

THIS AGREEMENT made in duplicate as of the _____ day of June, 2022.

BETWEEN:

THE CITY OF FREDERICTON, a local government under and by virtue of the *Local Governance Act*, SNB 2017, c.18, located at 397 Queen Street, Fredericton, New Brunswick, E3B 1B5 (hereinafter called the "Local Government")

OF THE FIRST PART

AND

SUSTAINABILITY SOLUTIONS GROUP, incorporated under the *Canada Cooperatives Act* with its head office at 49 Alex Cox Road, Tatamagouche, Nova Scotia, B0K 1V0, (hereinafter called the "Supplier")

OF THE SECOND PART

(each a "Party", collectively the "Parties")

WHEREAS the Local Government issued a Request for Proposal P22-21 for The Supply of Consultation Services For A Net Zero Corporate Engagement Strategy dated April 8, 2022, with a closing date of May 5, 2022 (the "RFP"), inviting submission of proposals to provide the Services, as hereinafter defined;

AND WHEREAS the Supplier provides a net zero emissions corporate engagement strategy and submitted a proposal to the Local Government dated May 5, 2022 (the "Proposal") in response to the RFP as the Supplier wishes to provide products and services to the Local Government;

AND WHEREAS the Local Government adopted a resolution on June 13, 2022, authorizing the award of the RFP to the Supplier and authorized and approved this Agreement between the Parties;

AND WHEREAS the Parties wish to enter into this Agreement pursuant to the RFP, and the terms and conditions set forth herein;

NOW THEREFORE in consideration of the terms and conditions and mutual covenants and agreements set out herein, the receipt and sufficiency of which are hereby acknowledged by each of the Parties, the Supplier and the Local Government agree as follows:

1. SERVICES AND TERM

1.1 The Supplier shall, notwithstanding the date signed, provide and deliver the services, and/or products and perform the work (collectively the "Services") described in Schedule A, in accordance with the terms and conditions of this Agreement, for a period of one (1) year commencing on June 1, 2022 and expiring on May 31, 2023 (the "Term"), unless terminated earlier or renewed in accordance with this Agreement.

- 1.2 The Local Government may at its sole discretion and option renew this Agreement for one (1) additional one (1) year term (a "Renewal Term"). The representatives of the Parties identified under Section 19.11 Notices shall acknowledge any Renewal Terms. The Renewal Term would commence on June 1, 2023 and would expire on May 31, 2024. The Local Government shall provide notice of any intention to renew this Agreement to the Supplier not less than thirty (30) days prior to the end of the Term for the Renewal Term. The terms and conditions of this Agreement in effect at the end of the Term shall continue for any and all Renewal Terms, in each case, subject to any amendment in accordance with this Agreement.
- 1.3 Any additional services, products or goods to be provided by the Supplier under this Agreement, other than the Services, must be approved in writing in advance by both Parties in a Statement of Work before the Supplier may perform such services. In the event that any such additional services are performed by the Supplier without written agreement by the Parties, the Local Government shall not be required to pay the Supplier any fees or other amounts in respect thereof, and Supplier will not be obligated to continue to perform such additional services.
- 1.4 The preparation of the Statement of Work Proposal will be undertaken and performed by the Supplier at its own expense.
- 1.5 All rights and obligations of the Parties under this Agreement shall be deemed to apply to such Statement of Work as if fully set forth therein.
- 1.6 The Supplier shall provide the Services and discharge its duties to the Local Government in a competent, professional and timely manner to the standard of care ordinarily exercised by other members of its profession under similar circumstances, and shall assign only duly qualified, competent and skilled personnel to carry out its obligations to the Local Government under this Agreement.
- 1.7 The Supplier shall deliver the Services on time and in accordance with the delivery schedule outlined in Schedule A, and as agreed to by the Local Government, and conform in all respects with the Local Government's requirements. The Services shall not be deemed to be completed to the satisfaction of the Local Government or accepted by the Local Government until all requirements have been met by the Supplier in accordance with the terms and conditions of this Agreement.
- 1.8 The Local Government may conduct an annual Supplier performance review. The annual performance review will include but shall not be limited to the following:
- acceptable performance of the specifications and Services / scope of work.
 - compliance to specifications/general requirements;
 - compliance with the terms and conditions of the RFP and general performance as per RFP and this Agreement;
 - delivery of the goods / Services;
 - the quality of goods and Services provided/adherence to detail;
 - any issues/challenges that occurred during the supply and delivery of the goods / Services;
 - efficient and effective communication between the Supplier and the Local Government;
 - proper invoicing;
 - proper reporting; and
 - any other factors that the Local Government deems appropriate.

