inquiries from Clients or the Broader Public Sector regarding the Service Provider's performance of the Services;
- (d) enable the Province to report publicly on the achievement or non-achievement of the Service Levels by the Service Provider in accordance with Province policies,



after consultation with the Service Provider to the extent permitted and practicable ; and

- (e) confirm and verify Service Level Performance in respect of any Service Level from time to time upon reasonable notice.

#### **8.08 Service Level Reports**

(1) From and after the Hand-Over Date, and without limiting the application of Section 8.07 (*Monitoring*), the Service Provider will prepare and maintain records and reports summarizing its Service Level Performance and providing the particulars of any failure of the Service Provider to meet a Service Level, organized by Service type (to the extent possible) and in such form and content as set forth in Schedule 12 Service Levels. For greater clarification, any reports regarding the failure of the Service Provider to meet a Service Level will include detail regarding the particulars of the failure, a description of the measures taken or to be taken by the Service Provider to rectify and remedy the failure, and the timeline in which such measures were or are expected to be taken by the Service Provider, in order to allow the Province to:

- (a) evaluate the consequence of such failure;
- (b) communicate with or respond to the Clients that received the Service that failed to meet such Service Level or the Broader Public Sector; and
- (c) cooperate with the Service Provider to rectify and remedy the consequence of such failure and to prevent future failures to meet such Service Level.

(2) The Service Provider will provide such reports to the Province on a monthly basis and in accordance with applicable reporting requirements set out in Schedule 20 (*Reporting*). The Service Provider will also provide the Province with notice of each material failure to meet a Service Level in accordance with the provisions of Schedule 12 (Service Levels).

#### **8.09 Incident Management**

(1) In order to facilitate the ability of the Parties to quickly address, mitigate or otherwise deal with an actual or potential Incident , the following provisions will apply:

- (a) from and after the Hand-Over Date, the Service Provider will develop, implement, maintain and comply with Incident alert, escalation, and management procedures, which procedures shall be subject to the Approval of the Province which shall be documented in the Operations Manual (such procedures, as may be amended by the Parties with the Approval of the Province from time to time, the "**Incident Management Procedures**");
- (b) if the Service Provider becomes aware of an Incident, then the Service Provider will immediately notify the Province of the Incident or, to the extent that such immediate notice is not possible, as soon as possible, by providing the Province with the particulars of the Incident;

- (c) the Service Provider will treat the Incident as a priority, will work diligently to avert or minimize any adverse effect that the Incident may cause, and will deal with the Incident in accordance with the Incident Management Procedures;
- (d) upon the occurrence of any Incident, the Service Provider will perform a root cause analysis in accordance with Schedule 12 (*Service Levels*);
- (e) the root cause analysis and proposal will be completed by the Service Provider as part of the Services at no additional cost to the Province;
- (f) for greater clarification, and for purposes of this Section, any Incidents of Subcontractors and Suppliers of Service Provider will be deemed to be Incidents of the Service Provider; and
- (g) the Service Provider will review each root cause analysis with the Province, monthly (or more frequently as may be requested by the Province from time to time) to monitor Service Provider's corrective and remedial actions (including detective and preventive actions).

(2) For greater certainty, the Service Provider will not be required to perform a root cause analysis as described in Subsections 8.09(1)(d), 8.09(1)(e) and 8.09(1)(g), in connection with an Incident in respect of systems owned or controlled by third parties (other than Subcontractors and Suppliers) for which the Service Provider has no control.

(3) Either Party may escalate any Dispute with respect to an Incident in accordance with the escalation procedures established as part the Governance Process.

#### **8.10 Service Level Failures**

The Service Provider's failure to meet any Service Level Minimum will be governed by the provisions of Schedule 13 (*Service Level Failures*).

2) A failure to meet a Service Level Minimum which does not give rise to a Service Level Termination Event will not give rise to a right of the Province to terminate this Agreement, but



will give rise to rights and remedies of the Province in respect of defaults generally in accordance with this Agreement including, without limitation, the provisions of this Section and the right to credits ("**Service Level Credits**") in accordance with the provisions of Schedule 13 (*Service Level Failures*).

## ARTICLE 9 – BENCHMARKING

### 9.01 Benchmarking

(1) The Province may require benchmarking comparisons of the cost competitiveness of all of the Services (each, a "**Benchmarking**"), in which case the following will apply:

- (b) the Service Provider will cooperate with the Province in connection with any such Benchmarking in the manner contemplated in Section 9.02 (Benchmarking Cooperation);
- (c) the third party consultant performing the Benchmarking (the "**Benchmarker**") will be selected and engaged by the Province and the Service Provider jointly. The Service Provider agrees that [redacted] are each acceptable as a Benchmarker. If the Province and the Service Provider are not able to agree on the selection of the Benchmarker, then the matter will be a Dispute and will be settled in accordance with Article 27 (*Expedited Dispute Resolution*);
- (d) the costs of the Benchmarker will be paid by the Province;
- (e) as a condition to its engagement, the Benchmarker will execute a Non-Disclosure Agreement or the Service Provider and the Benchmarker will enter into such other form of confidentiality agreement acceptable to both parties with the parties acting reasonably;
- (f) The Benchmarker shall perform a price based benchmark, comparing the total charges, in aggregate, applicable to the Benchmarked Services, against the total charges applicable to similar services with respect to the selected entities in the Representative Sample as such term is defined below. For the purposes of this Section "Representative Sample" for the benchmarked Services shall mean [redacted] that shall only include customers outsourced by top tier outsourcers in North America with similar scope, service levels and volume and similar complexity as the benchmarked Services;

- (g) The Benchmarker will be directed to conduct the Benchmarking as promptly as prudent in the circumstances; and
- (h) The Province will be entitled to perform [ ] and the Parties agree that the results of such Benchmark will not affect pricing during the Initial Term.

**9.02 Benchmarking Cooperation**

(1) The Province will, in consultation with the Service Provider, with the Benchmarker's assistance, determine the scope, methodology, relative comparisons and execution of each Benchmarking. The Service Provider will cooperate in the Benchmarking studies by providing information requested in relation to the Benchmarking, and in particular, the Service Provider will provide:

- (a) the Benchmarker (and will ensure that its Subcontractors provide, either directly to the Benchmarker or to the Service Provider), all necessary information, documents and assistance as may be reasonably required for the Benchmarker to perform the Benchmarking; and
- (b) the Benchmarker with reasonable access to the Service Provider's performance data.

**9.03 Benchmarker's Report**

(1) The Benchmarker will be directed to issue a preliminary written report reflecting its findings. Each Party will have fifteen days from receipt of the preliminary written report (or



such other period as the Parties may mutually agree) to review the same and make submissions to the Benchmarking with respect to the Benchmarking's findings. As part of such review and comment process, either Party may request the Benchmarking to provide the data on which its findings are based. If there are issues raised in response to the Benchmarking findings, the Benchmarking shall review the issues raised and any other materials submitted by either Party. The Benchmarking will be directed to issue a final report of its findings (the "Benchmarking Report") within thirty (30) days after the end of the review and comment period (or such other period as the Parties may mutually agree), including any revisions to the original Benchmarking findings. In doing so, the Benchmarking may accept or reject the comments and changes requested by either Party as it deems appropriate in its sole discretion.

(2) Each Party may dispute the results included in the Benchmarking Report in accordance with Article 27 provided that any disputes with respect to the results set out in the Benchmarking Report will be resolved within six (6) months of the date such Benchmarking Report is issued.

**9.04 Benchmarking's Adjustment – Cost Benchmarking**

(1) The Parties will follow the process set out in this Section 9.04 following finalization of the Benchmarking Report, either as a result of the Parties' acceptance of the Benchmarking Report or pursuant to the Dispute Resolution process referred to in section 9.03.

(2) and the target results for such Benchmarking will be deemed to such target results, the "Target Results".

(3) The report of the Benchmarking including the Target Results shall be treated as Confidential Information of each Party.

(4) Any adjustment to the Fees based on the Target Results will be based on the following principles:

(c) the Service Provider will provide the Province a proposal (the "Pricing Proposal") to reduce its Fees for the Province's consideration;

- (d) the Province may accept the Pricing Proposal or if the Province does not agree with the Pricing Proposal, the Parties will discuss potential changes to the Pricing Proposal;
- (e) if within 60 days from the date of the Province's and Service Provider's receipt of the Benchmark's final report, or such extended period as mutually agreed by the Parties, the Province and Service Provider do not agree on a plan to bring the Fees to within [ ] of the Target Results, then the Province may:
  - (i) accept the Pricing Proposal, provided that the Province will be entitled to perform an additional Benchmark within two years of such proposal acceptance; or
  - (ii) terminate this Agreement on notice to Service Provider, provided that such termination will not be effective prior to April 1<sup>st</sup>, 2018, and provided that the Province shall pay the termination fees set out in Schedule 25 (*Termination Fees*). For greater certainty if the Pricing Proposal includes an adjustment to the Fees such that the Fees are within [ ] of the Target Results, the Province has no right to terminate this Agreement;

(iii)

**9.05 Limitation**

Notwithstanding anything to the contrary herein or in any other agreement referenced herein or made between the Parties, no Benchmarking will result in any increase in any Fees payable by the Province or decrease in any agreed to Service Levels, change in performance relative to such Service Levels, or any other reduction in quality, responsiveness or performance without the Province's prior written consent. All adjustments to Fees will be effective prospectively from the date the Benchmark Report is delivered by the Benchmark.

**ARTICLE 10 - BRANDING AND COMMUNICATIONS**

**10.01 Use of Province Marks**

In respect of the use or display by the Service Provider of any trade-marks, official marks, business names, trade names, domain names, trading styles, logos, or other distinguishing marks of the Province, whether registered or unregistered, in the performance of the Services, the Parties agree as follows:

- (a) The Service Provider will use only the trade-marks, official marks, business names, trade names, domain names, trading styles, logos, or other distinguishing



marks of the Province identified in Schedule 14 (*Conditions of Use of Province Marks*), (each a "Province Mark");

- (b) prior to any public display or use of a Province Mark by the Service Provider in the performance of the Services, the Service Provider will obtain the Approval of the Province;
- (c) subject to Section 10.02 (*Brand Use*), any display or use of the Province Marks by the Service Provider will only be for the duration of the Term, on a non-exclusive basis, and only for the purposes of providing the Services;
- (d) the Service Provider will use the Province Marks only in accordance with this Agreement and in the manner expressly permitted in writing by the Province and provided that:
  - (i) the character and standards of quality of the wares and Services in respect of which the Province Marks may be used by the Service Provider are as set out in Schedule 14 (*Conditions of Use of Province Marks*),
  - (ii) such display or use of the Province Marks is in accordance with the provisions of Schedule 14 (*Conditions of Use of Province Marks*), appropriate legends and the Province Policies including, without limitation, any policies established or enforced by Communications Nova Scotia (or any successor organization), notice of which will be given to the Service Provider, and all usage guidelines and restrictions as reasonably prescribed from time to time by the Province in respect thereof, or in accordance with other express permissions granted by the Province, and
  - (iii) the Service Provider may not register or carry on business under a business name that contains any of the Province Marks;
- (e) upon Termination of this Agreement, the Service Provider:
  - (i) will immediately cease any and all use of the Province Marks,;
  - (ii) will discontinue the provision of all products and Services in association with the Province Marks;
- (f) any and all goodwill that is or may be acquired from the use of a Province Marks by the Service Provider or its Affiliates will vest in and be, and be deemed to be, the property of the Province;
- (g) as between the Parties the Province is and will remain the owner of the Province Marks, and the Service Provider will not obtain any rights in or to the Province Marks other than the right to use the Province Marks in accordance with the provisions of this Section 10.01 (*Use of Province Marks*); and

- (h) at the request of the Province, the Service Provider will provide the Province with samples of the Service Provider's use of the Province Marks.

#### **10.02 Brand Use**

The Service Provider will provide the Services under the branding of the Province Marks set forth in Schedule 14 (*Conditions of Use of Province Marks*), but subject to the provisions of Section 10.01 (*Use of Province Marks*), as the same may be changed from time to time by the Province pursuant to the Change Order Process, all of which is hereby Approved by the Province. Such Approval by the Province will not restrict the Province's right to use any such Province Marks, or to license the same to any other Person, or use or license any other Province Marks similar thereto.

#### **10.03 Service Provider Marks**

Notwithstanding any such requirement pursuant to Applicable Law, or Approval by the Province, the Province will not obtain any rights in or to the Service Provider Marks, and any and all goodwill that is or may be acquired from the such use of a Service Provider Mark by the Service Provider will vest in and be, and be deemed to be, the property of the Service Provider.

#### **10.04 Publicity**

(1) The Service Provider will submit to the Province all advertising, written sales promotion, press releases, public notices and any and all other publicity matters or materials relating to this Agreement or the transactions governed by this Agreement, or in which the Province's name or any Province Marks are mentioned or language from which connection with the Province's name or any Province Marks may be inferred or implied (the "**Publicity Materials**"). The Service Provider will not publish or use any Publicity Materials without the prior consultation with and Approval of the Province, which Approval will not be unreasonably withheld. Notwithstanding the foregoing, the Service Provider may include the Province's name and a factual description of the work performed under this Agreement only:

- (a) on Service Provider employee bulletin boards;
- (b) in Service Provider internal business planning documents;
- (c) for account referral purposes when Approved by the Province;
- (d) whenever otherwise required by reason of legal, accounting or regulatory requirements; and
- (e) in proposals where such proposal language has been Approved by the Province.



(2) In addition, no disclosure, including press releases, will be made by the Service Provider regarding any aspect of the Services or the Province without the Approval of the Province. In the event of potentially negative publicity or other potentially adverse effects upon the Service Provider in connection with the Services or this Agreement, the Service Provider will be entitled to respond to the same provided that it does so in consultation with the Province, and that the Province is given the opportunity to first Approve the contents of any such response insofar as it relates to the Province, the Services or this Agreement.

#### **10.05 Client Communications**

Unless specifically provided otherwise in this Agreement, all communications by the Service Provider to the Clients and the Broader Public Sector with respect to the Services will be in accordance with the Communication Plan and other processes and procedures as set forth in Schedule 15 (*Communications Plan and Processes*).

#### **10.06 Adverse Impact Notice**

The Service Provider will provide the Province with prior notice (which need not be in writing), if possible, of events with respect to the Service Provider and its Affiliates that the Service Provider anticipates will become public and could reasonably be expected to adversely impact the Province or the relationship between the Parties, or be covered negatively in any North American media. The Service Provider's obligation to provide such notice is subject to the provisions of Service Provider Applicable Laws, including securities laws applicable to the Service Provider and its Affiliates, and to the confidentiality obligations of the Service Provider and its Affiliates. Where it is not possible for the Service Provider to provide prior notice to the Province, the Service Provider will notify the Province as soon as possible.

### **ARTICLE 11 - RELATIONSHIP MANAGEMENT**

#### **11.01 Governance**

During the Term, the relationship of the Parties (including the mechanisms by which they will manage this Agreement, each with the other) will be expressly governed by the provisions of this Article 11 (*Relationship Management*) and the processes, procedures and provisions set forth in the governance structure attached as Schedule 16 (*Governance*), as Schedule 16 (*Governance*) may be jointly amended from time to time by the Parties in accordance with the terms of this Agreement.

#### **11.02 Cooperation of the Parties**

Each Party will cooperate with the other, in good faith, in the performance of its obligations under this Agreement. In connection therewith, each Party will make available, as reasonably requested by the other Party and subject to the provisions of this Agreement, such management decisions, information, approvals and acceptances such that the provision of the Services under this Agreement may be accomplished in a proper, timely and efficient manner and in accordance with the processes and procedures set forth in this Agreement. Notwithstanding the foregoing,

nothing in this Section 11.02 (*Cooperation of the Parties*) will in any manner relieve the Service Provider from performing its obligations, or delivering the Services, as contemplated under, and in accordance with, the terms of this Agreement.

**11.03            Power and Authority of the Service Provider**

(1) Except as otherwise set forth in this Agreement, and subject to the terms of this Agreement, the Service Provider will have the power and authority to take such actions as it deems to be prudent, necessary or advisable to perform the Services in accordance with the terms and conditions set forth in this Agreement. Notwithstanding the foregoing, the Service Provider will not take any action required by this Agreement, if such action is:

- (a) subject to the Approval of the Province (including the authorization or consent of the Province), without having received such Approval; and
- (b) subject to consultation with the Province, without having undertaken such consultation.

(2) For greater clarification, no such Approval or consultation will in any manner relieve the Service Provider from performing its obligations, or delivering the Services, as contemplated under, and in accordance with, the express terms of this Agreement, nor will such Approval or consultation have any effect on the allocation of risk to the Service Provider as a result of the covenants, obligations and requirements of the Service Provider under the terms of this Agreement.



**11.05** Province Approval

(1) If the Approval of the Province is required pursuant to this Agreement, then except as specifically provided otherwise in this Agreement, the Service Provider will deliver written notice to the Province through the Governance Process, setting out the particulars of the matter and requesting the Approval of the Province, and setting forth the reasonable time period in which a response is required, and if applicable, the implications of not responding within that time period. Service Provider agrees:

- (a) the appropriate response time with respect to any request for Province Approval will be determined having regard to all of the surrounding circumstances; and
- (b) except in extraordinary circumstances clearly demonstrated in writing by the Service Provider, or as otherwise expressly set out in the Agreement, it will not be considered reasonable for the response time to a request for Province Approval to be less than five (5) Business Days.

(2) The Province will use reasonable efforts to respond to any request from the Service Provider for the Approval of the Province within a reasonable period of time, having regard to all of the surrounding circumstances. Except as specifically provided otherwise in this Agreement, the failure of the Province to respond to a request for an Approval during the period suggested by the Service Provider will not result in any liability on the part of the Province to the Service Provider or be deemed to constitute the Approval of the Province by acquiescence or otherwise.

**11.06** Administrator

The Province shall act as the administrator of the Agreement in connection with the use by Clients of the Services in accordance with the Governance Process and Schedule 5 (*SAP Services*).

## ARTICLE 12 - HUMAN RESOURCES

### 12.01 Province Personnel

The Parties acknowledge that, after the Effective Date, the Service Provider will be making offers of employment to a specific list of employees of the Province or Clients mutually agreed to by the Parties involved at the Effective Date in the provision of SAP application maintenance, support and development services for the Province and Clients. The offers of employment will be made in accordance with the Transition Plan, Schedule 28 (Employment Matters) and the Transition Agreement.

### 12.02 Key Positions

(1) Recognizing the importance of executive continuity to the ongoing success of the Parties' relationship and to the successful performance of the Services under this Agreement, the Parties have agreed to the following with respect to the Service Provider positions described in Schedule 17 (*Key Positions*) (as such Service Provider positions may be amended or supplemented in accordance with this Agreement, the "**Key Positions**")

- (a) at all times during the Term, Service Provider will ensure that the Key Positions are appropriately staffed and available on such basis as may be necessary to ensure the efficient, timely, continuous and uninterrupted provision of the Services;
- (b) the Province shall have right to interview and to Approve the individuals who will be initially appointed to the Key Positions, prior to their appointment. The Province shall have the right to Approve any replacement for an individual in a Key Position in accordance with Section 12.03 (*Changes in Key Positions*);

(2) the Parties shall have the right to designate additional positions as Key Positions by mutual agreement during the Term and such additional positions shall be added to Schedule 17 (*Key Positions*). The Parties may also, from time to time through the Governance Process, re-designate the positions that constitute Key Positions.



**12.03**      **Changes in Key Positions**

The Province has entered into this Agreement in reliance upon and with the expectation that the personnel in the Key Positions will be engaged in the provision of the Services to the Province, and with the expectation of reasonable continuity in the Key Positions. Accordingly, the Service Provider will implement personnel changes in the Key Positions in accordance with the following:

- (a) with respect to each individual occupying a Key Position, without the Approval of the Province, Service Provider shall not, within the period set out in Schedule 17 (Key Positions) after the appointment of the individual to the Key Position:
  - (i) transfer, reassign or otherwise redeploy the individual from performance of Service Provider's duties under this Agreement; or
  - (ii) take any action that would result in the alteration or reduction of the time expended by the individual in the performance of his or her duties in respect of the Services to a percentage less than the percentage set out in Schedule 17 (*Key Positions*) for the Key Position, except for removal based on performance or failure to comply with Service Provider's policies, voluntary resignation, involuntary termination for cause, or illness, disability, retirement, death and leave of absence, subject to Subsection 12.03(c) below;
  
- (b) subject to Subsection 12.03(a), Service Provider may replace a person holding a Key Position, or appoint a new person to fill a vacancy caused by the resignation or other departure of a person holding a Key Position, provided that:
  - (i) the Service Provider provides the Province with reasonable prior written notice thereof, if possible, together with relevant information regarding the background qualifications of the person that the Service Provider wishes to appoint to the Key Position, and such other information regarding the qualifications of such person as the Province may request,
  - (ii) the Service Provider provides the Province with the opportunity to interview the candidates for the Key Position and Service Provider obtains the Approval of the Province in respect of the candidate that will replace the individual occupying the Key Position, and
  - (iii) the Service Provider provides the Province with a transition plan for the replacement of the incumbent with a new person in the Key Position.
  
- (c) in the event of an extended or unexpected absence of the incumbent in a Key Position, the Service Provider will forthwith advise the Province of such absence, and the Parties will consult with each other as to the appropriate steps to be taken by the Service Provider in respect of such absence; and



- (d) any person assigned to or otherwise placed in a Key Position will have qualifications or experience appropriate to the position which will be at least equivalent to the qualifications and experience of the initial person in such Key Position unless otherwise Approved by the Province, and such person will be suitably trained and transitioned to the Key Position.

#### 12.04 Key Position Failures

At any time, and from time to time, during the Term, the Province or the Service Provider may by notice (which may be oral) to the other, declare that a Key Position has failed to satisfactorily perform the duties of such position. The parties will promptly discuss such concerns, and where the Parties cannot agree on an appropriate course of action in respect thereof, then such issue will be elevated to the Management Committee for consideration, or such other discreet channels of communication as may be appropriate under the circumstances. Where the Management Committee provides any direction, including removal of such person, then the Service Provider will promptly adhere to and implement such direction.

Notwithstanding the foregoing, Service Provider may remove a person occupying a Key Position from the Key Position based on a failure to comply with Service Provider's policies or involuntary termination for cause.

#### 12.05 General Principles Regarding Personnel

At all times during the Term, the Service Provider will employ sufficient personnel of the Service Provider, including both employees and independent contractors of the Service Provider (collectively, "**Personnel**"), and will ensure that sufficient personnel are employed by its Subcontractors (collectively, "**External Personnel**"), to perform the Services in accordance with Service Levels and the other terms and conditions of this Agreement. The following provisions will apply with respect to the Personnel and the External Personnel:

- (a) unless specifically provided otherwise in this Agreement, the Service Provider will be responsible for the management and supervision of, and for the acts, omissions, performance of, and damage caused by the Personnel and External Personnel including Foreign Employed Individuals of its Affiliates in the performance of the Services;
- (b) the Service Provider will ensure that the Personnel and External Personnel performing the Services:
- (i) possess a degree of skill and experience appropriate to the tasks to which they are assigned and the performance and Service Levels which they are required to achieve,
  - (ii) receive appropriate training (including quality training courses, training with respect to the Province's business, operations and policies, refresher courses and retraining programs) for the performance of the Services and compliance with the confidentiality provisions and Privacy and Security Obligations in the Agreement, and



- (iii) perform the Services to the applicable standards set out in this Agreement; and

will require that Personnel and External Personnel performing the Services comply with the privacy, security and confidentiality provisions set forth in the Privacy and Security Obligations and will enforce such obligations;

- (c) the Service Provider will conduct background checks with respect to the Personnel

in accordance with the following, and will contractually require Subcontractors to do the same with respect to the applicable External Personnel, prior to such personnel commencing to provide the Services;

- (i) The background checks for employees or contractors providing Services in Canada are a

- (ii)

- (iii) The Province may require a heightened level of security or background checks where there are unique requirements and the Province may change the requirements in each case using the Change Order Process.

- (iv) The background checks to be completed for Service Provider employees outside Canada

shall be identified by the Province and completed by Service Provider before the employee has such access or performs such reviews.

- (d) where there is a change in or the appointment of new Service Provider Personnel or External Personnel, the Service Provider shall develop an appropriate transition or other plan to ensure such replacement or new Personnel or External Personnel, as the case may be, acquire the appropriate knowledge, skill and experience to fulfill their responsibilities in respect of the Services in accordance with the Service Levels and the terms of this Agreement.

- (e) the Province may request the immediate removal of Personnel or External Personnel for the Province's dissatisfaction with the performance, competence, responsiveness, capabilities, cooperativeness or fitness for any particular task of the Personnel or External Personnel, or a breach of a provision of this Agreement (whether or not such breach was intentional) or the involvement,

whether directly or indirectly, in any conduct that the Province determines, in its sole discretion and acting reasonably, following discussions with Service Provider, is detrimental to or adversely affects or is otherwise unprofessional or unacceptable to the Province, Clients or members of the Broader Public Sector provided that this paragraph will not require the Service Provider to act contrary to any human rights legislation. In such circumstances where the Service Provider or Subcontractor cannot promptly remedy the issue with respect to such Personnel or External Personnel, Service Provider or Subcontractor will promptly comply with the Province's request and provide replacement Personnel or External Personnel, as applicable;

- (g) the Service Provider will deal with its Subcontractors in such a manner that the Province will have no liability resulting from the failure of the Subcontractors to meet the same responsibilities and payment obligations as described in paragraph 12.05(f) above with respect to the External Personnel and for greater clarification, none of such costs, expenses, liabilities or claims contemplated in this paragraph 12.05(g) will be subject to reimbursement by the Province to the Service Provider or to the Subcontractors;
- (h) the Service Provider will comply at all times after the Hire Date with all applicable employment standards, occupational health and safety, workers' compensation, human rights legislation, and other Applicable Laws relating to its Personnel, and will cause each Subcontractor to comply with the same as applicable to the External Personnel of such entities, subject to the terms of the Transition Agreement, and will deal with all Subcontractors in such a manner



that the Province will have no liability resulting from any failure of the Subcontractors to so comply with such responsibilities and obligations with respect to the External Personnel;

- (i) except as expressly provided otherwise in this Agreement (including with respect to the termination of any Dedicated Employees in connection with expiration or termination of this Agreement) or in the Transition Agreement, the Service Provider will be solely liable and responsible for, to the exclusion of the Province and Clients, all costs arising from or otherwise relating to the termination by the Service Provider of any Personnel, and will ensure that the Province and Clients have no liability for the termination by any Subcontractor of any External Personnel, and the Service Provider and the Subcontractors will not be reimbursed by the Province or Clients for any such costs, expenses, claims or liabilities; and
- (j) Nothing in paragraphs (f) through (i) shall relieve the Province from, or prevent the Service Provider from making a claim against the Province, arising from acts or omissions of the Province or Persons for whom they are legally liable, in respect of any breach by the Province of its obligations under this Agreement.

#### **12.06 Non-solicitation of Provincial Employees**

Neither Party will at any time during the Term and for a period of 12 months thereafter, directly or indirectly induce or attempt to induce any individual to leave his or her employment with, or service to, the other Party without the Approval of such Party, if such individual is or was an employee, independent contractor or agent of the employing Party at any time during the then preceding 12-month period, and with whom the soliciting Party dealt, directly or indirectly, in the course of the provision the Services under this Agreement; This restriction does not prohibit: (i) either Party from giving consideration to any application for employment submitted on an unsolicited basis or in response to a general advertisement or communication of employment opportunities; (ii) the Province from rehiring any individual who (a) was an employee of the Province who transitioned to the Service Provider and (b) exercises rights under the Collective Agreement or other agreement binding on the Province or its Clients to be rehired or employed by the Province or Client;

### **ARTICLE 13 - SUBCONTRACTORS**

#### **13.01 Intentionally Deleted**

#### **13.02 Consent to Use of Subcontractors**

(1) The Service Provider will not use any Subcontractors in respect of the provision of any Services or other obligations performed under or in connection with this Agreement unless the Service Provider obtains the Approval of the Province. For purposes of this Section, those

Subcontractors described in Schedule 18 (*Subcontractors*) are hereby approved by the Province. Any request for Approval of a Subcontractor will include information regarding;

- (a) the components of the Services affected,
- (b) the scope of the proposed Subcontract,
- (c) the locations from which the subcontracted services will be performed,
- (d) the identity and qualifications of the proposed Subcontractor,

] \_\_\_\_\_ ]

and the reasons for subcontracting the work in question,

- (e) the contingency plans, if any, for the possibility of a Subcontractor failing to perform, needing to be replaced, or terminating the Subcontract with the Service Provider, and

(f) \_\_\_\_\_ ]

(2) For the purposes of Subsection 13.02(1), the following Subcontractors are deemed to be Approved by the Province:

- (i) individuals or single person companies in Canada retained by Service Provider either directly or indirectly through personnel agencies from time to time in the ordinary course of business as contract personnel; and
- (ii) Subcontractors engaged by Service Provider solely for the purpose of providing telecommunications network services.

(3) Any Approval of any Subcontractor granted or deemed to be granted by the Province pursuant to Subsections 13.02(1) and (2) will relate only to the specific tasks and the specific Subcontractor in respect of which such Approval was granted or deemed to be granted. Any further subcontracting of the same tasks to another Subcontractor or additional tasks to the same Subcontractor will require further Approval from the Province.

**13.03 Responsibility for Subcontractors**

(1) The Service Provider is the general contractor for the Services under this Agreement and remains responsible for all of its obligations under this Agreement, regardless of whether the Service Provider relies upon any Subcontractor to any extent. Subject to the terms of this Agreement:



- (a) the Service Provider's use of Subcontractors for any of the Services will in no way increase the Service Provider's rights or diminish the Service Provider's liabilities to the Province with respect to this Agreement;
- (b) the Service Provider's rights and liabilities under this Agreement with respect to the Province will be as though the Service Provider had itself performed such Services;
- (c) the Service Provider will be liable for any defaults or delays caused by any Subcontractor in connection with the Services as if such defaults or delays were caused by the Service Provider; and
- (d) the Service Provider will be liable for the actions and omissions of the Subcontractors in the performance of the Services to the same extent it would be liable if such actions or omissions were those of the Service Provider.

(2) If a Subcontractor breaches a Subcontract, or is alleged to have breached a Subcontract, which breach or alleged breach has or could have a material effect on the delivery of the Services or the performance of the Service Provider's obligations under this Agreement, then the Service Provider will notify the Province in writing and provide the Province with such information relating to the breach or alleged breach as the Province may reasonably request.

#### **13.04 Inconsistent Subcontract Terms**

The terms of this Agreement will in all events be binding upon the Service Provider notwithstanding, and without regard to:

- (a) the existence of any inconsistent or contrary terms in any agreement between the Service Provider and any Subcontractor; and
- (b) the fact that the Province may have directly or indirectly been given or otherwise received notice of the existence of any inconsistent or contrary terms in any agreement between the Service Provider and any Subcontractor.

#### **13.05 General Contract Terms (Subcontractors)**

All Subcontracts entered into by the Service Provider with Subcontractors will not include any terms or provisions that are inconsistent with, or contrary to, the terms and conditions of this Agreement, and all such Subcontracts will include the following provisions:

- (a) a requirement that the Subcontractor adhere to the applicable obligations that:
  - (i) are expressly required by this Agreement to be imposed upon the Subcontractor, and
  - (ii) are otherwise required for the Service Provider to perform its obligations to the Province under this Agreement including, without limitation, the Privacy and Security Obligations and the obligations relating to Service

Levels, intellectual property, audits and access as set out in Article 22 (Audits) and reporting;

- (b) obligations regarding compliance with Applicable Laws;
- (c) termination rights consistent with the terms of this Agreement;
- (d) to the extent possible, assignment rights to the Province or the Alternative Service Provider upon the early termination or expiry of this Agreement in accordance with its terms, without any further consent from the Subcontractor or any additional, accelerated or other similar payments having to be made;
- (e) an agreement by both the Service Provider and the Subcontractor not to directly or indirectly assign the Subcontract to any Person without the Approval of the Province, not to be unreasonably withheld or delayed; except for an Assignment permitted under Subsection 31.02 (1); and
- (f) any other provisions necessary for the Service Provider to fulfill its obligations under this Agreement.

#### **13.06 Confirmation of Subcontracts**

During the Term of this Agreement, and at the request of the Province, the Service Provider will confirm the Service Provider's compliance with the obligations set forth in this Article 13(*Subcontractors*).

#### **13.07 Subcontractor Monitoring**

During the Term, the Service Provider will monitor the performance of Subcontractors and promptly address and remedy any performance issues or disputes with Subcontractors in such a manner which has no Adverse Impact on the nature, quality or delivery of the applicable Services.

#### **13.08 Intentionally Deleted**

#### **13.09 Confidentiality Breaches**

Without limiting any other rights or remedies of the Province under this Agreement, in the event of any breach of confidentiality obligations by a Subcontractor, or any External Personnel of a Subcontractor, the Parties agree as follows:

- (a) in the event that either Party discovers that a breach of confidentiality by a Subcontractor or any External Personnel of a Subcontractor has occurred, it will promptly notify the other Party in writing; and
- (b) the Service Provider will develop and inform the Province of any remedial plans to remedy or otherwise deal with such breach.



### 13.10 Subcontractor Breach of Province Data

- (1) In the event that the Province determines, acting reasonably, that:
- (a) the continued use of a Subcontractor will or could have a detrimental effect on the Province, and is therefore not in the best interests of the Province as a result of the Province having severed all other relationships with such Subcontractor due to the wilful misconduct, fraud or other forms of malfeasance by such Subcontractor; or
  - (b) a material breach of the provisions of this Agreement relating to Province Data (including a breach of the obligations to comply with the *Freedom of Information and Protection of Privacy Act* (Nova Scotia) and the *Personal Information International Disclosure Prevention Act* (Nova Scotia)) by a Subcontractor occurs;

then the Province will give the Service Provider notice thereof (and specifying in detail the reasons therefor) through the Management Committee, requesting that such Subcontractor be replaced. Promptly following receipt of such notice, the Service Provider will investigate the matters stated in the notice and discuss its findings with the Province through the Management Committee. If requested to do so by the Province (acting reasonably), the Service Provider will promptly remove any access that the Subcontractor may have to the Province Data pending completion of the Service Provider's investigation and discussions with the Province. If, following such discussions with the Service Provider through the Management Committee, the Province reaffirms, acting reasonably, its request for the replacement of such Subcontractor, then the Service Provider will, within ninety (90) days (or such different period of time as may be agreed to between the Parties through the Management Committee having regard to all of the surrounding circumstances) of such reaffirmation, replace such Subcontractor with a new Subcontractor of suitable qualifications, or will perform the applicable Services directly.

(2)

- (3) The preceding paragraphs of this Section 13.10 do not limit the Province's other rights and remedies under this Agreement.

### 13.11 Other Business with Subcontractors

Nothing contained in this Agreement will prohibit or otherwise restrict the Province from entering into agreements or other arrangements with any Subcontractor.

**13.12**      **Suppliers**

The Service Provider may enter into contracts with Suppliers in respect of the Services (including for third party Software or for support or maintenance service for such Software) with such Suppliers as the Service Provider may select, provided that the Service Provider complies with any other applicable provisions of this Agreement regarding the use of Software in providing the Services.

(c) the Service Provider will prohibit its Suppliers from obtaining access to Province Confidential Information by employing appropriate security policies, including, without limitation, a clean desk policy; and

(d) [

(2) The Service Provider will monitor the performance of its Suppliers and will promptly address and remedy any performance issues or disputes in a manner which has no Adverse Impact on the nature, quality or delivery of the Services.

**13.13**      **Cooperation with Alternative Service Providers**

(1) Service Provider acknowledges that the Province has entered into agreements and may in its discretion enter into additional agreements with Alternative Service Providers for the supply of Hardware, Software, Systems, Content or other products or services that are related to the Services or the Province Shared Infrastructure including in respect of components of the Services or Project Services. Service Provider acknowledges and agrees that the performance by such Alternative Service Providers of their obligations may require the cooperation and assistance of Service Provider or Service Provider Subcontractors.

(2) At the Province's request, Service Provider will cooperate with and assist, and will cause each Service Provider Subcontractor to cooperate with and assist, the Alternative Service Providers in order to coordinate the performance by each Alternative Service Provider of its obligations with the performance of the obligations of Service Provider and Service Provider Subcontractors. Any assistance will be limited to providing such information and instructions reasonably required to enable the Province and the Alternative Service Provider to understand the services provided by Service Provider, and reasonably necessary so that the Province and an



Alternative Service Provider with reasonable skills and expertise can provide or carry on the provision of services similar to the Services. If such cooperation and assistance with the Alternative Service Provider requires excess resources or other costs or fees to be incurred by Service Provider, the Province shall be responsible for the payment of such extra fees or costs. Such assistance may include:

- (a) providing information related to the Services including information regarding the operating environment, system constraints and other operating parameters, to the Province and the Alternative Service Provider,
- (b) granting access to, Software, Systems, Content, equipment and Facilities being used by Service Provider; and
- (c) collaborating with the Province and Alternative Service Providers in addressing service-related issues that may cross over from one service area or provider to another and related to the Services,

provided that, if compliance with the obligations set out in this Section 13.13 would require the disclosure of Confidential Information of Service Provider to an Alternative Service Provider, Service Provider may require the Alternative Service Provider to execute a confidentiality agreement with Service Provider in the form attached as Schedule 19 (*Non-disclosure Agreement*).

(3) To the extent that Service Provider receives any services on behalf of the Province under any agreement between the Province and any Alternative Service Provider, Service Provider will comply with all obligations of the Province under such agreement relating to Service Provider's receipt of such services of which the Province has informed Service Provider, to the same extent as though Service Provider had been named a party to the agreement in place of the Province.

## **ARTICLE 14 - REPORTING AND PLANNING**

### **14.01 Reporting Generally**

At all relevant times during the Term, the Service Provider will prepare or cause to be prepared, and will provide to the Province all reports and information required by the Province that are set forth in Schedule 20 (*Reporting Requirements*) or other provisions of this Agreement, subject to adjustment or amendment by the Parties through the Governance Process.

### **14.02 Annual Review of Reporting Requirements**

The Parties, through the Governance Process, will conduct an annual review of the then current reporting requirements as set forth in Schedule 20 (*Reporting Requirements*) or other provisions of this Agreement, as the same may be adjusted or amended from time to time, and will consider any changes to the current reporting requirements as the Parties may determine to be appropriate or desirable.

#### 14.03 Changes to Reporting Requirements

The Parties acknowledge that the reporting requirements set forth in Schedule 20 (*Reporting Requirements*) and other provisions of this Agreement will evolve over the Term as a result of the addition of Services, adjustments to the reporting requirements as amended from time to time and other changes under this Agreement, and the evolution of the reporting requirements will be made through the Change Order Process or through the Governance Process.

#### 14.04 Format of Reports

To the greatest extent possible, the Parties will use direct electronic access to data and query reports in the format set out in Schedule 20 (*Reporting Requirements*) to meet the reporting and informational needs of the Province. The Parties agree to minimize the amounts and types of paper based reporting.

#### 14.05 Annual Operating Plan

The Service Provider will, with the co-operation and assistance of the Province through the Governance Process, prepare and provide to the Province an annual operating plan (the "**Annual Operating Plan**") that will be the planning document utilized in the provision of the Services, consisting of:

- (a) a summary of the financial and operational changes for the Services in the next Contract Year, based upon the most current annual estimate available;
- (b) a survey, review and analysis of the Systems and resources used to provide the Services;
- (c) strategies to assist in realizing the objectives set forth in Section 1.13 (*Objectives of the Parties*);
- (d) an analysis of the operations by the Service Provider with recommendations for changes to reduce costs, improve efficiencies and improve the satisfaction of the Clients of the Services and the Province;
- (e) a description of any planned changes to the Services for the next Contract Year, to the extent known;
- (f) a description of any proposed material changes in the way the Service Provider wishes to provide the Services;
- (g) a review and analysis of projects performed over the previous Contract Year by Service Provider or third parties and a summary of recommended projects for the next Contract Year, to the extent known and a summary of future recommended projects, to the extent known;



- (h) any planned System or resource acquisitions, to provide for additional or decreased Service capacity and volume, or to otherwise exploit new technological or business process developments;
- (j) a description of the risk profile of the Service Provider, including a description of any material risks which could have an impact on the Service Provider's ability to provide the Services in accordance with Service Levels;
- (k) a budget forecast setting out the estimated financial information in respect of the next Contract Year, taking into account anticipated changes and information then available to the Service Provider; and
- (l) such other matters as may be mutually agreed to by the Parties through the Governance Process.

#### **14.06 Timing of Annual Operating Plan**

No later than seventy five (75) days prior to the commencement of the next Contract Year, the Service Provider will develop, prepare and provide to the Province, through the Governance Process, a proposed Annual Operating Plan for the next Contract Year, with the first Annual Operating Plan being delivered on or before January 15, 2014. Within thirty (30) days following receipt of the proposed Annual Operating Plan, the Parties, through the Governance Process, will jointly Approve the Annual Operating Plan or discuss any modifications or changes required thereto, and the Service Provider will provide the Province, through the Governance Process, with a revised Annual Operating Plan incorporating such modifications or changes. Any Dispute with respect to the Approval of the Annual Operating Plan will be resolved through the Dispute Resolution Process set forth in Article 27 (*Dispute Resolution*).

#### **14.07 Annual Confirmation**

(1) The Service Provider will deliver a certificate to the Province by January 31<sup>st</sup> of each calendar year, with respect to the previous calendar year, beginning in January, 2014, together with the Annual Operating Plan referred to in Section 14.05 (*Annual Operating Plan*), that contains a confirmation signed by a senior officer of the Service Provider, or project executive of the Service Provider referred to in Schedule 17 (*Key Positions*) stating that:

- (a) a review of the activities of the Service Provider during the preceding calendar year has been made under the supervision of such senior officer or project executive; and
- (b) based upon the review referred to in paragraph 14.07(1)(a) above, and to the best of the knowledge of such senior officer or project executive, after having made due inquiry, the Service Provider has fulfilled all of its obligations under this Agreement in all material respects (including, without limitation, the Privacy and Security Obligations), and that no Material Breach (or any event which, with



notice or lapse of time or both, could reasonably be determined to become a Material Breach) occurred during such calendar year in respect of such obligations, and stating exceptions to any of the forgoing, if applicable.

- (2) The Parties shall review each compliance certificate at the Strategic Committee within three (3) months of the date of delivery of the certificate.

#### **14.08 Service Recommendations**

As part of the Services, the Service Provider will, from time to time as it may deem appropriate, but not less frequently than annually, make recommendations to the Province for improvements to the Services based on changes in SAP application development, SAP application maintenance and support, systems integration and IT consulting, available new technologies, and implement any of such recommendations Approved by the Province in accordance with the Change Order Process.

### **ARTICLE 15 - MAINTENANCE OF RECORDS**

#### **15.01 Maintenance of Records**

(1) During the Term and for a period of seven (7) years after the end of the Term (or such longer period as may be required by Applicable Law, or in the case of Subcontractors who cease to provide Services, seven (7) years after such Subcontractors have ceased to provide Services), the Service Provider will:

- (a) maintain accurate and complete Records related to this Agreement and to the Services to be provided by the Service Provider under this Agreement including those provided by Subcontractors (other than Records which have been returned to the Province by the Service Provider), as may be required or necessary in order for the following, provided that the Service Provider will not be required to retain any specific Record for a period of greater than seven (7) years except as required by Applicable Law:
  - (i) the Service Provider to meet any other reporting or record keeping requirements referred to in this Agreement, and
  - (ii) to enable the Province to verify compliance by the Service Provider with the terms of this Agreement and to ascertain the accuracy of all financial matters arising under this Agreement; and
- (b) cause Subcontractors to maintain complete and accurate Records of the transactions and activities undertaken by such Subcontractors as part of the Services (other than Records which have been returned to the Province by the Service Provider), as may be required or necessary in order for the following, provided that the Subcontractor will not be required to retain any specific Record



for a period of greater than seven (7) years except as required by the Service Provider Applicable Law:

- (i) the Service Provider to meet any other reporting or record keeping requirements referred to in this Agreement, and
- (ii) to enable the Province to verify compliance by the Subcontractor with the terms of this Agreement and to ascertain the accuracy of all financial matters arising under this Agreement.

(2) Without limiting the generality of the foregoing, the Service Provider will ensure that all new Records with respect to the performance of the Services will conform with GAAP (to the extent applicable), the requirements of the Service Provider Applicable Laws, and the Province Policies, as may be amended from time to time and notified by the Province to the Service Provider, subject to the Change Order Process.

#### **15.02      Transferred Records**

The Province will arrange for the delivery of the Transferred Records to the Service Provider on or before the Hand-Over Date, in accordance with the records protocols described in the attached Schedule 21 (*Records Protocols*).

#### **15.03      Intentionally Deleted**

#### **15.04      Control of Province Records**

(1) The Province Records will remain the property and in the Control of the Province, and accordingly, they will continue to remain subject to the requirements of the Province Applicable Law and all Province Policies related to the Province Records. The Service Provider will subject to Schedule 23 (*Privacy and Security Obligations*):

- (a) not sell, transfer to the physical custody of another jurisdiction or Person, destroy or otherwise dispose of the Province Records without the Approval and direction of the Province, or as contemplated under this Agreement, and then, only in accordance with the protocols described in Schedule 21 (*Records Protocols*), and the provisions of Article 17 (*Privacy, Security and Confidentiality*);
- (b) not under any circumstances, and without limiting the provisions of Article 17 (*Privacy, Security and Confidentiality*), use or disclose any Province Records except:
  - (i) on the prior written directions, or with the Approval, of the Province (which directions or Approval may be given by the Province at any time, in its sole discretion, or in response to a written request from the Service Provider specifying the particulars of the proposed use or disclosure of such Records), or

- (ii) through the ordinary course provision of the Services as contemplated under the terms of this Agreement and in accordance with applicable Province Policies notified to the Service Provider from time to time; or
  - (iii) as otherwise permitted under Schedule 23 (*Privacy and Security Obligations*) or required by Applicable Laws;
- (c) return the Province Records to the Province on the written instructions of the Province or as may otherwise be required or permitted in accordance with the provisions of this Agreement and Service Provider may maintain copies of such Province Records that do not contain Personal Information or Province Confidential Information (i) to the extent required for so long as necessary to perform and enforce the terms of the Agreement, (ii) for legal or regulatory purposes, and (iii) to the extent Service Provider is granted a license under this Agreement;
- (d) at the request and expense of the Province, provide written or electronic copies of such Province Records for storage on the premises of the Province or of any applicable regulatory body or agency, as the Province may require;
- (e) maintain the safe keeping and integrity of the Province Records in accordance with the records protocols set forth in the attached Schedule 21 (*Records Protocols*) and with the provisions of Article 17 (*Privacy, Security and Confidentiality*);
- (f) store all Province Records logically separate from other records of the Service Provider and identify them as Records of the Province; and
- (g) provide the Province with copies of any Province Records, and permit the Province to have access to the Province Records with such access being in accordance with the provisions of Section 22.01 (*Access Rights*)).

(2) The Province will comply with its obligations to the Service Provider in respect of the Province Records as set forth in Schedule 21 (*Records Protocols*).

#### **15.05 Final Return of Province Records**

Upon Termination of this Agreement, the Service Provider will destroy or deliver all such Province Records then in its Custody to the Province in accordance with the Termination Assistance Plan, or shall destroy such Province Records in accordance with the written instructions of the Province.

#### **15.06 Costs of Record Keeping**

The Service Provider acknowledges and agrees that all costs of record keeping by Service Provider contemplated in this Article 15 (*Maintenance of Records*) will be the responsibility of the Service Provider, and that compensation to the Service Provider in respect thereof is included in the Fees. For greater clarification, any Province Records delivered by the Service Provider to



the Province at the request of the Province or pursuant to Sections 15.04 (*Control of Province Records*) and 15.05 (*Final Return of Province Records*), or Schedule 21 (*Records Protocols*), will thereafter be the responsibility (both financially and as to storage obligations) of the Province.

**15.07      Storage and Disposal of Records**

The Service Provider will transfer all Province Records identified by the Service Provider for storage, destruction or disposal to the Province in accordance with the record protocols more particularly described in Schedule 21 (*Records Protocols*), or as otherwise Approved by the Province. The Province will destroy any such Province Records if the Province determines it to be appropriate to do so. The Service Provider will not, without the Approval of the Province, dispose of or otherwise destroy any Province Records in its Custody at any time before the seventh (7th) anniversary of the date that the final payment under this Agreement is made or of the date that all outstanding Disputes are settled, whichever is later.