If the Local Government identifies performance issues related to any of the Services or Goods, the Local Government will promptly notify the Supplier of such concerns verbally or in writing, and will provide a reasonable level of specificity related to the issue. The Supplier will have five (5) business days to respond in an effort to mitigate and address the Local Government's concerns (the "Remediation Period"). In the event that the Supplier has not improved to the satisfaction of the Local Government following the Remediation Period, the Local Government may request that the Supplier take specific action such as but not limited to removing an individual from performing the Services or the Local Government may suspend or terminate the Agreement pursuant to Section 5.

- 1.9 Nothing in this Agreement shall constitute or be deemed to constitute any assurance or representation by the Local Government to the Supplier that this Agreement will be renewed or extended.
- 1.10 The Local Government shall have the right, in its sole discretion, to issue a change order at any time to expand or reduce the Services or Goods.
- 1.11 The Supplier shall ensure that all personnel employed in the delivery of the Services that attend and enter a Local Government building, facility or location whether its own employees or a subcontractor's, are fully vaccinated against COVID-19. For the purposes of this requirement, an individual is considered to be fully vaccinated fourteen (14) days after receiving the full series of a COVID-19 vaccine or combination of COVID-19 vaccines approved by the World Health Organization (e.g., two doses of a two-dose vaccine series or one dose of a single-dose vaccine series, and any required boosters or as per the current World Health Organization approvals at the time of delivery of the Services).
- 1.12 Prior to the commencement of any onsite Services and/or in the event of a change in Supplier or subcontractor personnel, the Supplier shall complete and provide, upon request of the Local Government, a (corporate) officer's certificate/attestation or complete a certificate/attestation form provided by the Local Government that all personnel providing onsite services at a Local Government building, facility or location are fully vaccinated as set out in Section 1.11.
- 1.13 The Supplier acknowledges and agrees that until further notice, the Local Government requires all onsite individuals complete a mandatory active health screening process, upon request, which may include a question on vaccination status.
- 1.14 The Supplier acknowledges and agrees that non-vaccinated individuals shall not be permitted entry to any Local Government building, facility or location.
- 1.15 The Local Government shall have the right to audit the Supplier for compliance with Sections 1.11, 1.12, 1.13 and 1.14. In the event of non-compliance, the Local Government may, at its sole discretion and without limiting any other rights it may have, order the Supplier or subcontractor personnel to leave the Local Government building, facility or location immediately on a temporary or permanent basis.

2. DELIVERY OF GOODS AND SERVICES

- 2.1 The Supplier agrees to supply and deliver the products or goods, including all related products, hardware, materials, software, component parts, packaging, labelling, data and documentation ("Goods") that are required to perform the Services to the Local Government and as outlined in the attached Schedule A.

- 2.2 The Supplier shall promptly report to the Local Government, upon request, its progress in performing its obligations under this Agreement and provide such explanations as the Local Government may require in connection therewith.
- 2.3 The Supplier shall furnish at its own expense all labour, machinery, equipment, tools, transportation and other inputs required to perform the Services and provide the Goods, unless otherwise agreed to by the Local Government in writing. The Local Government shall not be liable for any loss of or damage to machinery, equipment or tools furnished by the Supplier.
- 2.4 The Supplier shall, at its own expense, and in accordance with the invoicing, delivery terms, shipping, packing, and other instructions printed on the face of any purchase order or otherwise provided to Supplier by the Local Government in writing, pack, load, and deliver Goods and Services to the location specified by the Local Government. The Local Government shall not be responsible for any charges for freight, transportation, insurance, shipping, storage, handling, demurrage, cartage, packaging, import fees or similar charges unless explicitly agreed to in writing.
- 2.5 The Supplier acknowledges and agrees that time is of the essence with respect to delivery of the Goods and performance of Services. Goods shall be delivered and Services completed by the delivery dates specified by the Local Government. The Supplier shall immediately notify the Local Government if the Supplier anticipates it will likely be unable to meet a delivery date.
- 2.6 At any time prior to the delivery of the Goods or performance of the Services, the Local Government may, upon notice to the Supplier, cancel or change a purchase order, or any portion thereof, for any reason, including, without limitation, for the convenience of the Local Government or due to failure of the Supplier to comply with the Agreement, unless otherwise noted.
- 2.7 The Supplier shall ship all Goods FOB to the delivery point specified by the Local Government.
- 2.8 The Supplier acknowledges and agrees that title, ownership and risk of loss to any Goods shall only pass to the Local Government, upon successful delivery of the Goods to the delivery point specified by the Local Government. The Supplier shall be responsible to obtain appropriate insurance for the Goods while they are in transit from the Supplier's loading point to the delivery point specified by the Local Government.
- 2.9 Supplier shall not supply a substitute for the Goods or Services without the prior written approval of the Local Government. Approval of substitutes shall be at the sole discretion of the Local Government.

3. INSPECTION AND ACCEPTANCE

- 3.1 All shipments of Goods and all Services performed and supplied by the Supplier are subject to the Local Government's right of inspection and testing.
- 3.2 The Local Government has ninety (90) business days (the "Inspection Period") following the delivery of the Goods to the delivery point specified by the Local Government or the completion of Services by the Supplier to undertake such inspection, and upon such inspection by the Local Government, in its sole but reasonable discretion, it shall either

accept the Goods or Services or reject them.

- 3.3 The Local Government has the right to reject any Goods that are delivered in excess of or below the quantity ordered or are damaged or defective. In addition, the Local Government has the right to reject any Goods or Services that are not in conformance with the specifications or any term of this Agreement.
- 3.4 The delivery of Goods or transfer of title of Goods from the Supplier to the Local Government does not constitute acceptance of those Goods by the Local Government.
- 3.5 The Local Government shall provide the Supplier, no later than the end of the Inspection Period, a written notice of any Goods or Services that are rejected, together with the reasons for such rejection. If the Local Government does not provide the Supplier with any notice of rejection before the end of the Inspection Period, the Local Government shall be deemed to have accepted such Goods or Services.
- 3.6 The Local Government's inspection (or non-inspection), testing (or non-testing), acceptance or use of the Goods or Services shall not limit or otherwise affect the Supplier's warranty obligations with respect to the Goods or Services.
- 3.7 If the Local Government rejects any Goods or Services, the Supplier shall arrange to have rejected Goods returned to the Supplier at the Supplier's expense, and the Supplier shall at the Local Government's option:
 - (a) provide a full credit or refund of all amounts paid by the Local Government to the Supplier for the rejected Goods or Services; or
 - (b) provide replacement Goods or Services to be received within the time period specified by the Local Government.
- 3.8 The Supplier shall not deliver Goods that were previously rejected by the Local Government unless delivery of such Goods is approved in advance in writing by the Local Government, and is accompanied by a written disclosure of the Local Government's prior rejection(s).

4. PRICE AND PAYMENT

- 4.1 The total amount payable to the Supplier under this Agreement for the Services outlined under Schedule A, including out of pocket expenses, shall not exceed Twenty-Three Thousand Dollars (\$23,000.00) (inclusive of applicable taxes) without prior written authorization from the Local Government. The Supplier shall not be entitled to receive payment for any Services it provides hereunder that exceed this amount ("Excess Services") unless the Local Government has given prior written authorization to the Supplier to undertake the performance of any Excess Services.
- 4.2 The payment of fees and the expansion of or continuation of Services under this Agreement is contingent on the Local Government's annual approved budget. If the Local Government does not obtain approval for the expense, they will inform the Supplier in advance of utilizing the billable services. In no instance will the Local Government use Services in advance of obtaining budgetary approval for payment of the Services.
- 4.3 The Supplier shall not be entitled to receive payment for any Services or Goods that are not outlined under Schedule B, (as such is considered to be "Excess Services") unless

the Local Government has given prior written authorization to the Supplier for the provision of such Excess Services.

- 4.4 Each invoice submitted by the Supplier for payment shall contain a detailed description of the Services in respect of which it is being remitted, and all such other information as specified by the Local Government from time to time for inclusion therein. Subject to verification by the Local Government, invoices will be paid thirty (30) days following receipt. Payments will be administered through the Local Government's electronic payment process. Following the execution of this Agreement, the Supplier shall send Proper Invoices in proportion to the progress made with each phase of the Services, if applicable, electronically to invoices@fredericton.ca, unless the Local Government advises otherwise. Invoices received after 4:30 p.m. (AST) will be considered to be received on the next business day.

"Proper Invoices" mean a written bill or other request for payment for services or materials made pursuant to this Agreement and shall contain the following information, and any other requirements that this Agreement specifies: (a) Supplier's name, telephone number, mailing address and shipping address (if different than the mailing address); (b) the Supplier's invoice number; (c) the date and the period during which the Services or materials were supplied; (d) a description, including quantity (itemized list of services being invoiced for, time spent by each employee and expenses incurred on the project in the billing period, where appropriate), of the Services or materials supplied; (e) the amount payable for the Services or materials that were supplied including a total showing how much money has been billed previously and a total billed to date, (i.e. current plus previous invoices) as applicable and the payment terms; (f) the name, title, telephone number and mailing address of the person to whom payment is to be sent; (g) the name or title of the project; (h) HST must also be shown as a separate line item; and (i) any other information that the Local Government may require.