**15.08      Locations of Records**

Unless provided otherwise in this Agreement, and subject to the provisions of Section 5.01 (*Overview of Service Locations*), the following provisions will apply in respect of all Province Records that contain any Personal Information:

- (a) the Service Provider will maintain the Province Records in Canada at locations notified by the Service Provider to the Province in writing pursuant to Section 5.02 (*Location of Province Data*);
- (b) the Service Provider will not relocate any such Province Records maintained pursuant to this Section without first notifying the Province in writing; and
- (c) at no time will any Person have remote access to any Personal Information (including on any backup data) contained in the Province Records from any location outside of Canada, except as expressly Approved by the Province or as otherwise expressly permitted under this Agreement.

**ARTICLE 16 - FEES AND PAYMENT TERMS**

**16.01      Fees**

In consideration of the performance of the Services, the Province will pay the Fees to the Service Provider, and Service Provider will issue credits pursuant to Article 8 (*Service Levels*), or as otherwise contemplated in this Agreement. Except as otherwise expressly set forth in this Agreement, the Province will not be obligated to pay any other amounts to the Service Provider for the Service Provider's performance of the Services and its other obligations under this Agreement. Any expenses that the Service Provider incurs in the performance of the Services are included in the Fees, and accordingly, the Service Provider's expenses will not be separately reimbursable by the Province unless specifically provided otherwise under, or agreed pursuant



to, the terms of this Agreement.

#### **16.02      Invoices**

The Service Provider will provide the Province with monthly invoices, that conform to the payment requirements set forth in Section 16.03 (*Method of Payment*) and Schedule 22 (*Fees*), for all Fees that are payable from time to time by the Province pursuant to this Agreement. Each invoice will be provided in the form and level of detail set forth in Schedule 22 (*Fees*) or as otherwise agreed. The payment of any invoice by the Province will not be deemed to be Approval or acceptance of such invoice, and no such payment will preclude the Province from contesting any amount set forth in an invoice at any later date in accordance with the provisions of Section 16.05 (*Disputed Payments*).

#### **16.03      Method of Payment**

The Province will pay the Fees to the Service Provider in accordance with Schedule 22 (*Fees*.)

#### **16.04      Taxes**

The Fees set out in Schedule 22 (*Fees*) do not include HST or other Transaction Taxes. The Service Provider will collect, remit to the appropriate Taxing Authorities and report to the Province on all Transaction Taxes related to the Services to the extent that the same are included in the Fees., To the extent that any of the Services attracts HST, the Service Provider will add the same to the invoices for the Fees. If, after the Effective Date, other Transaction Taxes are imposed with respect to the Services provided under this Agreement, the Service Provider will add the same to the invoices for the Fees. The Service Provider will be responsible for and will arrange to pay all Other Taxes whether relating to the Services or otherwise.

#### **16.05      Disputed Payments**

Any amounts owed to the Province by the Service Provider under this Agreement in respect of the Services, including Service Level Credits, but excluding any amounts under Dispute may be set-off by the Province against Fees and other charges payable by the Province to the Service Provider under this Agreement, or may be deducted from any sum due or which at any time may become due to the Service Provider under this Agreement.

#### **16.06      Right of Set-Off**

(1) If any overpayments by the Province should be discovered as a result of an audit or investigation under Article 22 (*Audit Rights*) or otherwise, then the Province will be entitled to recover the amount of such overpayments by way of a Dispute. In addition, the Province may withhold payment of a particular portion of Fees that the Province reasonably Disputes, subject to the following conditions:

- (a) the Province may withhold such funds as are related to the matter or matters under dispute under an invoice up to the amount in dispute provided that: (i) the amount withheld under an invoice shall not exceed the sum of (a) the greater of:



{ cap (ii) withheld amounts will be subject to a }  
("Disputed Fees Cap"). This may only be withheld until such time  
that the Dispute is resolved;

- (b) the Province provides to the Service Provider concurrently with the withholding of the disputed Fees, a detailed written explanation of the basis of the Dispute; and
- (c) the Parties will promptly settle the Dispute regarding such amount in accordance with the Dispute Resolution Process set forth in Section 27.03 (*Expedited Dispute Resolution*).

(2) Any interest accrued on any amount owed to or overpaid by the Province will be apportioned in the same manner as in the resolution of such disputed Fees. Any payment disputes will not affect the Service Provider's obligation to provide the Services under this Agreement at the agreed Service Levels or in accordance with any other of the Service Provider's obligations under this Agreement.

**16.07 Intentionally Deleted**

**16.08 No Volume Commitment**

- (1) Service Provider acknowledges and agrees that
  - (a) except as otherwise expressly set out in Schedule 6 (*Project Work*) or elsewhere in this Agreement, the Province makes no representation or warranty as to the nature, timing, quality, quantity or volume of Services required from Service Provider under this Agreement or the compensation that may be earned by Service Provider; and

(b) {

(2) {

(3) Notwithstanding Section 16.08(1), the Parties agree that the Fees for the Services provided under this Agreement will be subject to the Province maintaining a volume of Services within a specified range, where if the volume of Services required by the Province from Service Provider exceeds or falls below the volume range specified in the Agreement, an appropriate reduction or increase to the Fees will be made in accordance with Schedule 22 (Fees). If the Province and Service Provider cannot agree on an appropriate reduction or increase to the Fees

in accordance with the terms of this Section 16.08(3), the Dispute will be addressed in accordance with the Dispute Resolution Process set forth in Section 27.03 (*Expedited Dispute Resolution*).

**16.09 Joint Verification**

(1) In order for the Service Provider to complete its due diligence to validate any information that is reflected in or omitted from this Agreement, the Parties will complete the activities identified in the post contract due diligence plan set out in the Transition Plan (the "Joint Verification").

(2) In the event of any new findings resulting from such Joint Verification, the Service Provider and the Province may amend this Agreement to provide for an equitable adjustment to the Fees, Baselines and other terms of this Agreement affected by such findings, provided that there shall be no adjustment based on information or materials shared with the Service Provider prior to the Effective Date. If the Province and the Service Provider are unable to agree to the equitable adjustment, the Province and the Service Provider will submit the matter to the Dispute Resolution Process.

**16.10 Pricing Principles**

The applicable provisions of Exhibit 22-2 of Schedule 22 (*Fees*) will apply to: (a) the interpretation and calculation of any Fees payable pursuant to this Agreement; and (b) the establishment of Fees for new Services or Changes that the Province wishes to procure from Service Provider pursuant to this Agreement.

**16.11 Proration of Payments**

If any period in which any payment is to be made is less than the full period in respect of which the payment is due, then the payment will be prorated on a daily basis based on the number of days in the actual period.

**16.12 Procedure for Obtaining Refund, Credit or Discount**

If the Province is entitled to a refund, credit (including a Service Level Credit) or discount pursuant to any provision of this Agreement, Service Provider will credit such amount against the immediately following invoice provided under this Agreement and will deliver to the Province a credit note that indicates the credit, its amount and the applicable provisions of this Agreement pursuant to which the credit entitlement arose. If the refund, credit or discount is larger than the amount of such invoice, the remaining amount of the refund, credit or discount due will be credited against successive future invoices; provided, however, that if any portion of the refund, credit or discount owed has not been paid to the Province upon the termination or expiration of this Agreement, Service Provider will pay such outstanding credit amounts to the Province by way of cheque or wire transfer within thirty (30) days of the effective date of such termination or expiration.



**ARTICLE 17 - PRIVACY, SECURITY AND CONFIDENTIALITY**

**17.01 Privacy and Security Obligations**

(1) The Service Provider will at all times, and to the extent applicable in accordance with the provisions of Schedule 23 (*Privacy and Security Obligations*), comply with the obligations and requirements set forth in Schedule 23 (*Privacy and Security Obligations*), as such are amended from time to time in accordance with this Agreement (the “**Privacy and Security Obligations**”).

(2) The Service Provider will at all times, require that its Personnel, and to the extent applicable in accordance with the Schedule 23 (*Privacy and Security Obligations*), its Subcontractors and External Personnel, comply with their Privacy and Security Obligations and will enforce such compliance.

**17.02 Foreign Disclosures**

(1) The Province will be responsible, as set out in Schedule 23, for identifying Personal Information to be masked by the Service Provider and working with the Service Provider to confirm that the identified data fields are the only relevant data fields, and granting access to Service Provider Personnel to Personal Information.

(4) The Service Provider will flow through the requirements of this Section to any Access Subcontractors, to apply to the Access Subcontractors, *mutatis mutandis*.

**17.03 Canadian Entities**

(1) “**Canadian Entity**” means a corporation, partnership, limited partnership, or other similar entities that are incorporated or created under the laws of Canada or under the laws of any province of Canada.

(2) [redacted] shall have only such access in accordance with the provisions of Schedule 23 (*Privacy and Security Obligations*).

**17.04      Acknowledgement**

The Service Provider acknowledges that in the performance of the Services, the Service Provider will be given access to highly confidential and sensitive information, including Province Confidential Information, and that the confidentiality, privacy and security of such information is of paramount importance to the Province.

**17.05      Confidential Information**

(1) “**Confidential Information**” of a Party means any and all Information of a Party (the “**Disclosing Party**”) identified as confidential or marked as confidential information, that has or will come into the possession or knowledge of the other Party or any of its employees, contractors, subcontractors, agents or representatives (the “**Receiving Party**”) or to which the Receiving Party will have access in connection with or as a result of entering into this Agreement, including Information concerning or of the Disclosing Party’s past, present or future clients, customers, subcontractors, suppliers, technology or business.

Notwithstanding the foregoing and subject to paragraph 17.05(2), Province Confidential Information includes:

- (a) information of or provided by the Province, Clients, any member of the Broader Public Sector, the Province Personnel and Alternative Service Providers (each, a “**Province Disclosing Party**”) that is identified as confidential or marked as confidential information;
  - (b) any Province Data, information about or relating to the Province Licensed Software or the Province Shared Infrastructure, software and non-technical information in any form that the Province restricts access to or otherwise treats as confidential information or is clearly recognizable as confidential information to a prudent person with no special knowledge of the Disclosing Party’s business; and
  - (c) Information about the Province or its Clients, personnel, financial circumstances, business plans and strategies, forecasts and forecast assumptions, business practices, operations and procedures, and personal information as defined under applicable privacy laws including Personal Information.
- (2) “**Confidential Information**” does not include Information that is:
- (a) publicly available when it is received by or becomes known to the Receiving Party or that subsequently becomes publicly available other than through a direct or indirect act or omission of the Receiving Party (but only after it becomes publicly available);
  - (b) is already known to the Receiving Party at the time of its disclosure to the Receiving Party and is not known by the Receiving Party to be the subject of an obligation of confidence of any kind;



- (c) independently developed or obtained by the Receiving Party without any use of the Confidential Information of the Disclosing Party as established by evidence that would be acceptable to a court of competent jurisdiction; or
- (d) received by the Receiving Party in good faith without an obligation of confidence of any kind from a Third Party who the Receiving Party had reason to believe was lawfully in possession of such Information free of any obligation of confidence of any kind, but only until the Receiving Party subsequently comes to have reason to believe that such Information was subject to an obligation of confidence of any kind when originally received;

provided however that for the purposes of this Agreement the Province Personal Information will constitute Confidential Information of the Province and regardless of whether it falls into one of the exceptions set out in paragraphs (1) through (4) of this definition.

#### **17.06 Safeguarding Confidential Information**

(1) Each of the Parties acknowledges and agrees that all Confidential Information of the other Party, whether received or created before or after the Hand-Over Date, will be received in the strictest confidence and will be held and used only in accordance with and subject to the terms of this Agreement. A Party receiving the Confidential Information of the other Party will retain such information in confidence and will treat such information in accordance with the terms of this Agreement (including the Privacy and Security Obligations), and with a degree of care no less than the degree of care that the receiving Party employs for the protection of its own Confidential Information of a similar nature.

(2) Without limiting the foregoing, Service Provider will protect all Province Confidential Information with security measures as set forth in this Agreement. Depending on the nature of the Province Confidential Information and the circumstances, these measures may include physical controls, password protection of electronic files, encryption of data, or other measures such as firewalls, anti-virus Software and other means to protect the security of Systems or file storage areas.

#### **17.07 Permitted Disclosure and Use of Confidential Information**

Subject to the Privacy and Security Obligations and Section 17.02 (*Foreign Disclosures*), a Party may use or disclose relevant aspects of the other Party's Confidential Information:

- (a) only to the extent necessary to perform its obligations and exercise its rights under this Agreement;
- (b) only to its Personnel, Subcontractors, External Personnel and professional advisors (and in the case of the Province, its Clients, employees, contractors, subcontractors, agents and representatives) to the extent that such disclosure and use thereof is necessary for the performance of the receiving Party's rights or



obligations under this Agreement, and provided that such Persons have an actual need to know such information and have signed non-disclosure agreements as required by this Agreement, it being agreed between the Parties that the provisions of this paragraph will in no way restrict or otherwise limit either Party from disclosing the Confidential Information of the other Party, to the extent necessary, to the receiving Party's legal advisors in the course of obtaining legal advice in connection with this Agreement, provided that the solicitor-client privilege with respect thereto is not waived by the receiving Party in respect of such disclosure; and

- (c) subject to Section 13.13 (*Cooperation with Alternative Service Providers*), in the case of a disclosure of the Service Provider's Confidential Information by the Province, for purposes of undertaking any procurement or related process in connection with the selection of an Alternative Service Provider, provided that:
- (i) such disclosure does not include any of the Service Provider's costing or other internal financial information,
  - (ii) any third parties to whom such disclosure is made first execute and deliver to the Province a Non-Disclosure Agreement and the Province provides such executed Non-Disclosure Agreement to the Service Provider, and
  - (iii) such disclosure will be restricted to the Service Provider Confidential Information necessary to enable such parties to participate in such procurement or related process.

#### **17.08 Province Permitted Disclosure**

Notwithstanding the provisions of this Article 17 (*Privacy, Security and Confidentiality*), the Province may disclose the Service Provider Confidential Information as may be required by the provisions of any Applicable Laws, including the *Freedom of Information and Protection of Privacy Act* (Nova Scotia), as contemplated in Section 17.09 (*Disclosure Compelled by Law*) and as required by the Province in order to prevent any actual or reasonably anticipated disclosure of Province Data. For purposes thereof, the Service Provider acknowledges that the Non-Disclosure Agreements referred to in Section 17.07 (*Permitted Disclosure and Use of Confidential Information*) will be subject to the requirements and obligations of that Act.

#### **17.09 Disclosure Compelled by Law**

Subject to the Privacy and Security Obligations and Section 17.02 (*Foreign Disclosures*), a Party will not be considered to have breached its confidentiality obligations under this Article 17 (*Privacy, Security and Confidentiality*) for disclosing any Confidential Information (other than Personal Information) of the other Party to the extent that such disclosure is required to satisfy any Applicable Laws, provided that the Party required to make such disclosure (the "**Compelled Party**"):



- (a) promptly upon receiving any such request and within a reasonable time prior to disclosure (if possible), notifies the other Party of the terms and circumstances of the requested disclosure;
- (b) consults with the other Party regarding the nature and scope of such request and the response or other position that the Compelled Party intends to take with respect to such request unless consultation is prohibited by Applicable Law;
- (c) does not obstruct or interfere with, and to the extent practical, permits the other Party to obtain, a protective order or other remedy to prevent, object to, enjoin, narrow the scope of, or otherwise contest the requested disclosure;
- (d) if the other Party is unable to obtain a protective order or other similar remedy within a time period that is appropriate in the circumstances, then the Compelled Party will only disclose such of the Confidential Information that it is legally obligated to disclose; and
- (e) makes and reasonably pursues a request to the applicable Governmental Authority, for confidential treatment of the information to be disclosed pursuant to such Applicable Laws.

#### **17.10 Disclosure of Personal Information**

(1) In respect of Personal Information that constitutes Province Confidential Information, and without limiting the generality of Section 17.06, the Service Provider will not disclose to any Person or allow any Person (including the Personnel, Subcontractors, or External Personnel) to access or use, Personal Information, except

- (a) if, and in the manner expressly permitted pursuant to, the Privacy and Security Obligations or, subject to Section 17.02 (*Foreign Disclosures*) to comply with the provisions of Applicable Law;
- (b) as expressly Approved by the Province; or
- (c) pursuant to an order of a Canadian court of competent jurisdiction in accordance with Section 17.09 (*Disclosure Compelled by Law*).

(2) The Service Provider will at all times, require that any of the Service Provider Personnel, Subcontractors, or External Personnel, comply with the foregoing and will enforce such compliance.

#### **17.11 Notification of Unauthorized Use of Confidential Information**

Each Party will:

- (a) promptly notify the other Party of any unauthorized possession, use, access or disclosure of the other Party's Confidential Information by any Person, upon such information becoming known to such Party;

- (b) promptly furnish the other Party with details of such unauthorized possession, use, access or disclosure, and assist the other Party in investigating or preventing the recurrence of any unauthorized possession, use, access or disclosure, of the other Party's Confidential Information;
- (c) with respect to attempts to effect unauthorized possession, use, access or disclosure of a Party's Confidential Information, upon such attempts becoming known to a Party give notice of, respond to, and cooperate with the other Party, including in the case of Province's Confidential Information in accordance with Province Policies;
- (d) cooperate with the other Party in any litigation and investigation against third parties deemed necessary by the other Party to protect its Confidential Information, to the extent such litigation or investigation is related to this Agreement;
- (e) reimburse the other Party for any direct expenses incurred by such other Party as a result of such other Party's compliance with paragraphs 17.11(a) – 17.11(c) above, unless such other Party has directly or indirectly caused or is otherwise responsible for any unauthorized possession, use, access or disclosure of the Party's Confidential Information, in which case such other Party will be solely responsible for any and all direct expenses incurred as a result of its compliance with this Section; and
- (f) promptly take appropriate steps to prevent a recurrence of any unauthorized possession, use, access or disclosure of the other Party's Confidential Information, where such Party has directly or indirectly caused or is otherwise responsible for any unauthorized possession, use, access or disclosure of the other Party's Confidential Information by any Person.

#### **17.12 Breach of Confidentiality**

In the event of a breach of this Article 17 (*Privacy, Security and Confidentiality*), and to the extent available pursuant to Applicable Laws, the non-defaulting Party will be entitled to seek preliminary and permanent injunctive relief, as well as an equitable accounting of all profits and benefits arising out of such breach, which potential remedy will be in addition to any other rights or remedies to which the Party may be entitled under this Agreement or otherwise under any Applicable Laws.

#### **17.13 No Rights to Confidential Information**

Nothing contained in this Article 17 (*Privacy, Security and Confidentiality*) will be construed as obligating a Party to disclose its Confidential Information to the other Party, or as granting or conferring on a Party, expressly or implied, any right, title or interest or any licence in or to the Confidential Information of the other Party.



**17.14 Ownership of Province Confidential Information**

As between the Parties the Province Confidential Information is and will remain the property of the Province. Subject to applicable security procedures and System availability, the Province will have complete and unrestricted Control and access at all times of and to the Province Confidential Information and, as part of the Services, the Service Provider will provide access thereto as may be requested by the Province from time to time, including such access as will enable the Province to make complete copies of all Province Confidential Information. Control of the Province Confidential Information is vested solely in the Province and nothing in this Agreement will in any way be construed to grant Control of the Province Confidential Information to the Service Provider or any other Person. The Service Provider will at all times adhere to the directions of the Province with respect to Province Confidential Information. On the Province's request, at any time during the Term or upon any Termination, the Service Provider will promptly return to the Province, in the format and on the media requested by the Province, all or any part of the Province Confidential Information, and erase or destroy all or any part of the Province Confidential Information in the possession of the Service Provider or its Subcontractors, in each case to the extent so requested by the Province.

**ARTICLE 18 - BUSINESS CONTINUITY****18.01 General**

- (1) As part of the Services, the Service Provider will, on or before the Hand-Over Date, and as part of the Transition Services:
  - (a) review the Province's existing business continuity plans and related policies and coordinate efforts with the Province to prepare a Province Business Continuity Plan for the Services, and specifically the Service Provider will assist the Province in understanding what steps the Province can take in the event that the Service Provider is affected by a Disaster, and what steps the Service Provider will take, in addition to the steps that the Province will take, in the event that the Province Shared Infrastructure is affected by a Disaster; and
  - (b) review the Province's existing disaster recovery plans and related policies and coordinate efforts with the Province to prepare a Province Disaster Recovery Plan, and specifically outline the steps that the Service Provider will need to take, if any, in addition to the steps that the Province will take, in response to a Disaster that affects the Province Shared Infrastructure, which shall form a distinct part of the Province Business Continuity Plan.
- (2) For greater clarification, the Province Business Continuity Plan will be implemented and maintained by the Province for the Term of this Agreement.

## 18.02 Service Provider Business Continuity and Disaster Recovery

(1) As part of the Services, the Service Provider will, within six (6) months after the Hand-Over Date, and as part of the Transition Services:

- (a) share with the Province the [ ] which relates to the provision of the Services from the Service Locations;
- (b) coordinate efforts with the Province to align the [ ] with the Province Business Continuity Plan, such that the Parties have a coordinated approach to maintaining a level of Services during disaster recovery efforts by either Party;
- (c) from and after the Hand-Over Date, assume all responsibility for the establishment and maintenance (including all related management, training, planning, plans, work products and deliverables) of the [ ] for the Services; and
- (d) be responsible for all costs in respect of any updates to the [ ]

(2) The [ ] will include:

- (a) a process for identifying and notifying the Province of a Disaster, and establishing a crisis management team to manage disaster recovery efforts;
- (b) a communication process for communicating with affected Clients and the Province;
- (c) a process for evaluating the impact of the Disaster;
- (d) a process for invoking the appropriate pre-defined disaster recovery steps to provide the Services which were impacted by the Disaster in accordance with the Service Provider Business Continuity Plan;
- (e) recovery procedures which are outlined by critical process or function of the Services;
- (f) appropriate pre-defined business continuity steps to provide some level of the Services to the extent possible during recovery from the Disaster;
- (g) procedures for maintenance and testing of the [ ]

(3) For greater clarification, the [ ] and as contemplated in Section 18.02(1) above will be implemented and maintained by the Service Provider in accordance with the then current Service Provider standards for the Term of this



Agreement, subject to further amendments by the Service Provider in accordance with the terms of this Article 18 (*Business Continuity*).

### **18.03 Service Provider Representative**

(1) The Service Provider will designate a “**Business Continuity Representative**”, who may be identified as a Key Position, to be responsible for:

- (a) the upkeep, testing and implementation of the [ ] for the Services; and
- (b) acting as the liaison with the Province to integrate the [ ] for the Services with those of the Province and Clients (to the extent applicable).

(2) The Service Provider will also designate an alternate representative (or representatives), who need not be a Key Position, to act as the “**Business Continuity Representative**” if the original designated representative is unavailable for any reason.

### **18.04 Plan Management and Annual Reviews**

(1) From and after the Hand-Over Date, the Service Provider will be responsible for managing the continuity of the Services and performing recovery efforts pursuant to the [ ] for the Services. The management of the [ ] will include, without limitation, the following:

- (a) the performance in each Contract Year of business impact assessments in respect of the Services;
- (b) the performance in each Contract Year of strategic risk assessments in respect of the Services;
- (c) the development of risk mitigation and business continuity and disaster recovery plans in respect of the Services;
- (d) to the extent applicable, the development of business continuity activities specifically for any essential Services as may be so notified by the Province to the Service Provider from time to time; and
- (e) a review and update of the [ ] for the Services in conjunction with the Province at least once per Contract Year.

(2) Any changes to the [ ] for the Services may be submitted by either Party to the other in accordance with the Governance Process, or through the Change Order Process, as applicable.

## 18.05 Testing of Business Continuity Plans

(1) The testing of the [redacted] for the Services will be performed by the Service Provider. The testing will consist of process walkthrough and awareness testing (as opposed to full production testing), except as specifically provided otherwise below or set out in the [redacted]. Such testing will include the following (to the extent consistent with the foregoing and as may be applicable to the Service Provider):

- (a) the Service Provider will complete a test of the [redacted] for the Services within twelve months (12) months of the Hand-Over Date;
- (b) the Service Provider will test the [redacted] for the Services annually following the initial test described in paragraph 18.05(a) above;
- (c) the Service Provider will conduct the testing in a manner that causes minimal disruption to the ongoing operations of the Services, and in full consultation with the Province, provided that the Province will coordinate any communications with the Clients regarding any testing that may have an impact on the delivery of the Services;
- (d) the Province will have the right to participate in any testing of the [redacted] for the Services as an observer in the testing process and to review any results of such testing;
- (e) within thirty (30) days of any testing conducted by the Service Provider in respect of the [redacted] for the Services, the Service Provider will prepare and submit to the Province, through the Governance Process, a report detailing the results of such testing.

(2) From time to time, the Province may request that the Service Provider assist the Province with the testing of the Province Business Continuity Plan. The testing will consist of process walkthrough and awareness testing (as opposed to full production testing), except as specifically provided otherwise below. Such testing will include the following (to the extent consistent with the foregoing and as may be applicable to the Service Provider):

- (a) at the direction of the Province and with the assistance of the Service Provider, the testing may include fail-over testing from the Province's data centre facility to its back-up site;
- (b) at the direction of the Province and with the Province's consent, the Service Provider and Province may carry out the fail-over tests at such times and in such manner (including a single complete test or successive partial tests) in accordance with the Province Business Continuity Plan;



- (c) the Service Provider and Province will conduct the testing in a manner that causes minimal disruption to the ongoing operations of the Services, and the Province will coordinate any communications with the Clients regarding any testing that may have an impact on the delivery of the Services;
- (d) within ten (10) days of any testing conducted by the Service Provider and Province in respect of the Province Business Continuity Plan for the Services, the Province and Service Provider will jointly prepare and submit to the Operations Committee, a report detailing the results of such testing.

#### 18.06 Actual Disaster

(1) In the event of a Disaster, or either Party's anticipation of a Disaster, which will affect the Service Provider, the following provisions will apply:

- (a) if the Service Provider is prevented from, or delayed in, performing any of the essential Services as a result of the Disaster, or anticipates that it will be so prevented or delayed, then the Service Provider will promptly notify the Province thereof in writing of the particulars of the Disaster, including details of the nature of the Disaster, its expected duration and the obligations under this Agreement that will be affected as a result;
- (b) the Service Provider will continue to provide detailed reports to the Province with respect to such disruption, non-performance or delay, on a timely basis during the continuance thereof;
- (c) in the event that the Disaster affects any Service Provider Location, the Service Provider will take appropriate steps to restore the affected internal functions impacting the Services in accordance with the Business Continuity Plan by performing all activities described in the [ ] having regard to the nature and extent of the Disaster and its impact on the Service Provider, the Services, the Province and Clients;
- (d) to the extent that the Disaster is not addressed or not fully addressed in the [ ] for the Services, the Service Provider will take appropriate steps to restore the Services in a manner consistent with the [ ] and will assist the Province in carrying out the Province Business Continuity Plan by performing tasks appropriate in the circumstances and consistent with the Province Business Continuity Plan;
- (e) within ten (10) days of the recovery of the Services as a result of the implementation of the [ ] the Service Provider will provide the Province with a written report detailing the root cause of the disruption, the steps taken by the Service Provider in respect thereof, and any recommendations that the Service Provider may have with respect to improving the [ ]

- (f) notwithstanding the foregoing, the Province will retain the right to audit, sign-off and confirm the full recovery of the delivery of the Services following the implementation of the \_\_\_\_\_ for the Services; and
- (g) there will be no Service Level Credits assessed or otherwise applied by the Province against the Service Provider during the continuance of a Disaster that is beyond the reasonable control of the Service Provider until full recovery of the delivery of the Services pursuant to the \_\_\_\_\_ provided that the Service Provider complies, in all material respects, with its obligations under the provisions of this Article 18 (*Business Continuity*).

(2) In the event of a Disaster, or either Party's anticipation of a Disaster, which will affect the Province, the following provisions will apply:

- (a) if the Province or any Client is prevented from receiving any of the essential Services as a result of the Disaster which affects the Province Shared Infrastructure, or the Province anticipates that it or the Clients will be so prevented, then the Province will promptly notify the Service Provider of the particulars of the Disaster, including details of the nature of the Disaster, its expected duration and the obligations under this Agreement that will be affected as a result;
- (b) the Province will continue to provide detailed reports to the Service Provider with respect to such prevention on a timely basis during the continuance thereof;
- (c) the Province will perform all activities described in the Province Business Continuity Plan to restore the Province Shared Infrastructure, having regard to the nature and extent of the Disaster;
- (d) there will be no Service Level Credits assessed or otherwise applied by the Province against the Service Provider during the continuance of a Disaster that is beyond the reasonable control of the Service Provider until the restoration of the Province Shared Infrastructure to an operational state.

(3) In the event of a Disaster, or either Party's anticipation of a Disaster, which will affect both the Province and the Service Provider, both 18.06(1) and 18.06(2) apply.

## **ARTICLE 19 - TECHNOLOGY, ARCHITECTURE AND IMPROVEMENTS**

### **19.01 Architecture Standards**

In addition to the obligations otherwise set forth in this Agreement, the Service Provider will implement the Province's existing technical architecture standards and guidelines to the same extent as such standards and guidelines are themselves complied with by the Province as of the Hand-Over Date, as such standards are updated or revised by the Province from time to time



(subject to the Change Order Process). The Service Provider will advise the Province of any significant incompatibilities known to the Service Provider that would result from changes to such standards. If the Province requests, in accordance with the Change Order Process, the Service Provider's assistance to document technical architecture standards, then the Service Provider will deliver a draft document, *Technical Architecture Standards*, for the Province's review within three (3) months of the request. The Service Provider will update the document, *Technical Architecture Standards*, from time to time during the term as such standards change (and in accordance with the Change Order Process). The Province's architectural standards and guidelines including any *Technical Architecture Standards* document Approved by the Province, will form part of the Operations Manual.

#### **19.02      Technology Improvements and Currency**

The Service Provider will provide the Services by maintaining the supporting technologies at an appropriate level of currency and in a manner that will support the Parties' efforts to achieve the objectives set forth in Section 1.13 (*Objectives of the Parties*), and to comply with the Service Levels and the Privacy and Security Obligations. Except as specifically, provided otherwise in this Agreement, the Service Provider will determine the appropriate levels of technology currency in respect of the SAP Application and the SAP Services, and throughout the Term will identify and implement technology improvements to the SAP Application and the SAP Services, all with the Approval of the Province, in accordance with the Change Order Process. Except where the Province agrees in writing that such implementations are not necessary, the Service Provider will report to the Province at the end of each Contract Year throughout the Term, demonstrating its actions or steps that the Service Provider has taken to meet its obligations relating to improvements in technology set forth in this Section 19.02 (*Technology Improvements and Currency*).

#### **19.03      Material Technology Change**

Before making any changes to the material suppliers of technology to be used by the Service Provider in performing the Services, the Service Provider will consult with the Province in respect thereof through the Governance Process. If a change in material suppliers impacts the delivery or cost the services, or imposes a cost to the Province to accommodate the change to the material suppliers, the Service Provider will obtain the Approval of the Province of the change to the material suppliers.

#### **19.04      Technology Presentations**

At the Province's request and cost, the Service Provider will facilitate the attendance of the Province personnel at any presentation offered to the Service Provider by any technology vendor whose software, equipment or materials are used, or are being considered by the Service Provider for use, directly or indirectly in a material manner in the provision of Services, except in the event that the Service Provider cannot obtain the consent of such technology vendor or there is insufficient space to permit the Province to attend.



**19.05**      **Disabling Code**

The Service Provider will use commercially reasonable efforts to ensure that all Systems provided or used by it, or by its Subcontractors or Suppliers, to provide the Services do not and will not contain any Disabling Code. The Service Provider will not insert, or knowingly permit any third party to insert, any Disabling Code into any of the Systems used to provide the Services. In the event the Service Provider becomes aware of the existence of a Disabling Code, it will:

- (a) notify the Province thereof
- (b) will use commercially reasonable efforts to remove the Disabling Code in a prompt and co-ordinated manner so as to minimise the spread and impact of such Disabling Code; and
- (c) subject to subsection 25.08 (*Limitation of Liability*) and Schedule 23 (*Privacy and Security*)

(including the replacement of any protection tools as required to avoid a recurrence of such failure or damage and the replacement or restoration of lost or damaged Software, Systems, Province Confidential Information or other materials or information).

**19.06**      **System Protection Features**

To the extent that any Software (either a Deliverable or Service Provider Owned Property licensed under Section 20.08 (1)(a) or (1)(b)), including any Modifications thereto, that is, or at any time hereafter may be, utilized in providing Services under this Agreement contains protection features designed to prevent copying or the use of such Software or other unauthorized access, to disable or erase Software or data, to shut down all or any portion of the Services or to perform other like actions, the Service Provider will, in the case of:

- (a) For any Deliverable and Service Provider Owned Property licensed under Section 20.08 (1)(a), provide the Province with the necessary key, password or other means for the Province to have continued access and use of such Software, during and after the Term.
- (b) Service Provider Owned Property licensed under Section 20.08(1)(b), provide the Province with the necessary key, password or other means for the Province to have continued access and use of such Software during the Term and any Termination Assistance Period.



## ARTICLE 20 - INTELLECTUAL PROPERTY AND PROPRIETARY RIGHTS

### 20.01 Ownership of Province

(1) Except as expressly provided in this Agreement, as between the Parties, the Province will be and remain the exclusive owner of all rights, title and interest in and to:

- (a) all assets and property provided by the Province and Clients to the Service Provider, including any assets to which the Service Provider is given access by the Province or any Client from time to time during the Term;
- (b) [ except as provided in and subject to the terms of any separate license agreements entered into by the Province; ]
- (c) all Software owned by the Province or Clients, including object and source code versions, and any Documentation and any Modifications relating to the foregoing whether made by or on behalf of the Province, Clients separately, jointly or with any other Person (excluding the Service Provider, its Personnel, Subcontractors and their External Personnel outside of this Agreement) and includes all Modifications thereto made by or on behalf of the Province, Clients separately, jointly or with any other Person (including the Service Provider, its Personnel, Subcontractors and their External Personnel under this Agreement) (“**Province Proprietary Software**”) including all Intellectual Property Rights, in and to all Province Proprietary Software.

(2) For clarity, the parties acknowledge that, subject to the provisions of the license agreements entered into by the Province and the licensors of the Province Licensed Software, and other than with respect to Modifications to the Province Licensed Software made by Service Provider outside this Agreement, as between the Parties, the Province will be and remain the sole and exclusive owner of all rights, title and interest, including all Intellectual Property Rights, in and to the Province Licensed Software, and all Modifications to the Province Licensed Software made by or on behalf of the Service Provider or its Subcontractors as part of the Services. The Service Provider shall maintain and shall provide to the Province, upon request, a copy of the Deliverables that include documents and records with respect to any such Modifications to the Province Licensed Software. Upon request, the Service Provider will provide such other information it may have with respect to any such Modifications to the Province Licensed Software as may be reasonably requested by the Province to comply with its obligations under the licenses for the Province Licensed Software.

### 20.02 Ownership of Service Provider Owned Property

(1) The Service Provider will be and remain the sole and exclusive owner of all rights, title and interest, including all Intellectual Property Rights, in and to all Systems, Content, and Software owned by the Service Provider on the Hand-Over Date, or created or acquired by or on behalf of the Service Provider, its Affiliates and Subcontractors from time to time or licensed to Service Provider, its Affiliates and Subcontractors after the Hand-Over Date outside of this Agreement, including Documentation and Modifications relating to the foregoing, (“**Service**”



**Provider Owned Property**”). To the extent that any Service Provider Owned Property is embedded in any Deliverable, the Province will have a license to use them in accordance with Section 20.08. For clarity, all Service Provider Commercial Software is licensed under separate licenses or agreements and is not provided under this Agreement.

(2) Except as otherwise provided in this Agreement or a Change Order, or as provided to the Service Provider by or on behalf of the Province under this Agreement, or licensed to the Province under Section 20.08, no Hardware, Software, Systems, Documentation, Content, Confidential Information or other Information or Intellectual Property that is proprietary to a Third Party or that is Service Provider Commercial Software, and licensed under a separate license agreement, is or will be used in, incorporated into, integrated, embedded or bundled with any of the Deliverables or the SAP Applications, without the prior Approval of the Province.

### **20.03 Service Provider Intellectual Property**

Except as expressly provided otherwise under this Agreement, nothing in this Agreement or in the relationship between the Parties will confer any other right or license in or upon the Province in respect of the Service Provider’s Intellectual Property (including patents) or any other right or license in or upon the Service Provider in respect of the Province’s Intellectual Property (including patents), either directly, by implication, or otherwise.

### **20.04 Further Acknowledgements of Intellectual Property**

The Service Provider will itself execute, and will obtain the execution by all Personnel, Subcontractors and External Personnel of, and deliver to the Province (promptly upon receipt thereof from the Province) all such reasonable transfers, assignments, documents and instruments and other reasonable documents requested and prepared by the Province, and the execution of all lawful oaths and applications to assign or give effect to the foregoing rights and for registration of the same, as may be necessary to transfer and assign to the Province the ownership of Deliverables set out in Section 20.01, free and clear of all Liens, and to irrevocably waive all moral rights that they have or may have in any Deliverables, and will otherwise cooperate with the Province to give effect to, record and register the Province’s ownership. The Province shall be responsible for the costs of preparing the documents referred to in this Section and for any third party costs to record or register the Province’s ownership interests but shall not otherwise be responsible for costs incurred by the Service Provider unless such Service Provider assistance requires the use of different or additional resources beyond those which Service Provider uses to provide or has used to provide the Services.

### **20.05 License to Use Province Proprietary Software for the Services**

(1) Subject to the provisions of this Agreement, the Province hereby grants to the Service Provider the non-exclusive right during the Term and any Termination Assistance Period, without cost or charge, to:

- (a) use and copy the Deliverables, and the Province Proprietary Software;
- (b) create and use Modifications thereto; and



- (c) to authorize its Subcontractors to use the Deliverables, the Province Proprietary Software and any Modifications thereto;

for the sole purpose of providing the Services pursuant to, and in accordance with, the terms of this Agreement, but subject to any restrictions, license terms or Province Policies as set out in this Agreement or as notified by the Province to the Service Provider through the Change Order Process.

- (2) The foregoing rights will terminate upon the Termination Date or the expiry of the Termination Assistance Period, whichever is the later (the "License Termination Date").

#### **20.06 Use of Province Licensed Software**

(1) The Province will obtain, maintain, and provide to the Service Provider, at the Province's cost (including for maintenance and support that is the Province's obligation to pay under this Agreement, subject to section 21.05), with the Service Provider's reasonable assistance, all "**Required Consents**". Required Consents are any consents or approvals required to give the Service Provider and its Subcontractors which the Service Provider and Province agree that the Service Provider reasonably requires to perform the Services, including without limitation the right or license to use and access the SAP Applications (including the SAP Software and such Software of third parties as is licensed by the Province and identified in Schedule 5 (*SAP Services*) or implemented by the Province after the Effective Date) ("**Province Licensed Software**") and Province Data.

(2) For greater certainty, the Required Consents to be provided by the Province under paragraph 20.06(1) include the consents and approvals required for the Service Provider to:

- (a) use and access the Province Licensed Software and Province Data, for the sole purpose of providing the Services pursuant to, and in accordance with, the terms of this Agreement, but subject to any restrictions, license terms or Province Policies as set out in this Agreement or as notified by the Province to the Service Provider through the Change Order Process; and
- (b) to authorize its Subcontractors to use the Deliverables and the Province Proprietary Software and any Modifications thereto, for the purpose of providing the Services pursuant to, and in accordance with, the terms of this Agreement.

(3) The Service Provider acknowledges that, in connection with the Province's obligation to obtain Required Consents, the Service Provider may be required to execute reasonable acknowledgements and agreements as may be consistent with the terms of this Agreement (such as confidentiality and liability) and required by the third party licensors of the Province Licensed Software.

(4) If any Required Consent is not obtained, the Province and the Service Provider will cooperate with each other in achieving a reasonable alternative arrangement for the Province to receive the Services with as minimal interference to its business operations as is reasonably possible until such Required Consent is obtained.



(5) The Province will not assign or otherwise dispose of the licenses relating to the Province Licensed Software or amend, or terminate such licenses and the maintenance and support arrangements, in all cases, in any way which would materially adversely impact the Service Provider's ability to deliver the Services in accordance with the terms of this Agreement.

(6) The Province will exercise all rights of renewal under its maintenance and support arrangements in relation to the Province Licensed Software during the Term such that during such time as the Service Provider and its Subcontractors are utilizing such Software in connection with the Services, the Province maintains maintenance and support arrangements for such Software as are required for the performance of the Service Provider's obligations under this Agreement.

(7) Nothing in Subsections 20.06(5) and 20.06(6) shall fetter the discretion of the Province to take or not take such actions with respect to its licenses relating to the Province Licensed Software or the maintenance and support arrangements in respect thereof as the Province deems appropriate, provided that any Adverse Impact on the Service Provider's ability to deliver the Services in accordance with the terms of this Agreement resulting therefrom shall be addressed through the Change Order Process.

#### **20.07 Use of Toolbox Materials by Service Provider**

(1) Subject to paragraphs 20.07(2) and 20.07(3), the Province hereby grants to the Service Provider a perpetual, irrevocable, non-exclusive, world-wide, royalty-free right and license to use, have used, make or have made, copy, modify, create derivative works of, execute, display, perform, translate, distribute, and sublicense, lease, or sell, and practice and have practiced any method in, those Deliverables and portions of Deliverables created by the Service Provider in the performance of the Services the ownership of which is transferred to the Province under Section 20.01(2) and which are general in nature and re-usable in other applications or engagements and not unique to the Province's requirements, including any related Intellectual Property therein ("**Toolbox Materials**").

(2) The rights granted by the Province under paragraph 20.07(1) do not include any right or license of any nature whatsoever in or to any Modifications to Third Party Software embedded in or forming part of any Deliverables (except for Modifications to the SAP Software embedded in or forming part of any Deliverables).

(3) The rights granted under paragraph 20.07(1) are granted on an "as is" basis without representations, warranties or conditions of any kind, whether oral or written or express or implied, statutory or otherwise and the Province specifically disclaims any implied representations, warranties or conditions of merchantability, satisfactory quality, non-infringement and fitness for a particular purpose. The Province shall have no obligation to indemnify the Service Provider under Section 25.05 in respect of any use of the Toolbox Materials made by the Service Provider under the right and license granted under Section 20.07(1).

#### **20.08 Use of Service Provider Software**

(1) The Service Provider hereby grants to the Province



- (a) the non-exclusive, perpetual, irrevocable, right to use, without additional cost or charge, any Service Provider Owned Property to the extent that it is embedded in a Deliverable for the Province's own internal use including:
  - (i) the provision of SAP services to its Clients;
  - (ii) the use by any Client of a Deliverable, within such Client's enterprise (including on the facilities of Client's alternative service providers for purposes of obtaining service from such alternative service providers), on an "as is" basis (without warranty or condition), with Software licensed by the Client now or at any point in the future from SAP Canada Inc., including the SAP Software; and
  - (iii) the obtaining of services from Alternative Service Providers),

such rights being otherwise non-transferable.

- (b) the non-exclusive, irrevocable, right to use during the Term and any Termination Assistance Period any other Service Provider Owned Property as required for the Province to receive the Services pursuant to, and in accordance with, the terms of this Agreement (including the Province providing SAP services to its Clients); and
- (c) the right to permit subcontractors of Province and its Clients to use any Service Provider Owned Property to the extent that it remains embedded in a Deliverable solely for the purpose of, and to the extent necessary for providing services to the Province and its Clients, and subject to the execution of appropriate confidentiality agreements with the Province;

(2) Notwithstanding the foregoing, nothing in this Section 20.08 shall restrict the Province from permitting its Clients from accessing or using the Province Proprietary Software.

#### **20.09 Open Source Software**

The Service Provider will not provide, deliver, incorporate, embed, contain or otherwise include in any Deliverables, or Modifications thereto, any Open Source Software except as Approved by the Province.

#### **20.10 Intellectual Property Rights Re: New Services**

The Province and the Service Provider acknowledge that they may, from time to time, expand the scope of the Services in accordance with this Agreement, and recognize that, in connection with any new services, it will be necessary to reach an agreement on their respective Intellectual Property Rights in the Software (including any Software licensed from a Third Party) that is then operated by the Province or other third parties. It is the intention of the Parties to resolve any issues associated with such Intellectual Property Rights on a basis that is consistent with the provisions of this Article 20 (*Intellectual Property and Proprietary Rights*), to the extent applicable.



**20.11 Service Provider License to Province after Term**

Upon the expiry or termination of this Agreement, the Service Provider shall offer to the Province and/or Clients a license and right to use the Software of the Service Provider that is licensed by the Service Provider to others on commercially available terms ("**Service Provider Commercial Software**") on such commercially available terms and on payment of the applicable license fees.

**20.12 Post-Termination Maintenance and Support**

Upon termination or expiry of this Agreement, the Service Provider will offer to the Province or its designee, including the Alternative Service Provider on the Province's behalf, at the Province's request, any maintenance and support services that Service Provider provides to its customers generally in respect of the Service Provider Commercial Software, on the Service Provider's normal commercial terms and on payment of the rates for such maintenance and support services or on such other terms as may be agreed between the Province and the Service Provider.

**20.13 Third Party Notices of Infringement or Requests**

If either Party receives a notice of infringement, request for disclosure, subpoena, or other inquiry from a Third Party with respect to any of the other Party's Intellectual Property under this Article 20 (*Intellectual Property and Proprietary Rights*), then such Party will, as soon as practical, notify the other Party in writing and the matter will be dealt with in accordance with Article 25 (*Indemnification and Liability*), as applicable. Neither Party will respond to such notices, requests, subpoenas or inquiries, or disclose the other Party's Confidential Information to third parties, without first so notifying the other Party in writing (to the extent possible) and obtaining the other Party's Approval.

**20.14 Residual Rights**

Subject to the terms and conditions of this Agreement, either Party may use and exploit any general ideas, concepts, know-how, methodologies, processes, or techniques developed or created by such Party, or to which they are exposed and which are contained in Confidential Information of the other Party, in the course of performing or receiving the Services and that may be retained in the unaided memory of such Party's personnel, without such personnel taking steps to commit such ideas, concepts, know-how, methodologies, processes, or techniques to memory. This section does not apply to grant any Party any rights in, the Intellectual Property or Intellectual Property Rights of the other Party or any Third Party.

**ARTICLE 21 - PROVINCE SHARED INFRASTRUCTURE****21.01 Ownership and Control of Province Shared Infrastructure**

The Parties acknowledge that the Service Provider requires access to and use of the Province Shared Infrastructure during all or a portion of the Term to support the delivery and performance



of the Services as contemplated in this Agreement. In connection therewith, the Service Provider acknowledges that:

- (a) the Province Shared Infrastructure will at all times be owned, operated and maintained by the Province or on behalf of the Province by Third Parties;
- (b) the Service Provider has no ownership or other interest in the Province Shared Infrastructure other than the rights of access to, and use of, the Province Shared Infrastructure granted to the Service Provider under this Article 21 (*Province Shared Infrastructure*) for purposes of delivering and performing the Services in accordance with this Agreement; and
- (c) subject to the rights of the Service Provider specifically set out in this Article 21 (*Province Shared Infrastructure*) and otherwise in this Agreement, the Province will have control of, access to and use of the Province Shared Infrastructure, and the sole control of the operation and maintenance of the Province Shared Infrastructure including changes, modifications and upgrades thereto, without requirement for consent of or Approval from the Service Provider.

#### **21.02 Use of Province Shared Infrastructure**

The Province will make available to the Service Provider such access to and use of the Province Shared Infrastructure as is required by the Service Provider to deliver and perform the Services in accordance with this Agreement. Such access and use will be available for the period commencing on the Hand-Over Date (or commencing on such other date as may be agreed to by the Parties during the Term if access to the Province Shared Infrastructure is not required on the Hand-Over Date), to and including the end of the Termination Date or the expiry of the Termination Assistance Period, whichever is the later (the “**Shared Infrastructure Use Period**”), and without any additional fee or payment from the Service Provider to the Province but does not include physical access to the Province’s data centres.