- 4.5 The Parties acknowledge and agree that the Local Government shall not be considered to be in default if the payment process for a Proper Invoice is delayed due to the Supplier's failure to complete with the requirements of Section 4.
- 4.6 No payment by the Local Government to the Supplier hereunder shall be or construed to be an acceptance or approval by the Local Government of incomplete, defective or improper performance by the Supplier of any of its obligations under this Agreement or operate to relieve the Supplier from the performance of any of its obligations hereunder that have not been performed in accordance with the requirements set out in this Agreement.
- 4.7 The Supplier is responsible for paying its own costs and expenses incurred in connection with its performance of the Services. For greater certainty, such costs may include but are not limited to telephone, copying, courier, travel, parking, fuel surcharge and pandemic costs shall not be reimbursed by the Local Government.
- 4.8 The Local Government may set-off any amount due or owing to the Supplier, or any subcontractor, pursuant to this Agreement against any amounts the Supplier owes to the Local Government.

5 SUSPENSION AND TERMINATION OF AGREEMENT

- 5.1 The Local Government shall be entitled to immediately suspend and/or terminate this Agreement for cause, upon the occurrence of any of the following events, each of which shall constitute an "Event of Default":

- (a) The Supplier breaches or fails to comply with any of the terms and conditions of this Agreement, and such breach or failure is not remedied by the Supplier to the reasonable satisfaction of the Local Government within ten (10) days after written notice from the Local Government to remedy the breach or failure;
 - (b) The Supplier becomes insolvent, commits an act of bankruptcy, makes an assignment for the benefit of creditors, or otherwise acknowledges its insolvency, or a receiver or receiver manager is appointed for any property of the Supplier; or
 - (c) Any statement, representation or warranty made by the Supplier (in its Proposal) or in this Agreement is untrue or incorrect.
- 5.2 If this Agreement is suspended or terminated for cause pursuant to Section 5.1 as a result of an Event of Default, the Supplier shall be responsible for and shall reimburse the Local Government for all loss, costs and damages incurred by the Local Government as a result of or arising from the Event of Default, including any costs incurred by the Local Government to correct any defects or deficiencies in any of the Services, and any costs incurred by the Local Government to procure the Services or any part thereof from another provider.
- 5.3 Notwithstanding Section 5.1, the Local Government may, at its sole discretion, at no cost, terminate this Agreement without cause at any time prior to the expiration of the Term, or Renewal Term, upon giving thirty (30) days prior written notice of termination to the Supplier. In such an event, the Supplier shall be entitled to receive payment for the Services it has satisfactorily performed up to the date of termination, and where applicable, to the payment of any holdback which the Local Government is then holding at such time. Payments to the Supplier of the foregoing amounts shall constitute full and final satisfaction of the Local Government's obligations to the Supplier under this Agreement. In the event this Agreement is terminated by the Local Government pursuant to this Section 5.3, the Supplier shall not be reimbursed for any profits that may have been anticipated but not earned up to the termination date, and the Supplier shall not have any claim or entitlement to any additional compensation or damages arising from such termination.
- 5.4 Within sixty (60) business days following the expiry or termination of this Agreement the Supplier shall, a part of the provision of the Services in exchange for the payment of fees under this Agreement, (i) transfer to the Local Government all Data, Confidential Information, Personal Information and Material (including paper and electronic copies) then in custody or control of the Supplier or a subcontractor, by means of a commonly-used format that is readable across multiple industry-standard mediums or applications, and thereafter (ii) locate, delete and destroy any copies of Data, Confidential Information, Personal Information and Material that might remain on the Supplier's storage medium used for the storage, and (iii) wipe the storage medium clean. The Supplier shall ensure that any Data, Confidential Information, Personal Information or Material that may reside with a subcontractor is treated in conformity with Section 5.4 of this Agreement. The Supplier shall also provide written confirmation of completion of each action described above, as each is completed to the Local Government.
- 5.5 Neither the expiration nor the earlier suspension or termination of this Agreement shall relieve, or be deemed to relieve, the Supplier from any duties, obligations or liabilities hereunder that accrued prior to such expiration or termination, or which by their nature are intended to survive the expiration or earlier termination of this Agreement, including

but not limited to all warranties given by the Supplier in respect of the Services, and those duties and obligations of the Supplier set out in Section 5 (Suspension and Termination of Agreement), Section 6 (Confidentiality), Section 7 (Material Rights), Section 11 (Insurance, Liability and Indemnity), Section 15 (Representations, Acknowledgements and Warranties) and Section 18 (Accounts and Audit).