#### **21.03 Restrictions on Access and Use**

(1) The right of the Service Provider to access and use the Province Shared Infrastructure will be subject to the following:

- (a) the Service Provider will be given access to and the use of the Province Shared Infrastructure only during the normal hours of operation of the Province Shared Infrastructure during which the same is generally made available to other users thereof. The Province may change and modify such hours of operation from time to time in its discretion, and upon reasonable prior written notice to the Service Provider, provided that:
  - (i) the Province Shared Infrastructure will be available for use for a reasonable number of hours during each Business Day (and such non-Business Days where the Province Shared Infrastructure is ordinarily made available to its users) and at reasonable hours as may be required to support the delivery and performance of the Services,



- (ii) any change or modification of the hours of operation will apply generally to users of the Province Shared Infrastructure and not only or principally to the Service Provider,
  - (iii) the Service Provider will not be liable for any breach of or failure to perform its obligations under this Agreement, including any failure to meet the Service Levels, to the extent that such breach or failure to perform is attributable to such change or modification of the hours of operation of the Province Share Infrastructure, and
  - (iv) any decrease in the hours of availability of the Province Shared Infrastructure to the Service Provider (except as may be specifically contemplated as part of the Transformation of the Services under this Agreement) will be made through the Change Order Process;
- (b) in exercising its right of access to or use of the Province Shared Infrastructure, the Service Provider will:
- (i) not alter, change, damage or remove any furniture, fixtures, equipment, data, information or other matter located at or comprising part of the Province Shared Infrastructure, except with the Approval of the Province, or as specifically contemplated in this Agreement or resulting from the Services provided under this Agreement, and
  - (ii) following each exercise of access to or use of the Province Shared Infrastructure, leave the Province Shared Infrastructure in the same condition as existed prior to access to or use of the Province Shared Infrastructure by the Service Provider, allowing for normal wear and tear;
- (c) the Service Provider will cause all Personnel of the Service Provider or External Personnel used by the Service Provider, in accessing or using the Province Shared Infrastructure, to:
- (i) comply with all policies, rules and regulations related to the use of the Province Shared Infrastructure that the Province may adopt from time to time in respect of the Province Shared Infrastructure, provided that the Province gives the Service Provider prior written notice thereof. Without limiting the generality of the foregoing, Service Provider acknowledges that access to the database for development work is done through an SAP interface and is not done at the database level, and
  - (ii) except as otherwise agreed, at all times and in all circumstances to identify themselves as employees, agents, contractors or representatives of the Service Provider, as applicable, and not as employees, agents, contractors or representatives of the Province;
- (d) the Service Provider will access and use the Province Shared Infrastructure only for the purpose of delivering and performing the Services under this Agreement,



and for no additional, ancillary or other purpose unless specifically authorized in writing by the Province;

- (e) the Service Provider will advise the Province of any intended significant reduction in use of the Province Shared Infrastructure as soon as the Service Provider is reasonably aware of the same, including any determination by the Service Provider to discontinue all or partial use of the Province Shared Infrastructure, provided that in no event is the Service Provider required to provide more than twelve months' notice of any intended reduction;
- (f) to the extent that the Service Provider has any reason to believe that its use of the Province Shared Infrastructure will adversely affect the general operation of the Province Shared Infrastructure (including, without limitation, due to volume or usages changes), then the Service Provider will immediately advise the Province of the same and take all steps as directed by the Province acting reasonably that are intended to minimize or eliminate any Adverse Impact on the Province Shared Infrastructure (recognizing that the Province uses the Province Shared Infrastructure to deliver a number of critical services within the Province, and accordingly, the minimization or elimination of any such Adverse Impact is paramount); and
- (g) nothing in this Article 21 (*Province Shared Infrastructure*) entitles the Service Provider to require the Province to change, modify or upgrade the Province Shared Infrastructure.

#### **21.04 Ordinary Course Changes to Province Shared Infrastructure**

The Province, in its sole discretion and from time to time, may make non-material changes, modifications, additions or upgrades to the Province Shared Infrastructure or discontinue use of any non-material portion of the Province Shared Infrastructure in the ordinary course of operations that do not have a material impact on the delivery, performance or the cost of providing the Services (collectively, "**Ordinary Infrastructure Changes**"), without requirement for the consent of the Service Provider and without prior notice to the Service Provider; provided that the Ordinary Infrastructure Changes do not materially affect or impact the access to and use of the Province Shared Infrastructure by the Service Provider for the delivery and performance of the Services in accordance with this Agreement. If as a result of any Ordinary Infrastructure Changes made, the Service Provider is required to change, modify or upgrade its Systems and operations in order to continue to have access to and use of the Province Shared Infrastructure, then the Service Provider will be solely responsible for making all such changes, modifications or upgrades and for all costs thereof to the Service Provider.

#### **21.05 Material Changes to Province Shared Infrastructure**

(1) The Province may make material changes, modifications, additions or upgrades to the Province Shared Infrastructure or discontinue use of any material portion of the Province Shared Infrastructure from time to time (the "**Material Infrastructure Change**"), notwithstanding that



the Material Infrastructure Change may have a material adverse effect or impact on the access to and use of the Province Shared Infrastructure by the Service Provider, provided that:

- (a) subject to the Service Provider implementing any changes, modifications, additions or upgrades to its Systems and operations as contemplated in this Section, the Service Provider will continue to have access to and use of the Province Shared Infrastructure to the extent that the Province Shared Infrastructure continues to be operated by the Province; and
- (b) the Province will give reasonable prior written notice to the Service Provider of the details of the Material Infrastructure Change, including the analysis of the Province as to the effect and impact of the Material Infrastructure Change to the Service Provider, to the extent known, in the delivery and performance of the Services pursuant to this Agreement.

(2) Where a Material Infrastructure Change may be reasonably expected to have a material adverse effect or impact on the Service Provider, the Province will provide the notice of the Material Infrastructure Change to the Service Provider sufficiently in advance of the implementation thereof so as to afford the Service Provider a reasonable opportunity to make the required changes, modifications, additions and upgrades to its Systems and operations prior to such implementation. The Service Provider will be solely responsible for making all such required changes, modifications and upgrades that may be required as a result of the Material Infrastructure Change. Any material impact on the delivery, performance or the cost of providing the Services, will be addressed by the Parties through the Governance Process and the Change Order Process.

#### **21.06 Changes Required By the Service Provider**

Where a change to the Province Shared Infrastructure is required for the continued access to and use of the Province Shared Infrastructure by the Service Provider (such as a change to accommodate increased demand or capacity), then the following will apply:

- (a) the Service Provider will notify the Province, in writing, where a change to the Province Shared Infrastructure is required for the continued access to and use of the Province Shared Infrastructure by the Service Provider, which notice will include a detailed description of all business and technical requirements relating to such requested change, to the extent known;
- (b) the Province will review and consider any change to the Province Shared Infrastructure as may be reasonably requested by the Service Provider, having



regard to all of the surrounding circumstances including the impact on and the interests of the other users of the Province Shared Infrastructure, and the Province will implement any such changes as may be Approved by the Province;

- (c) the Province will prepare a plan, with the assistance of the Service Provider as may be necessary, for the implementation of any such required or requested change. Such plan will include a detailed description of each change to the Province Shared Infrastructure proposed to be made, and a forecast of any increase to the operating and maintenance costs of the Province in respect of the Province Shared Infrastructure as a result from such change, all to the extent known or reasonably anticipated;
- (d) the Province will incorporate all reasonable comments and suggestions as the Service Provider may provide to the Province in writing provided that, for greater clarification, the Province will, at all times, have and retain the sole right to determine the appropriate plan and actions to implement such required or requested change; and
- (e) the costs incurred by the Service Provider, if any, as a result of any change to the Province Shared Infrastructure under this Section 21.06 (*Changes Required By the Service Provider*), shall be addressed through the Change Order Process.

#### **21.07 Changes Initiated by the Service Provider**

Where a change to the Province Shared Infrastructure is initiated by the Service Provider, then the following will apply:

- (a) the Service Provider may request a change to be made to the Province Shared Infrastructure by notice in writing to the Province which notice will include a detailed description of all business and technical requirements relating to such requested change, to the extent known;
- (b) the Province will review and consider any change to the Province Shared Infrastructure as may be reasonably requested by the Service Provider from time to time, having regard to all of the surrounding circumstances including, without limitation, the impact on and the interests of the other users of the Province Shared Infrastructure, and will implement any such changes as may be Approved by the Province;
- (c) if the change proposed by the Service Provider is Approved by the Province for implementation the Parties will prepare a plan for the implementation of any such required or requested change will include a detailed description of each change to the Province Shared Infrastructure proposed to be made, as well as a budget of costs anticipated to be incurred to effect and implement such change, and the Parties' respective responsibilities for such costs, and a forecast of any increase to the operating and maintenance costs of the Province in respect of the Province Shared Infrastructure as a result from such change, all to the extent known or reasonably anticipated;



- (d) the Province will incorporate all reasonable comments and suggestions as the Service Provider may provide to the Province in writing.

The decision to implement the change to the Province Shared Infrastructure proposed by the Service Provider in accordance with the plan developed by the Parties shall be made by agreement of the Parties provided that in the absence of such agreement the Province may elect to implement the change in accordance with Sections 21.04 and 21.05.

#### **21.08 Cooperation of the Parties**

The Parties will cooperate with each other and will use commercially reasonable efforts to make and implement any change, modification or upgrade to the Province Shared Infrastructure determined or Approved by the Province contemplated in this Article 21 (*Province Shared Infrastructure*), including testing of such change, modification or upgrade.

#### **21.09 Change Order Process**

Unless specifically provided otherwise in this Article 21 (*Province Shared Infrastructure*), the change process set forth in Section 21.06 (*Changes Required by Service Provider*) and Section 21.07 (*Changes Initiated by the Service Provider*), is in lieu of the Change Order Process with respect to the Province Shared Infrastructure.

#### **21.10 Failure of Province Shared Infrastructure**

In the event of an failure of the Province Shared Infrastructure, or the occurrence of any event or circumstance which prevents the Service Provider from having access to and use of the Province Shared Infrastructure, as is required by the Service Provider for the delivery and performance of the Services, whether arising from the negligence or fault of the Province or otherwise and which are not caused by the Service Provider, the Province and the Service Provider acknowledge and agree that:

- (a) the Province will have no liability or obligation to the Service Provider in respect thereof other than the obligation to use reasonable efforts and to act with due diligence to correct such failure, or to restore such access to and use of, the Province Shared Infrastructure as soon as reasonably practicable; and
- (b) to the extent that the Service Provider is not able to deliver or perform a Service in the manner or to the Service Level required under this Agreement, or to perform any other obligations under this Agreement, as a result of such failure or lack of access to or use of the Province Shared Infrastructure, the Service Provider will be released of all consequences in respect of such failure to deliver and perform such Service, to meet such applicable Service Level or to perform such obligations under this Agreement, until such failure or lack of access to or use of the Province Shared Infrastructure is rectified or remedied to a degree that the Service Provider is able to deliver and perform the Services, and to perform its obligations in accordance with this Agreement, without incurring additional costs or additional resources beyond those then being used to perform the Services.



### 21.11 Termination of Rights to Province Shared Infrastructure

The Service Provider acknowledges and agrees that its rights in respect of the Province Shared Infrastructure under this Article 21 (*Province Shared Infrastructure*) will cease upon the expiry (or earlier termination in accordance with this Article 21 (*Province Shared Infrastructure*)) of the Shared Infrastructure Use Period. Upon such expiry, the Service Provider will return to the Province all passwords, access codes, access cards and devices of any kind used to obtain access to and use of the Province Shared Infrastructure. For greater clarification, if the Province discontinues use of any portion of the Province Shared Infrastructure, then upon the discontinuance thereof the Service Provider's rights in respect of the discontinued portion of the Province Shared Infrastructure under this Article 21 (*Province Shared Infrastructure*) will cease, and the Service Provider will return to the Province all passwords, access codes, access cards and devices of any kind used to obtain access to and use of the discontinued portion of the Province Shared Infrastructure.

## ARTICLE 22 - AUDIT RIGHTS

### 22.01 Access Rights

(1) In connection with the Province's exercise of its rights under this Article 22 (*Audit Rights*), during the Term, and for a period of seven (7) years after the end of the Term, upon prior written request of the Province, except where such prior notice is not required pursuant to the express provisions of this Article 22 (*Audit Rights*) or any other express provisions of this Agreement, the Service Provider will provide the Province and its auditors and other authorized representatives (collectively, "Auditors") of the Province with access including, where applicable and practicable to do so, electronic access, to the extent necessary to enforce its rights under Section 22.04 (*Audit Rights*) under this Agreement to:

- (a) all the Province Records or Province Data related to the Services then in the Custody of the Service Provider, wherever maintained;
- (b) any System that contains such Province Records or Province Data related to the Services, wherever maintained; and
- (c) any property or facility at which the Services are being performed, where any such Systems are housed, or where any such Province Records or Province Data are maintained or stored.

(2) The provisions of Section 22.07 (*General Principles*) will apply with respect to the access rights granted to the Province under this Section.

(3) Any Subcontracts entered into by Service Provider with its Subcontractors (who are Affiliates or performing material services) will provide the Province with audit and access rights in respect of the Services performed by such Subcontractor equivalent to the audit and access rights of the Province in respect of the Service Provider under this Agreement.



(4) During the Term, the Province will cause all such audits, inspections and investigations to be performed during the normal business hours for the Services in question, and upon reasonable prior notice to the Service Provider, which normally will be at least 30 days, but may be less if Service Provider and the Province agree that certain audits, such as physical security audits, may be conducted upon shorter notice, provided that:

- (a) in the case of audits, inspections and investigations conducted by a Government Authority, such audits, inspections and investigations can be conducted with such lesser notice as the Government Authority deems appropriate:
- (b) in the case of inspections or investigations pursuant to Section 22.03 (Inspection and Investigation Rights) which may be performed at any time without notice.

## **22.02 Examinations and Copies**

During the Term, upon the prior written request of the Province, the Service Provider will permit the Province and its auditors and their respective authorized representatives, subject to the provisions of Section 22.07 (*General Principals*) and during business hours or such other time as the Parties mutually agree, to examine and make copies of any computer-stored data, correspondence, accounting procedures and practices, and any other relevant supporting financial or operational data including, without limitation, invoices, payments, claims and receipts, and in all cases pertaining to the Services, which will be made available by the Service Provider to the Province and its auditors, and their respective authorized representatives, in Nova Scotia. Both Parties acknowledge and agree that nothing in this Section will in any way limit or restrict the confidentiality obligations as set forth in Article 17 (*Privacy, Security and Confidentiality*) or as otherwise contemplated by this Agreement.

## **22.03 Inspection and Investigation Rights**

In the event of a breach or a perceived breach of this Agreement, the Province will have the right, either directly or through its representatives, to inspect all or any matters in respect of the Services performed by or on behalf of the Service Provider under this Agreement. The Province will make reasonable efforts in exercising such right of inspection or investigation to not hinder or interfere with the performance of the Services by the Service Provider under this Agreement. For greater clarification, the Province acknowledges that to the extent that any such exercise of the Province's right of inspection or investigation directly hinders or interferes with the Service Provider's ability to deliver Services under this Agreement, then the Service Provider will not be responsible for any Service failure resulting therefrom. The Service Provider will provide the Province and its representatives with all reasonable assistance in connection with any such inspections and investigations. The provisions of Section 22.07 (*General Principles*) will apply with respect to the inspection or investigation rights granted to the Province hereunder. In the event the Service Provider does not agree with the Province's perception that there is a perceived breach of this Agreement the Service Provider will provide the Province with access and the Parties will escalate through Governance or the Expedited Dispute Resolution process,



**22.04      Audit Rights**

(1) The Province may appoint an internal or external auditor or other professional advisor at any time and from time to time, but subject to the provisions of Section 22.07 (*General Principles*), to review and confirm or verify, in respect of any Contract Year, any aspect of this Agreement and the Services performed under this Agreement including, without limitation, the following:

- (a) any matter related to the operational aspects of this Agreement and the Services including, without limitation, to certify or verify:
  - (i) the integrity of the Province Records or Province Confidential Information including, without limitation, the completeness, accuracy, timelines, confidentiality, availability and security in respect thereof;
  - (ii) the privacy and security processes of the Service Provider and its Access Subcontractors, and the compliance of the Service Provider and its Access Subcontractors with the Privacy and Security Obligations;
  - (iii) the adequacy of the measures implemented by Service Provider in response to risks identified by the Province (including any risks identified in the risk register);
  - (iv) the general controls, practices, and procedures utilized by the Service Provider in connection with the Services performed;
  - (v) the stability and security of the Systems and processes utilized by the Service Provider in performing the Services;
  - (vi) the integrity of all reports provided by the Service Provider to the Province (including the raw data from which such reports are compiled);
  - (vii) that the Services are being provided in accordance with the terms of this Agreement (including the Service Levels), and in accordance with all Service Provider Applicable Laws, the Province Policies and any applicable requirements of any regulatory body or authority having competent jurisdiction; and
  - (viii) the existence and testing referred to in Article 18 (*Business Continuity and Disaster Recovery*) in respect of the Business Continuity Plan and Disaster Recovery Plan;
- (b) any matter related to the financial aspects of this Agreement, to the extent necessary to confirm Service Provider's invoiced charges including verifying the accuracy of all Fees or other amounts invoiced to, or paid by, the Province, the accuracy of financial information provided by the Service Provider to the Province in respect of the calculation of Fees or other amounts invoiced to the Province or set forth in any Change Proposal in connection with the Change

Order Process, or any credits or reductions against the Fees (whether or not properly granted as required by the Service Provider to the Province), and the accuracy of any reporting by the Service Provider to the Province in connection with the foregoing;

(c)

(d)

operational and other audits requested or otherwise required to be undertaken by the Auditor-General under the *Auditor General Act* (Nova Scotia) or under any other Applicable Laws regarding any aspect of this Agreement (including, without limitation, an audit of the compliance by the Service Provider with the requirements of this Agreement), or any audits that may be required by Executive Council of the Province; or

(e)

such other audits relating to this Agreement relevant thereto, the obligations of the Service Provider under this Agreement, or the Services as the Province may determine from time to time.

(2) For greater clarification, the Province may, in connection with the exercise of its audit rights pursuant to this Section 22.04 (*Audit Rights*), exercise or cause the Service Provider to exercise rights referred to in this Section in respect of its Subcontractors.

(3) For the avoidance of doubt, and notwithstanding anything else in this Agreement, neither the Province nor any auditor, investigator, inspector or representative of the Province shall have the right to access Service Provider's costs, except where invoiced charges are expressly stated to be Service Provider's costs or costs-plus.

**22.05**            Costs

(1) Except for the [ ] section 22.06, the costs of any inspections, investigations and audits will be dealt with in accordance with the following provisions:

(a) except as set forth in paragraph (b) below, the Province will pay its costs and expenses of any investigations and inspections under Section 22.03 (*Inspection and Investigation Rights*), and the costs and expenses of any auditor or other professional advisor retained by the Province to conduct or assist with an audit under Section 22.04 (*Audit Rights*);

(b) subject to paragraphs (c) and (d) (ii), the Province will be responsible for the Service Provider's costs and expenses for the support and assistance provided by the Service Provider in respect of any inspections, investigations and audits carried out pursuant to this Article, to the extent that such support and assistance by the Service Provider requires the use of different or additional resources beyond those which Service Provider uses to provide the Services in accordance



with the baselines and Service Levels, such as specialized audit software or additional employees or Subcontractors;

- (c) The Service Provider will provide support and assistance for one inspection, investigation or audit each Contract Year at no additional cost to the Province, such inspection, investigation or audit to be determined by the Province and notice thereof to be given to the Service Provider prior to the commencement of the inspection, investigation or audit.

Notwithstanding the foregoing, the Service Provider shall not charge the Province for responding to questions or requests for information from the Province or its representatives if such questions or requests for information do not require a material effort by the Service Provider.

- (d) where an investigation, inspection or audit reveals a material Deficiency as a result of the acts or omissions of the Service Provider (or of those Persons for whom the Service Provider is responsible at law or pursuant to the terms of this Agreement), the following provisions will apply:

- (i) the Service Provider will resolve such Deficiency in accordance with the provisions of Section 22.08 (*Deficiencies*), and
- (ii) upon correction of the material Deficiency so identified, the Service Provider will provide reasonable documentation or other evidence that such Deficiency has been remedied. If the Province acting reasonably determines that it requires a further audit to verify that such Deficiency has been corrected, the Province will undertake a new audit at the Service Provider's expense, to confirm that such material Deficiency has been fully addressed and remedied.

(1) Subject to the provisions of this Section 22.06: (i) Service Provider shall arrange for an independent auditor to conduct a Audit; (ii) the Audit shall be in respect of the control objectives and control procedures referred to and agreed to be Service Provider responsibility in Subsection (2) and shall cover the period April 1 to March 31, and (iii) the independent auditor (the "Service Provider Auditor") conducting the Audit shall be qualified and trained to levels appropriate to conduct the Audit.



(2) The Province shall identify a consultant (the "External Consultant") who shall be qualified by training, education and experience to provide the services to be provided by such Person. The External Consultant shall work with the Province and the Service Provider in respect of the Audit. With the assistance of the External Consultant, the Parties shall mutually agree on the control objectives and control procedures for which each Party is responsible and, where the Parties are jointly responsible, their respective areas of responsibility, having regard to the Services to be provided by the Service Provider and the responsibilities of each Party under this Agreement. After the control objectives and control procedures for which each Party is responsible are defined, each Party will take such steps as may be necessary in order for the Service Provider to be able to provide the Audit on an annual basis for the control objectives and control procedures for which Service Provider is responsible, including identification of the specific activities and testing requirements for the control procedures and completion of internal evaluations and readiness reviews, in accordance with this Section.

(3) Prior to the commencement of each Audit in respect of a period commencing on or after April 1, 2013, the Service Provider will provide the Province with a description of the processes system in place during the period to be covered by the Audit and the control objectives and control procedures and any required written representation attesting to the fair presentation and design of the control procedures, in each case on which Service Provider's independent auditor will express an opinion under the Audit. Such information will be provided to the Province to enable the Province to consult with Clients concerning the Audit. Service Provider will provide a copy of the resulting final report from each Audit to the Province on or before April 30 (unless such other date is otherwise agreed to by the Parties) in each year. The Province will be entitled to provide copies of the final report from each Audit to Clients or to the auditors of such Clients.

(4) In respect of the period from the Hand-Over Date to the Service Provider shall provide the Province with such information and support as may be reasonably requested by the Province in connection with the Province's Audit for the period . . . . . The information and support provided by the Service Provider's Dedicated Employees shall be provided to the Province at no additional cost and the Service Provider will consult with the Province prior to providing any non-Dedicated Employees resulting in additional cost to the Province.

(5) The Province shall be responsible for: (i) the Province's internal costs and third party expenses incurred by the Province in connection with the Audit; (ii) the third party expenses incurred by the Service Provider in respect of the Audit for the period . . . . . and (iii) in respect of subsequent Contract Years, for third party expenses incurred by the Service Provider in respect of the Audit carried out under this Section that are in excess of . . . . . per Contract Year (provided that such amount shall be adjusted for Economic Change Adjustment on an annual basis in the same manner as Service Provider's Fees are adjusted under Schedule 22 (*Pricing*)). The third party expenses incurred by the Service Provider referred to in this subsection include, for greater certainty, the fees of Service Provider's independent auditor performing the Audit but do not include any amounts in respect of Personnel, External Personnel or the employees of Service Provider and Subcontractor Affiliates supporting the Audits carried out . . . . .



under this Section. For greater certainty, each Party will cooperate with the other Party to minimize the costs and expenses for which each Party is responsible.

(6) The [redacted] will be deemed to be an audit for the purposes of this Article 22 (*Audit Rights*) with Deficiency correction and all other matters (other than costs which will be addressed as set forth in subsection 22.06(5)) addressed in the manner as set forth in this Article 22 (*Audit Rights*) for audits.

#### **22.07            General Principles**

(1) In connection with the access, inspection, investigation and audit rights granted to the Province and other Persons under this Article 22 (*Audit Rights*):

- (a) the auditors, investigators, inspectors or representatives of the Province will: (i) be qualified and trained to levels appropriate to conduct audits, inspections or investigations being conducted; (ii) if a competitor of Service Provider, will execute a confidentiality agreement with Service Provider consistent with the form attached as Schedule 19 (*Non Disclosure Agreements*), subject to such other terms and conditions as may be required by the auditors, investigators, inspectors or representatives of the Province to address a potential breach of the duty of confidentiality under the confidentiality agreement; (iii) will not be retained on a contingency fee basis; and (iv) shall not have access to any data of any customer of Service Provider or any Service Provider's or its Affiliates proprietary data, provided that the Province may have access to such parts of Service Locations as are used to perform the Services, or other locations where Province Data or Province Confidential Information is stored to the extent reasonably necessary to audit Service Provider as set forth in this Agreement.
- (b) the Province will, and will cause its auditors, investigators, inspectors or representatives to:
  - (i) use reasonable efforts not to hinder or interfere with the performance of the Services by the Service Provider, and for greater clarification, the Province acknowledges that to the extent any such exercise of rights directly hinders or interferes with the Service Provider's ability to deliver the Services, then the Service Provider will not be responsible for any resulting Service Level failures in respect thereof, and
  - (ii) comply with all security and other similar policies of the Service Provider while at its premises, provided that the Service Provider provides the Province with reasonable prior notice thereof, and provided further that any such security or other similar policies of the Service Provider do not unduly hinder or interfere with the conduct of the audit, inspection or investigation in question;
- (c) the Service Provider will, and will cause its Personnel, Subcontractors and External Personnel to:



- (i) cooperate with any such inspections, investigations and audits performed by the Province through the Province's auditors, investigators, inspectors or representatives,
  - (ii) make available on a timely basis the information and Records requested by the Province or its auditors, investigators, inspectors or representatives, and
  - (iii) provide the Province and its auditors, investigators, inspectors or representatives with assistance in obtaining access to such information and Records, and to any Subcontractors, Personnel or External Personnel, as may be reasonably requested;
- (d) electronic access to any System contemplated in Section 22.01 (*Access Rights*), which contains Province Records or Province Data in connection with the Services and the records of third parties shall be supervised by the Service Provider; and
- (e) Service Provider will make available in Canada to the auditors, inspectors and investigators, records or information requested by them in respect of Services performed by Subcontractors outside Canada.

#### **22.08      Deficiencies**

Following delivery to the Service Provider of an audit, inspection or investigation report that outlines accounting or other Deficiencies of the Service Provider, the Parties will meet as soon as possible through the Governance Process in order to discuss and resolve such Deficiencies. In connection therewith, the following provisions will apply:

- (a) if the report identifies the potential for any Deficiency, then the Service Provider will provide the Province, through the Governance Process, with the Service Provider's assessment of the impact of the potential Deficiency;
- (b) subject to any alternative agreement reached between the Parties through the Governance Process, the Service Provider will, as soon as reasonably possible (but in any event within thirty (30) days), develop and present to the Province, through the Governance Process, a corrective action plan outlining the timely corrective action that has been taken, or will be taken, by the Service Provider to remedy the Deficiencies;
- (c) the corrective action plan will include a sufficient level of detail to allow the Province to assess the appropriateness of the corrective action and plan, including a description of the Deficiency, the specific action to be taken, and a specific implementation schedule that specifies dates and Persons responsible for taking, or who have already taken, the corrective action;
- (d) the Province will be given the opportunity, through the Governance Process, to provide the Service Provider with any comments that the Province may have on



the corrective action plan, and the Service Provider will take all such comments received by the Province into consideration; and

the Service Provider will remedy the Deficiencies in accordance with the corrective action plan, provided that the Service Provider will be entitled to remedy any Deficiencies that are not material in nature, or that do not involve access, use or disclosure of Province Data, in the ordinary course of business.

## **ARTICLE 23 - OTHER DUTIES AND OBLIGATIONS**

### **23.01      General Duties and Obligations of Service Provider**

At all times during the Term and without limiting the other provisions set forth in this Agreement, the Service Provider agrees to, and to require its Personnel, Subcontractors and all External Personnel to, perform its obligations under this Agreement and to deliver the Services as follows:

- (a) in compliance with all of the terms and conditions of this Agreement and all other documents incorporated by reference;
- (b) in a manner that is consistent with the Parties' objectives set out in Section 1.13 (*Objectives of the Parties*);
- (c) in accordance with the standard of care set forth in Section 4.04 (*Standard of Care*);
- (d) in accordance with any Change Orders and any agreements made between the Parties pursuant to the Governance Process; and
- (e) will enforce compliance of such obligations of its Personnel, Subcontractors and all External Personnel.

### **23.02      FOIPOP and PRO Act Reviews**

The Service Provider will cooperate with respect to reviews, investigations or other matters carried out by the Review Officer under the *Freedom of Information and Protection of Privacy Act* (Nova Scotia) or the Privacy Review Officer under the *Privacy Review Officer Act* and in respect of any information to which the Review Officer or Privacy Review Officer is entitled under the applicable Act.

### **23.03      Licenses and Permits**

At all times during the Term, the Service Provider will, at its own cost, obtain and maintain in full force and effect all licenses and permits issued by any Governmental Authority which are required for the Service Provider to perform or deliver the Service in compliance with the Agreement and Service Provider Applicable Law.

**23.04            Growth and Marketing**

The Service Provider will cooperate with efforts undertaken by the Province to expand existing Clients' use of the SAP Software and the use of the SAP Systems in the Broader Public Sector. If the Service Provider wishes to advertise, market, propose or sell any Services forming part of, similar to or related to the Services to the Province's existing Clients or to prospective Clients identified in the Province's municipal strategy, the Service Provider shall do so in cooperation with the Province.

**23.05            Opportunities**

(1) Service Provider will, in accordance with this Section 23.05, proactively plan for, identify, investigate, analyze and present to the Province opportunities (each an "**Opportunity**") that:

- (a) materially reduce Service Provider's cost to provide the Services;
- (b) materially reduce the cost to the Province of its operations or of receiving the Services (including reductions in Fees in addition to any required reductions set out in this Agreement); and
- (c) implement improvements to the Services, the Province's business processes or other operations, the Software or Systems of Service Provider or any other aspect of Service Provider's operations relating to the Services that will better enable the Parties to achieve the objectives set out in Section 1.13 (*Objectives*).

(each an "**Opportunity**")

(2) For greater certainty, Opportunities may include:

- (a) the implementation of new Software or Systems in connection with the Services;
- (b) the renegotiation or establishment of more economically favourable licensing or services arrangements with Third Parties; or
- (c) the implementation of new or improved business, operational or workflow management processes by the Province that will reduce costs to the Province.

(3) Subject to Section 23.05(4), Service Provider will present the Opportunities to the Province during each year of the Term as part of Service Provider's presentation of the proposed Annual Operating Plan for the next year under Section 14.06 (*Timing of Annual Operating Plan*) and with sufficient detail in respect of each Opportunity to enable the Province to make an informed decision as to whether to take further action with respect to the Opportunity.

(4) The Service Provider will notify the Province of any Opportunity identified to Service Provider by a Third Party promptly after such Opportunity is identified by the Third Party.



(5) The Province may request Service Provider to investigate any Opportunity, whether identified by the Province, Service Provider or a Third Party, by providing Service Provider with a Change Request and, in such event, Service Provider will prepare a Change Proposal in respect thereof.

## ARTICLE 24 - REPRESENTATIONS, WARRANTIES AND COVENANTS

### **24.01 Province Representations and Warranties**

The Province represents, warrants and covenants as follows to the Service Provider, as of the date of this Agreement and throughout the Term, and acknowledges and confirms that the Service Provider is relying upon such representations, warranties and covenants in entering into this Agreement:

- (a) the Province has the power and legal authority to enter into, execute and deliver this Agreement and the other Transaction Documents, which have been duly executed and delivered by the Province, and each constitutes a legal, valid and binding obligation of the Province enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency and other laws of general application limiting the enforceability of creditors' rights, and to the fact that specific performance and injunctive relief are equitable remedies available only in the discretion of the court;
- (b) the Province has the power and legal authority to perform its obligations under this Agreement and the other Transaction Documents as contemplated in this Agreement; and
- (c) neither the execution and delivery of this Agreement and the other Transaction Documents, nor the compliance with the terms thereof by the Province:
  - (i) has resulted or will result in a violation of any of the Province Applicable Laws listed in Schedule 8 (Specific Laws and Policies) and similar laws governing the Services and the federal laws of Canada applicable therein; or,
  - (ii) requires the Approval or consent of any Person or any Governmental Authority except such as has been obtained as of the date of this Agreement.

(f)

**24.02 Service Provider Representations, Warranties and Covenants**

(1) The Service Provider represents, warrants and covenants as follows to the Province, as of the date of this Agreement and (except as otherwise noted) throughout the Term, and acknowledges and confirms that the Province is relying upon such representations, warranties and covenants in entering into this Agreement:

- (a) the Service Provider is a corporation duly incorporated and validly existing under the laws of Canada or a Province thereof and is in good standing with respect to the filing of annual returns thereunder;
- (b) the Service Provider has all necessary corporate power, capacity and legal authority to enter into, execute and deliver this Agreement and the Transaction Documents to which it is a party, and to perform its obligations under this Agreement and such Transaction Documents, and this Agreement and such Transaction Documents have been duly executed and delivered by the Service Provider, and each constitutes a legal, valid and binding obligation of the Service Provider enforceable against the Service Provider in accordance with its terms, subject to applicable bankruptcy, insolvency and other laws of general application limiting the enforceability of creditors' rights, and to the fact that specific performance and injunctive relief are equitable remedies available only in the discretion of the court;
- (c) neither the execution and delivery of this Agreement and the other Transaction Documents, nor the compliance with the terms of this Agreement and the other Transaction Documents by the Service Provider:
  - (i) has resulted or will result in a violation of any Service Provider Applicable Laws,
  - (ii) has resulted or will result in a breach of, or constitute a default under, the Service Provider's constating documents, any shareholders' agreement to which it is a party, or any shareholder or directors' resolutions,



- (iii) has resulted or will result in a breach of, or constitute a default under, any instrument or agreement to which the Service Provider is a party or by which the Service Provider is bound which would have a material adverse effect on, or materially adversely restrict or impair the performance by, the Service Provider of its duties and obligations under this Agreement or the performance of the Services pursuant to the terms of this Agreement, or
  - (iv) requires the Approval or any consent of any Person or any Governmental Authority except such as has been obtained as of the date of this Agreement or as specifically set forth in this Agreement or such Approvals as are specifically set forth in the Agreement;
- (d) except for such permits, approvals, authorizations and consents as are the responsibility of the Province to obtain or provide under this Agreement from any Person or governmental authority, the Service Provider holds, and will hold as of the Hand-Over Date and throughout the Term, all material permits, approvals, authorizations and consents that may be required from any Person or Governmental Authority under Service Provider Applicable Laws in order for the Service Provider to perform its duties and obligations pursuant to the terms of this Agreement and to provide the Services as contemplated under this Agreement, and the Service Provider is, and at the Hand-Over Date and throughout the Term will be, in good standing with respect to all such permits, approvals, authorizations and consents, and none of the same contain, or will contain, any term, provision, condition or limitation which would have a material adverse effect on, or materially adversely restrict or impair the performance by, the Service Provider of its duties and obligations under this Agreement or the performance of the Services pursuant to the terms of this Agreement;
- (e) the Service Provider has filed all Transaction Tax, Other Tax, corporate information and other returns required to be filed under all Service Provider Applicable Laws, has complied with all workers compensation legislation and other similar legislation to which it may be subject, and has paid all taxes, fees and assessments calculated to be due by it under those laws as of the date of this Agreement;
- (f) Service Provider is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada).

(g)





- (h) all tangible personal assets, if any, including hardware that are transferred, assigned or licensed (as applicable in accordance with the terms of this Agreement) by the Service Provider to the Province under this Agreement and at any time during the Term and upon the Termination, will be free and clear of all Liens at the time of transfer, assignment or license to the Province, other than the interests of a lessor in respect of any leased assets, or such Liens as may have been granted in respect of such leased assets by the lessor thereof;
- (i) as of date of this Agreement, there are no suits, actions, proceedings, judgments or orders outstanding or, to the knowledge of the Service Provider, threatened against or affecting the Service Provider or any of its assets by or before any court, tribunal, board or other Governmental Authority that would, if adversely determined, have a material adverse effect on, or materially adversely restrict or impair the performance by, the Service Provider of its duties and obligations under this Agreement or the performance of the Services pursuant to the terms of this Agreement;
- (j) as of the Effective Date and the Hand-Over Date the Service Provider is not insolvent, is able to pay its debts as they become due in the ordinary course of business, and the entering into of this Agreement and the other Transaction Documents and the performing of its obligations under this Agreement and the other Transaction Documents will not render the Service Provider insolvent or unable to pay its debts as they become due;
- (k) Schedule 18 (*Subcontractors*) (as such Schedule may be amended from time to time during the Term in accordance with this Agreement) sets out the Subcontractors to be used by Service Provider in the performance of the Services. All actions required to be taken with respect to such Subcontractors have been taken including, without limitation, the incorporation in the agreements with such Subcontractors of the required provisions as set forth in Article 13 (*Subcontractors*) and in the Privacy and Security Obligations;
- (l) Service Provider will perform the Services in an efficient, cost-effective manner with a high degree of quality and responsiveness and using its technology, personnel, Software, Systems, resources, knowledge and expertise, in accordance with the practices used by well managed operations performing services similar to the Services and the Service Levels;
- (m) Service Provider and Service Provider Personnel and all Service Provider Subcontractors and External Personnel will have and maintain throughout the Term all skills and experience appropriate to the tasks to which they are assigned and the performance and Service Levels which they are required to achieve, qualifications, expertise and experience necessary to perform the Services in an efficient, cost-effective manner with a high degree of quality and responsiveness, at all times consistent with industry standards applicable to top tier providers of similar services and otherwise in accordance with the terms of this Agreement;



- (n) Service Provider will comply with all Service Provider Applicable Laws in its dealings with the Province and in performing its obligations under this Agreement and will refrain from engaging in any unfair or deceptive trade practice, or unethical business practice whatsoever in violation of Service Provider Applicable Law, or any other practice that is in violation of Service Provider Applicable Law, or Province Policies, or Service Provider Code of Conduct that could reflect unfavourably on the Province or its Clients;
- (o) except as set out in writing in Schedule 5 (*SAP Services*) or a Change Order or as otherwise approved by the Province, Service Provider will not knowingly insert or knowingly permit any Third Party to insert any Disabling Code into any of Systems used by the Service Provider to provide the Services and any Province Shared Infrastructure subject to subsection 19.05(b);
- (p) no Service Provider Owned Property or Deliverables provided by the Service Provider or its Subcontractors in performing the Services will incorporate any Open Source Software except to the extent consented to by the Province;
- (q) except: (i) as provided under a separate licence agreement and set out in writing in the applicable Statement of Work or a Change Order; ii) as provided to the Service Provider by or on behalf of the Province under this Agreement; or iii) as licensed to the Province under section 20.08; no Hardware, Software, Systems, Documentation, Content, Confidential Information or other Information or Intellectual Property that is proprietary to a Third Party or will be used in, incorporated into, integrated, embedded or bundled with any of the Deliverables or SAP Applications;
- (r)
- (s) all Systems used by the Service Provider or its Subcontractors (other than the Province Shared Infrastructure) will be maintained by the Service Provider or its Subcontractors in good working order, ordinary wear and tear excepted;
- (t) the Service Provider is under no known current obligation or restriction, nor will it knowingly assume any such obligation or restriction that does or could in any material way interfere or conflict with, or that does or could present a conflict of interest concerning, the performance of the Service Provider's obligations and the providing of the Services under the terms of this Agreement;
- (u) there has been no collusion with, unlawful relationship with or, benefit of more than minimal value granted to or received from, any employee, agent or



representative of the Province with respect to this Agreement, the delivery of the Services or anything related thereto except:

- (i) for subcontracts, supply arrangements, teaming agreements and other similar contracts entered into in the ordinary course of business,
  - (ii) obligations to pay commissions or other incentive compensation in compliance with compensations programs of the Service Provider and its Subcontractors and its or their Affiliates, and
  - (iii) as otherwise expressly disclosed by the Service Provider to the Province in writing; and
- (v) no employees, contractors, subcontractors agents or representatives of Service Provider has given, and nor will they give, any commissions, payments, kickbacks, lavish or excessive entertainment, or other inducements of more than minimal value in any form to any employee, agent or representative of the Province in connection with this Agreement.

#### **24.03 Breach by a Party**

In the event of the breach by a Party of any representation, warranty or covenant in this Article 24 such Party will forthwith notify the other Party of such breach and take all actions as are necessary to remedy such breach, provided that the foregoing will in no way limit any remedy that the other Party may otherwise have in law or equity in respect of such breach.

#### **24.04 Service Provider Deliverables**

The Service Provider warrants to the Province that for a period of \_\_\_\_\_ from the date of acceptance of a Deliverable and Service Provider Owned Property or such other period as may be agreed in writing (the "Warranty Period"), the Deliverables and Service Provider Owned Property will: (i) comply in all material respects with their specifications (including any functional specifications); and (ii) be free from material defects in materials, workmanship or design. During the Warranty Period, the Service Provider shall promptly correct or replace (at its option) any Deliverables and Service Provider Owned Property in respect of which it receives notice from the Province during the Warranty Period that fail to comply with this warranty, in accordance with the Defect Management Process set out in Section 20 of Schedule 5.

#### **24.05 Disclaimer of Warranties**

Other than the representations and warranties expressly set out in this Agreement or in the other Transaction Documents, neither Party makes any representation, warranty, or condition, expressed, implied, statutory or otherwise regarding any matter in connection with this Agreement or the other Transaction Documents including representations, warranties or conditions of merchantability or fitness for a particular purpose. Subject to Section 24.04, Service Provider does not warrant uninterrupted or error-free operation or performance of any



machines, software, products or the Services or that Service Provider will find or correct all defects.

**24.06 Intellectual Property Exceptions**

Service Provider shall have no liability under Subsection 24.02(1)(g) for any violation, infringement or misappropriation that would not have arisen but for:

(a) Province's combination, operation, or use of the Deliverables or the Service Provider Owned Property with any Hardware or Software not provided by Service Provider, or the use of any Deliverables or the Service Provider Owned Property in other than their specified operating environment (namely the Province Shared Infrastructure as of the date of acceptance of the Deliverable), to the extent the violation, infringement or misappropriation, would not have arisen but for such combination, operation or use;

(b)

(c) a Modification made by or on behalf of the Province to the Deliverables, or the Service Provider Owned Property that was not made by the Service Provider under this Agreement;

(d) the use by the Service Provider of any Third Party Intellectual Property provided to the Service Provider by the Province or third parties engaged by the Province,

(e) the compliance by Service Provider with any specification or standard specified by the Province that specifies the manner of performance to the extent the violation, infringement or misappropriation, would not have arisen but for the compliance with that specification or standard; or

(f) any Claims in respect of which the Province is required to indemnify the Service Provider Indemnified Parties pursuant to Section 25.05 (*Province Intellectual Property Indemnification*) below.

Without limiting or otherwise restricting the Service Provider's liability and obligations in respect of the foregoing paragraph, if the Province's use of any Deliverables or the Service Provider Owned Property is found to be infringing, in the Service Provider's reasonable judgment is likely to be found to be infringing, then the Service Provider may (at its option and expense), either procure for the Province the right to continue using such Intellectual Property, or replace or modify such Deliverables or the Service Provider Owned Property to make its

continued use non-infringing while providing substantially the same functionality and the Province would return any infringing material. The obligations of the Service Provider under this paragraph are in addition to the obligations of the Service Provider under Article 20 (*Intellectual Property and Proprietary Rights*) of the Agreement.

**ARTICLE 25 - INDEMNIFICATION AND LIABILITY**

**25.01 General Intent**

Each Party acknowledges that it may be liable to the other for damages incurred by the other Party under the terms of, or in connection with, this Agreement. Both Parties agree, however, that monetary damages may not be a sufficient remedy for any breach of this Agreement, and each Party will be entitled to seek equitable relief, including injunctive relief and specific performance in the event of a breach of this Agreement, to the extent that such remedy is available to a Party in accordance with Applicable Laws (including, without limitation, *The Proceedings Against the Crown Act* (Nova Scotia)), but subject to any express limitations otherwise provided for in this Agreement.

**25.02 Indemnification by Service Provider**

The Service Provider will indemnify and save harmless the Province, and its employees, advisors, agents and representatives (the "**Province Indemnified Parties**"), to the fullest extent permitted by law, from and against any Claims that may be suffered or incurred by any one or more of the Province Indemnified Parties arising as a result of, or in connection with, any of the following (except to the extent suffered or incurred as a result of or in connection with the breach of this Agreement by or negligent acts or omissions of the Province Indemnified Parties):

(b)



- [
- ]
- (c) amounts payable to any Taxing Authority for the failure of the Service Provider to pay and discharge any Transition Taxes and Other Taxes which the Service Provider is responsible pursuant to this Agreement and Service Provider Applicable Laws;
  - (d) the death of or bodily injury to any third party or to any employee of the Province to the extent caused by the acts or omissions of the Service Provider, its Personnel or its Subcontractors or External Personnel and to the extent the Service Provider is liable in law;
  - (e) the loss of or damage to any tangible personal or real property of any third party, to the extent caused by the acts or omissions of the Service Provider, its Personnel or its Subcontractors or External Personnel and to the extent the Service Provider is liable in law;
  - (f) provided that the term "Claims" shall be limited to:
    - (i) all damages that a court finally awards to a third party for such Claim and any defence costs incurred in accordance with Section 25.06 (Third Party Claim Process); or
    - (ii) subject to the provisions of Section 25.06 (Third Party Claim Process), the amount of any settlement agreed to by the Indemnified Party.

### **25.03 Indemnification by the Province**

The Province will indemnify and save harmless the Service Provider and its employees, advisors, agents and representatives (the "**Service Provider Indemnified Parties**"), to the fullest extent permitted by law, from and against any Claims that may be suffered or incurred by any one or more of the Service Provider Indemnified Parties arising as a result of, or in connection with, any of the following (except to the extent suffered or incurred as a result of breach of this Agreement by or negligent acts or omissions of the Service Provider Indemnified Parties):

- (a) the failure of the Province to perform its obligations under any Service Provider Assigned Contracts after the assignment thereof from the Service Provider to the Province;
- (b) in respect of any license between the Province and a third party in respect of which the Province is providing use rights or similar access rights to the Service Provider thereunder, the failure of the Province or the third party licensor to perform its respective obligations under such license;
- (c) the death of or bodily injury to any third party or any employee of the Service Provider to the extent caused by the acts or omissions of the Province and to the extent the Province is liable in law;

- (d) the loss of or damages to any tangible personal or real property of any third party to the extent caused by the acts or omissions of the Province and to the extent the Province is liable in law; and
- (e) provided that the term "Claims" shall be limited to:
  - (i) all damages that a court finally awards to a third party for such Claim and any defence costs incurred in accordance with Section 25.06 (Third Party Claim Process); or
  - (ii) subject to the provisions of Section 25.06 (Third Party Claim Process), the amount of any settlement agreed to by the Indemnified Party.

**25.04 Service Provider Intellectual Property Indemnification**

(1) Subject to 25.06 (*Third Party Claim Process*), the Service Provider will indemnify and save harmless, to the fullest extent permitted by law, the Province Indemnified Parties from and against any and all Claims suffered or incurred by them arising as a result of, or in connection with, any actual or alleged infringement by the Deliverables, or the Service Provider Owned Property of the Intellectual Property Rights of a third party (a "**Service Provider Infringement Claim**"). Notwithstanding the foregoing, the Service Provider shall have no liability under this Section for any Service Provider Infringement Claim if and to the extent that such Service Provider Infringement Claim would not have arisen but for:

- (a) Province's combination, operation, or use of the Deliverables or the Service Provider Owned Property with any Hardware or Software not provided by Service Provider, or the use of any Deliverables or the Service Provider Owned Property in other than their specified operating environment (namely the Province Shared Infrastructure as of the date of acceptance of the Deliverable), to the extent the Service Provider Infringement Claim would not have arisen but for such combination, operation or use;
- (b) [ ]
- (c) a Modification made by or on behalf of the Province to the Deliverables, or the Service Provider Owned Property that was not made by the Service Provider under this Agreement;
- (d) the use by the Service Provider of any Third Party Intellectual Property provided to the Service Provider by the Province or third parties engaged by the Province,



- (e) the compliance by Service Provider with any specification or standard specified by the Province that specifies the manner of performance to the extent the Service Provider Infringement Claim would not have arisen but for the compliance with that specification or standard; or
- (f) any Claims in respect of which the Province is required to indemnify the Service Provider Indemnified Parties pursuant to Section 25.05 (*Province Intellectual Property Indemnification*) below.

(2) For purposes of this Section 25.04 (Service Provider Intellectual Property Indemnification), the term "Claims" shall be limited to:

- (a) all damages that a court finally awards to a third party for such Claim and any defence costs incurred in accordance with Section 25.06 (*Third Party Claim Process*); or
- (b) subject to the provisions of Section 25.06 (*Third Party Claim Process*), the amount of any settlement agreed to by the Indemnified Party.