6 CONFIDENTIALITY

- 6.1 The Supplier acknowledges and confirms that all information provided to it by the Local Government hereunder or to which the Supplier has access as a result of providing the Services to the Local Government is confidential information (“Confidential Information”). Unless required by law or an order of a court of competent jurisdiction, such Confidential Information shall not, either during the Term, or Renewal Term, or at any time thereafter, be disclosed by the Supplier, to any third party or to any employees of the Supplier, other than its employees who are directly involved in providing the Services, without the prior written consent of the Local Government.
- 6.2 The Supplier shall implement and maintain security standards and procedures for the safeguarding of the Local Government’s Confidential Information to prevent unauthorized access thereto and to ensure compliance with applicable legislation. The Supplier agrees to promptly notify the Local Government in writing upon becoming aware of a breach of either the Supplier’s (or any subcontractor) security standards and procedures or any unauthorized disclosure of information that the Supplier is required to keep confidential under applicable law. The Supplier shall take immediate steps to mitigate any breach or unauthorized disclosure.
- 6.3 The Supplier acknowledges that the Local Government is subject to the *Right to Information and Protection of Privacy Act*, SNB 2009, c. R-10.6 (“RTIPPA”), as amended, with respect to the personal information, as defined thereunder, in its custody and control. The Supplier agrees that the Local Government may disclose this Agreement or portions thereof as may be required pursuant to RTIPPA or a City Council approval process, if required, and that no such disclosure constitutes a breach of confidentiality.
- 6.4 The Supplier represents, warrants and undertakes to the Local Government that it, and any subcontractor, shall comply with the RTIPPA, the terms and conditions contained in the Privacy Protection Schedule, attached as Schedule C to this Agreement, and protect personal information collected by the Local Government as if it were a public body under RTIPPA.

7 MATERIAL RIGHTS

- 7.1 All findings, data, information, surveys, research, working papers, drawings, spreadsheets, evaluations, databases and documents, regardless of storage format or whether in draft or final form that are collected, created or produced by the Supplier in the performance of this Agreement (collectively the “Materials”) are the exclusive property of the Local Government. All intellectual property rights, including patents, copyrights, trademark and industrial design in the Materials, with the exception of any pre-existing intellectual property rights of the Supplier therein, are the sole property of the Local Government, are hereby irrevocably assigned by the Supplier to the Local Government and the Supplier herewith waives all moral rights in those Materials.

- 7.2 All research reports, surveys, findings, data and other information comprising the Materials are Confidential Information of the Local Government and are subject to the provisions of Section 6 of this Agreement.
- 7.3 Local Government reserves the right, in its sole discretion, to publish or release, in whole or in part, or to refrain from publishing or releasing, any research, reports, information, audio visual materials, information or data produced by the Supplier in the performance of the Services under this Agreement.
- 7.4 The Supplier shall secure and ensure that the Local Government has all licences (including third party licences) that are needed for any software that the Local Government will require to lawfully continue using all deliverables that the Supplier has agreed to provide as part of the Services.
- 7.5 The Supplier hereby grants to the Local Government a perpetual non-exclusive licence to use any computer software or designs of a generic nature to which the Supplier holds copyright during the Term (or subscription period), and that may be included in any work product comprising any part of the Services delivered to the Local Government under this Agreement.
- 7.6 The Supplier shall provide the Local Government the ability to download copies of all Materials, Confidential Information, Personal Information and Data in its possession which shall be in a commonly used (workable as-is) format that is readable across multiple industry standard mediums or applications and/or destroy all copies thereof, and no such Materials, Confidential Information, Personal Information, and Data shall thereafter be retained or used in any form by the Supplier.
- Upon request from the Local Government, the Supplier shall locate, delete and destroy any copies of Material, Confidential Information, Personal Information and Data that may remain on the Supplier's or a subcontractors storage medium used for storage and shall wipe the storage medium clean. No Materials, Confidential Information, Personal Information or Data shall thereafter be retained or used in any form by the Supplier. The Supplier shall provide written confirmation of the deletion, destruction of any copies of Material, Confidential Information, Personal Information and Data and that the identified storage medium has been wiped clean.
- 7.7 The Parties acknowledge and agree that the Local Government shall not incur any costs, charges or fees with respect to Section 7.