(3) Without limiting or otherwise restricting the Service Provider's liability and obligations to the Province Indemnified Parties in respect of the foregoing, if the Province's use of any Deliverables or the Service Provider Owned Property is found to be infringing the Intellectual Property Rights of a third party or, in the Service Provider's reasonable judgment is likely to be found to be infringing, then the Service Provider may (at its option and expense), either procure for the Province the right to continue using such Intellectual Property, or replace or modify such Intellectual Property to make its continued use non-infringing while providing substantially the same functionality and the Province would return any infringing material. The obligations of the Service Provider under this Section 25.04 are in addition to the obligations of the Service Provider under Article 20 (*Intellectual Property*) of the Agreement.

#### **25.05 Province Intellectual Property Indemnification**

(1) Subject to 25.06 (*Third Party Claim Process*), the Province will indemnify and save harmless, to the fullest extent permitted by law, the Service Provider Indemnified Parties from and against any and all Claims suffered or incurred by them arising as a result of, or in connection with, any actual or alleged infringement by the Province Intellectual Property, Province Licensed Software or Province Proprietary Software of the Intellectual Property Rights of a third party (a "**Province Infringement Claim**"). Notwithstanding the foregoing, the Province shall have no liability under this Section for any Province Infringement Claim if and to the extent that such Province Infringement Claim would not have arisen but for:

- (a) the use by the Province of any Deliverable or Service Provider Owned Property in accordance with the provisions of this Agreement permitting the use of the same, provided that this subsection 25.05(a) will not apply if the Province Infringement Claim arises out of, relates to, or is caused by a Modification to the Deliverable or Service Provider Owned Property made by or on behalf of the Province; or



- (b) a Modification made by the Service Provider to the Province Intellectual Property, Province Licensed Software, Province Proprietary Software or Province Confidential Information that was not expressly authorized in writing by the Province.

(2) For purposes of this Section 25.05 (*Province Intellectual Property Indemnification*), the term "Claims" shall be limited to:

- (a) all damages that a court finally awards to a third party for such Claim and any defence costs incurred in accordance with Section 25.06 (*Third Party Claim Process*); or
- (b) subject to the provisions of Section 25.06 (*Third Party Claim Process*), the amount of any settlement agreed to by the Indemnified Party.

(3) Without limiting or otherwise restricting the Province's liability and obligations to the Service Provider Indemnified Parties in respect of the foregoing, if the Service Provider's use of Province Intellectual Property, Province Licensed Software or Province Proprietary Software provided or otherwise made available by the Province to the Service Provider pursuant to this Agreement is found to be infringing the Intellectual Property Rights of a third party or, in the Province's reasonable judgment is likely to be found to be infringing, then the Province may (at its option and expense), either procure for the Service Provider the right to continue using such Intellectual Property, or replace or modify such Intellectual Property to make its continued use non-infringing while providing substantially the same functionality and the Service Provider would return any infringing material. The obligations of the Province under this Section 25.05 are in addition to the obligations of the Province under Article 20 (*Intellectual Property*) of the Agreement and Section 21.10 (*Failure of Province Shared Infrastructure*).

#### **25.06 Third Party Claim Process**

Subject to any restrictions or other limitations contained in The *Proceedings Against the Crown Act* (Nova Scotia), or other Applicable Laws:

- (a) if a Party (an "**Indemnified Party**") intends to seek indemnification under this Agreement from the other Party (the "**Indemnifying Party**") in respect of any third party Claims, then the Indemnified Party will promptly give the Indemnifying Party written notice of such Claims for indemnification, such notice to include reasonable details of such Claim to the extent available; provided, however, that the failure of an Indemnified Party to give the Indemnifying Party such prompt notice will not relieve the Indemnifying Party of its obligations under this Agreement, except to the extent that such failure results in a prejudice to the Indemnifying Party;
- (b) if the Indemnifying Party receives a notice of any Claims pursuant to paragraph 25.06(a) above, then the Indemnifying Party will have the right to assume the defence and settlement of such Claims, at its sole cost and expense, with counsel designated by the Indemnifying Party. The Indemnifying Party will not settle any Claim or related action if the settlement requires the Indemnified Party to



- make a monetary payment which is not covered under the applicable indemnity, or provides a remedy other than the payment of money, without the prior written consent of the Indemnified Party, which consent will not be unreasonably withheld;
- (c) if the defendants in any such action include both the Indemnified Party and the Indemnifying Party, and the Indemnified Party reasonably concludes that there may be legal defences available to it which are different from or additional to those available to the Indemnifying Party, then the Indemnified Party will have the right to select separate counsel, the cost of which will be at the Indemnified Party's expense (without reimbursement by the Indemnifying Party under an indemnity or otherwise) to assert such legal defences or to otherwise participate in the defence of such action on behalf of the Indemnified Party;
- (d) if the Indemnified Party is entitled to indemnification under this Agreement as a result of a Claim by a third party, and if the Indemnifying Party fails or chooses not to assume the defence of such Claim, or fails to proceed to defend then the Indemnified Party may, at the expense of the Indemnifying Party, contest (or, with or without the prior consent of the Indemnifying Party, settle) such Claim. The Indemnified Party will not otherwise settle any Claim with respect to which it has sought or intends to seek indemnification pursuant to this Agreement without the prior written consent of the Indemnifying Party, which consent will not be unreasonably withheld or delayed; and
- (e) if the Indemnifying Party reaches a bona fide full and final settlement in respect of all Claims involving the Indemnified Party and such plaintiff(s) in any such action with the plaintiff(s), and the Indemnified Party does not (or is not asked to) consent to such settlement, the dollar amount specified in the settlement will act as an absolute maximum limit on the indemnification obligation of the Indemnifying Party.

#### **25.07 Mitigation**

Each Party has a duty to mitigate the Losses that would otherwise be recoverable from the other Party pursuant to this Agreement by taking appropriate and reasonable actions to reduce or limit the amount of such Losses.

#### **25.08 Limitation on Liability**

(1) Subject to Subsections 25.08(2), (3), (4), (5) and (6), each Party's liability to the other with respect to this Agreement will not exceed the actual direct damages suffered or incurred by the other Party up to the aggregate Fees paid or payable by the Province for the Services during the 12 months preceding the event giving rise to the claim or action; provided that if the event giving rise to liability occurs during the first 12 months after the Effective Date, such liability will be limited to an amount equal to the total Fees paid and that would be payable to the Service Provider for performance of the Services during such 12 month period (such amount hereinafter being referred to as the "**Damages Cap**", and the references to "12 months" in this Section 25.08

hereinafter being referred to as the “**Damages Multiplier**”). The Parties may agree to a separate Damages Cap in a Change Order for direct damages arising from Project Services under such Change Order. The limitations specified in this Section 25.08 will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.

(2) Subject to Subsections 25.08(3), (4), (5) and (6), in no event will a Party be liable for indirect or consequential, punitive, exemplary, incidental or special damages, or damages for loss of business, lost profits or lost revenue (except in respect of the Fees and other amounts payable by the Province under this Agreement), or lost savings, even if foreseeable or if such Party has been advised of the possibility of such damages in advance (“**Consequential Damages**”).

(3) Subsections 25.08 (1) and (2) will not apply to limit: (a) the liability of either Party for the misuse, disclosure, or other misappropriation by such Party of Confidential Information or Personal Information in breach of such Party’s confidentiality obligations under this Agreement; (b) the Service Provider’s liability or obligations under Section 25.04 (*Service Provider Intellectual Property Indemnification*); (c) the Service Provider’s liability or obligations under Section 25.02(a)(ii) (*Indemnification by Service Provider*); (d) the Province’s liability or obligations under Section 25.05 (*Province Intellectual Property Indemnification*); (e) the Service Provider’s liability or obligations under Section 25.02(d) (*Indemnification by Service Provider*); (f) the Service Provider’s liability or obligations under Section 25.02(e) (*Indemnification by Service Provider*); (g) the Province’s liability or obligations under Section 25.03(c) (*Indemnification by the Province*); and (h) the Province’s liability or obligations under Section 25.03(d) (*Indemnification by the Province*).



(7) This Section 25.08 will apply irrespective of the nature of the cause of action, demand or Claim, including breach of contract (including fundamental breach), negligence, tort or any other legal theory, and whether or not foreseeable, and will survive a fundamental breach or breaches of this Agreement or of any remedy contained herein.

(8) Notwithstanding any other provision of this Agreement, the Damages Cap set out in Sections 25.08 (4), (5) and (6) do not represent multiple and independent limitations of liability and will only serve to increase the quantum of the Damages Cap in respect of the types of claims specifically referenced in the applicable Subsection. All Service Level Credits paid pursuant to the provisions of Schedule 12 (*Service Levels*) and Schedule 13 (*Service Level Failures*) will reduce the amount of Damages Cap otherwise set out in 25.08 which is available to satisfy all other or subsequent claims.

#### **25.09 Reset of Damages Cap**

If and when the actual damages for which Service Provider is liable to the Province in connection with this Agreement, and awarded by a court of competent jurisdiction or an arbitrator appointed under this Agreement, or pursuant to a negotiated settlement signed by the Service Provider with respect to the Agreement, equals or exceeds the Direct Damage Cap, the Province may request that the Service Provider reset the amount of the Direct Damage Cap applicable for the period thereafter by providing written notice to the Service Provider. If the Service Provider does not agree in writing to reset the Direct Damages Cap to an amount equal to the original Direct Damages Cap within sixty (60) days of such written request by the Province, then the Province shall be entitled to terminate this Agreement, subject to the fees set forth in Schedule 25 (*Termination Fees*). If the Service Provider does not agree to reset the Direct Damage Cap in accordance with this paragraph the Direct Damage Cap remains in effect, unamended.

### **ARTICLE 26 - INSURANCE**

#### **26.01 Insurance**

(1) The Service Provider will procure and maintain at all times during the Term of this Agreement and during any Termination Assistance Period (or such longer period as may be specified in Schedule 24 (*Insurance*)), at its own expense and without reimbursement from the Province, the insurance policies more particularly described in Schedule 24 (*Insurance*) which will be, where applicable, underwritten by insurers licensed to carry on insurance business in Canada.

(2) The Parties agree that should any change in the insurance industry materially impact Service Provider's ability to obtain the insurance and insurance coverage levels set forth in this Article 26, the Parties will assess such impact and, if deemed necessary by the Parties, negotiate in good faith any amendments to this Article 26 to account for such insurance industry changes, provided however, that nothing herein shall require the Province to approve of any such amendment.

**26.02      Adequacy of Insurance**

The Service Provider acknowledges that any requirement or advice by the Province as to the amount of coverage under any policy of insurance does not, and will not be deemed to, constitute a representation by the Province that the amount required under such insurance is adequate, and the Service Provider acknowledges and agrees that it is solely responsible for obtaining and maintaining its own policies of insurance in such amounts as the Service Provider will determine to be appropriate and adequate, subject to the minimum requirements set out on Schedule 24 (*Insurance*).

**26.03      Requirements for Insurer**

All insurers must be reputable and financially creditworthy insurers with an A.M. Best financial strength rating of "A-" or higher.

**26.05      Evidence of Insurance**

Service Provider will provide to the Province certificates of insurance evidencing that the coverages and policy endorsements required under this Agreement are maintained in force. The first certificates of insurance will be provided on the Effective Date. Thereafter, the certificates of insurance will be delivered on each anniversary date of each such insurance policy promptly after their issuance.

**26.06      Changes to Insurance Coverage**

Should any of the insurance policies set out in Schedule 24 be cancelled before the expiration date thereof, the Service Provider shall notify the Province within thirty days of the notice of cancellation.

**26.08      Insurance Claims**

In the case of loss or damage or other event that requires notice or other action under the terms of any insurance coverage specified in this Agreement, Service Provider will be solely responsible to take such action. For claims involving Service Provider's performance under this Agreement, Service Provider will provide the Province with prompt notice of such claims together with such other information as the Province may reasonably request.



## ARTICLE 27 - DISPUTE RESOLUTION

### **27.01 Informal Dispute Resolution**

In the event of any Dispute, the Parties will use reasonable efforts to settle such Dispute internally and will consult and negotiate with each other in good faith in an effort to reach a fair and equitable solution satisfactory to the Parties. Prior to the initiation of formal dispute resolution procedures, the Parties will first attempt to informally resolve any Dispute (including any failure by the Parties to reach agreement where expressly provided for in this Agreement) arising under or in connection with this Agreement as follows:

- (a) the Service Provider Delivery Project Executive and the Province Program Manager will attempt to resolve the Dispute informally by meeting as often, for a duration and as promptly as those representatives agree as necessary, to discuss the Dispute and negotiate in good faith in an attempt to resolve the Dispute;
- (b) if such persons are unable to resolve the Dispute within ten (10) Business Days, then either one of them may refer the Dispute to the Management Committee, and the Management Committee will promptly schedule a meeting to discuss the Dispute and negotiate in good faith in an attempt to resolve the Dispute;
- (c) the Management Committee will meet as often and as promptly as the Parties agree as necessary to discuss the Dispute and negotiate in good faith in an effort to resolve the Dispute;
- (d) if the Management Committee does not resolve the Dispute within ten (10) Business Days of the referral of the Dispute to the Management Committee (or such longer period as to which the Parties agree), then either one of them may refer the Dispute to the Strategic Committee, and the Strategic Committee will promptly schedule a meeting to discuss the Dispute and negotiate in good faith in an attempt to resolve the Dispute;
- (e) the Strategic Committee will meet as often and as promptly as the Parties agree as necessary to discuss the Dispute and negotiate in good faith in an effort to resolve the Dispute;
- (f) during the course of all discussions referred to in paragraphs 27.01(a) to 27.01(e) above, all reasonable requests made by one Party to another for non-privileged information, reasonably related to the Dispute, will be provided by the other Party so that both Parties may be fully apprised of the other's interests in the Dispute and resulting positions and interests. The specific format for such discussions will be decided by mutual agreement of the Parties, but may include in each case the preparation of agreed-upon statements of fact or written statements of position or interest;

- (g) if the Strategic Committee does not resolve the Dispute within ten (10) Business Days of the referral of the Dispute to the Strategic Committee (or such longer period to which the Parties may agree), then the Parties may agree to submit the Dispute to non-binding mediation in accordance with the following, but are not required to do so;
  - (i) the Parties will promptly agree upon and appoint a sole mediator.
  - (ii) the mediation will be conducted at a time, in Halifax at a specific location as may be agreed to by the Parties with the mediator. The mediation will be held within five (5) Business Days after the mediator is appointed. If any Party has substantial need for information from another Party in order to prepare for the mediation, then the Parties will use reasonable efforts to agree on procedures for the formal exchange of information. Each Party will be represented in the mediation by at least an individual with authority to settle the Dispute on behalf of that Party and, if desired by that Party, by legal counsel for that Party.
  - (iii) Unless otherwise agreed to in writing by the Parties, each Party will pay one-half of the mediator's fees and expenses and will bear all of its own expenses in connection with the mediation. No Party may employ or use the mediator as a witness, consultant, expert, counsel or other similar position regarding the Dispute or any related matters; and
  - (iv)





### 27.03 Expedited Dispute Resolution

Certain Disputes are expressly designated as being subject to Expedited Dispute Resolution under the terms of this Agreement, and as may be specifically provided for in any Schedule to this Agreement or in other Transaction Documents. All such Disputes designated as Expedited Disputes shall follow the step-by-step resolution procedures set forth below to the extent necessary to resolve the Dispute, without first having to comply with the provisions of Section 27.01 (*Informal Dispute Resolution*) or Section 27.02

- (a) The Expedited Dispute Resolution process shall be commenced by a notice from either Party to the other referring to this paragraph 27.03(a) and setting out the matter that is to be resolved as an Expedited Dispute Resolution and such notice shall constitute the commencement of the Dispute Resolution Process in respect of such Expedited Dispute Resolution;
- (b) The time period for the parties' representatives to attempt to resolve the Dispute informally by meeting as often, for a duration and as promptly as those representatives deem necessary, to discuss the Dispute and negotiate in good faith in an attempt to resolve the Dispute under section 27.01(b), and (d), shall be reduced from ten (10) Business Days to three (3) Business Days, and failing resolution within such period, the Dispute shall proceed to the next level of the Dispute Resolution procedures.

### 27.04 Confidentiality

(1) The proceedings of all negotiations, mediations, and arbitrations as part of the Dispute Resolution Process will at all times be privately conducted. The Parties agree that all statements and other communications made during the Dispute Resolution Process including, without limitation, offers of settlement, settlement terms and all documents or other materials created for the purposes of the Dispute Resolution Process:

- (a) are made on a without prejudice basis;
- (b) do not constitute an admission or waiver of rights; and
- (c) will not be offered into evidence, disclosed or used for any other purpose other than the Dispute Resolution Process.

(2) During the Dispute Resolution Process, no Party is required to disclose to the other Party any information, documents or materials with respect to which they claim privilege; however, if as part of the Dispute Resolution Process a Party should disclose to the other Party information, documents or materials with respect to which they claim privilege or any information, documents or materials which they regard and identify as confidential or proprietary, then the other Party will maintain the confidentiality of the information, documents or materials so obtained and, to the extent permitted by law, any such disclosure will not constitute a waiver of any privilege or confidentiality. The Parties agree that any information regarding the Dispute Resolution Process, including any decisions or awards made, will not be disclosed to any third parties or used for any purpose other than the Dispute Resolution Process, unless the Parties otherwise agree; provided



that nothing in this provision will prevent such disclosure as may be necessary to enforce any arbitration awards.

#### **27.05      Selection of Arbitrator(s)**

(1) Within ten (10) Business Days of the referral of any Dispute to arbitration, the Parties shall meet with a view to identifying a panel of three (3) arbitrators, unless the Parties agree to appoint a single arbitrator. The panel shall be comprised of one arbitrator identified by each Party and the two arbitrators identified by the parties shall jointly appoint a third arbitrator within ten (10) Business Days, failing which the third arbitrator shall be appointed by a judge of the Supreme Court of Nova Scotia.

(2) The following provisions will apply to any arbitrator or arbitrators appointed under this Section:

- (a) unless the Parties agree otherwise in writing, all arbitrators will either be:
  - (i) a lawyer in good standing with the Law Society or equivalent body in all jurisdictions in Canada where that lawyer is called to the bar,
  - (ii) a retired lawyer who was previously in good standing with the Law Society or equivalent body in all jurisdictions in Canada where that lawyer was previously called to the bar before that lawyer's retirement; or
  - (iii) a retired judge;
- (b) no individual may be appointed as an arbitrator if that individual is (but for the appointment as arbitrator in connection with a Dispute under this Agreement) or was directly involved in matters relating to this Agreement, the Dispute or the Services to be performed by the Service Provider under this Agreement or any benchmarking; and
- (c) all arbitrators selected or otherwise appointed to hear a Dispute will have experience in complex, commercial outsourcing engagements and be skilled or knowledgeable in the subject matter of the Dispute;

#### **27.06      Exceptions to Dispute Resolution Procedure**

(1) The provisions of this Article 27 (*Dispute Resolution*) will not be construed to prevent a Party from:

- (a) seeking a temporary restraining order or injunctive or other equitable relief with respect to a breach (or attempted breach) of this Agreement by the other Party, to the extent such remedies are available to a Party pursuant to Applicable Law (including, without limitation, the *Proceedings against the Crown Act* (Nova Scotia)); or

- (b) instituting litigation or other formal proceedings to the extent necessary and available pursuant to Applicable Law:
  - (i) to enforce relief, } or orders for injunctive or other similar relief,
  - (ii) to avoid the expiration of any applicable limitations period,
  - (iii) to preserve a position with respect to other creditors.

(2) The provisions of subsection 27.02 of this Article 27 (*Dispute Resolution*) will not apply to the following Disputes:

- (a) any Dispute related to the Fees for the Services to be provided;
- (b) Disputes related to Intellectual Property and Intellectual Property Rights and formal proceedings related thereto to the extent necessary and available pursuant to Applicable Law;
- (c) Disputes related to breach of confidentiality obligations;
- (d) Disputes related to any adjustments to the Fees, as a result of the Benchmark Report under Section 9.04.

#### **27.07 Continuity of Services**

The Service Provider acknowledges that the timely and complete performance of its obligations pursuant to this Agreement is critical to the business and operations of the Province and the continuity of the Services. Accordingly, in the event of a Dispute, and at all times before, during and after the Dispute Resolution Process:

- (a) the Service Provider will continue to so perform its obligations and to deliver the Services under this Agreement in good faith during the resolution of such Dispute; and
- (b) the Province will continue to pay all Fees payable to the Service Provider in accordance with the terms of this Agreement, other than those Fees which are in Dispute and withheld from payment in accordance with the provisions of Section 16.05 (*Disputed Payments*).



**ARTICLE 28 - DEFAULT AND TERMINATION**

**28.01      Service Provider Material Breach**

The Service Provider will be in material breach of its obligations under this Agreement upon the occurrence of any one or more of the following events (each a “**Material Breach**”):

- (a) an Event of Insolvency in respect of the Service Provider;
- (b) if the Service Provider ceases, or any Director, Officer or other authorized representative of the Service Provider threatens that the Service Provider will cease to carry on business;
- (c) any direct or indirect assignment of this Agreement by the Service Provider contrary to the provisions of Section 31.02 (*Assignment by the Service Provider*), but excluding any permitted assignment under subsections 31.02(a) through (e) where no consent is required;

- (g) if the Service Provider commits a material breach under this Agreement;

where such breach is capable of being rectified, the Service Provider fails to rectify such breach within thirty (30) days (or such longer period as may be agreed to by the Province on a case-by-case basis) of its receipt of a written notice from the Province requesting it to do so, or where such breach is not capable of being rectified within thirty (30) days (or such longer period as may be agreed to by the Province on a case-by-case basis), the Service Provider fails to take or continue to take such steps and actions as may be necessary to rectify such breach.

## 28.02 Remedies of the Province

Without the requirement for the Province to resort to the Dispute Resolution Process under Article 27 (*Dispute Resolution*) and without limiting any other rights or remedies that the Province may have at law, in equity, or as otherwise set forth in this Agreement, upon the occurrence of a Material Breach, the Province may

- (a) subject to Article 25 (*Indemnification and Liability*), require that the Service Provider reimburse the Province for any Losses of the Province in connection with such Material Breach including, without limitation, any Losses incurred by the Province in connection with any steps taken by the Province pursuant to clause (ii) below, and if the Service Provider disputes the occurrence of the Material Breach or the Losses suffered by the Province, then such Dispute shall be resolved by the Parties under Article 27 (*Dispute Resolution*);
- (b) subject to Article 25 (*Indemnification and Liability*), where such Material Breach involves a breach by the Service Provider of the Privacy and Security Obligations, take such steps as may be deemed necessary by the Province in its sole discretion to cure such Material Breach including, without limitation, performing any Services or procuring or otherwise obtaining Services from any other service provider or providers during the period of time which the Material Breach remains uncured, at the sole cost and expense of the Service Provider; and
- (c) in addition to all other rights and remedies provided for in this Section, the Province may immediately terminate this Agreement by delivery of a Termination Notice to the Service Provider, in which case, the provisions of Schedule 25 (*Termination Fees*) will apply, provided that Province shall not be entitled to terminate this Agreement in accordance with this clause (c) as a result of a Material Breach referred to in Subsection 28.01(g) (*Service Provider Material Breach*), until such time as the Service Provider shall have failed to comply with the curative provisions for the Material Breach that are set out therein;

and the Service Provider acknowledges and agrees that, upon the occurrence of a Material Breach, the Province may exercise any or all of, or any combination of, the remedies set forth above in accordance with the provisions of this Section.

## 28.03 Material Breach by Province

The Province will be in material breach of its obligations under this Agreement (a "**Province Material Breach**") if the Province fails to pay when due including payment under Section 33.02 (*Appropriation and Approvals*), amounts payable by the Province to the Service Provider pursuant to this Agreement in excess of [ the Province fails to rectify such failure within thirty (30) days of its receipt of a written notice from the Service Provider of such failure, such notice to state in detail the nature and specifics of the failure. The Service Provider may extend such thirty (30) day period, in its sole discretion, for such additional period of time upon written notice of such extension to the Province.]



**28.04 Remedies of the Service Provider**

Without the requirement for the Service Provider to resort to the dispute resolution process under Article 27 (*Dispute Resolution*) and without limiting any other rights or remedies that the Service Provider may have at law, in equity, or as otherwise set forth in this Agreement, upon the occurrence of Province Material Breach, the Service Provider may immediately terminate this Agreement by the delivery of a Termination Notice to the Province, in which case the provisions of Section 28.07 (*Termination Fees*) will apply.

**28.05 Termination by Province for Convenience**

Notwithstanding any other provision contained in this Agreement, the Province may terminate this Agreement for convenience (for any reason or for no reason at any time during the Term) on not less than 12 months prior written notice to the Service Provider stating the Province's election to terminate this Agreement for its convenience and the effective date of such termination provided that the effective date of such termination will be no earlier than the fifth anniversary from the Hand-Over Date. For the purposes of this Section 28.05 (*Termination by Province for Convenience*), the Termination Date will be the date stated in the Termination Notice.

**28.06 Termination Notice**

Any Termination Notice from one Party to the other under this Agreement will specify the Termination Date, the grounds of termination (if applicable), the reasonable particulars of the surrounding circumstances giving rise to the grounds of termination, and if the Party providing the Termination Notice is the Province, whether any Termination Services will be required by the Province.

**28.07 Termination Fees**

The responsibilities of the Parties for termination fees in connection with the Termination of this Agreement are set out in Schedule 25 (*Termination Fees*).

**ARTICLE 29 - TERMINATION SERVICES****29.01 Termination Transition Framework and Plan**

(1) Within six (6) months after the Hand-Over Date, the Service Provider shall, prepare and deliver to the Province for Approval, a mutually agreed to post termination transition framework with respect to the Services (the "**Termination Transition Framework**") to allow the Services to continue and to facilitate the orderly wind down and transfer of the Services to the Province or one or more Alternative Service Providers upon the termination or expiration of this Agreement for any reason in the manner set forth in this Article 29 (the "**Termination**

Services”). The Termination Transition Framework and the description of the Termination Services shall set out the detailed tasks, steps and deliverables necessary to carry out the transition as contemplated by this Article 29. The Service Provider shall update the Termination Transition Framework on an annual basis. The Province shall cooperate with and assist the Service Provider in the preparation of the initial Termination Transition Framework and each update thereto. The initial Termination Transition Framework and each annual update shall be reviewed by the Parties through the Governance Process and Approved by the Province.

(2) As part of the Termination Services, immediately upon the commencement of the Termination Assistance Period (defined below), the Service Provider shall, in consultation with the Province, commence in good faith and with all reasonable diligence to develop a complete termination assistance plan (the “**Termination Assistance Plan**”) based upon the Termination Transition Framework and setting out in detail the specific tasks to be accomplished by each Party, and a schedule pursuant to which the tasks are to be completed. Such Termination Assistance Plan will, at a minimum, provide for the following:

- (a) a communications plan for Clients, Personnel, Subcontractors and other interested parties;

- (c) details of the reversion or transfer of the applicable Software (including Province Proprietary Software, Province Licensed Software), Systems, Province Data, Province Records, Province Confidential Information and other materials and information to which the Province is entitled upon the termination or the expiry of this Agreement or the termination of the Services;

- (d) a plan for the transfer of incomplete Projects, if any;
- (e) a plan for the transfer of tangible personal property and the transfer or assignment of applicable contracts;
- (f) support for Systems and Software testing to be carried out by the Province or the Alternative Service Provider in connection with the transfer or licensing of any Systems and Software;
- (g) assistance with the provision of reasonably required training for those Persons designated by the Province who will be assuming responsibility for the Services following the Termination Date;
- (h) any modifications to the applicable Services to be provided during the Termination Assistance Period and the date or dates on which responsibility for the provision of the applicable Services or portions thereof are to be transferred to the Province or the Alternative Service Provider;



- (i) any modifications to the Fees to take into account the planned reduction in Services and any increased or decreased costs associated with providing reduced Services over time that are agreed to by the Parties in contemplation of the Termination Services;
- (j) processes, methods and timelines in respect of the delivery of the Termination Services; and
- (k) the anticipated conclusion date for the completion of the Termination Services.

The Termination Assistance Plan shall be Approved by the Province.

(3) The Parties will monitor the performance of the Termination Services and the Termination Assistance Plan on a regular basis through the Governance Process. The Parties agree to provide to each other reasonably sufficient information to create or update the Termination Assistance Plan as required in accordance with the terms of this Agreement. The Parties will revise and update the Termination Assistance Plan as required but no less frequently than every two months during the Termination Assistance Period.

#### **29.02 Termination Assistance Period**

(1) Commencing upon the first to occur of the delivery of a Termination Notice and twelve (12) months before the expiry of the Initial Term or the Renewal Term, and ending upon

(the “**Termination Assistance Period**”), the Service Provider shall provide such Termination Services as may be requested by the Province by notice in writing including as contemplated by the Termination Transition Framework and this Article 29.

(2) For greater certainty, the Service Provider shall provide the Termination Services during any Extension of this Agreement in accordance with Section 2.06 of this Agreement.

(3) Notwithstanding any of the foregoing, the Province may, at its option and in its sole discretion and upon thirty (30) days prior written notice elect for a shorter Termination Assistance Period or otherwise terminate the provision of further Termination Services.

#### **29.03 Post Termination Assistance**

(1) The Service Provider shall continue to provide the Services in accordance with this Agreement including in compliance with Service Levels. The Service Provider will not be required to meet the Service Levels with respect to any Services provided during that part of the Termination Assistance Period that occurs after Termination, except as may otherwise be agreed between the Parties through the Governance Process in the completion of the Termination Assistance Plan. The Service Provider will continue to provide the Services during the Termination Assistance Period unless the Province expressly requests the permanent or



temporary discontinuation thereof (or a portion thereof). Any permanent or temporary discontinuation of the Services or any part thereof will be set out in the Termination Assistance Plan, or otherwise implemented through the Change Order Process.

(2) The Service Provider shall use reasonable efforts to perform all Termination Services using resources that have been allocated to the Province as part of the Services prior to Termination without consuming capacity made available to the Province for the performance of the Services described in Schedule 5 (*SAP Services*). To the extent that the Termination Services (other than development of the initial Termination Transition Framework and the annual review thereof in respect of which there shall be no additional charge) cannot be provided using such resources, the Province: (i) may direct that the Termination Services be provided using capacity made available to the Province for the performance of the Services described in Schedule 5 (*SAP Services*); or (ii) shall pay the Service Provider for additional resources used by the Service Provider to provide the Termination Services at the time and materials rates set out in Schedule 22 (*Fees*). In connection with the finalization of the Termination Assistance Plan, the Parties shall agree on the Services intended to be provided by the Service Provider's Personnel allocated to the performance of the Services and the Services to be provided on a time and materials basis.

(3) Termination Services shall be performed in accordance with the Termination Assistance Plan, and shall include the following, at the Province's request:

- (a) delivery to the Province of an updated Termination Assistance Plan for transition of Services from the Service Provider to the Province, or one or more than one third party Alternative Service Providers designated by the Province, or both (in each case, the "Successor") in accordance with the Province's requirements;
- (b) assistance to the Province with respect to its describing the applicable Services that will be the subject of a competitive procurement process, bid specification or similar document in respect of the applicable Services in accordance with this Agreement;
- (c) the Service Provider's cooperation with and assistance to the Successor to facilitate the transfer of the Services to the Successor, including provision of access to Service Provider Personnel including Key Personnel and the delivery of all Province Data, Province Records, Province Confidential Information and any Software owned or licensed by the Province;
- (d) provision of copies of:
  - (i) documentation that the Province is entitled to under Article 20 and non proprietary Documentation specifically used by Service Provider to provide the Services, to the extent not already included in the Operations Manual, in electronic format, hard copy or both, as may be requested by the Province,
  - (ii) the Operations Manual in its then current form,



- (iii) Non proprietary detailed lists and descriptions of all Services, as applicable, which are then being provided (including volumes, achieved Service Levels, up-to-date process maps, workflow charts, and other available policy and procedure documentation), technical information and technical descriptive documentation, and documentation of current configurations, specifically used by Service Provider to provide the Services, to the extent not already included in the Documentation; and
  - (iv) all ticketing data related to the Services provided by the Service Provider in electronic format as may be requested by the Province ;
  - (e) providing answers to all reasonable questions from the Successor regarding the Services and the manner in which such Services have been provided by the Service Provider;
  - (f) provision of a list of Service Provider Third Party Software used by the Service Provider that is licensed and used by the Service Provider during the ordinary course of performing the Services on the Termination Date;
  - (g) provision of a list of any Province Proprietary Software and Service Provider Owned Software used in providing the Services;
  - (h) provision of detailed descriptions of the Systems used in the delivery of the applicable Services sufficient to permit the Province or the Alternative Service Provider to assume control of the provision of the Services or to obtain and implement functional replacements therefor;
  - (i) assistance with appropriate testing of the Province's transition and migration procedures;
  - (j) the provision of the Services provided for in and the performance of the Service Provider's obligations under the Termination Assistance Plan;
  - (k) otherwise provide assistance and information requested by the Province in order to enable the smooth transition of the management of the applicable Services from the Service Provider to the Successor;
  - (l) delivery to the Province of any remaining Province materials still in the Service Provider's possession when no longer required by the Service Provider for the provision of the Services, including all reports and documentation and all Province Data and Province Confidential Information; and
  - (m) the manner in which Province records will be returned as contemplated under section 15.05.
- (4) The Province or its Successor may, at the Province's option, exercisable during the Termination Assistance Period, assume the licences, or contracts for any or all



- (a) Software, or
- (b) Third Party contracts providing for service or support of Software

that, during the one hundred and eighty (180) day period prior to termination or expiration of the Agreement, are used by the Service Provider on a dedicated basis in the provision of the Services to the Province (provided that software that is licensed by the Service Provider under an enterprise or corporate licence agreement that does not allow for the software to be assigned or transferred shall not be considered to be primarily dedicated to the performance of the Services for the purposes of this Section).

(5) In respect of any commercially available Software which on the date of Termination of this Agreement, Service Provider is using on a dedicated basis to provide the Services to the Province which Service Provider licenses from a Third Party, subject to the consent of the Third Party, Service Provider will work with such Third Party to obtain the right to assign a license, if any, to such Software to the Province or its designee upon the Province's reimbursement to Service Provider of any transfer fees imposed by a Third Party for Third Party Software, and any one-time license or purchase charges in an amount equal to the remaining unamortized value and the Province will reimburse Service Provider for any recurring periodic license, maintenance, support or other charges applicable to periods after the date of transfer or license to the Province that have been incurred by the Service Provider, and the Province will be responsible for any additional recurring charges applicable to periods after such date of transfer.

(6) When licensing software from a third party for use on a dedicated basis in providing the Services (other than pursuant to a master purchase or master software licence agreements that prohibits the transfer thereof), Service Provider shall use reasonable efforts to obtain the right to transfer or assign the licence upon Termination to the Province or an Alternative Service Provider at no additional charge to be paid to the licensor.

#### **29.04 Dedicated Employees**

(1) For the purposes of this section, "Dedicated Employee" means an employee of Service Provider in Canada who, during <sup>the period</sup> spent at least <sup>one-third</sup> of his or her time working in connection with the performance of Services but does not include the employees of the Service Provider occupying Key positions as set out in Schedule 17 (*Key Positions*).

(2) Upon expiration or termination of this Agreement, the Province shall have an option (directly or through the Alternative Service Provider) to make employment offers to all Dedicated Employees. The Service Provider and the Province will cooperate in good faith to determine which employees are Dedicated Employees and the timing of the offers to such employees. In connection with such offers:

- (a) Such offers of employment shall be made not less than sixty (60) days before the end of the Termination Assistance Period (as it may be extended) but shall not be



effective until such time as the Dedicated Employees are no longer required by the Service Provider, acting reasonably, for the purpose of providing the Services to the Province.

- (b) The Service Provider shall waive any contractual restrictions that would prevent the employees accepting offers of employment, to the extent required for such employees to provide the Services to the Province, but not including contractual restrictions relating to protection of the Confidential Information of the Service Provider provided that the foregoing shall not prevent the employees from using and disclosing Confidential Information on behalf of the Province and for the benefit of the Province that the Province: (i) receives or is entitled to receive under the Agreement; and (ii) is entitled to use after termination or expiration of the Agreement.

(3) If the Province or the Alternative Service Provider does not make an offer to a Dedicated Employee or if the Dedicated Employee declines such offer,

(4) The Province shall reimburse the Service Provider in accordance with Schedule 25 (Termination Fees)

The Parties will work in good faith to evaluate the comparability of the offers of employment to be made.

(5) The assistance that the Service Provider will provide in connection with the offers of employment under this section will be comparable to the Province's assistance provided to the Service Provider prior to the Hand Over Date in respect of Province employees offered employment by the Service Provider.

#### **29.05 Additional Termination Arrangements**

Without limiting the provisions of this Article 29 (Termination Services), if this Agreement is terminated for any reason, then the Service Provider will, effective on the completion of the Termination Services or such other date as may be agreed to between the Parties or as otherwise contemplated in this Article 29 (Termination Services):

- (a) peacefully leave and cause its Personnel and External Personnel to peacefully leave any Province facilities made available to the Service Provider in connection with providing the Services under this Agreement, and return to the Province and cause its Personnel and External Personnel to return all keys and access cards to such applicable facilities; and
- (b) deliver to the Province all Documentation and other files, records and documents relating to the Services and all Province Confidential Information in whatever format, form, condition or media which are then in the possession or control of the Service Provider, or, at the request of the Province, destroy any Province Confidential Information and provide the Province with confirmation of the same, subject to Service Provider's right to retain copies of such Confidential Information (i) to enforce the terms of the Agreement, (ii) for legal, regulatory purposes, and (iii) to the extent Service Provider is granted a license under this Agreement.

#### **29.06 Equitable Remedies of the Province**

Service Provider acknowledges that the Province may suffer irreparable harm if the Service Provider breached (or attempted or threatened to breach) its obligations to provide Termination Services to the Province in accordance with and pursuant to the terms of this Agreement. In such event, the Province may proceed directly to a court of competent jurisdiction without having to exhaust or utilize the Dispute Resolution Process set forth in Article 27 (Dispute Resolution). In addition to any and all remedies available to the Province at law or in equity, the Province may be entitled to seek judicial relief by way of a restraining order, interim, interlocutory or permanent injunction, or order for specific performance to remedy such breach if a court should find that the Service Provider has breached (or attempted or threatened to breach) the obligation to provide Termination Services pursuant to this Agreement.

### **ARTICLE 30 - FORCE MAJEURE**

#### **30.01 Notice of Force Majeure Event**

If either Party is prevented from, or delayed in performing any of its obligations under this Agreement (other than payment) as a result of a Force Majeure Event, then the Party claiming the Force Majeure Event will promptly notify the other Party by telephone (which does not include, for greater clarification, leaving a voice mail message). That Party will also provide the other Party with a follow up written notice within two (2) Business Days of such Party becoming aware of the potential non-performance or delay, of the particulars of the Force Majeure Event including details of the nature of the event, its expected duration and the obligations under the Agreement that will be affected by the Force Majeure Event. The Party claiming the Force Majeure Event will continue to furnish reasonable reports with respect thereto to the other Party on a timely basis during the continuance of the Force Majeure Event. The notice requirements of this Section are in addition to any notices that may be required pursuant to Article 18 (*Business Continuity*).



**30.02**      **Mitigation of Force Majeure Event**

Where a Party becomes aware of the occurrence of an event, condition or circumstance that could reasonably be expected to cause such Party to claim a Force Majeure Event, then that Party will use reasonable efforts to prevent or avoid such event, condition or circumstance developing into a Force Majeure Event, to the extent practicable. Failing prevention of the occurrence of such Force Majeure Event by the use of such efforts, the Party claiming the Force Majeure Event will, during the continuance of such Force Majeure Event, use reasonable efforts to mitigate and minimize the effect of such Force Majeure Event, to reduce and minimize any ensuing delay or interruption in the performance of its obligations under this Agreement, and to recommence performance of its obligations under this Agreement whenever and to whatever extent practicable. For greater clarification, where a Force Majeure Event affects performance of the obligations of both Parties under this Agreement, then both Parties may claim the same Force Majeure Event for purposes of this Article 30 (*Force Majeure*).

**30.03**      **Consequences of Force Majeure Event**

(1) Subject to the provisions of Section 18.06 (*Actual Disaster*) and Section 30.03(2), during the occurrence of a Force Majeure Event, if a Party is prevented or delayed in performing any of its obligations under this Agreement (other than payment) the non-payment obligations of the Party claiming the Force Majeure Event will be suspended, but only to the extent that such Party's obligations cannot be performed or are delayed as a result of the Force Majeure Event, and such Party will not be considered to be in breach or default under this Agreement for the period of such occurrence. The suspension of performance will be no greater in scope and of no longer duration than is reasonably required to adjust for effects of the Force Majeure Event, to the extent reasonably possible to do so. For greater clarification, no obligation of either Party that existed prior to the Force Majeure Event causing the suspension of performance will be excused as a result of the Force Majeure Event, unless such obligation is a continuing obligation, the performance of which is affected by the Force Majeure Event.

(3) The Province may terminate any portion of this Agreement or the Services so affected by the Force Majeure Event in accordance with sub Section 30.04 (*Termination for Force Majeure*) if the Province is not receiving the Services so affected by the Force Majeure Event within following the occurrence of the Service Provider Force Majeure Event.

(4) Upon the occurrence of a Force Majeure Event affecting the Province that has an Adverse Impact on the Services, the Province may request the Service Provider to assist the Province to respond to the Force Majeure Event including if requested by the Province assisting the Province to implement an alternative approach, adjust the Services or cooperate with a Third Party.

**30.04 Termination for Force Majeure Event**

(1) If the Province or the Service Provider terminate any portion of this Agreement or the Services so affected by the Force Majeure Event in accordance with the terms set out in Section 30.03 (*Consequences of Force Majeure Event*), the Province shall pay the Fees payable set forth in Schedule 25 (*Termination Fees*).

(2) In either case the Province shall pay, in addition to the amounts set forth in Schedule 25 (*Termination Fees*) the following amounts:

(a) for the Services rendered by Service Provider prior to the effective date of such termination; and



- (b) for Termination Assistance Services provided by Service Provider, in accordance with Article 29 (Termination Services).

## ARTICLE 31 - ASSIGNMENT

### **31.01 Assignment by Province**

The Province may assign at any time, in its sole discretion, and without the Approval of the Service Provider but upon prior written notice, this Agreement in whole or in part, any right or benefit set forth in this Agreement to any government, public sector or Crown entity, body or authority within Canada. Nothing in this Section will limit, or be deemed to limit, any rights granted in this Agreement with respect to Alternative Service Providers. No such assignment will relieve the Province from its payment or other obligations under this Agreement.

### **31.02 Assignment by Service Provider**

(1) The Service Provider will not, either directly or indirectly, in whole or in part, assign this Agreement or any rights, duties, obligations or interests of the Service Provider under this Agreement, without the prior written consent of the Province, which consent may be given or withheld in the sole and absolute discretion of the Province except that Service Provider may, without consent and upon providing the Province written notice, assign its rights to receive payments under this Agreement, provided that the Province shall only be required to deal with Service Provider, and not with the assignee and Service Provider remains fully liable for all of its obligations pursuant to this Agreement and the assignment does not affect the Province's right to assert any claim or defence against the Service Provider or the assignee which the Province would have had in the absence of such assignment. For the purpose of this Agreement, the following will be deemed to be an assignment of this Agreement (provided that the exceptions to the following identified below are deemed to be permitted assignments and no consent is required):

- (a) the amalgamation or merger of the Service Provider with any other entity, except (i) any amalgamation or merger of the Service Provider with any other entity which is an Affiliate; or (ii) the dissolution windup of the Service Provider into a Service Provider Affiliate; where in each case the resulting entity is a Canadian Entity;
- (b) an assignment by operation of law, except any assignment as permitted under this Section;
- (c) a sale of all or substantially all of the assets or undertaking of the Service Provider, except any sale of assets to any other Canadian Entity which is an Affiliate or is otherwise as permitted under this Section;
- (d) a change in the Corporate Control of the Service Provider such that the Service Provider ceases to be subsidiary (direct or indirect) of Service Provider Parent; and



- (e) the acquisition of Corporate Control of Service Provider Parent by a Person who is not an Affiliate of Service Provider Parent and does not have Corporate Control of Service Provider Parent at the Effective Date.

(2) Any attempt by the Service Provider to so assign all or any part of this Agreement or any of the Service Provider's rights, duties, obligations or interests under this Agreement, without the prior written consent of the Province, contrary to the provisions of Section 31.02(1) will be null and void and without effect, and such assignment and any deemed assignment under subsections (1) (a) to (e) above will give rise to the right of the Province to terminate this Agreement in accordance with Article 28.

## **ARTICLE 32 - CONTRACTUAL RELATIONSHIP**

### **32.01 Relationship of the Parties**

- (1) Except as otherwise set forth in this Agreement:
  - (a) nothing in this Agreement will be construed to grant the Service Provider any right to act as an agent for or on behalf of the Province, including with respect to the Clients, third parties or any other Person; and
  - (b) the Service Provider has no authority to bind, and will not bind or purport to bind, the Province with respect to any such Clients, third parties or any other Person with respect to the performance of the Services or any matter relating to the Services, without the express Approval of the Province.

(2) For greater clarification, the use by the Service Provider of the Province Marks in performing the Services under this Agreement will not be, or be deemed to be, an act of the Service Provider (or its Affiliates, as applicable) as agent for and on behalf of the Province, and in all such cases the Service Provider (or its Affiliates, as applicable) will be, and will be deemed to be, acting on its own behalf, in its own right and as an independent contractor. The Service Provider expressly agrees not to act or to purport to act as agent for and on behalf of the Province, and not to bind or to purport to bind the Province, unless authorized to do so by express Approval of the Province.

### **32.02 No Partnership or Joint Venture**

This Agreement establishes, and will only be construed as establishing, a contract between unrelated business entities for the provision of certain services, and does not and will not be construed or deemed to create or constitute a partnership or joint venture relationship between the Parties. Each Party hereby expressly disclaims any intention to create a partnership or a joint venture with respect to the subject matter of this Agreement. Each Party will be independently and solely responsible for all obligations arising in connection with its own employees (including any obligations incumbent upon such Party as an employer, such as the payment of benefits, and the withholding and remittance of applicable source deductions, in respect of its employees).



**32.03      Conflict of Interest**

(1) The Service Provider will also require its Personnel to conduct themselves in a manner consistent with the “conflict of interests” guidelines established in the Conflict of Interest Policy set out in the Nova Scotia Public Service Commission Management Manual #500 or any successor thereof, to the extent applicable to contractors such as the Service Provider, a copy of which has been provided by the Province to the Service Provider, as such standard is revised by the Province from time to time upon notice to the Service Provider (the “**Province of Nova Scotia Conflict of Interest Policy**”).

(2) At no time during the Term will the Service Provider or its Personnel directly or indirectly engage in any activity, business or undertaking that could create an actual or perceived conflict of interest with the Province in respect of the Services (it being acknowledged by the Parties that the different economic interests of the Parties in and of itself will not be deemed to be a conflict of interest under this Section). In connection therewith, the following provisions will apply:

- (a) where the Service Provider becomes aware of any act, omission or event that could be construed as creating an actual or perceived conflict of interest in respect of the Services, or where the Service Provider is uncertain as to whether or not such a conflict of interest or a perceived conflict of interest could exist in a particular situation, the Service Provider will immediately notify the Province of the same;
- (b) the Service Provider will abide by any reasonable direction given by the Province in respect of any such act, omission or event, except where the Service Provider reasonably disagrees with such direction from the Province, in which case such matter will be deemed to be a Dispute and will be resolved in accordance with the Dispute Resolution Process;
- (c) if such Dispute is settled by arbitration, then the Dispute will be determined by the arbitrator (or arbitrators) in accordance with any Province Policies applicable under this Agreement;
- (d) the Province retains the right to prohibit any Person (including any Subcontractor or Supplier to of the Service Provider) from taking any action, delivering any Services or otherwise participating in any manner with respect to the Services or to this Agreement where the Province determines, in its sole opinion, that such Person’s current or past corporate or other interests may give rise to a conflict of interest in connection therewith; and
- (e) any determination or direction by the Province in respect of paragraph (d) above will be based upon such information as the Province, in its sole discretion, determines to be relevant, and Service Provider will be relieved of its obligations with respect to the performance of Services (including Service Levels) to the extent adversely affected by such direction through no fault of the Service Provider.