8 INFORMATION SECURITY

- 8.1 The Supplier acknowledges and agrees that, in the course of providing the Services, the Supplier may receive, have access to, control over, or custody of Confidential Information, Materials, Personal Information and Data. In circumstances where this occurs, the Supplier shall comply with the terms and conditions set forth in this Agreement, including Section 8.2 below, in its collection, receipt, transmission, retention, storage, use, disclosure and disposal of Confidential Information, Materials, Personal Information and Data, (collectively in this Section 8 "Use") and be responsible for any unlawful or unauthorized Use or Mishandling of Confidential Information, Materials, Personal Information or Data it receives, has access to, or which is under its control or custody (or the temporary control or custody of a subcontractor), to the extent such unlawful or unauthorized Use arises out of or is related to the Supplier's or any employee, director, officer, agent, service provider, supplier or subcontractor of the Supplier, negligent act or omission, or failure to act in

accordance with the terms of this Agreement.

8.2 The Supplier both directly, and through its third party service providers, agrees and covenants to:

- (a) adhere to leading industry information security practices, such as ISO 27000 and its successors or equivalent industry alternatives (e.g., COBIT, ITIL) with respect to Materials, Personal Information, Data and Confidential Information of the Local Government that is in its custody or control;
- (b) host Materials, Personal Information, Data and Confidential Information of the Local Government that is in its custody or control in a hardened cloud data center(s) which shall be located in Canada and that adheres to the SSAE18/ISAE 3402 standard for data centers;
- (c) maintain (and provide the Local Government, upon request, a copy of a comprehensive and up-to-date set of information security and data integrity/protection policies relative to the Supplier's Use of Materials, Personal Information, Data and Confidential Information of the Local Government (including, for example: Data collection, retention, backup and destruction rules, Data Breach response protocols, and disaster recovery procedures) that are consistent with leading industry standards referenced in Section 8.2(a) above;
- (d) except where to do so would result in a violation of applicable laws or regulations, provide the Local Government with written notice (in priority to all other interested parties and regulatory bodies) of any Data Breach that may affect the Local Government, or any of their employees or customers, and then take (and document) all necessary steps at its cost and effort to mitigate and remediate the breach as required under (i) this Agreement, (ii) the Supplier's data privacy and security policies and procedures, and all applicable laws and regulations;
- (e) plan and execute regular internal audits of the Supplier's information security procedures and controls relative to the protection of its customer information. The Local Government may obtain a copy of the results upon request; and
- (f) securely purge Materials, Personal Information, Data and Confidential Information of the Local Government, as required (i) under this Agreement, including when appropriate in the provision of the Services, (ii) by operation of applicable laws and regulations, or (iii) by the Local Government, acting reasonably in its direction of the Supplier; and thereafter inform the Local Government.

8.3 The Supplier shall monitor its third-party providers and subcontractors and enforce its contractual rights to ensure that in the provision of the Services and Goods its third-party service providers and subcontractors comply with data security and systems security commitments.

9 INDEPENDENT CONTRACTOR

9.1 This Agreement is a contract for the performance of the Services. The Supplier is engaged by the Local Government hereunder as an independent contractor and shall not at any time hold itself out as an employee, servant or agent of the Local Government. No

partnership, joint venture, agency or other legal relationship is created or deemed to be created by this Agreement or any actions of the Parties hereunder. The Supplier shall not have authority under this Agreement to bind the Local Government or to commit the Local Government to the payment of money to any third party.

10 COMPLIANCE WITH LAWS

10.1 The Supplier shall comply with all applicable laws governing the conduct of its business and the provision of the Services and Goods to the Local Government.

10.2 Without limiting the generality of Section 10.1, the Supplier shall comply with the requirements of the *Official Languages Act*, SNB 2002, c. O-0.5, as amended, that pertain to the Local Government in the provision and delivery of the Services as they relate to communications and services prescribed by Regulation 2002-63, as amended, in both official languages, including but not limited to:

- (a) Consultations/Public Meetings: presentation materials, displays, comment cards/feedback mechanism or other materials. The Supplier or the Local Government shall have at least one bilingual staff or interpreter present to answer questions and discuss technical drawings and/or documents;
- (b) Signage: building, facility, traffic and construction signs; and
- (c) Communications: public notices, information bulletins, advertisements, public education material.

Notwithstanding the provisions of this Section 10.2, the Local Government shall be responsible for translation of all documents, video and other public notices and information required by the Supplier in the provision of the Services. The Supplier giving written notice to the Local Government of the date that any and all translation must be received by the Supplier to meet its timelines.

10.3 The Supplier agrees to maintain in good standing all licences, permits, registrations or authorizations it is required to obtain in order to lawfully provide the Services in the Province of New Brunswick. Without limiting the foregoing, professional personnel performing any part of the Services on behalf of the Supplier shall be required to comply with all applicable professional registration or licensing requirements in effect in the Province of New Brunswick at the time such Services are being performed.

10.4 Neither the execution of this Agreement by the Local Government or the acceptance of the Supplier's Proposal shall be or deemed to be approval or authorization by the Local Government to anything related to the business or operations of the Supplier or the provision of the Services that requires any permit or licence or approval pursuant to federal, provincial or municipal legislation, regulations or by-laws.

10.5 The Supplier shall promptly provide to the Local Government, upon request (unless specified otherwise in the tender or request for proposal), copies of all permits, licences, authorizations and registrations that it is required to obtain in order to provide the Services, as well as evidence of the Supplier's compliance with laws applicable to the performance of the Services.

11 INSURANCE, LIABILITY AND INDEMNITY

11.1 The Supplier, and any subcontractor involved in the delivery or provision of Services or Goods, shall at its own expense obtain and maintain for the Term, or Renewal Term, and for an additional period of two (2) years thereafter the following insurance coverage:

(a) Commercial General Liability

- (i) The policy shall provide a policy limit of not less than Five Million Dollars (\$5,000,000.00) per occurrence for all claims arising out of bodily injury (including death), personal injury, and damage to property of others. Such policy shall not contain any exclusion that conflict with the Services required to be delivered or performed under this Agreement. The Supplier shall list the Local Government and any other party required by the Local Government as an additional insured. The policy shall also contain cross liability and severability of interest.

(b) Automobile Liability Insurance

- (i) The policy shall provide coverage for liability arising out of the use of owned, non-owned, leased or hired automobiles in connection with the performance of the Services. Coverage shall consist of a combined single limit of not less than Five Million Dollars (\$5,000,000.00) per occurrence. Alternatively, for Services that do not require the use of owned, non-owned, leased or hired automobile, the Supplier shall provide written confirmation stating same within five (5) Business Days of the execution of the Agreement instead of the required insurance coverage.

(c) Errors and Omissions Insurance

- (i) The policy shall provide errors and omissions insurance including coverage for privacy, infringement of trademark and copyright covering the Services rendered by the Supplier, any subcontractor or any Supplier personnel, including personnel on loan to the Supplier who perform normal services of the Supplier under this Agreement. The policy shall have a limit of liability of not less than Five Million Dollars (\$5,000,000.00) per occurrence and in the policy aggregate. The policy shall be maintained throughout the Term, plus twenty-four (24) months after the termination or expiration of this Agreement.

(d) Cyber Liability Insurance

- (i) The policy shall provide a policy limit of not less than One Million Dollars (\$1,000,000.00) per occurrence. Coverage shall be sufficiently broad to respond to the duties and obligations of the Supplier and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private or personal information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs,

regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

- 11.2 Each of the aforementioned policies in Section 11.1(a), 11.1(b) and 11.1(c) shall have policy limits not less than five million dollars (\$5,000,000.00) per claim or occurrence, aggregate limits not less than five million dollars (\$5,000,000.00) within any policy year. With respect to the policy in Section 11.1(d), it shall have policy limits not less than one million dollars (\$1,000,000.00) per claim or occurrence, aggregate limits not less than one million dollars (\$1,000,000.00) within any policy year.
- 11.3 The insurance to be maintained by the Supplier hereunder shall:
- (a) be issued by financially sound insurers acceptable to the Local Government and licensed to carry on business in the Province of New Brunswick or Canada;
 - (b) require the insurer to provide the Local Government with at least thirty (30) days' prior written notice of a material change in the policy or termination or cancellation of the policy;
 - (c) provide coverage for liability arising out of property damage, loss, personal injury (including death), or any other damage resulting from any act or omission of the Supplier, its officers, directors, employees, servants, and agents; and
 - (d) be primary insurance without right of contribution of any other insurance carried by the Supplier or by the Local Government.
- 11.4 Prior to the award of any request for proposal or the signing of this Agreement, the Supplier shall deliver to the Local Government certificates of insurance evidencing the insurance required under this Agreement is in effect. Thereafter and throughout the Term, or Renewal Term, of this Agreement, the Supplier shall, provide the Local Government any and all renewal certificates of insurance evidencing that the insurance required under this Agreement continues in effect. The Supplier shall also provide a certificate of insurance upon request of the Local Government.
- 11.5 The Supplier shall provide the Local Government with a certificate of renewal for each insurance policy no later than fifteen (15) days prior to the expiry date of the applicable policy.
- 11.6 When requested by the Local Government, the Supplier shall provide copies of its insurance policies to the Local Government for their review and inspection during the Term, or Renewal Term, of this Agreement or prior to the Parties signing this Agreement.
- 11.7 The Parties acknowledge and agree that any other valid or collectible insurance that may be available to the Local Government shall not apply to any loss until the coverage and limits available under the insurance policies maintained by the Supplier in accordance with this Agreement have been exhausted.
- 11.8 The Supplier shall indemnify and hold harmless the Local Government, its officers, directors, employees, councillors, agents, representatives, officials, successors and assigns (hereinafter the "Indemnified Parties"), from and against any and all claims, actions, suits, executions, demands, or other proceedings of any kind or nature, and all loss, liability, judgments, costs, charges, damages, liens and expenses (including legal fees) of any nature whatsoever and howsoever caused ("Losses") arising out of or