(3) Subsection 2 does not apply to actual or perceived conflicts of interest with the Province in respect of the Services which conflicts of interest are not material.

**32.04 Code of Conduct and Standards**

The Service Provider will at all times comply, and will cause its Personnel to comply, with the Service Provider code of conduct policy, a copy of which is attached to this Agreement as Schedule 26 (*Service Provider Code of Conduct*), as such policy is revised from time to time upon written notice to the Province, except to the extent it is inconsistent with this Agreement.

**ARTICLE 33 - MISCELLANEOUS**

**33.01 Notice**

(1) Unless specifically provided otherwise in this Agreement, including through the Governance Process, wherever any notice, communication, demand, invoice, Approval or other document is required or permitted to be given, sent or delivered by one Party to another under this Agreement, then it will be in writing and may be delivered personally, by facsimile or sent by a recognized courier service (and for greater clarification, no notice, demand or Approval required or permitted to be given under this Agreement will be, or be deemed to be, effective or delivered if given by email). Any such notice, communication, demand, invoice, Approval or other document so personally delivered or sent by facsimile or courier will be deemed to be given when actually received and will be addressed as follows:

To the Province:

The Province of Nova Scotia  
1723 Hollis Street  
PO. Box 187  
Halifax, Nova Scotia  
B3J 2N3  
Attention: Director Nova Scotia SAP CCC

Fax: 902-424-0635

With a copy to:

Nova Scotia Department of Justice  
5151 Terminal Road  
PO Box 7  
Halifax, Nova Scotia  
B3J 2L6

To the Service Provider:



IBM Canada Limited  
1969 Upper Water Street  
Halifax, Nova Scotia  
B3J 3R7

Attn: IBM Canada Senior Location Executive  
Fax: (902) 420-9424

With a copy to:

IBM Canada Limited  
Attention: General Counsel  
3600 Steeles Avenue East  
Markham, Ontario L3R 9Z7

(2) Either Party may change its address or facsimile number for notices upon giving prior written notice of the change to the other Party in the manner provided above.

**33.02 Appropriation and Approvals**

Notwithstanding any other provision of this Agreement, the payment of money by the Province to the Service Provider under this Agreement is subject to annual appropriation as approved by the Nova Scotia Legislature, or the Governor in Council not having controlled or limited expenditures relating to this Agreement.

**33.03 Severability**

If any provision contained in this Agreement or its application to any Person or circumstance will, to any extent, be invalid or unenforceable, then the remainder of this Agreement or the application of such provision to Persons or circumstances other than those to which it is held invalid or unenforceable, will not be affected, and each provision of this Agreement will be separately valid and enforceable to the fullest extent permitted by law. In addition, any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will not invalidate the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction will not invalidate or render unenforceable such provision in any other jurisdiction.

**33.04 Entire Agreement**

This Agreement and the Schedules to this Agreement, together with the other Transaction Documents, and all other documents or agreements referred to in this Agreement as incorporated by reference, constitute the entire agreement among the Parties with respect to the subject matter hereof, and cancel and supersede any other prior agreements, undertakings, declarations, commitments, representations, warranties, covenants, conditions, promises and understandings, whether written or oral, express or implied, statutory or otherwise among the Parties with respect to the subject matter of this Agreement.

**33.05**      **Amendments**

No term or provision of this Agreement may be amended except by written instrument signed by each of the Parties, or by a Change Order as contemplated in Article 7 (*Change Order Process*).

**33.06**      **No Liens**

Except as expressly provided in this Agreement, the Service Provider covenants and agrees to protect and keep all assets of the Province free and clear from any and all Liens from any Person claiming through the Service Provider, other than, in respect of leased assets transferred to the Province, interests of a lessor in any leased assets or Liens granted by any lessor in such leased assets and not including Liens of any Person claiming through the Province. If any such Lien is filed, then the Service Provider will immediately notify the Province by providing a copy of the Lien claim, and will cause such Lien to be satisfied or otherwise discharged within ten (10) Business Days. If any such Lien is filed or otherwise imposed, and the Service Provider does not cause such Lien to be released and discharged forthwith, then the Province has the right, but not the obligation, to pay all sums necessary to obtain such release and discharge, or otherwise cause the Lien to be removed to the satisfaction of the Province, from funds retained from payment then due or thereafter to become due as Fees payable to the Service Provider under this Agreement.

**33.07**      **Waiver**

Failure by a Party to insist in any one or more instances upon the strict performance of any one of the terms, provisions or covenants contained in this Agreement will not be construed as a waiver or relinquishment of such term, provision or covenant. No consent or waiver, express or implied, by a Party to or of any breach or default by the other Party in the performance by such other Party of any term, provision or covenant under this Agreement will be deemed or construed to be a consent or waiver to or of any other breach or default such other Party under this Agreement. No waiver of any breach of any term, provision or covenant of this Agreement will be effective or binding unless made in writing and signed by the waiving Party.

**33.08**      **Further Assurances**

Each of the Parties will, from time to time, execute and deliver all such further documents and instruments and do all such further acts and things as the other Party may reasonably require to carry out or better evidence or perfect the full intent and meaning of this Agreement.

**33.09**      **Obligations as Covenants**

Each obligation of a Party in this Agreement, even though not expressed as a covenant, is considered for all purposes to be a covenant.

**33.10**      **Transaction Fees**

Each Party will be responsible for and pay its respective legal and accounting costs and other expenses incurred in connection with the preparation, execution and delivery of this Agreement,



the other Transaction Documents and all other documents and instruments prepared, executed or delivered pursuant thereto or to this Agreement.

### 33.11 Survival

(1) Unless otherwise provided in this Agreement, the following provisions, including the obligations of the Service Provider and the Province thereunder will survive the expiration or termination of this Agreement:

- Article 1 (Interpretation and General Matters) with the exception of Section 1.14 (*Non-Exclusive Relationship with Service Provider*)
- Section 2.02 (*No Renewal Assurances*) and Section 2.03 (*No Expropriation*)
- Section 3.06 (*Transition Costs*)
- Section 4.04 (*Standard of Care*), Section 4.07 (*Compliance with Laws and Policies*) and Section 4.12 (*Failure of Province to Perform Retained Responsibilities*)
- Section 8.10 (*Service Level Failures*)
- Section 10.01 (*Use of Province Marks*) and Section 10.04 (*Publicity*)
- Section 12.06
- Section 13.03 (*Responsibility for Subcontractors*)
- Section 13.13 (*Cooperation with Alternative Service Providers*)
- Section 15.01 (*Maintenance of Records*)
- Section 15.04 (*Control of Province Records*)
- Section 15.05 (*Final Return of Province Records*)
- Section 15.07 (*Storage and Disposal of Records*)
- Article 16 (*Fees and Payment Terms*)
- Article 17 (*Privacy, Security and Confidentiality*)
- Article 20 (*Intellectual Property and Proprietary Rights*)
- Article 22 (*Audit Rights*)
- Section 23.02 (*FOIPOP and PRO Reviews*) Section 24.04 (*Disclaimer of Warranties*)
- Article 25 (*Indemnification and Liability*)
- Article 27 (*Dispute Resolution*)
- Article 29 (*Termination Services*)
- Section 31.02 (*Assignment by Service Provider*)
- Section 32.01 (*Relationship of the Parties*) and Section 32.02 (*No Partnership or Joint Venture*)
- Article 33 (*Miscellaneous*)
- any other provisions of this Agreement which are required for the proper interpretation thereof, or which by their nature extend beyond the expiration or Termination of the Agreement.

(2) In addition, any liabilities or obligations of either Party arising before Termination of this Agreement or arising out of the events causing such Termination, and any damages or other remedies to which a Party may be entitled under this Agreement, whether at law or in equity,

arising from any breach of such obligations of a Party and any other provisions herein, the nature and intent of which is to survive Termination of this Agreement, will survive and will not be affected by the expiration or Termination of this Agreement.

### **33.12**            Language

The Parties have agreed that this Agreement and all documents related to this Agreement will be drafted in the English language. Les parties aux présentes ont convenu que cette convention et tous les documents qui s'y rapportent soient rédigés en langue anglaise.

### **33.13**            Governing Law

(1) This Agreement will be governed by and construed in accordance with the laws, other than choice of law rules, of the Province of Nova Scotia. Any matter regarding the interpretation and application of this Agreement or the other Transaction Documents, and all disputes arising under or in connection with this Agreement or the other Transaction Documents will, subject to Article 27 (*Dispute Resolution*), be within the exclusive jurisdiction of the courts of Nova Scotia, as stipulated in the following paragraph.

(2) Subject to Article 27 (*Dispute Resolution*), the Parties irrevocably agree to and hereby accept and attorn to the exclusive jurisdiction of the Courts of Halifax, Nova Scotia for any and all Claims that they may have related in any way to this Agreement and its renewal or non-renewal, and all Disputes relating hereto or hereunder, and the Parties irrevocably covenant and agree not to commence any action or bring any Claim in any forum whatsoever, be it domestic, foreign or international (including, but not limited to the North American Free Trade Agreement), relating in any way to this Agreement or its renewal or non-renewal or any Dispute relating hereto or hereunder.

### **33.14**            Change of Law

The Service Provider hereby acknowledges and agrees that its costs involved in performing its obligations under this Agreement are, in part, based upon governmental laws, regulations and policies in force at the time this Agreement was entered into and subsequently, and that such governmental laws, regulations and policies are subject to change without notice. Any such change could result in a material change in the Service Provider's costs of performing its obligations under this Agreement. The Service Provider specifically acknowledges and agrees that:

- (a) subject to the Change Order Process and Section 4.07 (Compliance with Laws and Policies), any such change that has the effect of increasing the Service Provider's costs of performing its obligations under this Agreement will not affect those obligations;
- (b) such actions will not constitute expropriation or be tantamount to expropriation at domestic or international law (including, but not limited, the North American Free Trade Agreement); and



- (c) such actions will not constitute grounds for asserting any other claim whatsoever under domestic law or any claim whatsoever under any international agreement (including, but not limited to, Chapter Eleven of the North American Free Trade Agreement and the General Agreement on Trade in Services).

**33.15 No Fettering of Legislative Authority**

The Service Provider expressly acknowledges and agrees that nothing in this Agreement will be construed as an agreement by the Province to restrict, limit or otherwise fetter in any manner the Province's ability to introduce, pass, amend, modify, replace, revoke or otherwise exercise any rights or authority regarding legislation, regulations, policies or any other authority of the Province.

**33.16 Intentionally Deleted**

**33.17 Binding Effect**

This Agreement will be binding upon and enure to the benefit of the Parties and their respective successors and permitted assigns.

**33.18 Client Claims and Third Party Beneficiaries**

- (1) The Service Provider will provide Services to Clients under this Agreement, subject to the terms of this Section.
- (2) The Province will have the responsibility to ensure that:
- (a) the Clients will not make any claim or be a party to any action or lawsuit, directly against the Service Provider or its Affiliates or their employees, officers, or directors arising out of or in connection with this Agreement and the Parties agree that any claim in respect of the Clients will be made by the Province; and
  - (b) the Clients will direct all communications relating to claims under this Agreement to the Province, and not through or to the Service Provider.
- (3) With respect to the Services provided to Clients, the Province is fully responsible for the performance of the Province's obligations under this Agreement.
- (4) Nothing in this Section relieves the Province of its obligations under this Agreement.
- (5) Subject to Section 33.18(1-4), nothing in this Agreement, express or implied, is intended to confer upon any Person (other than the Parties and their successors and permitted assigns), and the indemnified parties who are expressly indemnified pursuant to the provisions of this Agreement, any rights, benefits or remedies of any kind or character whatsoever. No Person (other than the Parties and their successors and permitted assigns) will be deemed to be a third-party beneficiary under or by reason of this Agreement, unless specifically provided otherwise in this Agreement.

**33.19**      **Counterparts**

This Agreement may be executed in several counterparts, each of which will be deemed to be an original. Such counterparts together will constitute one and the same instrument, notwithstanding that all of the Parties are not signatories to the original or the same counterpart.

**33.20**      **Remedies Cumulative**

Unless otherwise expressly stated herein, the rights and remedies of the Parties hereunder are cumulative and are in addition to, and not in substitution for, any other rights and remedies available at law or in equity or otherwise. No single or partial exercise by a Party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that Party may be entitled.

IN WITNESS WHEREOF the Parties have executed this Agreement as of the Effective Date.

**PROVINCE OF NOVA SCOTIA**

**IBM CANADA LIMITED**

Per: *Marcus McLeod*  
Title: Authorized Signing Officer  
Date: *Oct. 30, 2012*

Per: *[Signature]*  
Title: Authorized Signing Officer  
Date: *Oct. 30, 2012*

Per: \_\_\_\_\_  
Title: Authorized Signing Officer  
Date: \_\_\_\_\_



## SCHEDULE 1 – TRANSITION DOCUMENT

This Schedule 1 – Transition Document is made pursuant to the Master Services Agreement effective November 1, 2012 (the “**Agreement**”) by and between the Her Majesty the Queen in Right of the Province of Nova Scotia (the “**Province**”) and IBM Canada Ltd. (the “**Service Provider**”), and forms part of the Agreement.

As of the Effective Date, Schedule 1 (Transition Agreement) is not required. If the Parties determine during Transition that a Transition Agreement is required, the Parties will mutually agree on the form and content of such agreement.

**SCHEDULE 2 – TRANSITION PLAN**

This Schedule 2 – Transition Plan (*“Transition Plan”*) is made pursuant to the Master Services Agreement effective November 1, 2012 (the **“Agreement”**) by and between the Her Majesty the Queen in Right of the Province of Nova Scotia (the **“Province”**) and IBM Canada Limited (the **“Service Provider”**), and forms part of the Agreement.



S17(1)(c)(d)



**Schedule 2**

**Transition Plan**

**Pages 1 to 24**

**Withheld under**

**s. 17(1)(c)(d)**

**s. 21(1)(a)(i)(ii)(b)(c)(i)(ii)(iii)**

**Schedule 2 – Transition Plan  
Exhibit A - Schedule**

**10 pages**

**Withheld under**

**s. 17 (1)(c)(d)**



**Schedule 2 – Transition Plan**

**Exhibit B-1  
Service Provider Document**

**71 pages**

**Withheld under**

**s. 21(1)(a)(i)(ii)(b)(c)(i)(ii)(iii)**

**Schedule 2 – Transition Plan**

**Exhibit B-2  
Service Provider Document**

**78 pages**

**Withheld under**

**s. 21(1)(a)(i)(ii)(b)(c)(i)(ii)(iii)**



**Schedule 2 – Transition Plan**

**Exhibit B-3  
Service Provider Document**

**15 pages**

**Withheld under**

**s. 21(1)(a)(i)(ii)(b)(c)(i)(ii)(iii)**

**Schedule 2 – Transition Plan**

**Exhibit B-4  
Service Provider Document**

**5 pages**

**Withheld under**

**s. 21(1)(a)(i)(ii)(b)(c)(i)(ii)(iii)**



**Schedule 2 – Transition Plan**

**Exhibit B-5  
Service Provider Document**

**7 pages**

**Withheld under**

**s. 21(1)(a)(i)(ii)(b)(c)(i)(ii)(iii)**

**SCHEDULE 3 – TRANSITION MANAGEMENT & GOVERNANCE**

This Schedule 3 – Transition Management & Governance ("*Governance & Management*") is made pursuant to the Master Services Agreement effective November 1, 2012 (the "**Agreement**") by and between the Her Majesty the Queen in Right of the Province of Nova Scotia (the "**Province**") and IBM Canada Limited (the "**Service Provider**"), and forms part of the Agreement.

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**Schedule 3 – Transition Management & Governance**

**Pages 2 - 10**

**Withheld under  
S. 17(1)(c)(d)**

**s. 21(1)(a)(i)(ii)(b)(c)(i)(ii)(iii)**

**s. 20(1)**

**Schedule 3 – Transition Management & Governance**

**Exhibit A – 1  
Service Provider Document**

**6 pages**

**Withheld under  
s. 21(1)(a)(i)(ii)(b)(c)(i)(ii)(iii)**



**Schedule 3 – Transition Management & Governance**

**Exhibit A – 2  
Service Provider Document**

**7 pages**

**Withheld under  
s. 21(1)(a)(i)(ii)(b)(c)(i)(ii)(iii)**

**Schedule 3 – Transition Management & Governance**

**Exhibit A – 3  
Service Provider Document**

**18 pages**

**Withheld under  
s. 21(1)(a)(i)(ii)(b)(c)(i)(ii)(iii)**



**Schedule 3 – Transition Management & Governance**

**Exhibit A – 4  
Service Provider Document**

**10 pages**

**Withheld under  
s. 21(1)(a)(i)(ii)(b)(c)(i)(ii)(iii)**

**Schedule 3 – Transition Management & Governance**

**Exhibit A – 5  
Service Provider Document**

**8 pages**

**Withheld under  
s. 21(1)(a)(i)(ii)(b)(c)(i)(ii)(iii)**



**SCHEDULE 4 - WORK IN PROGRESS ACTIVITIES**

This Schedule 4 – Work In Progress Activities is made pursuant to the Master Services Agreement effective November 1, 2012 (the “**Agreement**”) by and between the Her Majesty the Queen in Right of the Province of Nova Scotia (the “**Province**”) and IBM Canada Ltd. (the “**Service Provider**”), and forms part of the Agreement.

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S170(xcl)

**Schedule 4 – Work In Progress Activities**

**Pages 2 & 3**

**Withheld under  
s. 17(1)(c)(d)**



## SCHEDULE 5 - SAP SERVICES

This Schedule 5 – SAP Services (“**SAP Services Schedule**”) is made pursuant to the Master Services Agreement effective November 1, 2012 (the “**Agreement**”) by and between the Her Majesty the Queen in Right of the Province of Nova Scotia (the “**Province**”) and IBM Canada Limited (the “**Service Provider**”), and forms part of the Agreement.

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**Schedule 5 – SAP Services**

**Pages 2 – 29**

**Withheld under**

**s. 15(1)(k)**

**s. 17(1)(c)(d)**

**s. 21(1)(a)(ii)(b)(c)(i)(ii)(iii)**



**Schedule 5 – SAP Services**

**Exhibit B -1  
System Diagram**

**1 page**

**Withheld under  
s. 15(1)(k)**

**Schedule 5 – SAP Services  
Exhibit A – Services Matrix**

**55 Pages**

**Withheld under**

**s. 15(1)(k)**

**s. 17(1)(c)(d)**

**s. 21(1)(a)(ii)(b)(c)(i)(iii)**



**Schedule 5 – SAP Services**

**Exhibit B -2  
System Diagram**

**1 page**

**Withheld under  
s. 15(1)(k)**

**Schedule 5 – SAP Services**

**Exhibit B -3  
System Diagram**

**1 page**

**Withheld under  
s. 15(1)(k)**



**Schedule 5 – SAP Services**

**Exhibit B -4  
System Diagram**

**3 pages**

**Withheld under  
s. 15(1)(k)**

**Schedule 5 – SAP Services**

**Exhibit B - 5  
System Diagram**

**1 page**

**Withheld under  
s. 15(1)(k)**



**Schedule 5 – SAP Services**

**Exhibit B - 6  
System Diagram**

**1 page**

**Withheld under  
s. 15(1)(k)**

**Schedule 5 – SAP Services**

**Exhibit B - 7  
System Diagram**

**2 pages**

**Withheld under  
s. 15(1)(k)**



**Schedule 5 – SAP Services**

**Exhibit B - 8  
System Diagram**

**1 page**

**Withheld under  
s. 15(1)(k)**

**Schedule 5 – SAP Services**

**Exhibit B - 9  
System Diagram**

**1 page**

**Withheld under  
s. 15(1)(k)**



**Schedule 5 – SAP Services**

**Exhibit B - 10  
System Diagram**

**1 page**

**Withheld under  
s. 15(1)(k)**

**Schedule 5 – SAP Services**

**Exhibit B - 11  
System Diagram**

**1 page**

**Withheld under  
s. 15(1)(k)**



**Schedule 5 – SAP Services**

**Exhibit B - 12  
System Diagram**

**1 page**

**Withheld under  
s. 15(1)(k)**

**Schedule 5 – SAP Services**

**Exhibit B - 13  
System Diagram**

**1 page**

**Withheld under  
s. 15(1)(k)**



**Schedule 5 – SAP Services  
Exhibit C - 1  
System Inventory**

**18 Pages**

**Withheld under**

**s. 15(1)(k)**

**Schedule 5 – SAP Services  
Exhibit C - 2  
System Inventory**

**16 Pages**

**Withheld under**

**s. 15(1)(k)**



**Schedule 5 – SAP Services  
Exhibit C - 3  
System Inventory**

**3 Pages**

**Withheld under**

**s. 15(1)(k)**

**Schedule 5 – SAP Services  
Exhibit C - 4  
System Inventory**

**4 Pages**

**Withheld under**

**s. 15(1)(k)**



**Schedule 5 – SAP Services  
Exhibit C - 5  
System Inventory**

**2 Pages**

**Withheld under**

**s. 15(1)(k)**

**Schedule 5 – SAP Services  
Exhibit C - 6  
System Inventory**

**12 Pages**

**Withheld under**

**s. 15(1)(k)**



**Schedule 5 – SAP Services  
Exhibit C - 7  
System Inventory**

**6 Pages**

**Withheld under**

**s. 15(1)(k)**

### SCHEDULE 6 - PROJECT WORK

This Schedule 6 - Project Work is made pursuant to the Master Services Agreement effective [\*] (the "Agreement") by and between the Her Majesty the Queen in Right of the Province of Nova Scotia (the "Province") and IBM Canada Ltd. (the "Service Provider"), and forms part of the Agreement.

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**Schedule 6**

**Project Work**

**Pages 2 to 10**

**Withheld under**

**s. 17(1)(c)(d)**

**s. 21(1)(a)(ii)(b)(c)(i)(iii)**

SCHEDULE 7 – QUALITY MANAGEMENT

This Schedule 7 – Quality Management (“*Quality Management*”) is made pursuant to the Master Services Agreement effective November 1, 2012 (the “**Agreement**”) by and between the Her Majesty the Queen in Right of the Province of Nova Scotia (the “**Province**”) and IBM Canada Limited (the “**Service Provider**”), and forms part of the Agreement.

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**Schedule 7**

**Quality Management**

**Pages 2 to 11**

**Withheld under**

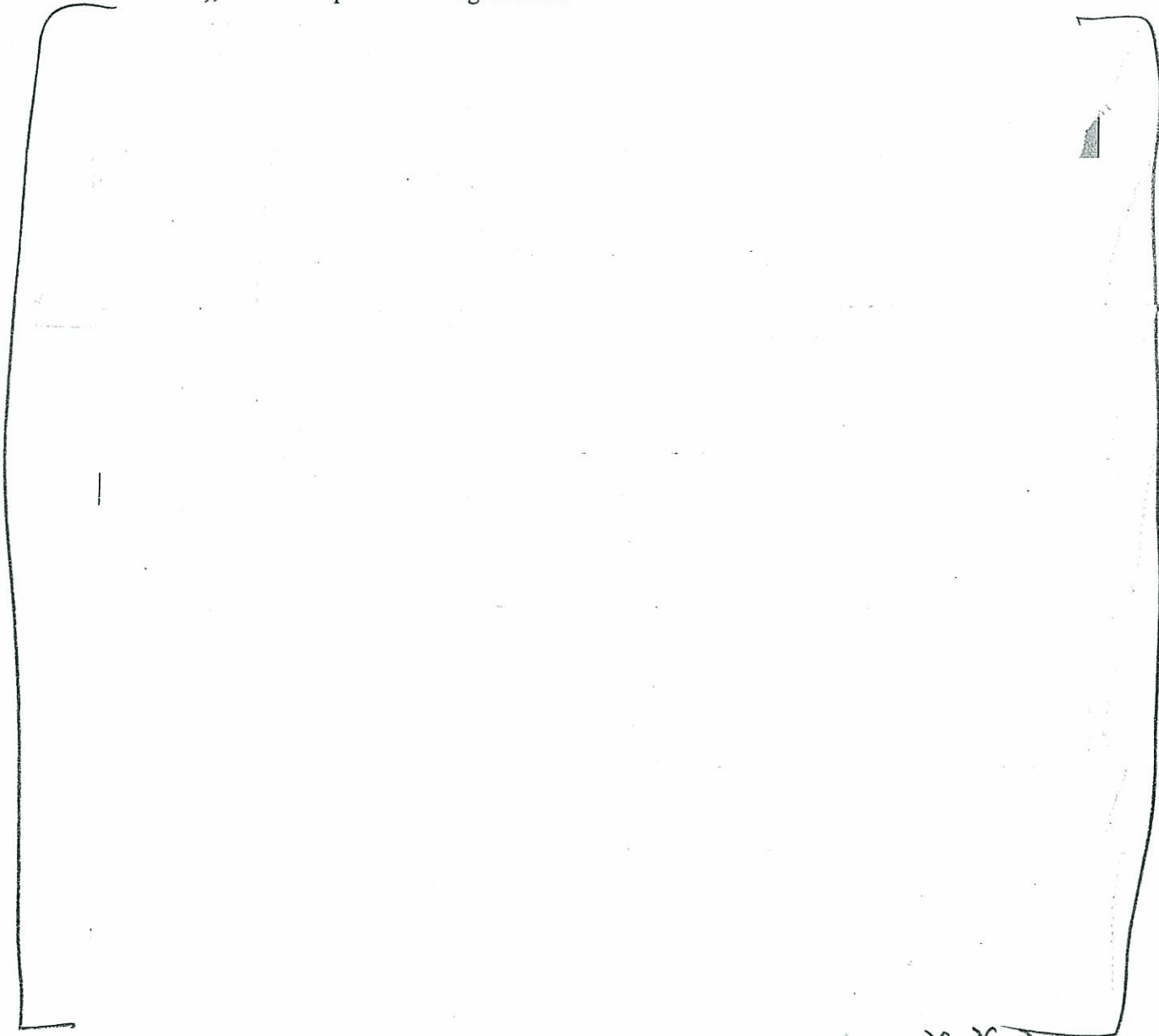
**s. 17(1)(d)**

**s. 21(1)(a)(i)(ii)(b)(c)(i)(ii)(iii)**

**Volume II**

**Exhibits to Schedule 7 – Quality**

This Volume II - Exhibits to Schedule 7 – Quality contains the exhibits to Schedule 7 – Quality Management (“Quality Management”), made pursuant to the Master Services Agreement effective November 1, 2012 (the “Agreement”) by and between the Her Majesty the Queen in Right of the Province of Nova Scotia (the “Province”) and IBM Canada Limited (the “Service Provider”), and forms part of that Agreement.



S21(c)(i)(ii)(b)(c)  
(i)(ii)(iii)



**Schedule 7  
Quality Management**

**Exhibit A-1**

**Service Provider Document**

**10 pages**

**Withheld under**

**s. 21(1)(a)(i)(ii)(b)(c)(i)(ii)(iii)**

**Schedule 7  
Quality Management**

**Exhibit A-2**

**Service Provider Document**

**13 pages**

**Withheld under**

**s. 21(1)(a)(i)(ii)(b)(c)(i)(ii)(iii)**



**Schedule 7  
Quality Management**

**Exhibit A-3**

**Service Provider Document**

**8 pages**

**Withheld under**

**s. 21(1)(a)(i)(ii)(b)(c)(i)(ii)(iii)**

**Schedule 7  
Quality Management**

**Exhibit A-4**

**Service Provider Document**

**16 pages**

**Withheld under**

**s. 21(1)(a)(i)(ii)(b)(c)(i)(ii)(iii)**



**Schedule 7  
Quality Management**

**Exhibit A-5**

**Service Provider Document**

**14 pages**

**Withheld under**

**s. 21(1)(a)(i)(ii)(b)(c)(i)(ii)(iii)**

**Schedule 7  
Quality Management**

**Exhibit B-6**

**Service Provider Document**

**9 pages**

**Withheld under**

**s. 21(1)(a)(i)(ii)(b)(c)(i)(ii)(iii)**



**Schedule 7  
Quality Management**

**Exhibit B-7**

**Service Provider Document**

**8 pages**

**Withheld under**

**s. 21(1)(a)(i)(ii)(b)(c)(i)(ii)(iii)**

**Schedule 7  
Quality Management**

**Exhibit B-8**

**Service Provider Document**

**12 pages**

**Withheld under**

**s. 21(1)(a)(i)(ii)(b)(c)(i)(ii)(iii)**



**Schedule 7  
Quality Management**

**Exhibit B-9**

**Service Provider Document**

**7 pages**

**Withheld under**

**s. 21(1)(a)(i)(ii)(b)(c)(i)(ii)(iii)**

**Schedule 7  
Quality Management**

**Exhibit B-10**

**Service Provider Document**

**1 page**

**Withheld under**

**s. 21(1)(a)(i)(ii)(b)(c)(i)(ii)(iii)**



**Schedule 7  
Quality Management**

**Exhibit B-11**

**Service Provider Document**

**1 page**

**Withheld under**

**s. 21(1)(a)(i)(ii)(b)(c)(i)(ii)(iii)**

**Schedule 7  
Quality Management**

**Exhibit B-12**

**Service Provider Document**

**28 pages**

**Withheld under**

**s. 21(1)(a)(i)(ii)(b)(c)(i)(ii)(iii)**



**Schedule 7  
Quality Management**

**Exhibit B-13**

**Service Provider Document**

**61 pages**

**Withheld under**

**s. 21(1)(a)(i)(ii)(b)(c)(i)(ii)(iii)**

**Schedule 7  
Quality Management**

**Exhibit B-14**

**Service Provider Document**

**80 pages**

**Withheld under**

**s. 21(1)(a)(i)(ii)(b)(c)(i)(ii)(iii)**



**Schedule 7  
Quality Management**

**Exhibit B-15**

**Service Provider Document**

**15 pages**

**Withheld under**

**s. 21(1)(a)(i)(ii)(b)(c)(i)(ii)(iii)**

**Schedule 7  
Quality Management**

**Exhibit B-16**

**Service Provider Document**

**3 pages**

**Withheld under**

**s. 21(1)(a)(i)(ii)(b)(c)(i)(ii)(iii)**



**Schedule 7  
Quality Management**

**Exhibit B-17**

**Service Provider Document**

**1 page**

**Withheld under**

**s. 21(1)(a)(i)(ii)(b)(c)(i)(ii)(iii)**

**Schedule 7  
Quality Management**

**Exhibit B-18**

**Service Provider Document**

**1 page**

**Withheld under**

**s. 21(1)(a)(i)(ii)(b)(c)(i)(ii)(iii)**



**Schedule 7  
Quality Management**

**Exhibit B-19**

**Service Provider Document**

**1 page**

**Withheld under**

**s. 21(1)(a)(i)(ii)(b)(c)(i)(ii)(iii)**

**Schedule 7  
Quality Management**

**Exhibit B-21**

**Service Provider Document**

**1 page**

**Withheld under**

**s. 21(1)(a)(i)(ii)(b)(c)(i)(ii)(iii)**



**Schedule 7  
Quality Management**

**Exhibit B-22**

**Service Provider Document**

**5 pages**

**Withheld under**

**s. 21(1)(a)(i)(ii)(b)(c)(i)(ii)(iii)**

**Schedule 7  
Quality Management**

**Exhibit B-23**

**Service Provider Document**

**1 page**

**Withheld under**

**s. 21(1)(a)(i)(ii)(b)(c)(i)(ii)(iii)**



**Schedule 7  
Quality Management**

**Exhibit B-24**

**Service Provider Document**

**1 page**

**Withheld under**

**s. 21(1)(a)(i)(ii)(b)(c)(i)(ii)(iii)**

**Schedule 7  
Quality Management**

**Exhibit B-25**

**Service Provider Document**

**1 page**

**Withheld under**

**s. 21(1)(a)(i)(ii)(b)(c)(i)(ii)(iii)**

**Schedule 7  
Quality Management**

**Exhibit B-26**

**Service Provider Document**

**1 page**

**Withheld under**

**s. 21(1)(a)(i)(ii)(b)(c)(i)(ii)(iii)**



**Schedule 7  
Quality Management**

**Exhibit B-27**

**Service Provider Document**

**1 page**

**Withheld under**

**s. 21(1)(a)(i)(ii)(b)(c)(i)(ii)(iii)**

**Schedule 7  
Quality Management**

**Exhibit B-28**

**Service Provider Document**

**9 pages**

**Withheld under**

**s. 21(1)(a)(i)(ii)(b)(c)(i)(ii)(iii)**

**Schedule 7  
Quality Management**

**Exhibit B-29**

**Service Provider Document**

**10 pages**

**Withheld under**

**s. 21(1)(a)(i)(ii)(b)(c)(i)(ii)(iii)**



**Schedule 7  
Quality Management**

**Exhibit B - 30  
Service Provider Document**

**2 pages**

**Withheld under  
s. 21(1)(a)(i)(ii)(b)(c)(i)(ii)(iii)**

**Schedule 7  
Quality Management**

**Exhibit B-31**

**Service Provider Document**

**1 page**

**Withheld under**

**s. 21(1)(a)(i)(ii)(b)(c)(i)(ii)(iii)**

**Schedule 7  
Quality Management**

**Exhibit B-32**

**Service Provider Document**

**7 pages**

**Withheld under**

**s. 21(1)(a)(i)(ii)(b)(c)(i)(ii)(iii)**



**Schedule 7  
Quality Management**

**Exhibit B-33**

**Service Provider Document**

**2 pages**

**Withheld under**

**s. 21(1)(a)(i)(ii)(b)(c)(i)(ii)(iii)**

**Schedule 7  
Quality Management**

**Exhibit B-34**

**Service Provider Document**

**8 pages**

**Withheld under**

**s. 21(1)(a)(i)(ii)(b)(c)(i)(ii)(iii)**

**Schedule 7  
Quality Management**

**Exhibit B-35**

**Service Provider Document**

**5 pages**

**Withheld under**

**s. 21(1)(a)(i)(ii)(b)(c)(i)(ii)(iii)**



**Schedule 7  
Quality Management**

**Exhibit B-36**

**Service Provider Document**

**1 page**

**Withheld under**

**s. 21(1)(a)(i)(ii)(b)(c)(i)(ii)(iii)**

**Schedule 7  
Quality Management**

**Exhibit B-37**

**Service Provider Document**

**1 page**

**Withheld under**

**s. 21(1)(a)(i)(ii)(b)(c)(i)(ii)(iii)**

**Schedule 7  
Quality Management**

**Exhibit B-38**

**Service Provider Document**

**1 page**

**Withheld under**

**s. 21(1)(a)(i)(ii)(b)(c)(i)(ii)(iii)**



**Schedule 7  
Quality Management**

**Exhibit B-39**

**Service Provider Document**

**5 pages**

**Withheld under**

**s. 21(1)(a)(i)(ii)(b)(c)(i)(ii)(iii)**

**Schedule 7  
Quality Management**

**Exhibit B-40**

**Service Provider Document**

**10 pages**

**Withheld under**

**s. 21(1)(a)(i)(ii)(b)(c)(i)(ii)(iii)**

**Schedule 7  
Quality Management**

**Exhibit B-41**

**Service Provider Document**

**1 page**

**Withheld under**

**s. 21(1)(a)(i)(ii)(b)(c)(i)(ii)(iii)**



**Schedule 7  
Quality Management**

**Exhibit B-42**

**Service Provider Document**

**7 pages**

**Withheld under**

**s. 21(1)(a)(i)(ii)(b)(c)(i)(ii)(iii)**

**Schedule 7  
Quality Management**

**Exhibit B-43**

**Service Provider Document**

**7 pages**

**Withheld under**

**s. 21(1)(a)(i)(ii)(b)(c)(i)(ii)(iii)**

**Schedule 7  
Quality Management**

**Exhibit B-44**

**Service Provider Document**

**6 pages**

**Withheld under**

**s. 21(1)(a)(i)(ii)(b)(c)(i)(ii)(iii)**



**Schedule 7  
Quality Management**

**Exhibit B-45**

**Service Provider Document**

**14 pages**

**Withheld under**

**s. 21(1)(a)(i)(ii)(b)(c)(i)(ii)(iii)**

**Schedule 7  
Quality Management**

**Exhibit B-46**

**Service Provider Document**

**19 pages**

**Withheld under**

**s. 21(1)(a)(i)(ii)(b)(c)(i)(ii)(iii)**

**Schedule 7  
Quality Management**

**Exhibit C-47**

**Service Provider Document**

**6 pages**

**Withheld under**

**s. 21(1)(a)(i)(ii)(b)(c)(i)(ii)(iii)**



**Schedule 7  
Quality Management**

**Exhibit C-48**

**Service Provider Document**

**10 pages**

**Withheld under**

**s. 21(1)(a)(i)(ii)(b)(c)(i)(ii)(iii)**

**Schedule 7  
Quality Management**

**Exhibit C-49**

**Service Provider Document**

**3 pages**

**Withheld under**

**s. 21(1)(a)(i)(ii)(b)(c)(i)(ii)(iii)**

**Schedule 7  
Quality Management**

**Exhibit C-50**

**Service Provider Document**

**8 pages**

**Withheld under**

**s. 21(1)(a)(i)(ii)(b)(c)(i)(ii)(iii)**



**Schedule 7  
Quality Management**

**Exhibit C-51**

**Service Provider Document**

**8 pages**

**Withheld under**

**s. 21(1)(a)(i)(ii)(b)(c)(i)(ii)(iii)**

**Schedule 7  
Quality Management**

**Exhibit C-52**

**Service Provider Document**

**3 pages**

**Withheld under**

**s. 21(1)(a)(i)(ii)(b)(c)(i)(ii)(iii)**

**Schedule 7  
Quality Management**

**Exhibit C-53**

**Service Provider Document**

**2 pages**

**Withheld under**

**s. 21(1)(a)(i)(ii)(b)(c)(i)(ii)(iii)**



**Schedule 7  
Quality Management**

**Exhibit C-54**

**Service Provider Document**

**4 pages**

**Withheld under**

**s. 21(1)(a)(i)(ii)(b)(c)(i)(ii)(iii)**

## SCHEDULE 8 - SPECIFIC LAWS AND POLICIES

This Schedule 8 – Specific Laws and Policies (“Specific Laws and Policies Schedule”) is made pursuant to the Master Services Agreement effective November 1, 2012 (the “Master Services Agreement”) by and between the Her Majesty the Queen in Right of the Province of Nova Scotia (the “Province”) and IBM Canada Limited (“IBM”), and forms part of the Master Services Agreement.

### TABLE OF SPECIFIC LAWS

1. *Companies Act*, RSNS, 1989, c 81.
2. *Bankruptcy and Insolvency Act*, RSC, 1985, c. B-3.

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3. *Companies' Creditors Arrangement Act*, RSC, c C-25.
4. *Freedom of Information and Protection of Privacy Act*, SNS 1993, c 5.
5. *Personal Information International Disclosure Protection Act*, SNS 2006, c 3.
6. *Personal Information and Protection of Electronic Documents Act*, SC, 2000, c 5.
7. *Auditor-General Act*, RSNS, 1989, c 28.
8. *Income Tax Act*, RSC 1985, c 1 (5th Supp).
9. *Proceedings Against the Crown Act*, RSNS 1989, c 360.
10. *Commercial Arbitration Act*, RSNS , 1999, c 5.
11. *Interpretation Act*, RSC, 1985, c. I-21
12. *Privacy Review Officer Act*, RSNS, 2008, c 42.
13. *Public Interest Disclosure of Wrongdoing Act*, SNS 2010, c. 42.
14. *Government Records Act*, RSNS 1995-96, c. 7, s. 1
15. *Public Archives Act*, SNS 1998, c. 24, s. 1.
16. *Business Electronic Filing Act*, RSNS 1995-96, c. 3, s. 1
17. *North American Free Trade Agreement*
18. *General Agreement on Trade in Services*, schedule to the WTO Agreement dated April 15, 1994.
19. Laws applicable to the incorporation and existence of the Service Provider in Canada.
20. Laws relating to the taxation of the Service Provider, in any jurisdiction.
21. Laws applicable to employment standards, occupational health and safety, workers' compensation, human rights legislation, workers compensation, in each case as they relate to the Service Provider's obligations under the Master Services Agreement, in any jurisdiction.
22. The laws and rules of evidence applicable in the Courts of Nova Scotia.

## TABLE OF SPECIFIC POLICIES

1. *Province of Nova Scotia Conflict of Interest Policy:*  
<http://www.gov.ns.ca/treasuryboard/manuals/PDF/500/50801.pdf>
2. Province Policies Relating to the Province Shared Infrastructure:
  - a. *WAN Security Policy* (Attached to Schedule 23)
  - b. *WAN Security Standards* (Attached to Schedule 23)
3. Service Location Policies: When visiting the Province's facilities, the Service Provider Personnel will comply with all of the Province's standard workplace security, safety, operational and other similar policies and procedures applicable to visitors for such Party, including:

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  - a. *Occupational Health and Safety:*  
<http://www.gov.ns.ca/treasuryboard/manuals/PDF/500/50407.pdf>
  - b. *Respectful Workplace Policy:*  
<http://www.gov.ns.ca/treasuryboard/manuals/PDF/500/50409.pdf>
4. Use of Province Marks Policies and other Communications Policies:
  - a. *Communications Policy/Protocol:*  
<http://www.gov.ns.ca/treasuryboard/manuals/PDF/300/30601-15.pdf>
  - b. *Visual Identity Program:* <http://www.gov.ns.ca/treasuryboard/manuals/PDF/300/30608-09.pdf>
  - c. *Social Media Policy:* <http://www.gov.ns.ca/treasuryboard/manuals/PDF/300/30609-01.pdf>
5. Business Continuity and Disaster Recovery Policies:
  - a. Department of Finance, CIS Division, Business Continuity Procedures Guide
  - b. Department of Finance, CIS Division, Business Continuity Process
  - c. Department of Finance Business Continuity Management (BCM) Policy
  - d. Department of Finance Business Continuity Plan
  - e. Department of Finance Disaster Recovery Plan
  - f. Functional Inventory for Business Continuity Plan
6. Records Policies:
  - a. *Records Management Policy:*  
<http://www.gov.ns.ca/treasuryboard/manuals/PDF/300/30401-07.pdf>
  - b. *Department of Health Records Management Policy*
  - c. *Department of Finance Records Management Policy:*  
[http://iweb.finance.gov.ns.ca/policies/Records\\_Management.pdf](http://iweb.finance.gov.ns.ca/policies/Records_Management.pdf)



- d. *STAR 6.0: Standard for Administrative Records:*  
<http://gov.ns.ca/nsarm/star/Default.asp>

7. Security Policies:

- a. *Electronic Mail Policy:*  
<http://www.gov.ns.ca/treasuryboard/manuals/PDF/300/30402-06.pdf>
- b. *Guidelines on Use of the Internet:*  
<http://www.gov.ns.ca/treasuryboard/manuals/PDF/300/30403-05.pdf>
- c. *Citizen Online Identity Authentication Policy:*  
<http://www.gov.ns.ca/treasuryboard/manuals/PDF/300/30409-04.pdf>
- d. *Finance Privacy and Security Protocols v.5 (Attached to Schedule 23)*

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8. Privacy Policies:

- a. *Government Website Privacy Policy:*  
<http://www.gov.ns.ca/treasuryboard/manuals/PDF/300/30407-04.pdf>
- b. *Government Privacy Policy:*  
<http://www.gov.ns.ca/treasuryboard/manuals/PDF/300/30411-03.pdf>
- c. *Access to Information Requests:*  
<http://www.gov.ns.ca/treasuryboard/manuals/PDF/300/30405-11.pdf>
- d. *Department of Health Verbal Disclosure Guidelines*
- e. *Department of Health Access and Privacy Policy*
- f. *Department of Health: Preventing and Managing an Information Breach*
- g. *Department of Finance Privacy Breach Protocol (Attached to Schedule 23)*
- h. *Privacy Enquiry or Complaint Form*
- i. *Employee Exit Policy and associated checklists*

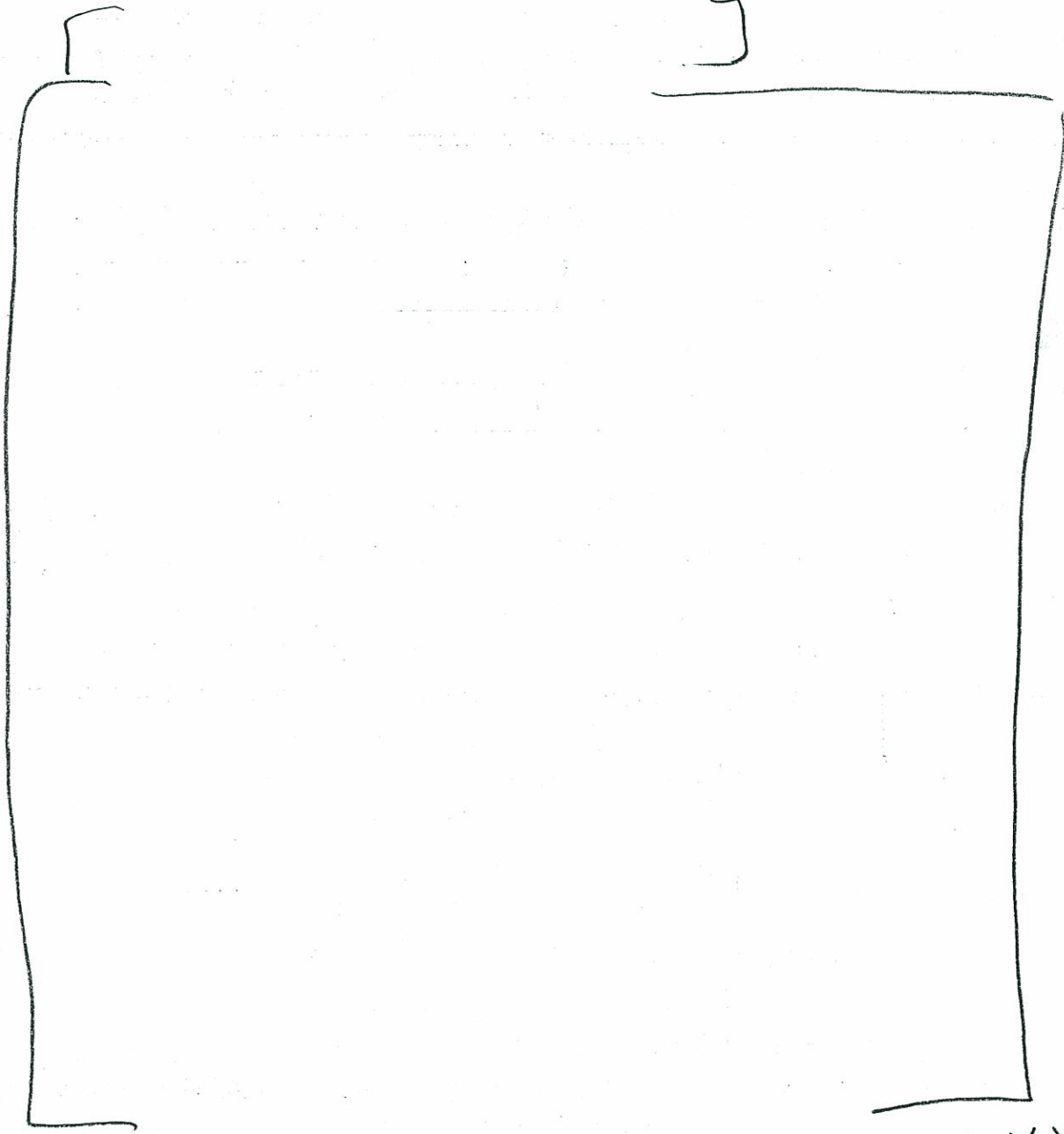
9. SAP CCC Policies: – Including the following policies, which are applicable, but subject to the Service Responsibility Matrix:

- a. CCC Policy C02 (System Administration)
- b. CCC Policy C03 (Security)
- c. CCC Policy C04 (Service Delivery)
- d. CCC Policy C05 (Interfaces)
- e. CCC Policy C06 (System Change Management)
- f. CCC Policy C07 (SAP Service Marketplace)
- g. CCC Policy C08 (Upgrades and Support Packs)
- h. CCC Policy C09.03 (Documentation), C09.06 (Provincial Budget in QA) and Budget C09.07 (Designated Training Client)

- i. CCC Policy C10 (Projects)
  - j. CCC Policy C11 (Documentation)
  - k. CCC Policy C12 (Communication)
-

**SCHEDULE 9 - SERVICE LOCATIONS**

This Schedule 9 - Service Locations is made pursuant to the Master Services Agreement effective November 1, 2012 (the "Agreement") by and between the Her Majesty the Queen in Right of the Province of Nova Scotia (the "Province") and IBM Canada Ltd. (the "Service Provider"), and forms part of the Agreement.



S2X(1)(a)(i)(b)(c)(ii)



## SCHEDULE 10 – TRANSFORMATION PROJECTS

This Schedule 10 – Transformation Projects (“*Transformation Projects Schedule*”) is made pursuant to the Master Services Agreement effective November 1, 2012 (the “**Agreement**”) by and between the Her Majesty the Queen in Right of the Province of Nova Scotia (the “**Province**”) and IBM Canada Limited (the “**Service Provider**”), and forms part of the Agreement.

[Redacted content]

3  
1

S17(1)(d)

**Schedule 10**

**Transformation Projects**

**Pages 1 to 10**

**Withheld under**

**s. 17(1)(d)**

**s. 21(1)(a)(ii)(b)(c)(i)(ii)(iii)**

## SCHEDULE 11 – TRANSFORMATION PLAN

This Schedule 11 – Transformation Plan (“*Transformation Plan Schedule*”) is made pursuant to the Master Services Agreement effective November 1, 2012 (the “**Agreement**”) by and between the Her Majesty the Queen in Right of the Province of Nova Scotia (the “**Province**”) and IBM Canada Limited (the “**Service Provider**”), and forms part of the Agreement.

[

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STW(d)



**Schedule 11**

**Transformation Plan**

**Pages 1 to 3**

**Withheld under**

**s. 17(1)(c)(d)**

**s. 21(1)(a)(ii)(b)(c)(i)(ii)(iii)**

**SCHEDULE 12 – SERVICE LEVELS**

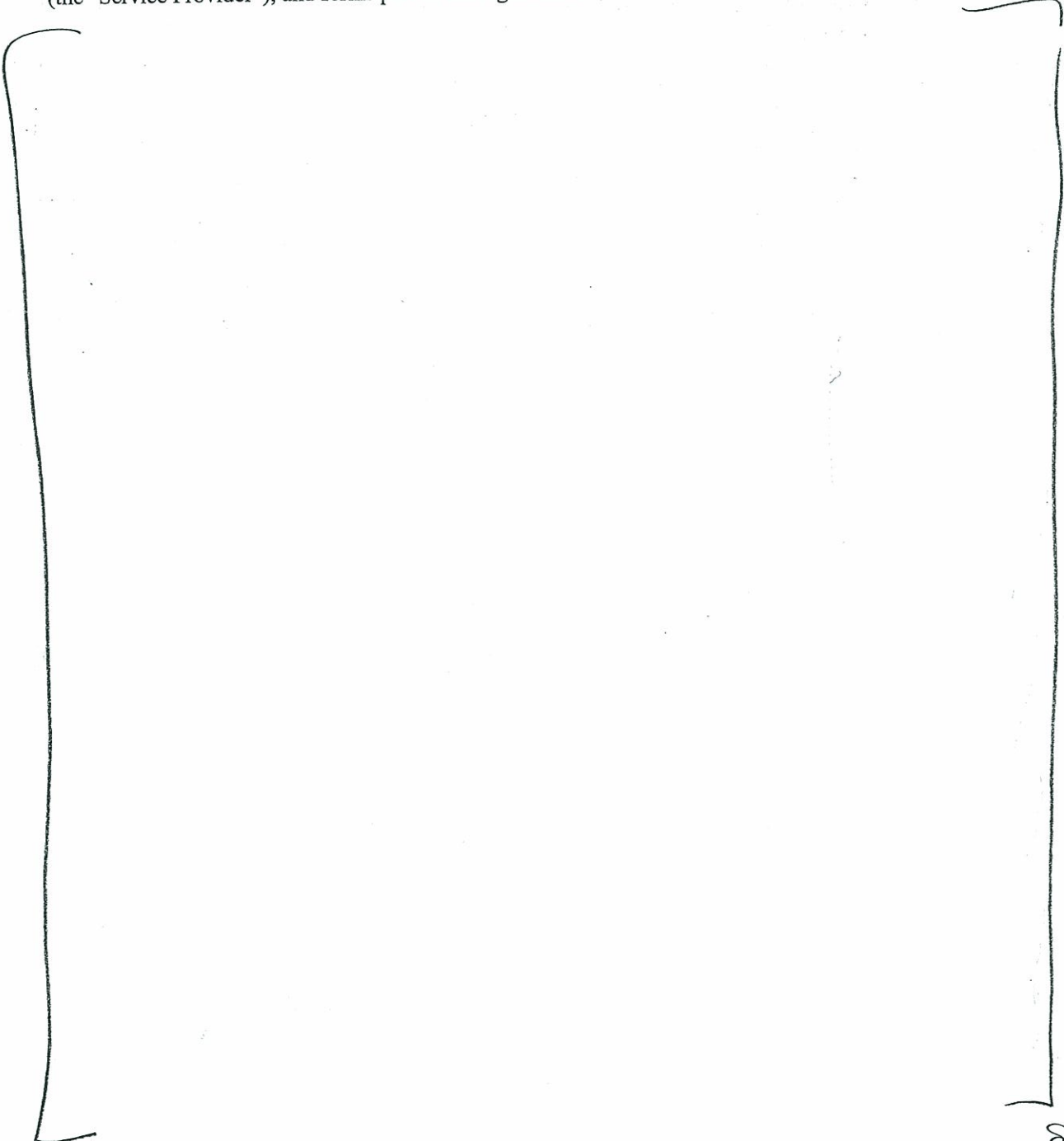
This Schedule 12 – Service Levels (“Services Level Schedule”) is made pursuant to the Master Services Agreement effective November 1, 2012 (the “Agreement”) by and between the Her Majesty the Queen in Right of the Province of Nova Scotia (the “Province”) and IBM Canada Limited (the “Service Provider”), and forms part of the Agreement.



STW/dcl

**SCHEDULE 13 – SERVICE LEVEL FAILURES**

This Schedule 13 – Service Level Failures (“Service Level Failures Schedule”) is made pursuant to the Master Services Agreement effective November 1, 2012 (the “Agreement”) by and between the Her Majesty the Queen in Right of the Province of Nova Scotia (the “Province”) and IBM Canada Limited (the “Service Provider”), and forms part of the Agreement.



8/17/12(d)



**Schedule 13  
Service Level Failures**

**Pages 2 to 4**

**Withheld under**

**s. 17 (1)(d)**

#### SCHEDULE 14 - CONDITIONS OF USE OF PROVINCE MARKS

This Schedule 14 (*Conditions of Use of Province Marks*) is made pursuant to the Master Services Agreement effective November 1, 2012 (the “**Agreement**”) by and between the Her Majesty the Queen in Right of the Province of Nova Scotia (the “**Province**”) and IBM Canada Ltd. (the “**Service Provider**”), and forms part of the Agreement.

1. The Province will identify in writing the Province Marks that the Services Provider may use in the performance of the Services prior to the Hand-Over Date.
2. The display or use by the Service Provider of the Province Marks shall conform to the following, to the extent applicable to such display or use:
  - a. Article 10 of this Agreement,
  - b. Applicable Law; and
  - c. any relevant Province policies which have been provided by the Province to the Service Provider in a direction by the Province in accordance Section 11.04 (*Province’s Right to Issue Directives*) of the Agreement.

## SCHEDULE 15 - COMMUNICATIONS PLAN AND PROCESSES

This Schedule 15 (*Communications Plan and Processes*) is made pursuant to the Master Services Agreement effective November 1, 2012 (the “**Agreement**”) by and between the Her Majesty the Queen in Right of the Province of Nova Scotia (the “**Province**”) and IBM Canada Ltd. (the “**Service Provider**”), and forms part of the Agreement.

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**Schedule 15**

**Communications Plan and Processes**

**Pages 2 to 3**

**Withheld under**

**s. 17(1)(c)(d)**

**SCHEDULE 16 - GOVERNANCE**

This Schedule 16 – Governance (“**Governance Schedule**”) is made pursuant to the Master Services Agreement effective November 1, 2012 (the “**Agreement**”) by and between the Her Majesty the Queen in Right of the Province of Nova Scotia (the “**Province**”) and IBM Canada Ltd. (the “**Service Provider**”), and forms part of the Agreement.

*5/7/2012*

**Schedule 16**

**Governance**

**Pages 2 to 13**

**Withheld under**

**s. 17(1)(c)(d)**

**s. 21(1)(a)(ii)(b)(c)(i)(ii)**



**SCHEDULE 17 - KEY POSITIONS**

This Schedule 17 – Key Positions (“Key Positions Schedule”) is made pursuant to the Master Services Agreement effective November 1, 2012 (the “**Agreement**”) by and between the Her Majesty the Queen in Right of the Province of Nova Scotia (the “**Province**”) and IBM Canada Ltd. (the “**Service Provider**”), and forms part of the Agreement.

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S. 17(c)(a)(i)(b)(c)(i)(ii)  
S. 17(c)(d)  
J. 2011  
Final

**Schedule 17**

**Key Positions**

**Pages 2 to 3**

**Withheld under**

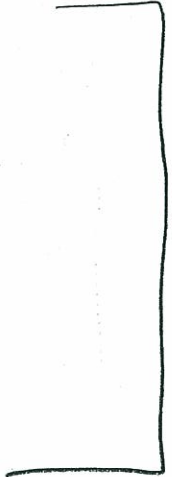
**s. 17(1)(c)(d)**

**s. 20(1)**

**s. 21(1)(a)(ii)(b)(c)(i)(iii)**

**SCHEDULE 18 – SUBCONTRACTORS**

This Schedule 18 (*Subcontractors*) is made pursuant to the Master Services Agreement effective November 1, 2012 (the “**Agreement**”) by and between the Her Majesty the Queen in Right of the Province of Nova Scotia (the “**Province**”) and IBM Canada Ltd. (the “**Service Provider**”), and forms part of the Agreement.



saic(a)(i)(ii)(b)  
(c)(i)(ii)(iii)



**SCHEDULE 19 - NON-DISCLOSURE AGREEMENT**

This Schedule 19 - Non-Disclosure Agreement is made pursuant to the Master Services Agreement effective November 1, 2012 (the "Master Services Agreement") by and between the Her Majesty the Queen in Right of the Province of Nova Scotia (the "Province") and IBM Canada Limited ("IBM"), and forms part of the Master Services Agreement.

[

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S21(1)(a)(i)(b)(xi)(iii)

**Schedule 19**

**Non-Disclosure Agreement**

**3 pages**

**Withheld under**

**s. 21(1)(a)(ii)(b)(c)(i)(iii)**

**SCHEDULE 20: REPORTING REQUIREMENTS**

This Schedule 20 – Reporting Requirements (“**Reporting Requirements Schedule**”) is made pursuant to the Master Services Agreement effective November 1, 2012 (the “**Agreement**”) by and between the Her Majesty the Queen in Right of the Province of Nova Scotia (the “**Province**”) and IBM Canada Limited (the “**Service Provider**”), and forms part of the Agreement.



**Schedule 20**

**Reporting Requirements**

**Pages 2 to 8**

**Withheld under**

**s. 17 (1)(c)(d)**

**Schedule 20**

**Reporting Requirements**

**Exhibit A**

**Report Definition Document**

**7 Pages**

**Withheld under**

**s. 17 (1)(d)**

**s. 20(1)**

**Schedule 20**

**Reporting Requirements**

**Exhibit B**

**Report Definition Document**

**7 Pages**

**Withheld under**

**s. 17 (1)(d)**

**s. 20(1)**



**SCHEDULE 21 – RECORDS PROTOCOLS**

This Schedule 21 – Records Protocols is made pursuant to the Master Services Agreement effective November 1, 2012 (the “**Agreement**”) by and between the Her Majesty the Queen in Right of the Province of Nova Scotia (the “**Province**”) and IBM Canada Ltd. (the “**Service Provider**”), and forms part of the Agreement.

The Parties agree that Schedule 21 (*Records Protocols*) will be completed (if required) during Transition.

**SCHEDULE 22 – FEES**

This Schedule 22 – Fees (“**Fees Schedule**”) is made pursuant to the Master Services Agreement effective November 1, 2012 (the “**Agreement**”) by and between the Her Majesty the Queen in Right of the Province of Nova Scotia (the “**Province**”) and IBM Canada Limited (the “**Service Provider**”), and forms part of the Agreement.

5/17/12 (d)

**Schedule 22 - Fees**

**Pages 2 to 21**

**Withheld under**

**s. 17 (1)(c)(d)**

**s. 21(1)(a)(ii)(b)(c)(i)(ii)(iii)**



**SCHEDULE 23 - PRIVACY AND SECURITY OBLIGATIONS**

This Schedule 23 – Privacy and Security Obligations (“**Privacy and Security Schedule**”) is made pursuant to the Master Services Agreement effective November 1, 2012 (the “**Agreement**”) by and between the Her Majesty the Queen in Right of the Province of Nova Scotia (the “**Province**”) and IBM Canada Ltd. (the “**Service Provider**”), and forms part of the Agreement.

**Schedule 23**  
**Privacy and Security Obligations**

**Page 2-20**

**Withheld under**

**s. 15(1)(k)**

**s. 17(1)(c)(d)**

**s. 21(1)(a)(ii)(b)(c)(i)(ii)(iii)**

**EXHIBIT A – THE PROVINCE’S WIDE AREA NETWORK SECURITY POLICY**



## 4.8 Wide Area Network Security Policy

### Policy Statement

The Government of Nova Scotia provides a wide range of services to the citizens of Nova Scotia that require a secure IT infrastructure. Many of the computer systems supporting these services use the Wide Area Network (WAN) to transmit sensitive information such as government financial transactions, personnel and payroll records, and proprietary corporate data. The Government of Nova Scotia is committed to protecting the integrity, confidentiality, and availability of its information systems, the sensitive information these systems handle, and the privacy of citizens' information, while providing for efficient and effective management of this information.

### Definitions

#### **WIDE AREA NETWORK (WAN)**

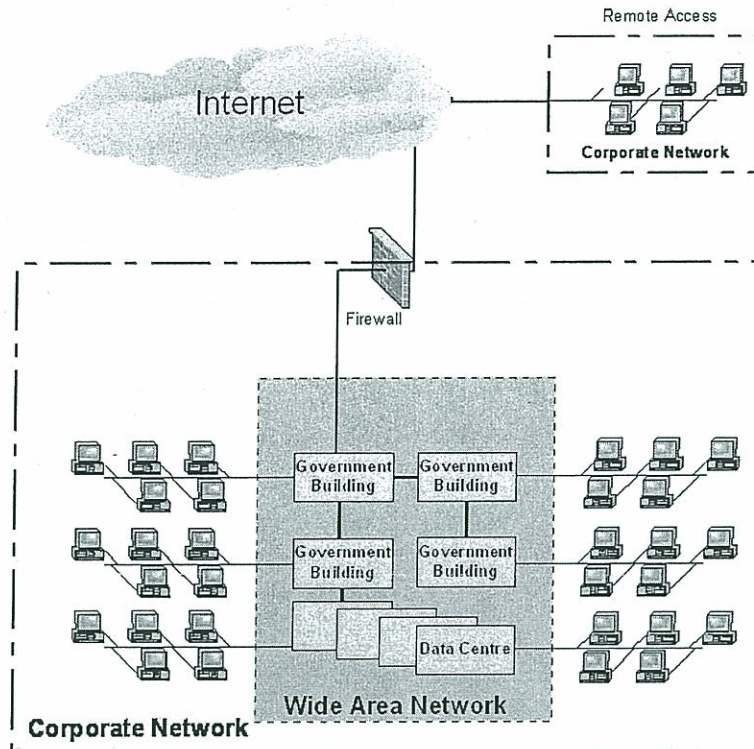
For the purposes of this policy, the WAN is defined to include all lines and devices used to terminate data communication services from a service provider. The WAN may also be referred to as the Provincial Data Network in various service provider agreements and other contracts signed with vendors. WAN devices may include hubs, routers, switches, wireless devices, or other devices. The Security Authority determines whether devices are classified as WAN or not. In this definition, personal computers, file servers, printers, or other Local Area Network (LAN) devices are not generally classified as part of the WAN. (See illustration on following page).

#### **CORPORATE NETWORK**

For the purposes of this policy, the Corporate Network includes the WAN, as defined above, as well as LANs including file servers, personal computers, printers, and other computing or data communications devices that are used by any department, office, agency, board, or commission within the Government of Nova Scotia. Any other connected organization is considered an External Entity requiring specific authorization to connect and access the Corporate Network and is required to abide by the WAN Security Policy and Standards, including any revisions, while connected. This definition of the Corporate Network is intentionally broad in scope to provide clear authority boundaries for those charged with its security. (See illustration on following page).

*Additional terms used in the body of this policy are defined in the glossary.*

## Illustration of WAN and Corporate Network



This is a conceptual illustration to differentiate the WAN from the Corporate Network. It is not intended as an accurate depiction of the complexity of the Corporate Network.

### Policy Objectives

The objectives of this policy are to:

- Contribute to a secure WAN environment for all connected departments, offices, agencies, boards, and commissions.
- Provide a uniform security framework to secure the integrity, confidentiality, and availability of information and information systems, at the WAN level.
- Provide, in balance with operational requirements, legislative requirements, and information sharing agreements, the minimum WAN security requirements.
- Raise awareness of information and information technology security needs for all users of the WAN by providing the security principles, requirements, and rules of use.
- Define the clear roles and responsibilities of all users of the WAN, particularly WAN security staff.



- Provide a foundation to develop and implement additional policies and standards as may be required to address specific security issues.

### **Application**

This policy applies to all Corporate Network connected provincial departments, offices, agencies, boards and commissions (Client Organizations), and other authenticated users in an authorized area of the WAN such as municipalities, academic institutions, associations, federal agencies, and commercial organizations (External Entities).

Any content covered by departmental policies also covered by or in conflict with any content in this policy is superceded by this policy. Additionally, this policy supercedes any prior policies related to WAN security such as the Firewall Gateway Policy.

### **Policy Directives**

Policy directives are the minimum mandatory requirements that shall be met by Corporate Network connected Client Organizations and External Entities.

#### **1. IDENTIFICATION/AUTHENTICATION**

- a) All accounts, user IDs and devices in the Corporate Network shall be uniquely identifiable.
- b) IT systems within the Corporate Network shall authenticate all users, applications and devices except for those designed specifically for anonymous access. These exceptions require the approval of the Security Authority.

#### **2. ACCESS CONTROLS/AUTHORIZATION**

- a) All access points to the WAN shall be approved by the Security Authority.
- b) All physical and logical connections to the WAN intended to provide access by individuals or groups shall be approved by the Security Authority.
- c) All WAN related address changes and configurations shall be approved by the Security Authority.
- d) Any individual, office, or network connected to the Corporate Network shall require all employees to sign an agreement to abide by the requirements outlined in the WAN Security Policy and Standards.
- e) Requests for access to the WAN for an external entity shall be done through the sponsoring government body. The sponsor shall assume all responsibility for the entity being sponsored.



- f) Security personnel who have access to sensitive information or are responsible for critical security functions such as LAN administrators, WAN administrators, and Client Security Officers require security screening.

**3. REMOTE ACCESS**

- a) Any remote access over untrusted networks shall use technology approved by the Security Authority to secure, monitor, and filter traffic.
- b) All remote access to the WAN shall be authenticated, logged, and restricted to minimize the risk to WAN assets.
- c) Remote access involving the WAN shall be monitored by the Client Security Officer(s) to protect the WAN security profile and confidentiality of sensitive information from unauthorized access and disclosure.
- d) The installation or use of a modem to permit dialing into or dialing out from the Corporate Network to an external location or to another part of the Corporate Network is not allowed except where permission is granted by the Security Authority. This applies equally to any similar device which permits user-controlled access to the Corporate Network, such as wireless modems.
- e) All access to the Corporate Network shall occur through approved paths.
- f) All users who use WAN resources remotely shall sign an agreement to abide by these requirements.

**4. BASTION HOST (FIREWALL)**

- a) All communications between the Corporate Network and networks with different security profiles shall be protected by a network firewall approved by the Security Authority.
- b) All bastion hosts and their configurations shall be provided and managed by the Security Authority except where the Security Authority approves Client Organizations to install and manage bastion hosts.

**5. TELECOMMUNICATIONS SERVICE PROVIDERS**

- a) All service providers contracting with government such as suppliers of data communications or security services shall commit contractually to ensure that the WAN security profile is maintained.
- b) All service providers contracting with government shall have access to the WAN Security Policy and Standards and agree to abide by them and ensure they are enforced within their organization.
- c) Any exception to these directives shall be approved by the Security Authority and included as an addendum to the contract.

**6. CONTRACTORS**

- a) All contracts or service agreements involving Corporate Network facilities, configuration, or management shall include appropriate security clauses ensuring compliance with the WAN Security Policy and Standards.
- b) All persons and organizations contracting with government (i.e., consultants, third party sub-contractors, and casual and student employees) shall have access to the WAN Security Policy and Standards and agree to abide by them.

**7. PHYSICAL AND ENVIRONMENTAL SECURITY**

- a) An adequate environment (e.g., temperature, humidity, backup power supply) shall be provided to ensure optimum operation of the WAN and common infrastructure equipment as specified in the WAN documentation.
- b) Physical controls shall be implemented to prevent unauthorized access to Corporate Network equipment including routers, switches, wiring racks, and network access servers.
- c) The Security Authority shall have input into and final approval of all site design where WAN connectivity is being provided.

**8. TIME SYNCHRONIZATION**

- a) All devices on the Corporate Network shall synchronize with a common central time source.

**9. REVOCATION/TERMINATION OF WAN PRIVILEGES**

- a) The Security Authority shall take appropriate action, including termination of any connection or activity, at any time where the Security Authority feels the security of the WAN is or could be severely comprised. When circumstances permit, the Security Authority shall consult with the Client Security Officer(s) prior to taking action. The Security Authority shall make a full report of the actions taken and the reasons for such actions.

**10. CHANGE CONTROL**

- a) All planned, scheduled changes to the WAN (power up, power down, configuration changes, and reset) shall be performed or authorized by the Security Authority.
- b) A change control process shall be used to assess the security impact of major system upgrades and to support re-certification and accreditation. The change control process shall ensure that all system configurations and modifications are documented and retained in a secure environment for audit or future risk management considerations.



**11. SECURITY RISK MANAGEMENT MECHANISMS AND PLANNING**

- a) Security risk management based upon due diligence and due care shall be the primary basis to determine WAN security safeguards and residual risk, and to maintain the accredited WAN security profile.
- b) Re-assessments of the security profile shall take place if risk, system, or other relevant technological or organizational changes occur.
- c) Before implementation, all new systems as well as additions, deletions, or alterations to existing systems shall be reviewed to ensure that the security profile of the Corporate Network is not compromised by the change.

**12. CERTIFICATION AND ACCREDITATION** \*\* DIRECTIVE IS NOT IN EFFECT AT THIS TIME \*\*

- a) *IT system security certification and accreditation shall be performed on the Corporate Network (including all hardware and software that comprises the Corporate Network) throughout the planning, implementation, and operations life cycle.*

**13. SECURITY LOGS AND RECORDS**

- a) Appropriate logs shall be kept and reviewed as prescribed by the Security Authority. All actual or suspected security incidents shall be recorded and reported to the Security Authority.

**14. INCIDENT REPORTING AND INVESTIGATION**

- a) All Corporate Network security incidents shall be reported and investigated immediately by the Client Security Officer(s), the Security Authority, or others as appropriate. The Security Authority shall notify other Client Security Officers who may be affected.
- b) The Security Authority may also conduct a self instituted secondary investigation as requested by the Client Security Officer(s) to determine if there are additional security issues and the appropriate solutions.

**15. SECURITY INFORMATION/DOCUMENTATION**

- a) WAN infrastructure shall be documented as required by the Security Authority from time to time. The Security Authority shall be given access to this documentation on request to support WAN design security issues, disaster recovery operations, change control processes, diagnostic or hacker investigations, visual inspections, and security audits of the WAN infrastructure.
- b) WAN security information and documentation including configuration, backups, and diagnostic information shall be password protected, physically stored under lock and key, and only released on the approval of the Security Authority. If located at a contractor site the protective details and obligations shall be addressed in the contract.



- c) Security information and documentation to be discarded, and which contains sensitive information such as passwords and IP addresses, shall be irretrievably destroyed in a secure manner by shredding, permanent electronic deletion, or by other means approved by the Security Authority.

**16. MONITORING/SURVEILLANCE AND PRIVACY**

- a) The Security Authority shall monitor the WAN for performance and security purposes.
- b) Monitoring initiatives designed for the WAN shall operate within the legislated requirements for protection of personal privacy.
- c) Access or monitoring of LAN segments shall be in co-operation with the appropriate Client Security Officer(s).
- d) No person shall operate sniffers or other monitoring devices on the Corporate Network without the prior knowledge of the Security Authority.
- e) Corporate Network monitoring shall not involve reading data content unless it is required in the performance of duties.
- f) Where there is reason to believe that an individual is engaging in inappropriate activity on the Corporate Network the content of individual files may be read. This would only happen in an approved investigation by appropriate authorities.
- g) Any investigation of data content shall be conducted in accordance with applicable human rights, and any applicable provincial and federal legislation.

**17. SECURITY TRAINING**

- a) The Security Authority shall provide Client Security Officers with training on WAN Security Policy and Standards including interpretation and application.
- b) Client Security Officers are responsible for the WAN Security training within their Client Organizations, and any External Entities sponsored by them, required to ensure performance of the security responsibilities outlined in the WAN Security Policy and Standards.

**Policy Guidelines**

The Wide Area Network Security Standards, WAN Security Processes, and WAN Security Intranet web site <<http://wansp.gov.ns.ca>> are supplements to this policy providing interpretation, technical standards and best practices, and guidance on implementation, risk, and compliance. These shall be amended from time to time as necessary to keep current with changing technology and respond to new threats to the WAN.

## **Accountabilities**

### **DEPUTY MINISTER/DEPUTY HEAD**

The Deputy Minister/Head of each Client Organization is accountable for the overall security of all information within their jurisdiction.

### **DEPUTY MINISTER OF THE CHIEF INFORMATION OFFICE**

The Deputy Minister of the Chief Information Office is additionally accountable for the strategic development and analysis of policy, standards, and processes for information security.

### **SECURITY POLICY CO-ORDINATOR**

The Security Policy Co-ordinator is responsible for developing, monitoring, and proposing revisions to the WAN Security Policy and Standards in co-operation with WAN stakeholders.

### **SECURITY AUTHORITY**

The Security Authority is responsible for operational WAN security management and directs the implementation of the WAN Security Policy and Standards in co-operation with Client Security Officers. The Security Authority evaluates and responds to all requests related to WAN access, services and security.

### **CLIENT SECURITY OFFICER**

A Client Security Officer is the individual(s) assigned within each Client Organization to carry out all operational security responsibilities for their Client Organization and to work in co-operation with the Security Authority to ensure compliance with the WAN Security Policy and Standards.

### **CLIENT ORGANIZATION**

A Client Organization is any department, office, agency, board, or commission in the Government of Nova Scotia connected to the Corporate Network and is required to abide by the WAN Security Policy and Standards.

### **EXTERNAL ENTITY**

An External Entity is an organization having business with government, sponsored by a Client Organization and authorized by the Security Authority, connected to the WAN. The External Entity shall agree to abide by the WAN Security Policy and Standards.



**MANAGERS AND DELEGATED STAFF**

Managers and delegated staff, in addition to specific responsibilities cited above, shall have other specific responsibilities for such WAN aspects as availability, network upgrade and maintenance, security monitoring and incident reporting.

**ORGANIZATIONS HOSTING WAN FACILITIES**

Organizations hosting WAN facilities such as routers, firewalls, wiring closets and other related components shall ensure that physical protection of WAN assets meets the WAN Security Policy and Standards.

**Monitoring (of the WAN Security Policy)**

**DEPUTY MINISTER/DEPUTY HEAD**

The Deputy Minister/Head of each Client Organization is responsible for overall compliance with the WAN Security Policy and Standards.

**SECURITY POLICY CO-ORDINATOR**

The Security Policy Co-ordinator shall monitor WAN Security Policy implementation. This responsibility includes evaluating the suitability and effectiveness of the policy and standards. The Security Policy Co-ordinator shall co-ordinate any necessary remedial action to address issues reported by the Security Authority in the annual WAN security report. The Security Policy Co-ordinator shall also ensure that the policy and standards are formally reviewed at least every two years.

**SECURITY AUTHORITY**

The Security Authority is responsible for monitoring the operational security of the WAN ensuring that the established security profile is maintained and that changing environments, potential threats, and evolving technology are addressed. The Security Authority shall report annually to the Security Policy Co-ordinator on the WAN security environment, identified issues and security incidents, and the effectiveness of the WAN Security Policy.

**CLIENT SECURITY OFFICER**

The Client Security Officer shall monitor compliance with the WAN Security Policy and Standards for all IT systems within the jurisdiction of their Client Organization. The Client Security Officer shall notify the Security Authority and the Security Policy Coordinator to request a policy review.



## References

*Freedom of Information And Protection of Privacy Act*

*Government Records Act*

*Human Rights Act*

*Public Archives Act*

*Members and Public Employees Disclosure Act*

Conflict of Interest Policy (Management Manual 500, Chapter 9, Policy 9.3) and any other applicable legislation, provincial or federal

Standard for Administrative Records/Standard for Operational Records (STAR/STOR) and any other applicable policies or procedures which contain specific requirements for the production of, access to, and retention and disposition of records.

## Appendix

4-D Glossary

## Enquiries

All enquiries, requests, or comments should be forwarded to

Director, Corporate Information Management Program

Corporate Information Strategies

Chief Information Office

(902) 424-2915

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*Approval date: April 1, 2002*

*Manual release date:*

*Approved by: Treasury and Policy Board through the  
Business and Technology Advisory Committee*

*Most recent review: March 1, 2010*

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## Appendix 4-D

# Glossary

### **ACCESS CONTROL**

A set of procedures performed by hardware, software and administrators to monitor access, identify users requesting access, record access attempts, and grant or deny access.

### **ACCREDITATION**

Approval by the responsible manager for the operation of an information technology system using a particular set of safeguards.

### **AUTHENTICATION**

The process of determining whether a person, workstation, system or procedure is eligible to access specific information, or to perform certain operations. Password validation, for example, is a form of authentication. Authentication may also be a measure meant to validate a transmission or message and the authority of the originator.

### **BASTION HOST**

A server that is hardened against attack and can therefore be used as a critical component of network security. Firewalls and screening routers are examples of bastion hosts.

### **CERTIFICATION**

An examination by qualified personnel of an information technology system's implemented security safeguards against the system's security requirements.

### **CLIENT ORGANIZATION**

See Accountabilities.

### **CONFIDENTIALITY**

The sensitivity of information or assets to unauthorized disclosure, recorded as highly confidential, confidential or protected, each of which implies a degree of injury should unauthorized disclosure occur.

**CONTRACTOR**

A third party involved in the direct management of the WAN or any part of it, quite often under a WAN management or data communications, service agreement. Contractors are required to abide by the WAN Security Policy and Standards.

**CORPORATE NETWORK**

See Definitions.

**DUE CARE**

Reasonable attention or caution which could be expected from an average person under the circumstances.

**DUE DILIGENCE**

A measure of prudence which could be expected from a reasonable and prudent individual having responsibility for some aspect of security risk management. It carries with it a higher level of responsibility than "due care".

**EXTERNAL ENTITY**

See Accountabilities.

**FIREWALL**

A network security device positioned between networks with different security profiles that ensures all communications attempting to travel between the networks conform to the configured security profile

**INTEGRITY**

The quality or condition of being accurate or complete.

**MODEM (MODULAR-DEMULATOR)**

A device that converts digital signals used by computers and analogue signals used by the telephone or related telecommunication system which enables computers to communicate remotely. In the WAN Security Policy and Standards, a modem includes any telecommunications device such as a dial-up modem, cable modem, dedicated line modem, wireless device or digital subscriber line (DSL) device.

**MONITOR**

The activity to ensure that information and assets, or the safeguards protecting them, are checked by security staff or electronic means with sufficient regularity to satisfy the WAN Policy and Standards.



**SECURITY PROFILE**

A minimum acceptable level of security for the WAN established by the implementation of the WAN Security Policy and Standards.

**SECURITY AUTHORITY**

See Accountabilities. *All references to the Security Authority in this document means the Security Authority or a delegate appointed by the Security Authority from time to time.*

**SECURITY INCIDENT**

An occurrence or situation that results in a compromise of sensitive information, assets, functionality, or a loss of availability or integrity.

**SECURITY RISK MANAGEMENT**

The process by which resources are planned, organized, directed and controlled to ensure the risk of operating an IT system remains within acceptable bounds at optimal cost.

**SERVICE PROVIDER**

A third party involved in the direct management of the WAN or any part of it, quite often under a WAN management or data communications contract. Exceptions to the WAN Security Policy and Standards, if applicable, shall be documented in the service agreement.

**TIME SYNCHRONIZATION**

Process of insuring that all devices on the WAN have the same time to insure the accuracy of records and logs.

**THREAT**

Any potential event or act that could cause one or more of the following to occur: unauthorized disclosure, destruction, removal, modification or interruption of sensitive information, assets, services, or injury to people. A threat may be deliberate or accidental.

**THREAT AND RISK ASSESSMENT**

An evaluation, based on the effectiveness of existing or proposed security safeguards, of the chance of vulnerabilities being exploited.

**UNTRUSTED NETWORK**

A network, such as the Internet, that has no basis for a user to have any confidence and assurance in its inherent security.

**WIDE AREA NETWORK (WAN)**

See Definitions.

**EXHIBIT B– THE PROVINCE’S WIDE AREA NETWORK SECURITY STANDARDS**



**Schedule 23**  
**Privacy and Security Obligations**

**Exhibit B**  
**Province Wide Area Network Security Standards**

**46 Pages**

**Withheld under**

**s. 15(1)(k)**

**s. 17 (1)(a)**

**EXHIBIT C – PRIVACY BREACH PROTOCOL**

## Privacy Breach Protocol for Department of Finance

A privacy breach may be discovered through a variety of means. It may be uncovered unexpectedly in the course of normal business activity, it might be very obvious as soon as it happens, or there could be a complaint from someone whose information was involved or a third party. Regardless, there needs to be a clear set of instructions on how to proceed once a privacy breach is suspected or discovered.

A privacy breach is the unauthorized disclosure of personal information contrary to the *FOIPOP Act* by any government department, office, agency, board, or commission. Not every incident of a suspected breach of privacy is an actual breach of privacy, and many actual breaches are not serious. For example, in some cases, an individual believes that a breach has occurred and notifies the department of the breach. It is incumbent on the department to immediately investigate the alleged breach, and determine whether it did actually occur, and if not, whether a potential breach could occur. If no breach occurred, and there is no potential for breach, then the matter is concluded. If, however, there is potential for a future breach, corrective action must be taken at the earliest opportunity to ensure that one does not occur. If a breach did actually occur, a determination has to be made as to whether there has been an actual public exposure or disclosure of an individual's personal information to a broad actual or potential audience, or whether the exposure has only been to a single or a few individuals in an isolated situation. If neither situation has occurred, then the most appropriate course of action is to remedy the breach and take preventive measures to ensure it does not occur again. Such circumstances do not require further action. If, however, there has been public exposure or disclosure of an individual's personal information, or an individual has complained about the disclosure of his or her personal information, or that of another individual, then the breach protocol procedures noted below should be followed.

The following protocol is to be used for responding to a breach or suspicion of a breach, regardless of how it came about. This document has two companion documents, a form for gathering information about a privacy breach inquiry/complaint and a procedure for responding to an actual complaint about an alleged privacy breach, which requires additional steps to be considered.

### **1. Identify the privacy breach**

Once the potential of a privacy breach has been identified by whatever means, some basic information is required to identify the extent of the breach in order to contain it. If known, identify the date and time the breach occurred, location of the breach (physical address), how long the breach has occurred, the type of breach, and the extent of the breach (internal to department, internal to government, external to government).



## 2. Immediate remedial action

Identify what action must be taken to contain/stop the breach. Immediate action can minimize or reduce the risk/harm. For example:

- Hard copies of personal information were retrieved or confirmation that the recipient(s) securely disposed of the hard copy personal information fax?
- Was the unopened GroupWise email recalled or was the GroupWise recipient(s) who had opened the email contacted to request the email be deleted and hard copies are to be securely destroyed?
- Regarding a recipient(s) not on the GroupWise system, did you contact the recipient(s) to request deletion of the email and secured disposal of any hard copies?
- Will the breach allow access to any other personal information, and if so, were steps taken to avoid this potential additional breach?
- If an electronic device and paper records containing personal information was stolen, did you immediately contact security (if within a public body facility) or the police (if outside a public body facility)?

## 3. Internal notification

Who needs to be notified internal to your organization? It is recommended that your immediate supervisor and the Department's Information Access and Privacy (IAP) Administrator (424-7932) be notified. Other internal notifications may need to be considered after the supervisor and IAP Administrator consult, for example:

Title	When
Your Supervisor	recommended for all breaches
IAP Administrator	recommended for all breaches
Web Master	breach involves a website
IT Director, RCSU	breach involves a website or electronic system within the IT infrastructure
CIS Director	breach involves the SAP system
Corporate Information Technology Office (CITO)	breach involves the government Local Area Network (LAN), Wide Area Network (WAN), corporate information systems within the CITO infrastructure (not SAP) such as the government internet and intranet
Deputy Minister	breach is serious or could be potentially serious
Legal Council	breach is serious or could be potentially serious
Communications Director	breach is or will be a matter of public interest

#### **4. Investigation and documentation**

Describe in detail what and whose personal information is involved, and what the extent/scope of the breach is. Example questions:

- Were the immediate remedial actions effective?
- Is there enough documented evidence about the incident to determine the series of events that led to the breach?

#### **5. External notification**

When personal privacy is breached, it is necessary to determine what stakeholders (e.g. public bodies or municipalities, general public, individuals etc.) should be notified, under what circumstances, and when. External notifications may need to be considered after the supervisor and IAP Administrator consults with the Deputy Minister and Legal Counsel:

- Individual(s) whose privacy has been breached;
- Deputy Minister of NS Economic Development or Chair of the Business Technology and Advisory Committee (BTAC);
- Communications Nova Scotia (through DOF's Communications Director);
- Security Authority or Deputy Minister of TIR; and/or
- Other individuals who may have been affected by the breach.

#### **6. Follow-up and long term remedial action**

Determine what follow-up and long term remedial action there will be to prevent the breach from occurring again (e.g. report with analysis and listing of future preventive measures). Example questions include:

- Was the privacy breach protocol followed?
- Are new or amended policies, procedures and/or training required to prevent a reoccurrence of the breach?
- What plans have to be developed to lessen the likelihood or eliminate the possibility of another, similar breach?



Department of Finance  
1701 Hollis St, 4<sup>th</sup> Floor  
PO Box 187 Halifax NS B3J 2N3  
902-424-0427

## PRIVACY ENQUIRY/COMPLAINT

*This form will be used to document a privacy enquiry/complaint. Please complete this form and forward to the IAP Administrator, NS Department of Finance at the address written above, by e-mail to [ajsmith@gov.ns.ca](mailto:ajsmith@gov.ns.ca), or by fax 902-424-5849.*

*Contact Information:*

Name (please print): \_\_\_\_\_ Signature: \_\_\_\_\_

Mailing  
Address: \_\_\_\_\_  
\_\_\_\_\_

I can be reached between the hours of 8:30AM and 4:00PM at telephone: \_\_\_\_\_

or alternate Telephone #: \_\_\_\_\_

*Nature of Enquiry/Complaint:*

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*Please describe any action/efforts made by yourself thus far to resolve your concerns:*

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**EXHIBIT D– DEPARTMENT OF FINANCE PRIVACY AND SECURITY PROTOCOLS**



**PROVINCE OF  
NOVA SCOTIA  
DEPARTMENT  
OF FINANCE**

**PRIVACY AND SECURITY  
PROTOCOLS FOR HANDLING  
PERSONAL INFORMATION**

Approved: [date]



## Introduction

The Department of Finance's Privacy Policy addresses compliance with applicable access to information and privacy legislation and policies and how the Department of Finance will uphold the principles of transparency, custodianship and shared responsibility established in the Government Privacy Policy, as it relates to the collection, use and disclosure of personal information.

The following protocols have been developed to ensure the security and confidentiality of personal information that supports the programs and services delivered by the Department of Finance.

The Department of Finance is responsible for implementing programs and services as a public body and central agency for the Government of Nova Scotia. The Department is therefore required to handle sensitive personal information on a regular basis. The Department recognizes that it is held accountable for ensuring that personal information in its care is only collected as authorized by law and is protected throughout the record life cycle.

These protocols serve as a mandatory minimum standard and common reference point so that the Department of Finance and its internal divisions can then cross reference their own security and confidentiality protocols and practices to determine if there are any gaps. This document provides an initial first step in the risk management of handling (collected, used, stored, shared, managed and destroyed) personal information. Some divisions may determine that their areas require security standards above the minimum set out in this protocol.

These protocols are approved by the Deputy Minister to be applied by the Department on a mandatory basis to facilitate the protection of personal information. Any deviation from these standards require Deputy Minister or delegate approval.

The Department of Finance will actively take steps to protect personal information, safeguard sensitive data in our files and on our computers and mobile devices. In order to protect personal information, the department will:

- Take Stock – maintain an inventory of personal information banks so we know what personal information is in our custody and control.
- Scale Down – We will only collect information we have a legal authority for collecting.
- Pitch it – We will only keep what personal information we need as evidence of a business transaction, action, obligation or right and will dispose of personal information once its purpose has been served.
- Lock It – We will protect the information in our custody and control.



- Plan Ahead – We will conduct a privacy impact assessment prior to collecting personal information or changing the way in which we collect, use, disclose or dispose of it. For example, we will ensure all contracts for accessing and storing personal information from outside Canada are in compliance with PIIDPA.

## **Privacy and Security Protocols**

### **Physical Security Protocols:**

- Access and exit to DOF floors will be controlled.
- Employee Government ID cards must be displayed at all times while in the office.
- Visitor passes must be displayed at all times while in the office.
- Access cards will be controlled.
- Personal information shall not be left unattended on a desk, printer, or in an open office area.
- Unattended files and documents shall be placed in a locked file cabinet or desk, if not in a secure room.
- Unattended computer screens should be “screen locked”.
- Office doors must be locked when unoccupied.
- Appropriate precautions must take place for activities such as office cleaning, IT work, carpet cleaning, etc.
- Never remove personal information in paper or electronic format from the work place without permission from your manager or supervisor.
- Storage areas will be protected against destruction or physical damage, such as fire or floods.
- All mobile devices and computers must be password protected.

### **Breach Protocols:**

All actual and potential privacy breaches must be reported as per the complaint procedure and privacy breach protocol. In this, the following protocols must be followed:

- The Department of Finance’s Breach Protocol must be followed.
- The Department of Finance’s Privacy Complaint Procedure must be followed.
- The CIO Breach Protocol for lost or stolen blackberries must be followed – telephone 424-7777 (or toll free at 1-877-629-9777). Also see FAQ on-line at <http://www.gov.ns.ca/cio/lostwirelessdevice/faq/>

- All breaches must be immediately contained and reported to your immediate supervisor and the IAP Administrator (424-7932 or [ajsmith@gov.ns.ca](mailto:ajsmith@gov.ns.ca)).

#### Storing and Destroying Personal Information Protocols

The Department of Finance handles and stores confidential information in a variety of formats. In this, the following protocols must be followed:

- Electronic files and folder structures must be configured to promote the use of electronic security permissions, so only authorized Department staff shall have access to personal information which is stored electronically.
  - Hard copy files or information stored in physical format shall be stored to promote the use of physical security permissions, so only authorized Department staff shall have access to personal information which is stored in a physical format.
  - Memory sticks should never be used to store personal information unless they are protected by encryption software.
  - Never store personal information on departmental or general shared network drives (even temporarily).
- S15(DC19)
- Retention policies (such as STAR/STOR) and records management procedures approved for the Department of Finance shall be followed. Contact records management staff (424-5209 or 424-7932) for the secure disposal of records.
  - All personal information due for destruction shall be securely shred or placed in a locked container to await physical shredding once destruction has been authorized.
  - Destroy or erase information from digital photocopiers, cell phones, blackberries, iPads, computers, disks, CDs/DVDs, hard drives, lap tops, PDAs, or any other electronic media or hardware containing personal information before they are sent to surplus, provided to a new user, or otherwise disposed of and removed from the department.

#### Distributing Personal Information Protocols

On a regular basis, the Department of Finance both receives and makes a variety of correspondence through e-mail, Canada Post, Postal Services (interdepartmental Mail) and Courier. Efforts will be made to ensure that only the person, to whom the correspondence is intended, receives it. In this, the following protocols must be followed:

- The use of e-mail to transmit personal information should be limited and e-mail should not be used to transmit large amounts of personal information, especially when the recipient is outside the Provincial E-mail System.
- Staff should consider using encryption of e-mails containing highly sensitive personal information, eg. labour relations, garnishments, health records, etc.



- E-mail and fax messages containing personal information must end with a statement of confidentiality in which the recipient(s) is asked to destroy the email or fax if they are not the intended recipient. Example statements are provided below:

**CONFIDENTIALITY NOTICE**

This e-mail message may contain privileged and/or confidential information. If you have received this e-mail in error or are not the intended recipient, you may not use, copy, disseminate, or distribute it. Do not open any attachments. Delete this message immediately from your system and notify the sender by e-mail or telephone that you have done so. Thank you.

**CONFIDENTIALITY NOTICE**

This fax message may contain privileged and/or confidential information. If you have received this fax in error or are not the intended recipient, you may not use, copy, disseminate, or distribute it. Destroy this fax message immediately and notify the sender by fax, e-mail or telephone that you have done so. Thank you.

- Emails that are government records and must be retained shall be placed in the appropriate file and deleted from the Email system.
- Double check addresses to ensure it is correct.
- Outgoing regular mail or Interdepartmental mail will be placed in an envelope, stamped "Confidential", and physically sealed (eg. tape, staples) to ensure the contents remain private.
- Fax machines used regularly to receive personal information must be stored in a limited access area and used exclusively by authorized staff.
- A common fax machine can be used to receive personal information if the recipient waits for the fax to come in to ensure unauthorized individuals do not have access to the fax.
- The recipient of outgoing faxes containing personal information shall be contacted prior to it being sent so they can wait for the fax machine or to confirm that the fax is going to a confidential fax machine.

**Verbal Handling of Personal Information (Behaviours)**

On a regular basis, the Department of Finance both receives and makes a variety of verbal messages. In this, the following protocols must be followed:

- Ensure you have reached the proper telephone number before leaving a voice message. If in doubt, call back later.
- Verbal discussions involving personal information should take place in an appropriate place, ensuring the personal privacy of an individual is not breached.
- Personal information shall not be shared in non-work related conversations.



- When meetings are scheduled and held, the Department shall endeavor to hold all meetings in such a way that ensures confidentiality of personal information.
- Boardroom bookings will NOT include personal information or information that would disclose the essence of a meeting about a confidential issue. Boardroom bookings are open for all staff to read. Send out a separate appointment to book the boardroom and another to recipients, the latter which may contain the issue being discussed.

### **Printing and Copying Personal Information**

On a regular basis, the Department of Finance prints a variety of correspondence. In this, the following protocols must be followed:

- All personal information, which must be printed, shall be sent to a secure printer to ensure no unauthorized access to the personal information.
- If using a shared printer, wait for the documents to print or use a secure password to protect the privacy of the Information.
- All printed material must be removed from the printer immediately.
- When copying, personal information must not be left unattended. Remember to take your original and all copies with you.

### **References**

- Provincial Building Security Measures (February 11, 2009)

### **Contact**

Questions regarding these standards should be directed to the Information Access and Privacy Administrator, Angela Smith, at 424-7932 or [ajsmith@gov.ns.ca](mailto:ajsmith@gov.ns.ca).

**Schedule 23**  
**Privacy and Security Obligations**

**Exhibit E**  
**Security Roles**

**3 Pages**

**Withheld under**

**s. 15(1)(k)**

**s. 17 (1)(c)**

**Schedule 23  
Privacy and Security Obligations**

**Exhibit F  
Confidentiality Agreement Template**

**1 Page**

**Withheld under**

**s. 21(1)(a)(ii)(b)(c)(i)(iii)**



**EXHIBIT G– PIIDPA COMPLIANCE DOCUMENT**

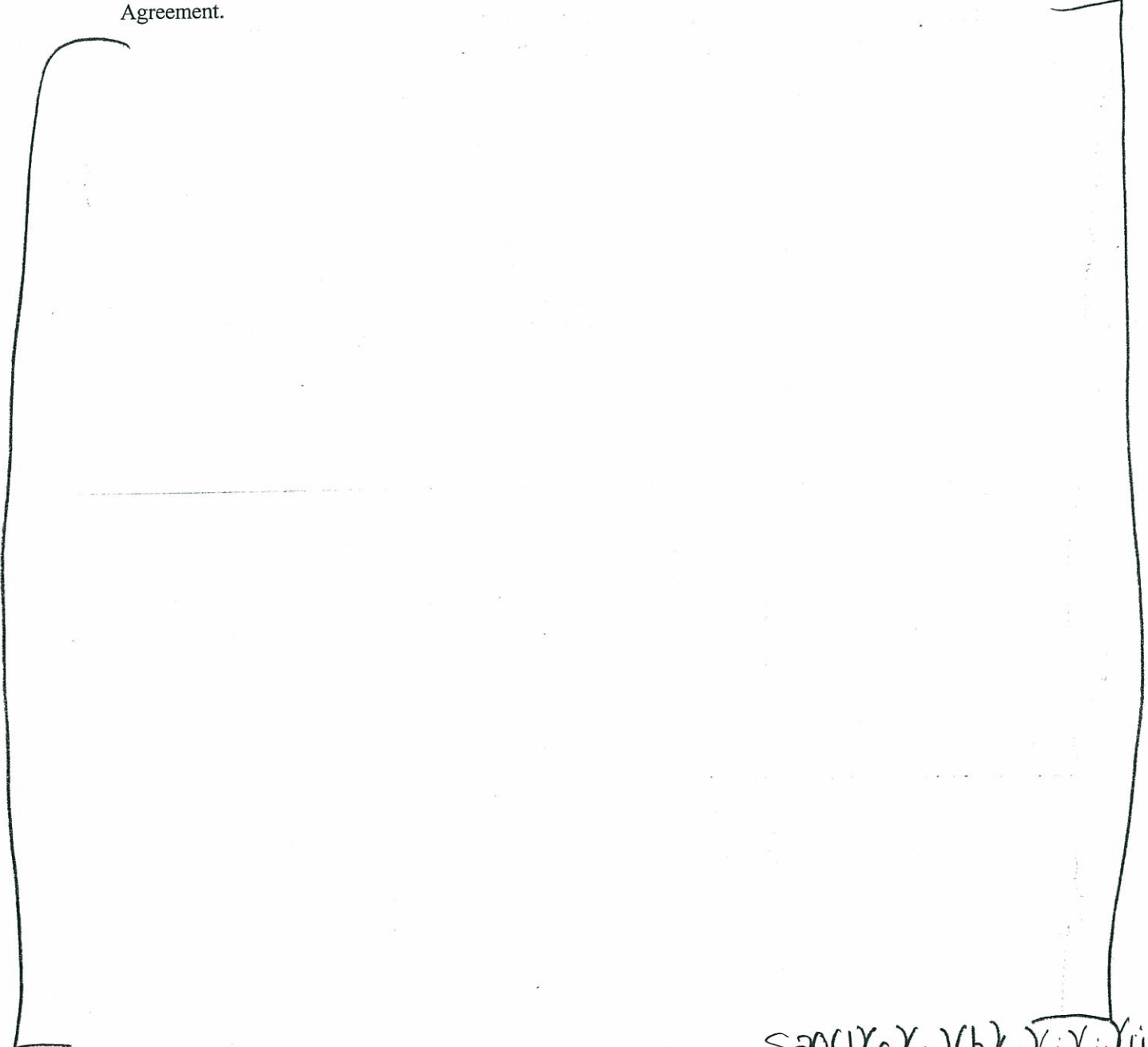
**PERSONAL INFORMATION INTERNATIONAL DISCLOSURE PROTECTION ACT**

The Service Provider acknowledges and confirms that it is a "service provider" as defined in the *Personal Information International Disclosure Protection Act*, SNS 2006 c. 3 ("PIIDPA"), that it has read and understands its obligations as a service provider thereunder and that as a service provider it is legally bound by the obligations imposed on it by PIIDPA.

The Service Provider acknowledges and agrees that it will not, either directly or indirectly, acquire any rights to own any such Province Personal Information other than the right to use it for the sole purpose of fulfilling its obligations to the Province under the Agreement.

SCHEDULE 24 - INSURANCE

This Schedule 24 - Insurance is made pursuant to the Master Services Agreement effective November 1, 2012 (the “**Agreement**”) by and between the Her Majesty the Queen in Right of the Province of Nova Scotia (the “**Province**”) and IBM Canada Ltd. (the “**Service Provider**”), and forms part of the Agreement.



S200(a)(i)(b)(c)(i)(ii)(iii)  
S17(d)(d) Final

**SCHEDULE 25 – TERMINATION FEES**

This Schedule 25 – Termination Fees (“**Termination Fees Schedule**”) is made pursuant to the Master Services Agreement effective November 1, 2012 (the “**Agreement**”) by and between the Her Majesty the Queen in Right of the Province of Nova Scotia (the “**Province**”) and IBM Canada Ltd. (the “**Service Provider**”), and forms part of the Agreement.



521(x)(a)(i)(B)  
521(x)(a)(ii)  
517(x)(d)  
Final



**Schedule 25  
Termination Fees**

**Pages 2 to 11**

**Withheld under**

**s. 17 (1)(c)(d)**

**s. 21(1)(a)(ii)(b)(c)(i)(ii)(iii)**

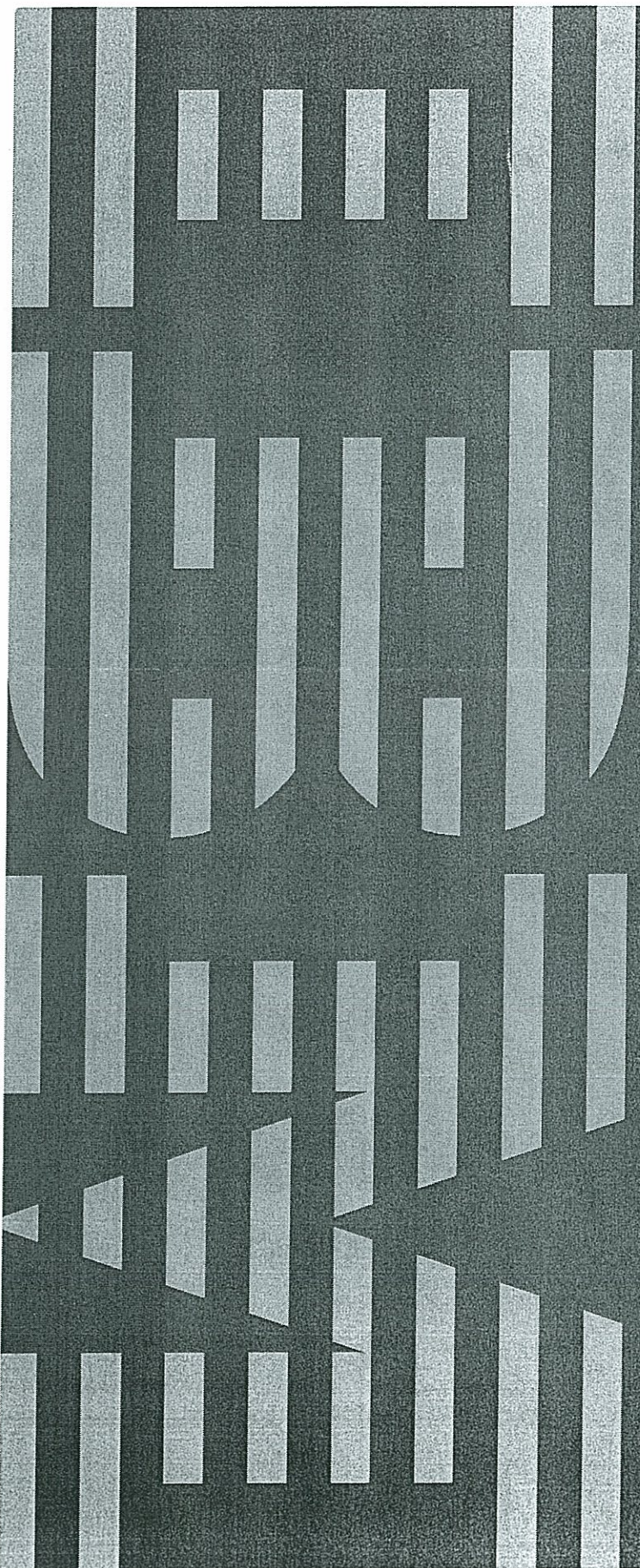
## **SCHEDULE 26 – SERVICE PROVIDER CODE OF CONDUCT**

This Schedule 26 – Service Provider Code of Conduct is made pursuant to the Master Services Agreement effective November 1, 2012 (the “**Agreement**”) by and between the Her Majesty the Queen in Right of the Province of Nova Scotia (the “**Province**”) and IBM Canada Ltd. (the “**Service Provider**”), and forms part of the Agreement.

The Schedule comprises the attachment hereto entitled “IBM Business Conduct Guidelines”, as it may be updated from time to time during the Term of the Agreement.



# Business Conduct Guidelines





## *Letter from the Chairman and the CEO*

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- 1.2 Using the Business Conduct Guidelines
- 1.3 Importance of Compliance

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- 2.1 Raising Concerns and Reporting Violations
- 2.2 Non-Retaliation Policy

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### **Further Guidance**

#### **6.1 Other IBM Policies, Directives and Guidelines**

#### **6.2 Additional Resources**



Letter *from*  
the Chairman *and* the CEO





# THINK

Dear IBMer,

IBM's Business Conduct Guidelines are, at the most basic level, a description of the conduct we establish for all IBMers to comply with laws and ethical practices wherever we do business. It is a living document that we regularly review and update, in response to changes in business and the world at large.

But the BCGs have always been about more than compliance and ethics. By establishing these guidelines decades ago and giving them the weight of a governing document, we have embraced the proposition that our choices and actions define IBM for others. And we have sought to ensure that our relationships – with clients, investors, colleagues and the communities in which we live and work – are built on our core value of trust and personal responsibility.

The subject of our values is especially relevant now, as the world becomes rapidly more complex and interconnected. At the same time, IBM's 100th anniversary, which we marked in 2011, reminds us of what it means to manage for the long term. It reminds us especially of the remarkable persistence and evolution of a distinctive culture, grounded in the powerful idea of a values-based enterprise.

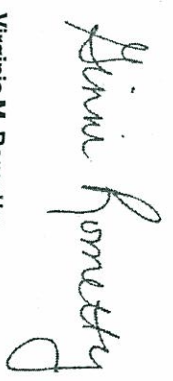


**Samuel J. Palmisano**  
Chairman of the Board

Over a century, this idea has been embraced by millions of women and men who call themselves "IBMers," and who have shaped our company through era after era of profound change. It was also this core idea that led us to come together as a global workforce several years ago to reexamine and renew our values for a very new world.

For us, these are not "IBM's values," but *IBMers'* values. For the same reason, we see our Business Conduct Guidelines not as a set of rules imposed from above, but as a living manifestation of who we are and what we value – an expression of and aid to each IBMer's personal responsibility for demonstrating the highest standards of trust in all of our actions and relationships. As such, this document is written to be read, and to spark your thinking.

We hardly find it necessary to remind IBMers to "act ethically." We know you feel as strongly as we do that anyone doing otherwise does not belong at IBM. But as you reread and recertify your agreement to our Business Conduct Guidelines, we hope you will think anew about what they mean. When you do, you will be strengthening our collective understanding of what it means to be an IBMer in our second century.



**Virginia M. Rometty**  
President and Chief Executive Officer



10

# Guiding Principles

*Your daily commitment to living the IBM Values and following the Business Conduct Guidelines distinguishes IBM and IBMers. It's no exaggeration to say that IBM's integrity, reputation and brand are in your hands.*





## Integrity Tip

Acting with integrity and according to our Values is often a question of good judgment, and basic questions like these will often help you to eliminate any doubt about a decision or proposed action:

- Is it honest?
- Does it conform to the Business Conduct Guidelines?
- Do I really feel comfortable with this decision?
- What if this appeared in the news?
- What if everyone were to behave like this?

## 11 Commitment to Integrity and Business Ethics

IBM's reputation for integrity and business ethics should never be taken for granted. To maintain that reputation, you must follow these Business Conduct Guidelines and exercise good judgment in your decisions and actions.

As IBM employees, we may face ethical and legal questions; some may be difficult ones. We should always decide these questions in ways that are consistent with IBM's Values:

- Dedication to every client's success
- Innovation that matters—for our company and for the world
- Trust and personal responsibility in all relationships

Our Values in themselves may not provide obvious answers in all cases, but they should serve as the basis for the choices we make. Our Values also serve as the basis for the Business Conduct Guidelines, which provide greater guidance on the questions you may face.

## 12 Using the Business Conduct Guidelines

In all instances, each of us must obey the law and act ethically. The Business Conduct Guidelines provide general guidance for resolving a variety of legal and ethical questions for us. Employees are also expected to comply with other applicable IBM policies, directives and guidelines, some of which are referenced here. For example, employees who work in specialized areas such as procurement, environmental, import, export, or tax, must also comply with additional functional guidelines.

Remember, there are no simple shortcuts or automatic answers for the choices we have to make in business today. No single set of guidelines or policies can provide the absolute last word to address all circumstances. Therefore, we expect IBMers to use sound judgment in all of their conduct and ask for help when needed.

## 1.3 Importance of Compliance

If you have any questions about interpreting or applying the Business Conduct Guidelines—or any other IBM policies, directives, or guidelines—it is your responsibility to consult your manager, IBM Counsel, or Trust and Compliance. A violation of any IBM guideline can result in disciplinary action, including dismissal.

Furthermore, IBM's policy is to comply with all laws and regulations that apply to its business. As you conduct IBM's business, you may encounter a variety of laws and legal issues, including those in the areas described below. If you have questions on specific laws or regulations, contact IBM Counsel. Penalties for failure to comply with laws are severe and can result in fines, lawsuits, loss of business privileges and, in some cases, imprisonment of individuals.



# 2.0 Speaking Up

*Your responsibility to know and follow the Business Conduct Guidelines includes reporting potential violations. IBM will promptly review your report, and will not tolerate threats or acts of retaliation against you.*





## 2.1

## Raising Concerns and Reporting Violations

If you know of, or have good reason to suspect, an unlawful or unethical situation or believe you are a victim of prohibited workplace conduct, immediately report the matter through any of IBM's Communication Channels:

- Your manager is usually the best place to start
- IBM Human Resources
- Concerns and Appeals programs
- IBM Internal Audit (for violations related to financial recording and reporting, business process violations and inappropriate use of assets)
- IBM Security (for loss or theft of personal information or IBM assets, including proprietary or confidential information)
- IBM Counsel
- IBM Trust & Compliance

IBM's Concerns & Appeals programs include "Open Door" to higher management and "Confidentially Speaking," which lets you raise your concern anonymously, if you so choose. Furthermore, these programs allow you to submit your concerns online, by email, regular mail, fax or phone.

## 2.2

## Non-Retaliation Policy

IBM will promptly review your report of unlawful or unethical conduct, and will not tolerate threats or acts of retaliation against you for making that report.



3.0

# In the Workplace

*As part of IBM's Globally Integrated Enterprise, your workplace may include working from an IBM location, a client location, or your home. Wherever you are, you will interact with other IBMers, and come in contact with sensitive information, intellectual property, and other valuable assets. Whether communicating in person, over the phone, online, or by any other means or media, the Business Conduct Guidelines apply.*





3.1	Work Environment	3.2	IBM's Information and Property	3.3	IBM's Handling of Your Personal Information	3.4	Making Commitments and Obtaining Approvals	3.5	Reporting, Recording and Retaining Information
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### 3.1 Work Environment

IBM strives to maintain a healthy, safe and productive work environment which is free from discrimination and harassment, whether based on race, color, religion, gender, gender identity or expression, sexual orientation, national origin, genetics, disability, age, or any other factors that are unrelated to IBM's legitimate business interests. IBM will not tolerate sexual advances, actions or comments or conduct that in the judgment of IBM management, creates, encourages or permits an offensive or intimidating work environment.

Other prohibited conduct, because of its adverse impact on the work environment, includes:

- Threats or violent behavior
- Possession of weapons of any type
- Use of recording devices, including cell phone cameras and web cameras, except as authorized by management and IBM Counsel
- A manager having a romantic relationship with a subordinate
- Use, distribution, sale or possession of illegal drugs or any other controlled substance, except for approved medical purposes
- Being under the influence of illegal drugs, controlled substances used for non-medical purposes, or alcoholic beverages in the workplace

— Consumption of alcoholic beverages on IBM premises is only permitted, with prior management approval, for company-sponsored events

Furthermore, if IBM management finds that your conduct on or off the job adversely affects your performance, that of other employees, or IBM's legitimate business interests, you will be subject to disciplinary action, including dismissal.

### 3.2 IBM's Information and Property

IBM has extensive assets of great value. These assets include valuable proprietary information, such as IBM's intellectual property and confidential information, as well as physical property and systems. Protecting all of our assets is critical. Their loss, theft, misuse or unauthorized disclosure can jeopardize IBM's future.

You are personally responsible for protecting IBM's assets in general, as well as those entrusted to you. This includes those assets that you have been authorized to provide to other IBM employees, contract personnel, clients or others. To do this, you should know and understand IBM's security controls, processes and practices. You should be alert to situations that could lead to the loss, misuse, theft, or unauthorized disclosure of our assets. Furthermore, you should report those situations to IBM Security or your manager as soon as they come to your attention.

### Proprietary and Confidential Information

As an IBM employee, you will have access to information that IBM considers proprietary. Most IBM proprietary information is confidential, and often subject to copyright, patent or other intellectual property or legal rights. It is also the result of the hard work and innovation of many IBMers and investments made by IBM. IBM's competitive advantage from this information would be lost if such information was improperly disclosed, even if the disclosure is inadvertent. To help maintain the value of this important information, it is critical that you follow all IBM safeguards for protecting that information and that you only disclose or distribute that information as authorized by IBM.

**Integrity Tip**

If you believe you have been subjected to prohibited workplace conduct, immediately report the matter through any of the designated IBM Communications Channels, including IBM's Concerns and Appeals programs. Your report of such conduct will be reviewed promptly.



IBM proprietary information is any information that IBM owns, including for example:

- Information about current and future products, services or research
- Business plans or projections
- Earnings and other financial data
- Personnel information including executive and organizational changes
- Software in object or source code form

**Inadvertent Disclosure**

You should be careful to avoid inadvertent disclosure. Never discuss proprietary information that IBM considers confidential or which IBM has not made public with, or in earshot of, any unauthorized person. Activities where inadvertent disclosure could occur include a conversation (in person or by telephone) in any public area, in a blog or within a social network. Also, you should not discuss such information with family members or friends. They might innocently or otherwise pass the information on to someone else.

**External Inquiries, Contacts, and Opportunities**

IBM's business activities are monitored by journalists, consultants, securities analysts and others. In addition, as an IBMer, you may be recognized by these individuals or groups as having valuable expertise and be asked to provide your own insights to them, with or without compensation. You should not contact these individuals or groups or respond to their inquiries, whether online (including social media), telephonically, or otherwise, without authorization as follows:

- Journalists—IBM Communications
- Consultants or IT Analysts—IBM Analyst Relations
- Securities or Financial Analysts—IBM Investor Relations
- Environmental groups—Corporate Environmental Affairs

3.1	Work Environment	3.2	IBM's Information and Property	3.3	IBM's Handling of Your Personal Information	3.4	Making Commitments and Obtaining Approvals	3.5	Reporting, Recording and Retaining Information
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Similarly, if you receive a request for information related to IBM's business from an attorney, an investigator, law enforcement, or other government official or agency, refer the requestor to IBM Counsel. Immediately notify IBM Counsel or Trust & Compliance of any such requests.

**Intellectual Property**

**IBM Intellectual Property**

As an IBM employee you will have access to and may develop IBM intellectual property. When you joined IBM, you signed an employee agreement in which you assumed specific obligations relating to intellectual property. For example, you assign to IBM all of your rights in certain intellectual property you develop. That intellectual property includes such things as ideas, inventions, software, templates, publications and other materials relating to IBM's current or anticipated offerings, business, research or development. Subject to the laws of each country, this applies no matter where or when—at work or after hours—you create such intellectual property. You must disclose that intellectual property to IBM and protect it like any other IBM proprietary information. Information on how to report and protect intellectual property can be found at the Intellectual Property & Licensing site. In addition, you should also seek advice and direction from your IBM Intellectual Property Counsel before you file for a patent other than through IBM, and provide IBM with copies of any patents you have applied for or obtained.

**Third Party Software**

You should exercise caution in obtaining third party software from others, including commercial and open source software. Software includes computer programs, databases and related documentation, and can be in any stage of development.



3.1	Work Environment	3.2	IBM's Information and Property	3.3	IBM's Handling of Your Personal Information	3.4	Making Commitments and Obtaining Approvals	3.5	Reporting, Recording and Retaining Information
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### Integrity Tip

Did you know that even if software is free it may be unacceptable for use on IBM systems or in our offerings? That is because the license may not permit such use or, possibly, no license was provided (which may prevent any use of the software in some countries). There is also the risk that the software contains harmful code, such as viruses or Trojan horses, which can be costly to IBM.

Software may be on tangible media (e.g. CDs, portable devices and publications), or it may be downloadable or accessible for use online. The license for the software sets out the rights and obligations that must be complied with, such as how and where the software may be used, whether it may be modified or distributed and, possibly, what rights IBM is obligated to grant to others. The terms and conditions of the license agreement must be strictly followed. You must follow applicable business unit and CIO Office procedures before you load software from any source onto any computer or device provided by IBM or used primarily for IBM business purposes. You must also follow those procedures before you distribute, access or receive software from inside or outside of IBM, or otherwise accept a license agreement.

#### Open Source Software

Do not confuse open source software with software that is in the public domain. Open source software licenses often impose obligations that could result in a conflict of interest with IBM and the inappropriate transfer of IBM's intellectual property rights. If you want to be involved with or use open source software you must first obtain management approval and comply with IBM's [Open Source Participation Guidelines](#).

#### Trademarks

IBM and many other companies have trademarks—words, names, symbols or designs—that are used to identify and distinguish the company and its products. It is important that you properly use IBM's and other companies' trademarks. For guidance on proper usage and acknowledgement of IBM's and certain third party trademarks, refer to IBM's [Copyright and Trademark Information](#). In addition, you should not use a word, name, symbol or design as a trademark without first going through the [Naming Approval Process](#).

#### External Standards Organizations

Before you participate in any external standards activity, you must get approval from management, with guidance from [Intellectual Property and Standards](#). In addition to the obligations that you and IBM may have to the standards organization, you also need to understand your responsibilities to protect IBM's intellectual property; to submit to IBM any intellectual property you create; to avoid conflicts of interest; and to comply with antitrust and other laws.

#### Use of IBM Assets and Premises

Protection of IBM's assets, workplace environment and business interests, including compliance with legal requirements, are critical to IBM's operations and marketplace integrity. All IBM assets—proprietary information, such as IBM's intellectual property and confidential information, as well as physical property and systems—should only be used to conduct IBM's business or for purposes authorized by IBM management. This obligation applies whether or not you developed the information yourself, and it applies by law in virtually all countries where IBM does business. IBM's physical property and systems include equipment, facilities, information and communication systems, corporate charge cards and supplies. IBM's property and systems, including IBM connections to the Internet, should also only be used for appropriate purposes. Incidental personal use of such property and systems—meaning use that is limited in duration, does not violate company policies, and does not interfere with doing your job—may be permitted by management. However, it is never permissible to use IBM's systems for visiting Internet sites that feature sexual content or gambling, that advocate intolerance of others, or that are inconsistent with IBM's Values and business interests. It is also inappropriate to use them in a manner that interferes with your productivity or the productivity of others.



3.1 Work Environment	3.2 IBM's Information and Property	3.3 IBM's Handling of Your Personal Information	3.4 Making Commitments and Obtaining Approvals	3.5 Rescinding, Recording and Retaining Information
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## IBM's Right to Access and Use

You should understand IBM has the right to inspect your use of IBM assets, including your communications using IBM's assets. You should understand that IBM does not consider any such uses of its assets to be private. Therefore, you should not place or keep any personal items, messages or information that you consider private anywhere in the IBM workplace, such as, telephone, office, or email systems, electronic files, laptops, smartphones and other personal communication devices, lockers, desks, or offices. If you choose to do so, you should understand that IBM may at any time, monitor, recover through technical or other means, and review employee communications including emails from personal email accounts, records, files, and other items IBM finds through or in its systems, assets and any other IBM areas or IBM provided facilities, for any purpose. In addition, in order to protect its employees, assets, and business interests, IBM may share outside of IBM anything it finds, such as with its outside legal or other advisors, or with law enforcement.

Additionally, in order to protect its employees, assets and business interests, IBM may ask to search an employee's personal property, including briefcases and bags, located on or being removed from IBM locations. If you use personal electronic devices for IBM-related work, then those devices may also be examined by IBM. You are expected to cooperate with all such requests. Employees, however, should not access another employee's work space, including email and electronic files, without prior approval from management. For additional information on access to company property and employee personal property, refer to [Access to Property & Information](#).

## Leaving IBM

If you leave IBM for any reason, including retirement, you must return all IBM assets, such as documents and media which contain IBM proprietary information, and you may not disclose or use that information. Also, IBM's ownership of intellectual property which you created as an IBM employee continues after you leave IBM. Regrettably, there have been cases in which IBM's proprietary information or other assets have been wrongfully taken or misused. IBM has and will continue to take every step necessary, including legal measures, to protect its assets.

## 3.3 IBM's Handling of Your Personal Information

To the extent permitted by law, IBM and IBM authorized companies and individuals collect and maintain personal information which relates to your employment, such as compensation, medical and benefit information. As a globally integrated enterprise, IBM's business processes, management structures and technical systems cross country borders.

Therefore, you acknowledge that, to run its business, IBM and its authorized companies may transfer personal information about you as an IBM employee to any of the countries where we do business. While not all countries have data protection laws, IBM has worldwide policies that are intended to protect information wherever it is stored or processed.



3.1 Work Environment

3.2 IBM's Information and Property

3.3 IBM's Handling of Your Personal Information

3.4 Making Commitments and Obtaining Approvals

3.5 Reporting, Recording and Retaining Information

### Integrity Tip

Under various laws, such as tax and securities laws, IBM is required to maintain accurate books. Violations of laws associated with accounting and financial reporting can result in fines, penalties and imprisonment, as well as a loss of public faith in a company. If you become aware of any action related to accounting or financial reporting that you believe may be improper, you should immediately tell IBM, by informing IBM Accounting, Internal Audit, your management, IBM Counsel, or by using any of IBM's other Communications Channels.

- For those eligible for overtime, failing to record all hours worked including all overtime hours, which must be management approved in line with IBM guidelines
- Providing inaccurate or incomplete information to IBM management, IBM Internal Audit or IBM Counsel during an internal investigation, audit or other review, or to organizations and people outside the company, such as external auditors
- Making false or misleading statements in external financial reports, environmental reports, import/export documentation, or other documents submitted to or maintained for government agencies

In order for IBM to conduct investigations and reviews, it needs the help and cooperation of IBM employees. You are required to fully cooperate with all authorized internal investigations and reviews, and to promptly, completely, and truthfully comply with all internal requests for information, including interviews and documents, during the course of such an investigation or review.

### Financial Controls and Reporting

As a public company, IBM must follow strict accounting principles and standards, to report financial information accurately and completely, and to have appropriate internal controls and processes to ensure that accounting and financial reporting complies with law.

The rules for accounting and financial reporting require the proper recording of, and accounting for, revenues, costs, expenses, assets and liabilities. If you have responsibility for or involvement in these areas, you must understand and follow these rules.

Further, these rules also prohibit anyone from assisting others to account improperly or make false or misleading financial reports. Do not assist anyone to record or report any information inaccurately or in a way that could be misleading. You should also never provide advice to anyone outside of IBM, including clients, suppliers and IBM Business Partners, about how they should be recording or reporting their own revenues, costs, expenses, and other assets and liabilities.

### Retaining Records

Employees must comply with the guidelines in the IBM Worldwide Records Management Plan in their retention and disposal of IBM documents. The plan applies to information in any media, including both hard copy and electronic records such as email. It requires that information defined as "essential" be retained in a recoverable format for the duration of its assigned retention period. Information that is not essential or whose retention period has expired should be disposed of as soon as possible, unless it is subject to a document retention order issued by IBM Counsel. Where such an order exists, you must strictly follow the retention requirements specified in the order until you receive a notice from IBM Counsel that the order is no longer in force.



4.0

# In the Marketplace

*You must be ethical and lawful in all of your business dealings, whether you are selling, buying or representing IBM in any other capacity. Your communications and dealings with IBM Business Partners, suppliers, competitors, clients or others can directly impact IBM's reputation and our compliance with applicable laws.*





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### *Integrity Tip*

It is essential that suppliers competing for IBM or a client's business have confidence in the integrity of IBM's selection process. That confidence could be jeopardized if former employees of IBM or close personal friends or relatives of current IBM employees, competing as suppliers, are perceived to have an unfair advantage. If your work involves the use or selection of a supplier with which you are connected, eg, a supplier owned by a family member, you should disclose your relationship with that supplier to your manager and the IBM Global Procurement Ombudsman Office, prior to any involvement in IBM's consideration of that supplier.

## 4.1 Working with Organizations Outside of IBM

Other organizations have multiple relationships with IBM. An IBM Business Partner may be both a client and a competitor. Another organization may be an IBM supplier and client at the same time. A few organizations may even be suppliers, competitors, Business Partners and clients. No matter what the context, you need to understand each relationship involved in your dealings, and act in accordance with our guidelines.

### Working with Suppliers

In deciding among competing suppliers, we weigh the facts impartially to determine the best supplier. You should do so whether you are in a procurement job or any other part of the business—and regardless of whether it is a large or small purchase.

You must not exert or attempt to exert influence to obtain special treatment for a particular supplier. Even appearing to do so can undermine the integrity of our established procedures.

Seeking reciprocity is contrary to IBM policy and may also be unlawful. You should not tell a prospective supplier that your decision to buy its goods or services is conditioned on the supplier's agreement to buy IBM products or services. This does not mean that an IBM client cannot be an IBM supplier or that IBM can never consider its other relationships with the supplier when it is evaluating the supplier. It simply means that IBM's decision to buy goods and services from a supplier must be made independently and apart from that supplier's decision to buy IBM products and services.

### Working with Resellers and Other Complementary Third Parties

IBM has relationships with complementary third parties, such as IBM Business Partners, Independent Software Vendors, and systems integrators, to help IBM market and install IBM solutions. If you work with these third parties, you must follow the applicable sales, marketing and services guidelines for dealing with them, including the *Guidelines for Working with IBM Business Partners*. In addition to their complementary offerings, some of these third parties market products or services that compete with IBM. When such a situation arises, you must exercise caution and follow established guidelines for dealing with competitors.

### Working with Competitors

In the marketplace it is often clear when you are directly competing with another company. However, a company with which you are dealing in another context—such as a client, a supplier, or even an IBM Business Partner—may also be a competitor. Such situations require extra care. For example, it is likely that you and competitors will, from time to time, meet, talk and attend the same industry or association meetings. Many of these contacts are acceptable as long as established procedures are followed.



For example:

- IBM handles your personal information in accordance with its corporate policies and practices, including Corporate Policy 139, Corporate Instruction HR 113 and the IBM Guidelines for the Protection of Employee Information
- Access to your personal information is restricted to people with a need to know

- Personal information is normally released to outside parties only with employee approval, except that IBM and authorized companies and individuals may also release personal information to verify employment, to satisfy the legitimate requirements of a company or other entity which is considering acquiring some of IBM's business operations, or for appropriate investigatory, business or legal reasons

Likewise, in your work you may have access to personal information of others. You must ensure that you use and disclose that information only as permitted by IBM policies or practices.

### 3.4 Making Commitments and Obtaining Approvals

IBM's approval processes are designed to help IBM protect its assets and maintain appropriate controls to run its business effectively, whether you are dealing with clients, IBM Business Partners, suppliers, or other third parties. Within these processes, authority for pricing, contract terms and conditions and other actions may have been delegated to certain functions and to line management. Making business commitments outside of IBM's processes, delegation limits or without appropriate approvals, through side deals or otherwise, is not acceptable.

Modifications of pricing, contract or service terms, must be approved by the appropriate level of management or authorized function. Do not make any oral or written commitments that create a new agreement or that modify an existing IBM agreement with a third party without approval, consistent with delegation levels. All commitments must be reported to IBM Accounting to help ensure the accuracy of IBM's books and records.

### 3.5 Reporting, Recording and Retaining Information

Every employee records or reports information of some kind and submits it to the company and others with whom we interact. In doing so, you must ensure that *all* information is recorded and reported accurately, completely and honestly.

Never make misrepresentations or dishonest statements to anyone. If you believe that someone may have misunderstood you, promptly correct the misunderstanding. Reporting inaccurate or incomplete information, or reporting information in a way that is intended to mislead or misinform those who receive it, is strictly prohibited and could lead to serious consequences.

The following are some examples of dishonest reporting:

- Submitting an expense account for reimbursement of business expenses not actually incurred, or misrepresenting the nature of expenses claimed
- Failing to properly record time worked on a billable client project, whether or not such time is charged to the client



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## Integrity Tip

Competition laws exist in almost all countries where IBM does business. The purpose of competition laws, which also may be known as antitrust, monopoly, fair trade or cartel laws, is to prevent interference with the functioning of a competitive market system. Companies also may violate competition laws without acting jointly with other companies by, for example, illegally monopolizing or attempting to monopolize an industry or unlawfully abusing a dominant position.

Acceptable contacts include sales to other companies in our industry and purchases from them; approved participation in joint bids; and attendance at business shows, standards organizations and trade associations. However, these contacts require caution.

Discussion or collaboration on prohibited subjects with competitors can be illegal. In all contacts with competitors, avoid discussion or collaboration on pricing policies, contract terms, costs, inventories, marketing and product plans, market surveys and studies, production plans and capabilities, and any other proprietary or confidential information. You must also avoid any discussion or agreement on dividing clients or territories.

If a competitor raises a prohibited subject, even lightly or with apparent innocence, you should object, stop the conversation immediately and inform the competitor that you will not discuss these matters. If necessary, you should leave the meeting and immediately report the incident to IBM Counsel.

## 4.2 Competing Fairly

IBM will compete vigorously for business. However, you must compete ethically and in compliance with our policies and the law, no matter how competitive the environment.

### Statements About Competitors

IBM sells products and services on their merits. Avoid false and misleading statements about competitors, their products, and their services. Be sure all comparisons to competitors are substantiated, and that they are complete, accurate and not misleading whenever they are made. Certain countries prohibit comparative advertising.

## Selling Against Competitive Orders

If a competitor already has a firm order (a legally enforceable contract) from a client for the competitor's product or service, care should be taken when marketing competing IBM products or services to that client. Letters of intent, free trials, conditional agreements and similar arrangements are usually not considered firm orders. It is often difficult to determine when a firm order exists. When a situation is unclear, seek advice from IBM Counsel.

## 4.3 Acquiring and Using Information

### Information About Others

In the normal course of business, it is not unusual to acquire information about other organizations, including competitors. Doing so is not unethical in itself. In fact, IBM quite properly gathers this kind of information from legitimate sources for such purposes as:

- Extending credit
- Evaluating suppliers
- Evaluating the relative merits of our own products, services, and marketing methods against that of competitors



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## Integrity Tip

Did you know that even if you receive a competitor's confidential information (such as a pricing proposal), by mistake, innocently or even deliberately from a client or other party, you should not review it, distribute it, or otherwise use it? Immediately call IBM Counsel or Trust & Compliance for guidance on how to proceed.

There are, however, limits to how that information should be acquired and used, especially information about competitors. No company should use improper means to acquire another's trade secrets or other confidential information. Improper solicitation or receipt of confidential data from any source, including an IBM client, a competitor's employees or any other party, is wrong.

IBM will not tolerate any form of questionable intelligence-gathering. Accordingly, you must not engage in or facilitate any improper or illegal practices designed to collect potentially confidential or sensitive information from competitors or others, such as:

- Wiretapping, surveillance, hacking, bribery, theft or trespassing
- Hiring a competitor's employees to obtain the competitor's confidential information
- Accepting or using potentially confidential or sensitive information if you have reason to believe it may have been improperly or illegally obtained

Information about other organizations and individuals should be treated with sensitivity and discretion. When working with information, you should use that information in the proper context and make it available only to other IBM employees with a legitimate need to know. In presenting such information, you should disclose the identity of the organization or the individuals only if necessary. If specific identifying information is not necessary, you should present the information in aggregated form or by some other means.

## Personal Information About Individuals

As part of your work, you may have access to personal information, such as information about consumers or employees of clients, suppliers, IBM Business Partners and others. You may only use such information to the extent necessary to fulfill your assigned job responsibilities and in accordance with instructions issued by management or applicable IBM policies, directives, and guidelines. You may not use or alter the personal information inappropriately or disclose it to anyone who does not have a legitimate need for such information. If possible, information should be made anonymous before disclosure to avoid disclosing personal information of individuals. If you suspect that personal information has been lost or stolen, you must report it immediately to IBM Security.

## Proprietary and Confidential Information Owned by Others

Our business often requires the use, exchange or disclosure of information that others may own and which they may consider to be their trade secrets or intellectual property.

If you receive another party's proprietary information, even inadvertently, you must proceed with caution to prevent any accusation that IBM misappropriated or misused the information. For example, you should avoid receiving or using confidential information owned by others unless (a) you are clearly authorized to do so, and (b) an authorized confidentiality agreement is in place between IBM and the other party or parties. The terms, restrictions and other conditions that apply to using confidential information can vary widely so it is important that you understand and comply with the applicable obligations.



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## Integrity Tip

Anti-corruption laws around the world, including the U.S. Foreign Corrupt Practices Act (FCPA), make bribery a crime. This includes giving anything of value (directly or indirectly) to a foreign official to obtain or retain business with the government. Foreign officials, under the FCPA, can include executives and employees of partially government-owned corporations, universities, public international organizations, and other entities.

## 4.4 Gifts, Amenities and Bribes

The following are general guidelines on receiving and giving gifts and business amenities. Types and values of gifts and amenities can vary widely—ranging from advertising novelties of nominal value, which you may give or accept, to bribes, which you unquestionably may not. Additional guidance and approval requirements are provided in IBM's Corporate Instruction Finance 168 (Business amenities and gifts). Under these guidelines, senior executive management may approve receiving or giving higher value gifts and business amenities provided the gifts and business amenities are not prohibited by law or known client, business partner or supplier practices.

### Receiving Gifts, Amenities and Referral Fees

Neither you nor any member of your family may, directly or through others, solicit or accept from anyone money, a gift, or any amenity that could influence or could reasonably give the appearance of influencing IBM's business relationship with that person or organization. If you or your family members receive a gift (including money), even if the gift was unsolicited, you must notify your manager and take appropriate measures, which may include returning or disposing of what you received. Unless you have been informed otherwise, you may accept the following:

- Promotional premiums and discounts offered by transportation companies, hotels, auto rental agencies and restaurants, if based upon bonus programs for individuals and offered to travellers generally
- A gift of nominal value, such as an advertising novelty, when it is customarily offered to others having a similar relationship with that person or organization
- With management approval, customary business amenities, such as meals and appropriate entertainment, provided the expenses are kept at a reasonable level and are not prohibited by law or known practices of the giver

Similarly, when authorized by IBM you may refer clients and others to third parties but you may not accept any fee, commission or anything in compensation for this referral.

### Giving Gifts, Amenities and Other Value

You may not, directly or through others, offer or give any money, gift, amenity or other thing of value to an executive, official, employee or representative of any client, supplier, IBM Business Partner or any other organization, if doing so could influence or could reasonably give the appearance of influencing the organization's relationship with IBM.

You may:

- Give a gift of nominal value, such as an IBM advertising novelty, if it is not prohibited by law or the organization's known business practices
- With management approval give customary business amenities, such as meals and appropriate entertainment, provided the expenses are kept at a reasonable level and are not prohibited by law or known business practices of the recipient's organization



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## Integrity Tip

For giving and receiving business amenities and gifts, additional guidance, including specific cost limits, can be found in Corporate Instruction FIN 163. In addition, use of IBM's global approval process for Client Travel, Entertainment and Business Amenities (CTEBA) is required to ensure that amenities provided to clients, IBM Business Partners, and others comply not only with applicable law, but also with the Business Conduct Guidelines and our Values.

However, prior management and IBM Counsel approval is required if the intended recipient is an official, employee, or representative of a government or government-owned entity, or any of their family members. Additional policies and legal limitations, including IBM's Government Client Guidelines, apply in such situations, even if a proposed payment is common in the country or where local custom calls for giving gifts on special occasions.

Beyond gifts and amenities, certain legal or ethical restrictions may also apply when hiring current or former employees of the government or their family members. You must consult with IBM management and IBM Counsel before any attempts are made to hire such persons.

### 4.5

## Other Public Sector Matters

### Selling in the Public Sector

Public sector procurement laws are designed to ensure that products and services are procured at fair and reasonable prices. These laws vary widely and can be complex.

You should be sensitive to the following when working with the public sector:

- Procurement laws generally require competitive bidding and permit sole source procurement only in specific circumstances
- You may review an advance copy of a solicitation or tender document only if the client has also made it available to other bidders

- As a general rule, you may not prepare a solicitation document on behalf of a public sector client, even at the client's request, or submit any anonymous documents, such as white papers, to a public sector client, or encourage a public sector client to sign an agreement before an award is made to IBM

- You should never discuss business or employment opportunities that could personally benefit any public sector procurement personnel during an active or anticipated procurement, and must not offer or provide gratuities or any promises in connection with a procurement activity
- Prior to hiring an agent or consultant for a public sector procurement you must ensure that doing so will not create a conflict of interest, that the agent or consultant has agreed to our Business Conduct Guidelines, that you obtain management authorization and involve IBM Global Procurement or IBM Counsel
- If we plan to use subcontractors, we need to ensure that the subcontractors also follow our guidelines

You should follow these guidelines as well as IBM's Government Client Guidelines when dealing with the public sector. Immediately report any actual or possible violation of these guidelines or a public sector procurement law or regulation to management, IBM Counsel, Trust and Compliance, or through IBM's other Communication Channels.



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## Lobbying

Any contact with government personnel for the purpose of influencing legislation or rule making, including such activity in connection with marketing or procurement matters, may be considered lobbying. In addition, under some laws, lobbying includes normal marketing and sales activities unrelated to legislation or rule making. You are responsible for knowing and adhering to all relevant lobbying and associated gift laws, including all reporting requirements.

You must obtain prior approval from IBM Governmental Programs and advice of IBM Counsel to lobby or authorize anyone else (for example, a consultant, agent, or IBM Business Partner) to lobby on IBM's behalf—including when lobbying is limited to normal marketing and sales activities.

## Campaign Visits on IBM Property

Political campaigning is not allowed on IBM property. From time to time, IBM may encourage public officials to make non-partisan visits to IBM locations, to better understand our offerings and our views on public policy issues. However, non-partisan visits by public officials within 60 days of an election in which they are participating are generally not allowed, unless authorized by Government Programs and IBM Counsel.

## 4.6

# International Trade Compliance

## Exports

In our globally integrated enterprise, regardless of your work assignment or location, your actions may have export compliance implications. As a U.S. company, IBM's hardware and software products, services, and technology (i.e., technical data for the design, development, production or use of those products and source code) are subject to both U.S. and non-U.S. export laws and regulations. Before IBM products, services and technology can be exported, re-exported, or delivered anywhere, IBM must validate that it has the authorization to export under U.S. export regulations and any applicable non-U.S. laws and regulations.

Export laws and regulations affect many IBM transactions, including: intercompany transactions; in-country transfers of technology to recipients who are not citizens or permanent residents (e.g., where the recipient is a non-U.S. person located in the U.S.); transactions with third parties, including clients, suppliers, and original equipment manufacturers; use of IBM Business Partners, alliance partners or agents to complete a delivery or provide a service; and any relationship where IBM will be involved with the export, re-export, or delivery anywhere in the world of products, services, and technology.

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## Integrity Tip

IBM has a worldwide network of experts who can help answer questions about IBM's import and export control requirements. Visit the Export Regulation Office for export matters and the Import Compliance Office for import and supply chain security matters.

Export laws and regulations cover more than just physical shipments. They also cover:

- Electronic transfers of, and remote access to, software or technology
- Provision of services over a network, including e-business and e-services
- Design, development and delivery of hardware, software and solutions
- Travel outside the U.S. with IBM products or technology
- Providing technical specifications and performance requirements to suppliers
- Disclosures of IBM technology to recipients that are not citizens or permanent residents of the country (e.g. where the recipient is a non-U.S. person located in the U.S.)
- The transfer of personal knowledge (technical assistance) outside the U.S. or country of residency

## Imports

As a major importer around the world, IBM must comply with all import laws, regulations and requirements when engaging in international trade. This includes compliance with obligations made to government agencies when participating in supply chain security and other trusted partnership programs. Because of the continued globalization of IBM's business, there are many situations, some of them very subtle, in which your role or work may have import implications.

In addition to the cross-border movement of physical items, there may be import implications resulting from other activities, such as:

- Change in manufacturing location, processes, or source of supply
- Client activity requiring cross-border delivery

- Shipment of marketing samples or prototypes cross-border
- Calculation of product intercompany prices for sales to an IBM location in another country
- Determination of product country of origin
- Maintenance of accurate data and records for product inventory, sales, and shipment

## Antiboycott

IBM, its subsidiaries and affiliates, and their agents are prohibited from following or supporting a foreign country's boycott of a country which is friendly to the United States. A foreign country or an entity associated with the country could make such a request in a bid invitation, purchase order or contract, letter of credit, orally in connection with a transaction, or in a number of other ways. IBM is required to promptly report to the U.S. Government any request to support a boycott or to furnish information regarding a boycott. Examples of improper boycott requests include requests that we refuse to do business with a certain country, its citizens, or with certain companies who do business with the boycotted country. A request that we provide information about activities in a boycotted country, implement letters of credit with boycott conditions, or issue negative certifications of origin, also require legal scrutiny. If you hear of or receive boycott-related requests, you must contact your manager, IBM Counsel or the Export Regulation Office.



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## 4.7 Immigration

Cross-border travel for IBM business can raise immigration, payroll, and corporate tax requirements and obligations under IBM internal policies or the laws of the destination country. For instance, valid work authorizations and documentation, such as a work permit or a work visa, are usually required if you are going to perform productive work in another country. In addition, certain supplemental tax obligations may apply. Always comply with IBM requirements related to cross-border travel. In some cases this may require an IBM Assignment Plan or Mobility Agreement before doing productive work (generally, an activity that involves more than just business meetings) in a country that is not your primary employment country.

## 4.8 The Environment

IBM is committed to worldwide leadership in environmental protection. Any IBM employee involved with processes that affect the environment, such as measuring, recording or reporting discharges and emissions to the environment, or handling hazardous waste, must comply with applicable environmental regulations and permits, as well as IBM's environmental policies. Information and contacts related to environmental compliance can be found at IBM's [Corporate Environmental Affairs and Product Safety website](#). As IBM employees, we each have a role to play in protecting the environment. If you become aware of any violation of environmental law or any action that could cause or may appear to conceal such a violation you should immediately report the matter to management or IBM Counsel.



5.0

# On Your Own Time

*Your private life is very much your own. Nonetheless, as an IBMer, your activities, both on and off the job, can affect IBM's reputation and business interests. IBM counts on you to be guided by our Values and Business Conduct Guidelines in all your activities.*





### Integrity Tip

Even non-commercial projects—such as some Open Source projects—can have an impact on IBM's current or future business. Management should be consulted both before and during any such project, to regularly assess the project's impact on IBM's interests.

## 5.1 Conflicts of Interest

A conflict of interest occurs when you advance a personal interest at the expense of IBM's interests. Some conflicts of interest can be avoided through careful foresight and planning. Others are unavoidable. In some cases, the mere potential for or perception of a conflict can be problematic. It is up to you to avoid situations in which your loyalty may become divided. Some common conflicts are addressed below.

### Assisting a Competitor

An obvious conflict of interest is providing assistance to an organization that markets products and services in competition with IBM's current or potential product or service offerings. You may not, without IBM's consent, work for such an organization in any capacity, such as an employee, a consultant or as a member of its board of directors.

### Competing against IBM

Also prohibited are individual pursuits that could conflict with IBM's current or future business interests. Outside the office, many IBM employees engage in activities that generally relate to technology, business advice or other products or services IBM offers its clients. Often, such activities are in sufficient conflict with IBM's current or future business interests that they are prohibited. Because IBM is rapidly expanding into new lines of business and areas of interest, the company will constantly redraw lines of acceptable activity. It is therefore your responsibility to consult, in advance and on a periodic basis, with your management or IBM Counsel to determine whether your planned activity will compete with any of IBM's actual or potential businesses.

### Supplying IBM

Unless approved in advance by senior management and IBM Counsel, you may not be a supplier to IBM, represent a supplier to IBM, work for a supplier to IBM or be a member of its board of directors while you are an employee of IBM. In addition, you may not accept money or benefits of any kind for any advice or services you may provide to a supplier in connection with its business with IBM.

### Personal Financial Interests

You may not have a financial interest in any organization if that interest would create or give the appearance of a conflict of interest with IBM. Such organizations include suppliers, clients, competitors, IBM Business Partners, alliance companies and others with which IBM does business. In all cases, a financial interest is improper if your job, the amount of your investment, or the particular organization in which you invested could—when viewed objectively by another person—influence your actions as an IBM employee.

If you have any involvement—direct or indirect—in deciding whether IBM does business with an organization, you should not obtain or maintain a financial interest in that organization. Additionally, you must not accept or buy stock options or other securities in any situation where there is a question that the offer was motivated in whole or in part by your IBM employment, or if the investment otherwise violates IBM policies, directives, and guidelines.







dividend actions, acquisitions or other business combinations, divestitures, major new product or services announcements, significant advances in research, and other significant activities affecting IBM.

Avoid improper use and disclosure of inside information. For example:

- If you know that IBM is considering an alliance or is about to announce a new product or make a purchasing decision that could affect the price of the securities of an IBM client or supplier or other company, you should not buy or sell the securities of that company until after the information becomes public
  - If you know that IBM is about to make an announcement that could affect the price of IBM's own securities, you should not buy or sell IBM securities on the open market until after the announcement. For instance, if you have visibility to any earnings information related to IBM, you should not trade in IBM securities until the company publicly announces its earnings
  - You should not buy or sell the securities of a client or alliance company based on any inside information you have about that company
  - If you have nonpublic information that IBM is about to build a new facility or expand an existing facility, you should not invest in land or in any business near the new site
  - You should not disclose inside information about IBM or any other company to IBM employees who do not have a business need to know or to anyone outside of IBM
- As with investments, you should not evade these guidelines by acting through anyone else or by giving inside information to others for their use, even if you will not financially benefit from it. If you have any doubt about what you can or cannot do in this area, you should consult with IBM Counsel.

### Integrity Tip

Under certain circumstances, the exchange of competitive information with employees of a competitor can be a crime, even if the people involved do not directly intend to commit one. Maintaining the confidentiality of sensitive business information can often be as much for your own protection as IBM's.

5.1	Conflicts of Interest	5.2	Inside Information and Insider Trading	5.3	Public Service and Political Activity	5.4	Speaking Publicly and Social Media
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## 5.3 Public Service and Political Activity

IBM encourages all employees to pursue personal interests, including active participation in their communities. While the vast majority of such interests pose no particular concerns for your IBM position, some do. Certain off-the-job activities can affect your IBM position, or can otherwise reflect negatively on IBM. In cases where there is doubt, you must decide whether you can avoid harm through careful management of your conduct, or whether harm is unavoidable, and therefore the activity must be avoided.

### Public Service

Participation in public and governmental service may pose conflict of interest concerns. As a board or committee member, for example, you may be confronted with a decision involving IBM, such as a decision to purchase IBM products or services. In such circumstances, your interest in IBM and your obligation to the civic organization might pull you in opposite directions. While you must weigh the concerns and bear responsibility for your decision, you can and should seek advice from the civic organization's lawyer and from IBM Counsel. In all events, you should make it clear that you are an IBM employee to avoid any perception that you concealed your association with IBM. Similarly, should you decide to abstain, you should state clearly that you are doing so to avoid an actual or potential conflict of interest.







6.0  
Further Guidance





## 6.1 Other IBM Policies, Directives and Guidelines

- Corporate Directives, Policies and Instructions
- Government Client Guidelines
- Guidelines for Working with Business Partners
- Open Source Participation Guidelines
- Social Computing Guidelines
- Technical Ethics Guidelines—Global
- Virtual Worlds Guidelines for IBM employees
- WW Records Management

## 6.2 Additional Resources

- Concerns and Appeals Programs
- Trust and Compliance
- Global Assignment and Immigration
- Import Policies and Guides
- Export Regulation
- Privacy & Data Protection: Policies and Legislation
- Revenue Recognition
- Corporate Security website
- Global Procurement





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**SCHEDULE 27 – PROVINCE SHARED INFRASTRUCTURE**

This Schedule 27 – Province Shared Infrastructure (“Province Shared Infrastructure”) is made pursuant to the Master Services Agreement effective November 1, 2012 (the “Agreement”) by and between the Her Majesty the Queen in Right of the Province of Nova Scotia (the “Province”) and IBM Canada Limited (the “Service Provider”), and forms part of the Agreement.



SMALC)



**Schedule 27**  
**Province Shared Infrastructure**

**Pages 2 to 3**

**Withheld under**

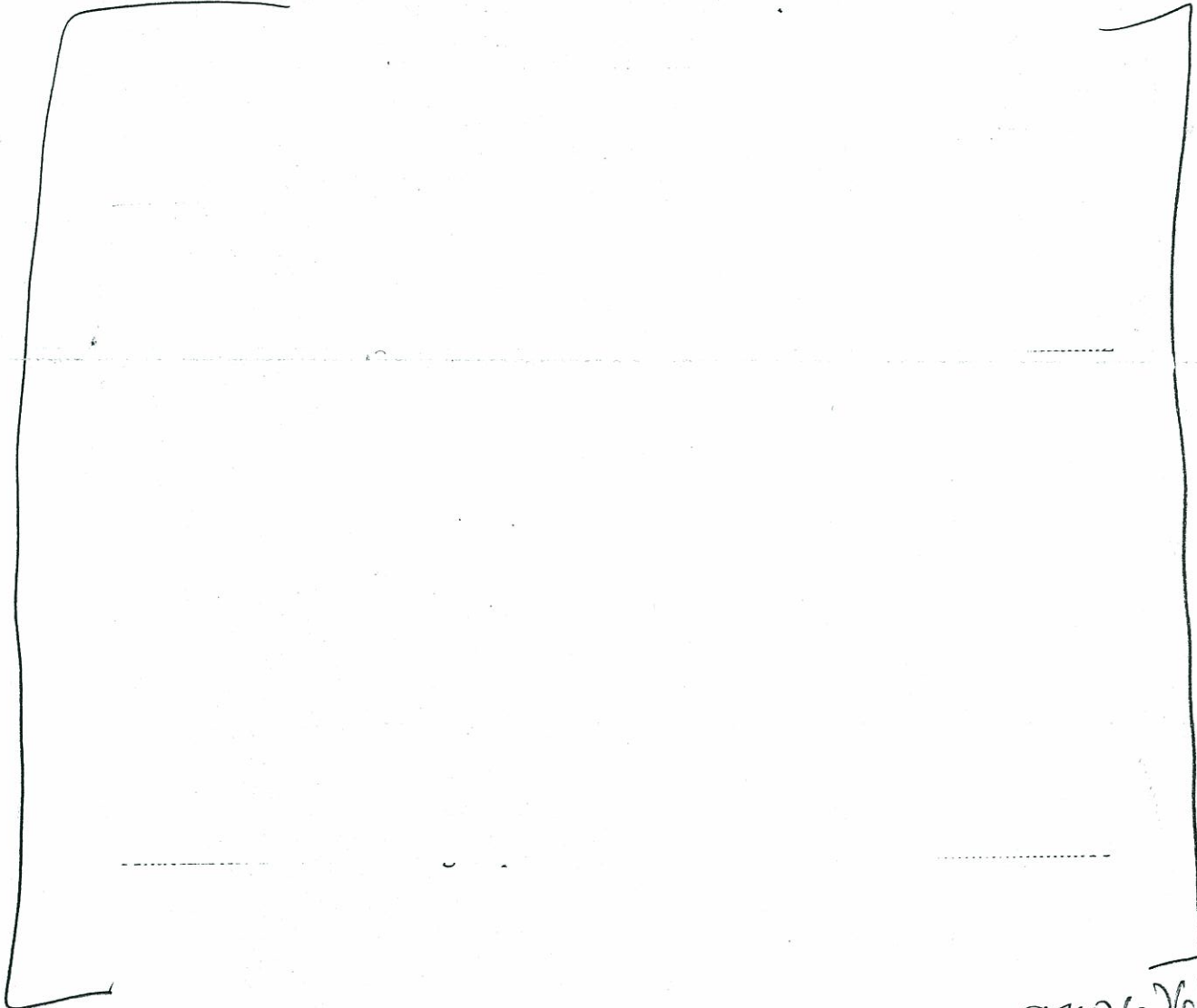
**s. 17 (1)(c)**

**s. 15(1)(k)**

**s. 21(1)(a)(ii)(b)(c)(i)(iii)**

**SCHEDULE 28 - EMPLOYMENT MATTERS**

This Schedule 28 (*Employment Matters*) is made pursuant to the Master Services Agreement effective November 1, 2012 (the “**Agreement**”) by and between the Her Majesty the Queen in Right of the Province of Nova Scotia (the “**Province**”) and IBM Canada Ltd. (the “**Service Provider**”), and forms part of the Agreement.



5170(w)(w)

**Schedule 28  
Employment Matters**

**Pages 1 to 10**

**Withheld under**

**s. 17 (1)(c)(d)**

**s.20(1)**

**s. 21(1)(a)(ii)(b)(c)(i)(ii)(iii)**



## **SCHEDULE 29 - DEFINITIONS**

This Schedule 29 (Definitions) is made pursuant to the Master Services Agreement effective November 1, 2012 (the “**Agreement**”) by and between the Her Majesty the Queen in Right of the Province of Nova Scotia (the “**Province**”) and IBM Canada Ltd. (the “**Service Provider**”), and forms part of the Agreement.

**SCHEDULE 29**

**DEFINITIONS**

(Section 1.1)

In this Agreement, unless something in the subject matter or content is inconsistent therewith:

“**Access Subcontractor**” means a Subcontractor who has access to or custody of Province Data.

[ ] s.17(1)(d)

“**Adverse Impact**” means: (i) in the case of the Province, a material adverse effect on the Services provided to the Province or the results thereof, the Service Levels at which or Fees for which such Services are provided or the Province’s ability to comply with the terms or conditions of this Agreement; and (ii) in the case of the Service Provider, a material adverse effect on the Service Provider’s ability to provide the Services or the costs of providing such Services, to meet Service Levels or to comply with the Privacy and Security Obligations or other terms or conditions of this Agreement.

“**Affected Employees**” has the meaning ascribed to it in Schedule 28 (*Employment Matters*).

“**Affiliate**” has the meaning given to it in the *Companies Act* (Nova Scotia).

“**Agreement**” means this agreement, including its recitals and schedules annexed hereto or otherwise incorporated herein, and all Statements of Work and Change Orders entered into pursuant hereto, as amended from time to time.

“**Alternative Service Provider**” means any Person designated by the Province from time to time as an alternative service provider for any or all of the Services or services substantially similar to the Services, but only after such Person has been so designated by the Province as such.

[ ] s.17(1)(d)

“**Annual Operating Plan**” has the meaning given to it in Section 14.05 (*Annual Operating Plan*).

[

] S17(u)(d)

“**Applicable Law**” means any domestic or foreign law, rule, statute, subordinate legislation, regulation, by-law, order, ordinance, protocol, code, guideline, treaty, policy, notice, direction or judicial, arbitral, administrative, ministerial or departmental judgment, award, decree, treaty, directive, or other requirement or guideline, having the force of law and in force at any time during the Term, which applies to or is otherwise intended to govern or regulate any Person (including any Party), property, transaction, activity, event or other matter, including any such rule, order, judgment, directive or other requirement or guideline issued by any Governmental or Regulatory Authority.

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] S17(u)(d)

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] S17(u)(d)

“**Approval**” means, with respect to any matter, document, action or other thing to be consented, decided, to or otherwise approved, that the same action has the prior written approval of the Party in question, and “**Approved**” has a similar meaning.

“**Assigned Contract**” has the meaning given to it in Section 25.02 (*Indemnification by Service Provider*).

[

] S17(u)(d)

“**Auditors**” has the meaning given to it in Section 22.01 (*Access Rights*).

“**Authorized Personnel**” has the meaning ascribed to it in Schedule 23 (*Privacy and Security Obligations*).

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] S17(u)(d)

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] S17(u)(d)

“**Benchmark Report**” has the meaning given to it in Section 9.03 (*Benchmarker Report*).

“**Benchmarker**” has the meaning given to it in Section 9.01 (*Benchmarking*).



“**Benchmarking**” has the meaning given to it in Section 9.01 (*Benchmarking*).

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] S17U(D)

— S17U(D)

“**Broader Public Sector**” means: (i) all other levels of government within Nova Scotia including all municipalities, cities, towns, counties or other political jurisdictions of Nova Scotia; (ii) all crown corporations or agencies that are owned directly or indirectly by the Province or any of the foregoing; and (ii) all agencies, boards, councils, departments, authorities, tribunals and commission of the Province or of any of the foregoing; and includes any universities, colleges, schools, school boards, hospitals, clinics, health districts and health authorities in Nova Scotia.

“**Business Change Termination Notice**” has the meaning given to it in Section 7.14 (*Material Business Change*).

“**Business Continuity Plan**” means a roadmap and description of procedures, information and advance arrangements to guide the timely recovery and ongoing provision of services, programs and operations within a predefined period of time, following the declaration of a Disaster, which may include a Disaster Recovery Plan.

“**Business Continuity Representative**” has the meaning given to it in Section 18.03 (*Service Provider Representative*).

“**Business Day**” means any day other than a Saturday, Sunday or a statutory holiday in the Province of Nova Scotia.

“**Canadian Delivery Centre**” has the meaning given to it in Section 4.14(2) (*Restrictions on Shared Environment*).

“**Canadian Entity**” has the meaning given to it in Section 17.03 (*Canadian Entities*).

“**CCC**” means the Province’s Customer Competency Centre which provides support, prior to the execution of this SAP Services Schedule, for the SAP Applications to all of the Clients (including the Government of Nova Scotia) except those serviced by HASP.

“**CDHA**” means the Capital District Health Authority.

“**Change Directive**” has the meaning given to it in Section 7.09 (*Change Orders*).

“**Change Order Process**” has the meaning given to it in Section 7.04 (*Change Request*).

“**Change Order**” has the meaning given to it in Section 7.09 (*Change Orders*).

“**Change Proposal**” has the meaning given to it in Subsection 7.05(1)(b) (*Change Request Process*).

“**Change Request**” has the meaning given to it in Section 7.04 (*Change Request*).

“**Claims**” means any and all claims, legal or other proceedings, suits, actions, causes of action, losses, damages, liabilities, costs and expenses, and all reasonable legal fees suffered or incurred by a Person in defense thereof, and “**Claim**” means any one of them.

“**Clients**” means the entities set forth in 1.2 of Schedule 5 (*SAP Services*), or any other (i) any department, ministry, board, bureau, agency, instrumentality or other part of the Province; or (ii) any member of the Broader Public Sector; that receives or for whom the Province receives Services provided under this Agreement.

“**Collective Agreement**” has the meaning ascribed to it in Schedule 28 (*Employment Matters*).

“**Communication Plan**” means the communications protocols and processes to be followed by the Service Provider in connection with any communications to Clients, the Broader Public Sector, or to other Persons, in connection with the Services and this Agreement.

“**Compelled Party**” has the meaning given to it in Section 17.09 (*Disclosure Compelled by Law*).

“**Confidential Information**” has the meaning ascribed to it in Section 17.05 (*Confidential Information*).

“**Confidentiality Covenant**” has the meaning ascribed to it in Schedule 23 (*Privacy and Security Obligations*).

“**Consequential Damages**” has the meaning given to it in Section 25.08 (*Limitation of Liability*).

“**Content**” means works, data, text, information, audio, video, trade-marks, trade names, logos, domain names or other distinguishing features, graphics, advertisements, graphical user interface elements and designs, photography and other works, in any form or medium whatsoever.

“**Contract Year**” means each twelve (12) month period commencing on April 1 of a particular year and ending on March 31 of the immediately following year, except that the following will apply, as applicable: (a) the first “**Contract Year**” will be a partial “**Contract Year**” commencing on the Effective Date and ending on March 31, of the immediately following year; and (b) the



final Contract Year will be a partial “Contract Year” commencing on April 1 in the final year and ending on Expiration or Termination.

“**Control**” means the power or authority to manage, restrict, regulate or administer the use or disclosure of a Record.

“**Corporate Control**” of a corporation or other entity is directly held by a Person where securities of the corporation or other entity to which are attached more than 50% of the votes that may be cast to elect directors or persons acting in a similar capacity of the corporation or other entity are directly held, other than by way of security only, by or for the benefit of such Person, and “**Corporately Controlled**” has a corresponding meaning.

[ ] s17(u)(d)

“**CSAE 3416 Audit**” means, at any time, the Canadian Standard on Assurance Engagements For Reporting on Controls at a Service Organization Number 3416 (CSAE 3416), Type 2 of the *Handbook of the Canadian Institute of Chartered Accountants* at such time or equivalent report in effect at such time.

[ ] s17(u)(d)

“**Custody**” means to have physical possession and immediate responsibility for the safe-keeping, preservation and protection of a Record.

“**Damages Cap**” has the meaning given to it in Section 25.08 (*Indemnification by Service Provider*).

“**Damages Multiplier**” has the meaning given to it in Section 25.08 (*Limitation of Liability*).

“**Declining Employees**” has the meaning ascribed to it in Schedule 28.

“**Dedicated Employee**” has the meaning given to it in Section 29.04 (*Dedicated Employees*).

[ ] s17(u)(d)



[ ..... ] S17(00)

**“Deliverables”** means: (1) all Software, Systems, Content, Documentation, Confidential Information, Information and Modifications thereto (including Modifications to SAP Software) that are Service Provider’s responsibility to; (i) create, design, or develop, and (ii) provide or deliver to the Province; under this Agreement (including under any Change Order) including such Software, Systems, Content, Documentation, Confidential Information and Information and Modifications thereto; (i) created, designed, or developed, and (ii) provided or delivered to the Province; by Service Provider Subcontractors; and (2) all Modifications, other Changes to or derivative works created or developed from a Deliverable referred to in (1) made in accordance with this Agreement, but excluding any Software, Systems, Content, Documentation, Confidential Information and Information provided under separate license or agreement terms (including without limitation the SAP Software), Service Provider Owned Property and Service Provider Commercial Software. For clarity, the creation, design or development of Open Source Software and Modifications thereto is outside the scope of the Service Provider’s responsibility.

[ ..... ] S17(00)

**“Designated Representative”** has the meaning ascribed to it in Schedule 23 (*Privacy and Security Obligations*).

**“Directive”** has the meaning given to it in Section 11.04 (*Province’s Right to Issue Directives*).

**“Disabling Code”** means any virus, Trojan horse, worm, logic bomb, drop-dead device, backdoor, shutdown mechanism or similar Software, Hardware, System or combination of any of the foregoing that is intended or designed to, is operable to, is likely to or has the effect of disabling, deleting, erasing, denying authorized access to, permitting unauthorized access to, repossessing, damaging, destroying, corrupting or otherwise affecting or interfering with the provision of the Services or the normal use of any of Service Provider’s or the Province’s Hardware, Software or Systems (including any Documentation or any Deliverable) or any data or files on or used in conjunction with any of the aforementioned.

**“Disaster Recovery Plan”** of a Party means details of the back-up, recovery procedures and communication procedures to guide the disaster recovery efforts of a Party.

**“Disaster”** means any event or circumstance that adversely affects or disrupts (or has the potential to adversely affect or disrupt) the Services, or the ability of either Party as applicable to otherwise comply with the terms of this Agreement or to otherwise operate their businesses,

whether within or outside the control of either Party as applicable including, without limitation, any Force Majeure Event.

“**Disclosing Party**” has the meaning set out in Section 17.05 (*Confidential Information*).

“**Disclosure Order**” has the meaning given to it in Section 17.02 (*Foreign Disclosures*).

“**Dispute Resolution Process**” means the informal and formal process established under Article 27 (*Dispute Resolution*) for the resolution of Disputes.

“**Dispute**” means a dispute, Claim, or disagreement between the Parties arising out of or related to the Services or the Agreement.

“**Disputed Fees Cap**” has the meaning given to it in Section 16.06 (*Disputed Payments*).

“**Document Deliverables**” refers to the Deliverables that are documents identified in Section 22 of Schedule 5 (*SAP Services*) or elsewhere in this Agreement.

“**Documentation**” means the Operations Manuals and other documentation regarding the capabilities, implementation, installation, operation, application, use or method of performance of that which is being documented, including, as applicable and available, user manuals, business process maps, functional specifications, technical specifications, systems operations manuals, console operations manuals, linking instructions, error logs and reports, scripts, forms, templates, and other manuals and reports, whether in printed or electronic format.

“**Effective Date**” has the meaning give to it in the first page of this Agreement.

“**Employee on Leave**” has the meaning ascribed to it in Schedule 28 (*Employment Matters*).

“**Event of Insolvency**” means the occurrence of any one of the following events in respect of any Person:

- (a) if the Person:
  - (i) other than in connection with a bona fide corporate reorganization which does not otherwise contravene this Agreement, is wound up, dissolved, liquidated or has its existence terminated or has any resolution passed therefor or makes a general assignment for the benefit of its creditors or a proposal under any present or future law relating to bankruptcy, insolvency, or other relief for or against debtors generally, domestic or foreign, including the *Bankruptcy and Insolvency Act* (Canada),



- (ii) makes an application to the applicable court for a compromise or arrangement under any present or future law relating to bankruptcy, insolvency, or other relief for or against debtors generally, domestic or foreign, including the *Companies' Creditors Arrangement Act* (Canada), or
  - (iii) files any written request, application, answer or other document seeking or consenting to any re-organization, arrangement, composition, readjustment, liquidation or similar relief for itself under any present or future law relating to bankruptcy, insolvency, or other relief for or against debtors generally, domestic or foreign, including any notice of intention to make a proposal pursuant to the *Bankruptcy and Insolvency Act* (Canada);
- (b) if a court of competent jurisdiction enters an order, judgment, or decree against the Person which approves or provides for any reorganization, arrangement, composition, re-adjustment, liquidation, dissolution, winding up, termination of existence, declaration of bankruptcy or insolvency or similar relief with respect to such Person, under any present or future law relating to bankruptcy, insolvency, or other relief for or against debtors generally and such order, judgment, or decree remains un-vacated and un-stayed for an aggregate period of sixty (60) days (whether or not consecutive) from the date it is made;
  - (c) if any trustee in bankruptcy, receiver, receiver and manager, liquidator or any other officer with similar powers is appointed for or with respect to such Person and that appointment remains in effect for an aggregate period of sixty (60) days (whether or not consecutive) from the date of the appointment; or
  - (d) if an encumbrance or anyone acting on behalf of an encumbrancer takes possession of all or substantially all of the property of such Person and remains in possession for an aggregate period of sixty (60) days (whether or not consecutive) from the first date of the taking of possession.

**“Extension”** has the meaning given to it in Section 2.06 (*One Year Extension*).

**“External Confidentiality Covenant”** has the meaning given to it in Section 1.2(d) of Schedule 23 (*Privacy and Security Obligations*).

**“External CSAE 3416 Consultant”** has the meaning given to it in Section 22.06 (*CSAE 3416 Audit*).

**“External Personnel”** has the meaning given to it in Section 12.05 (*General Principles Regarding Personnel*).



“**Fees**” means the fees set out in Schedule 22 (*Fees*) that are payable by the Province to the Service Provider in consideration for the provision of the Services pursuant to the terms of this Agreement.

“**Force Majeure Event**” means the occurrence of one or more of the following events or any other event that is beyond the reasonable control of a Party, and that interferes with, delays or prevents performance of the obligations of a Party under this Agreement, provided that the non-performing Party is without fault in causing or failing to prevent such occurrence, and such occurrence cannot be circumvented through the use of reasonable alternative sources, workaround plans or other similar means (including, with respect to the Service Provider, by the Service Provider meeting its business continuity and disaster recovery obligations described in this Agreement), and includes the following: (a) explosions, fires, floods, earthquakes, catastrophic weather conditions or other elements of nature or acts of God; (b) acts of war (declared or undeclared), acts of terrorism, insurrection, riots, civil disorders, rebellion or sabotage; (c) failures or fluctuations in electrical power or telecommunications services or other similar public utilities; and (d) labour disruptions, including a labour dispute, lockout, strike or other industrial action or labour strife, whether direct or indirect and whether lawful or unlawful; and (e) other events which the Parties expressly agree in writing as constituting a “Force Majeure Event”. For greater clarification, a “Force Majeure Event” will specifically exclude: (1) lack of financial capacity; and (2) any non-performance or other similar failure on behalf of a Subcontractor or Supplier unless such non-performance or similar failure results from one or more of the events described in paragraphs (a) to (e) above that is beyond the reasonable control of the Subcontractor or Supplier, and that interferes with, delays or prevents performance of the obligations of the Subcontractor or Supplier, provided that the non-performing Subcontractor or Supplier is without fault in causing or failing to prevent such occurrence, and such occurrence cannot be circumvented through the use of reasonable alternative sources, workaround plans or other similar means.

“**Foreign Disclosure Laws**” means any laws, statutes, by-laws, treaty, directive, policy having the force of law, order, judgment, injunction, award, decree or other similar matter of any government, legislature (or similar body), court, governmental department, commission, board, bureau, agency, instrumentality, province, state, territory, association, county, municipality, city, town or other political division of competent governmental jurisdiction, whether not or in the future constituted, outside of Canada, that may require, or otherwise demand access, use or disclosure of Personal Information, whether to intercept or obstruct terrorism, or for any other reason.

“**Foreign Employed Individual**” means individuals who have entered into an employment agreement or other similar agreement for the provision of personal services thereunder, whether express or implied by law, with a Person that is not a Canadian Entity.

“**FTE**” has the meaning given to such term in Section 2.1 of Schedule 30 (*Hiring Commitment*).

“**GAAP**” has the meaning given to it in Section 1.06 (*Accounting Policy*).

“**Governance Manual**” has the meaning set out in Section 6 of Schedule 16 (*Governance*).

“**Governance Process**” means the interactions between the Parties through the established governance channels and processes described in Schedule 16 (*Governance*), as applicable.

“**Governmental Authority**” means any court or governmental department, commission, board, bureau, agency, or instrumentality of Canada, or of any province, state, territory, county, municipality, city, town, or other political jurisdiction, whether domestic or foreign, and whether now or in the future constituted or existing, having competent jurisdiction over the business that is the subject of the Services or over any Party to this Agreement.

“**Handle**” means to access, receive, collect, use, store, process, record, disclose, transfer, retain, dispose of, destroy, manage or otherwise handle.

“**Hand-Over Date**” means [ ] as such date may be changed in accordance with § 174(D) Article 3 (*Transition In*).

“**Hardware**” means hardware, mainframes, personal computers, servers, client/server stations, network equipment, routers, cables, circuits, switches, semi-conductor chips, embedded Software, communication lines and other equipment.

“**HASP**” means the Province’s Health Administrative Services Program (SAP) which provides support, prior to the execution of this SAP Services Schedule, for the SAP Applications for HASP Clients.

“**Hire Date**” has the meaning ascribed to it in Schedule 28 (*Employment Matters*).

“**Hired Employees**” has the meaning in Schedule 28 (*Employment Matters*).

“**Hires**” has the meaning in Section 2.1 of Schedule 30 (*Hiring Commitment*).

[ ] § 174(D)

“**HITS**” means the Province’s Health Information Technology Service Desk, which provides basic IT support for the HASP portion of the End User Community.

“**HST**” means any harmonized sales tax.



“**Incident Management Procedures**” has the meaning given to it in Section 8.09(1)(a) (*Issue Management*).

“**Incident**” is defined as a deviation from an expected norm that results in a loss, or potential loss of the availability or performance of an IT resource or its supporting environment which is managed by the Service Provider, including the SAP Services or the SAP Applications.

“**Indemnified Party**” has the meaning given to it in Subsection 25.04(a) (*Third Party Claim Process*).

“**Indemnifying Party**” has the meaning given to it in Subsection 25.04(a) (*Third Party Claim Process*).

“**Information**” means material, information or data in any form or notation and however stored, fixed, expressed or embodied (whether embodied in a material, tangible or electronic form) whether originals or copies, including: all processes, business rules, business processes, business process flows, know-how, procedures, standards, specifications, designs and formulas, databases, ideas, opinions, Software, Content, documentation, information relating to Hardware, all information and data of a business nature including information and data related to past, present and prospective businesses, products and services, internal management and finances, marketing plans and techniques, price lists, financial results, customers, employees, operations, facilities, assets and programs. Information will be considered as such whether or not it is protected by or embodies any Intellectual Property Right and whether or not it is in human or machine readable form.

“**Initial Term**” means the initial term of this Agreement, as more particularly described in Section 2.01(1) (*Initial Term*).

[

] S17(1)(d)

“**Intellectual Property Rights**” means any and all rights in respect of, in or to Intellectual Property, including all applications, registrations, renewals, extensions, continuations, divisions, reissues, and restorations relating to any such rights (where applicable), now or hereafter in force and effect throughout the world (including any rights in any of the foregoing).

“**Intellectual Property**” means any statutory provision or common law principle applicable to this Agreement that provides for rights in intellectual property of whatever nature and kind in any jurisdiction, and to the extent they provide a right in software, trademarks, official marks, brand names, business names, trade names, domain names, trading styles, logos, trade secrets, inventions, innovations, discoveries, research, processes, developments, formulae, product formulations, compositions of matter, databases, works of authorship, works subject to



copyright, guides, manuals and designs, and including Modifications to any of the foregoing, in all cases whether patented or patentable, whether registered or unregistered, and in any medium whatsoever.

“**Joint Verification**” has the meaning given to it in Section 16.09 (*Joint Verification*).

[ ] S17U(D)

“**Key Positions**” has the meaning given to it in Section 12.02 (*Key Positions*).

“**License Termination Date**” has the meaning given to it in Section 12.05 (*General Principles Regarding Personnel*).

“**Liens**” means any and all liens, security interests, encumbrances, pledges, mortgages or similar charges of any kind whatsoever.

“**Losses**” means any and all damages, Claims, fines, penalties, deficiencies, losses, liabilities (including applicable settlements and judgments), costs and expenses (including, as applicable, interest, court costs, reasonable fees and expenses of lawyers, accountants and other experts and professionals or other reasonable fees and expenses of litigation or other proceedings or of any Claim, default or assessment).

“**Management Committee**” has the meaning given to it in Schedule 16 (*Governance*).

“**Mandatory Change Request**” has the meaning given to it in Section 7.08(1) (*Implementation of Mandatory Changes*).

“**Mandatory Change**” has the meaning given to it in Section 7.07 (*Mandatory Changes*).

“**Material Breach**” has the meaning given to it in Section 28.01 (*Service Provider Material Breach*).

“**Material Business Change Request**” has the meaning given to it in Section 7.14 (*Material Business Change*).

“**Material Business Change**” has the meaning given to it in Section 7.14 (*Material Business Change*).

“**Material Infrastructure Change**” has the meaning given to it in Section 21.05 (*Material Changes to Province Shared Infrastructure*).

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] S. 17(4)(D)  
 ] S. 17(4)(D)  
 ] S. 17(4)(D)

“**Mission Critical SAP Application**” is any SAP Application that the Province identifies is in regular use by the Province or a Client, or is important to the business operations of the Province or a Client, including without limitation any production SAP System and development or Q/A systems in regular use.

“**Modifications**” means all corrections, modifications, enhancements, improvements, supplements or derivative works, and includes interface applications in connection with any Software. “Modify” has a corresponding meaning.

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] S. 17(4)(D)  
 ] S. 17(4)(D)

“**NSBI Agreement**” means the agreement entered into between NSBI and the Service Provider in respect of the Canadian Delivery Centre contemporaneous with this Agreement.

“**NSBI**” means Nova Scotia Business Inc.

“**NSLC**” means the Nova Scotia Liquor Corporation.

“**Open Source Software**” means any Software (including its source code and any related documentation) that is available without fee or royalty, with source code generally available, that allows for the creation of derivative works, and that is distributed under terms that are generally referred to as an open source license, including versions of the Apache License, licenses substantially similar to the BSD License, the GNU General Public License and other open source licenses approved by the Open Source Initiative.

“**Operational Committee**” has the meaning given to it in Schedule 16 (*Governance*).



“**Operations Manual**” has the meaning given to it in Section 4.08 (*Documentation*).

“**Opportunity**” has the meaning given to it in Section 23.05 (*Opportunity*).

“**Ordinary Course Changes**” has the meaning given to it in Section 7.01 (*Ordinary Course Changes*).

“**Other Taxes**” mean any and all taxes, duties, fees, levies, or other assessments imposed or collected by any Taxing Authority together with any interest and penalties (imposed on the responsible Party) and additional amounts imposed with respect thereto (including any fee, duty, levy, assessment or other charge in the nature of or in lieu of any tax) and any liability in respect of any of the forgoing as a result of being a member of any affiliated, consolidated, combined, unitary or similar group but not including Transaction Taxes.

“**Out-of-Canada Personnel**” has the meaning ascribed to it in Schedule 23 (*Privacy and Security Obligations*).

“**Parties**” means the Service Provider and the Province, and “**Party**” means either one of them, as applicable.

“**Person**” means any natural person, corporation, division of a corporation, partnership, joint venture (which includes a co-ownership), association, company, estate, unincorporated organization, society, trust, government, agency or Governmental Authority.

“**Personal Information**” means all recorded information that is about an identifiable individual or is defined or deemed as “personal information” pursuant to any laws or regulations related to privacy or data protection that are applicable to the Province or to the Service Provider (including, without limitation, any information that constitutes “personal information” as such term is defined, from time to time, pursuant to the *Freedom of Information and Protection of Privacy Act, SNS 1993, c 5* (Nova Scotia) or the *Personal Information International Disclosure Prevention Act* (Nova Scotia))

“**Personnel**” has the meaning given to it in Section 12.05 (*General Principles Regarding Personnel*).

[ ( . x ✓ ----- ]

] S. 17(1)

“**Pricing Proposal**” has the meaning given to it in Section 9.04 (*Benchmarker’s Adjustment – Cost Benchmarking*).



[ ] S17(4)(D)

“**Privacy and Security Obligations**” has the meaning given to it in Section 17.01 (*Privacy and Security Obligations*), and as more fully set forth in Schedule 23 (*Privacy and Security Obligations*).

“**Privacy Impact Assessment**” means a review of processes, procedures and practices to ensure that Personal Information is collected, managed, stored and protected in accordance with the applicable Privacy Laws.

“**Privacy Laws**” mean all Applicable Laws in any jurisdiction governing the Handling of Information about an identifiable individual, including the *Personal Information and Protection of Electronic Documents Act* (Canada), *Freedom of Information and Protection of Privacy Act* (Nova Scotia) and the *Personal Information International Disclosure Prevention Act* (Nova Scotia).

[ ] S.17(4)(D)

“**Project Document**” has the meaning set out in Section 2.1 of Schedule 6 (*Project Work*).

“**Project Services**” refers to the Project-related Services described in Schedule 6 (*Project Work*).

“**Project**” has the meaning ascribed to it in Schedule 6 (*Project Work*).

“**Province Applicable Laws**” has the meaning given to it in Subsection 4.07(1)(d) (*Compliance with Laws and Policies*).

“**Province Business Continuity Plan**” means the Province’s Business Continuity Plan, which is distinct from the Province’s Disaster Recovery Plan.

“**Province Confidential Information**” means Confidential Information of the Province (as set out in Section 17.05 (*Confidential Information*)).

“**Province Data**” means: (1) all Personal Information; (2) all Information that was provided, collected, generated, processed, stored, accessed, transmitted, referenced or used by the Province Systems; and (3) all Information relating to, of or provided by the Province, any Client or member of the Broader Public Sector, the Province Personnel, or an Alternative Service Provider that was provided, collected, generated, processed, stored, accessed, transmitted, referenced or used on the SAP Software and any Deliverables.

“**Province Disclosing Party**” has the meaning given to it in Section 17.05 (*Confidential Information*).

“**Province Indemnified Parties**” has the meaning given to it in Section 25.02 (*Indemnification by the Service Provider*).

“**Province Infringement Claim**” has the meaning given to it in Section 25.05 (*Province Intellectual Property Indemnification*).

“**Province Licensed Software**” has the meaning set out in Section 20.06(1) (*Use of Province Licensed Software*).

“**Province Mark**” has the meaning given to it in Section 10.01(1) (*Use of Province Marks*).

“**Province Material Breach**” has the meaning given to it in Section (28.03) (*Material Breach by Province*).

“**Province of Nova Scotia Conflict of Interest Policy**” has the meaning given to it in Section 32.03 (*Conflict of Interest*).

“**Province or CDHA Benefit Plans**” has the meaning ascribed to it in Schedule 28 (*Employment Matters*).

“**Province or CDHA Pension Plan**” has the meaning ascribed to it in Schedule 28 (*Employment Matters*).

[

] S17000

“**Province Policies**” has the meaning set out in Section (4.07) (*Compliance with Laws and Policies*).

“**Province Proprietary Software**” has the meaning set out in Section 20.01(3) (*Ownership of Province*).

“**Province Records**” means all Records containing Province Data and all Province Data relevant to the performance of the Services and other transactions contemplated in this Agreement, or any other Province Confidential Information, and includes any Transferred Records.

“**Province Sensitive Information**” has the meaning ascribed to it in Schedule 23 (*Privacy and Security Obligations*).



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S17020)

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“**Province Systems**” means Systems of the Province used in receipt of the Services.

“**Publicity Materials**” has the meaning given to it in Section 10.04(1) (*Publicity*).

“**Receiving Party**” has the meaning set out in Section 17.05 (*Confidential Information*).

“**Records**” means books, records, reports, documents, maps, drawings, correspondence, system logs, system development records, accounts, invoices, backup data (including original source documents) and other similar documents, images, writings or other recordings of information by any means whether graphic, electronic, audio, mechanical or otherwise.

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S17020)

“**Remove**” has the meaning ascribed to it in Schedule 23 (*Privacy and Security Obligations*).

“**Renewal Term**” has the meaning given in Section 2.04 (*Renewal Term*).

“**Representative Sample**” has the meaning given to it in Section 9.01 (*Benchmarking*).

[

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S17020)

“**Response Period**” has the meaning given to it in Section 7.14 (*Material Business Change*).

[

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S17020)

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[Redacted]

S17(u)(d)

“SAP Applications” has the meaning ascribed to it in Section 23.1 of Schedule 5 (*SAP Services*).

[Redacted]

S17(u)(d)

S17(u)(d)

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S17(u)(d)

S17(u)(d)

“SAP Software” means the Software licensed to the Province under the license agreement between the Province and SAP Canada Inc. dated May 14, 1996, as amended, and which forms part of the SAP Applications in respect of which the Service Provider is providing Services under this Agreement.

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] S17U(D)  
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] S17U(D)

“**SAP-HASP Triage Group**” means the HASP resources which determine the disposition of HITS tickets, and whether such tickets should be forwarded to the SAP Service Desk.

“**Schedules**” means the schedules listed in Section 1.10 (*Schedules*) and any other schedules incorporated into and forming part of this Agreement in accordance with the terms and conditions hereof.

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] S17U(D)  
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] S17U(D)

“**Service Desk**” has the meaning ascribed to it in the SAP Services Schedule.

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] S17U(D)  
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[Redacted text block]

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[Redacted text block]

S17(u)(d)

S17(u)(d)

S17(u)(d)

“Service Level Schedule” means Schedule 12 (*Service Levels*).

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

S17(u)(d)

S17(u)(d)

S17(u)(d)

“Service Locations” means has the meaning given to it in Section 5.01 (*Overview of Service Locations*).

“Service Provider Applicable Laws” has the meaning set out in Section 4.07(1)(a).

“Service Provider Assigned Contract” has the meaning given to it in Section 25.02 (*Indemnification by Service Provider*).

[Redacted text block]

S17(u)(d)



[ ..... ] S17(1)(1)

[ ..... ] S17(1)(1)

“**Service Provider CSAE 3416 Auditor**” has the meaning given to it in Section 22.06 (*CSAE 3416 Audit*).

“**Service Provider Facility**” means any facility, site or other physical location owned, leased, or otherwise occupied by Service Provider or any Service Provider Subcontractor from which Service Provider or any Service Provider Subcontractor provides any Service.

“**Service Provider Group**” has the meaning given to it in Subsection 33.13(4) (*Governing Law*) and “**Service Provider Group Members**” means any member of the Service Provider Group.

“**Service Provider Indemnified Parties**” has the meaning given to it in Section 25.03 (*Indemnification by the Province*).

“**Service Provider Infringement Claim**” has the meaning given to it in Section 25.04 (*Province Intellectual Property Indemnification*).

“**Service Provider Mark**” has the meaning given to it in Section 10.03 (*Service Provider Marks*).

“**Service Provider Owned Property**” has the meaning set out in Section 20.02 (*Ownership of Service Provider Owned Property*).

“**Service Provider Parent**” means International Business Machines Corporation

“**Service Provider Pension Plan**” has the meaning ascribed to it in Schedule 28 (*Employment Matters*).

“**Service Provider**” has the meaning given to it in the first paragraph of this Agreement.

“**Service Request**” has the meaning set out in Section 3.4 of Exhibit A of Schedule 12 (*Service Levels*).

“**Services**” has the meaning given to it in Section 4.01 (*Scope of Services*).

“**Shared Infrastructure Use Period**” has the meaning given to it in Section 21.02 (*Use of Province Shared Infrastructure*).

“**Software**” means software applications, software tools, methodologies and computer programs, including all versions thereof, and all related documentation, manuals, program files, data files, computer related data, field and data definitions and relationships, data definition specifications, data models, program and system logic, program modules, routines, sub-routines, algorithms, program architecture, design concepts, system designs, program structure, sequence and organization, screen displays and report layouts, technology and techniques, object code (and if obtained, source code) and interfaces.

“**Source Code**” means the human-readable form of a computer instruction, including related system documentation, applicable comments and procedural codes such as job control language.

“**Specific Security Measures**” has the meaning ascribed to it in Schedule 23 (*Privacy and Security Obligations*).

“**Specified Privacy and Security Policies**” has the meaning ascribed to it in Schedule 23 (*Privacy and Security Obligations*).

[REDACTED]

] S.17(1)(d)  
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] S.17(1)(d)

“**Subcontract**” means a contract entered into between the Service Provider and a Subcontractor, but does not include Supplier Agreements.

“**Subcontractor**” means any third party Person engaged by the Service Provider to perform any of the Services on behalf of the Service Provider. The term “Subcontractor” does not include a Supplier but does include a subcontractor of a Subcontractor.

“**Successor**” has the meaning given to it in Section 29.03 (*Post termination Assistance*).

“**Supplier**” means a third party supplier for the delivery and provision of non-material and ordinary course goods and services relating to or in connection with the Services contemplated



by this Agreement, including; i) Persons engaged by Service Provider solely for the purpose of supporting hardware and commercially available infrastructure software, who are providing support under standard maintenance or support arrangements and are not providing customized services; and ii) ancillary services such as janitorial or courier services; but expressly excluding Subcontractors.

“**Support Personnel**” means the resources assigned by Service Provider to provide the Services specified in the SAP Services Schedule. While specific resources, roles or titles may be identified individually at times in the SAP Services Schedule for clarity or elaboration on a particular responsibility, the term Support Personnel applies collectively to all Service Provider resources engaged on the account.

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] S17(1)(2)

“**Systems**” means the Hardware and Software which is required or otherwise used in the performance or receipt of the Services, as applicable.

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] S17(1)(A)

“**Target Results**” has the meaning given to it in Section 9.04 (*Benchmarkers’ Adjustment – Cost Benchmarking*).

“**Taxing Authority**” means any multinational, national, federal, state, provincial, local, municipal or other Governmental Authority responsible for the imposition or collection of any taxes, duties, fees, levies, or other assessments on any Person, or in respect of the Services provided under this Agreement or the Fees payable in respect thereof.

“**Telecommunications**” means the emission, transmission or reception of intelligence by any wire, cable, radio, optical or other electromagnetic System, or by any similar technical System.

“**Term**” means in the context of this Agreement, the Initial Term of this Agreement and any Renewal Term and/or Extension of this Agreement, as applicable.

“**Termination Assistance Period**” has the meaning set out in subsection 29.02 (*Termination Assistance Period*).

“**Termination Assistance Plan**” has the meaning given to it in subsection 29.01(2) (*Termination Assistance Plan*).



“**Termination Date**” means: the effective date of the expiry or earlier termination of the last applicable “term” of the Services (being the Initial Term, the Renewal Term, or any applicable Extension).

“**Termination Notice**” means a written notice terminating the Services or this Agreement, given by one Party to the other in accordance with the terms of this Agreement.

“**Termination Services**” has the meaning given to it in subsection 29.01(1) (*Termination Transition Framework and Plan*).

“**Termination Transition Framework**” has the meaning given to it in Section 29.01 (*Termination Transition Framework and Plan*).

“**Termination**” means the expiry or earlier termination of this Agreement pursuant to the provisions of this Agreement.

“**Third Party Software**” means any Software owned by a Third Party, and includes the Province Licensed Software.

“**Third Party**” means a Person who is not a Party.

“**Toolbox Materials**” has the meaning set out in Section 20.07 (*Use of Toolbox Materials by Service Provider*).

“**Trade-marks**” means trade-marks, trade-names, brands, trade dress, business names, domain names, designs, graphics, logos and other commercial symbols and indicia of origin whether registered or not and any goodwill associated therewith.

“**Transaction Documents**” means, collectively, this Agreement, the Transition Agreement and such other agreements between the Parties as may be identified by the Parties as constituting a Transaction Document.

“**Transaction Taxes**” mean all applicable taxes (such as sales, use, transfer, gross receipts, excise, occupation, goods and services, harmonized and value-added taxes, and other transaction-based taxes), (and for greater clarification, including HST), duties, levies, fees or other assessments on Service Provider’s Fees or the Services under this Agreement imposed or collected by any Taxing Authority together with any interest and penalties imposed on the responsible Party by a Governmental Authority.

“**Transferred Asset**” means any Hardware, Software, Systems, real property or other equipment, assets or facilities identified as Transferred Assets in a Statement of Work or Change Order.

“**Transferred Records**” means those Records transferred by the Province to the Service Provider under the terms of this Agreement.

“**Transformation Plan**” has the meaning given to it in Section 6.02 (*Transformation Plan*).

“**Transformation Projects**” has the meaning given to it in Section 6.01 (*Transformation Program*).

“**Transformation**” means the orderly transition of the Services from the form of Services contemplated on the Hand-Over Date to the form of Services set forth in the Transformation Plan.

“**Transition Agreement**” has the meaning given to it in Section 3.01 (*Hand-Over of Services*).

“**Transition Governance Process**” has the meaning given to it in Section 3.04 (*Transition Management*).

[ ] S1741000

“**Transition Manager**” has the meaning given to it in Section 3.04 (*Transition Management*).

“**Transition Period**” means the period of time from the Effective Date until the Hand-Over Date.

“**Transition Plan**” has the meaning given to it in Section 3.02 (*Transition Services*).

“**Transition Services**” has the meaning given to it in Section 3.02 (*Transition Services*).

“**Transition**” has the meaning given to it in Section 3.01 (*Hand-Over of Services*).

“**User Community**” has the meaning ascribed to it in Section 2 of Schedule 5 (*SAP Services*).

“**Warranty Period**” has the meaning given to it in Section 24.04 (*Service Provider Deliverables*).

[ ] S1741000

In addition to the definitions set out above, any capitalized terms defined elsewhere in this Agreement will have the meanings so given to them.

**SCHEDULE 30 - HIRING COMMITMENT**

This Schedule 30 – Hiring Commitment is made pursuant to the Master Services Agreement effective November 1, 2012 (the “Master Services Agreement”) by and between the Her Majesty the Queen in Right of the Province of Nova Scotia (the “Province”) and IBM Canada Limited (“IBM”), and forms part of the Master Services Agreement.

[Redacted content with handwritten annotations: s17(u)(e)(d), s17(c)(d)(a), s21(c)(a)(ii), (b)(i)(ii)]



**Schedule 30  
Hiring Commitment**

**Pages 2 to 3**

**Withheld under**

**s. 17 (1)(c)(d)**

**s. 21(1)(a)(ii)(b)(c)(i)(iii)**