resulting from:

- (a) an Event of Default;
- (b) a Data Breach;

“Data Breach” means (i) the Mishandling of Confidential Information, Material, Data or Personal Information, and (ii) any act, error or omission that violates or causes the Local Government to violate any applicable data privacy/security laws or regulations.

“Mishandling” means the collection, handling, access, use, management, control, retention, storage, disclosure, transfer, disposal, destruction, hack or loss of Confidential Information, Material, Personal Information or Data in a manner that fails to comply with (i) this Agreement and the Local Government’s lawful instructions relative thereto, (ii) the Supplier’s data privacy, security policies and procedures or (iii) applicable data privacy or security laws and regulations (e.g. the Supplier’s obligations with respect to Personal Information).

“Personal Information” is defined in Schedule C.

- (c) any act, omission, failure or negligence of the Supplier, or any of its employees, servants, agents, or subcontractors, in the performance of this Agreement, including without limitation, any injury or death to persons, or loss of or damage to property;
- (d) the death of or bodily injury to any employee, customer, agent, business invitee, visitor or other person, to the extent caused by the negligence or willful misconduct of the Supplier or any Supplier personnel or Supplier subcontractor;
- (e) the damage, loss or destruction of any real or tangible personal property (excluding data) to the extent caused by the negligence or willful misconduct of the Supplier or any Supplier personnel;
- (f) the unauthorized disclosure or breach by the Supplier or any Supplier personnel of any Confidential Information, Materials and/or Personal Information;
- (g) any acts performed by or on behalf of the Supplier beyond the authority of the Supplier under the terms of this Agreement;
- (h) any illness, injury or death of any employee of the Supplier;
- (i) any breach or resulting expenses incurred by the Supplier attributable to the Supplier’s responsibilities pursuant to applicable health and safety legislation;
- (j) any infringement or alleged infringement of any patent, trade secret, service mark, trade name, copyright, official mark, moral right, trade-mark, industrial design or other propriety rights conferred by contract, common law, statute or otherwise in respect to the Services or any matter provided to the Local Government or performed by the Supplier, or anyone else for whom at law the Supplier is responsible, except to the extent any such alleged infringement is attributable to the actions or omissions of the Indemnified Parties;

- (k) a security breach caused by or attributable to the negligence, actions, omissions or delays in the performance of this Agreement by the Supplier;
- (l) an allegation that the Services, or any party thereof, violate the intellectual property rights of a third party; or
- (m) a breach or non-performance of the Supplier's obligations, representations or warranties described in this Agreement

(collectively, "Indemnified Claim(s)"). Notwithstanding the foregoing, the indemnification obligations of the Supplier under this Section 11.8 do not apply to the extent that the Indemnified Claim arises out of (i) a modification of the Services or documentation by the Local Government, or combining the Services with services or products not provided by Supplier, unless such modification or combination is made at the recommendation or direction of, is authorized or agreed to by, the Supplier or Supplier subcontractor, or is necessary for the Local Government to use the Services in accordance with any specifications or documentation; or (ii) misuse of the Services by the Local Government in breach of this Agreement.

11.9 The Supplier will, at its sole cost and expense and always acting in a reasonable manner, diligently investigate, defend and/or settle any Indemnified Claim advanced against the Local Government provided that:

- (a) the Local Government promptly notifies the Supplier in writing of any such Indemnified Claim,
- (b) the Supplier is afforded the right to control and direct the investigation, preparation, defence and settlement of the Indemnified Claim,
- (c) the Local Government provides reasonable assistance and cooperation to the Supplier in connection with the defence and settlement of the Indemnified Claim, at the Supplier's cost and expense (including reimbursement of reasonable legal fees and expenses that may be incurred by the Local Government directly related to such assistance or cooperation), and
- (c) the settlement of any Indemnified Claim is subject to the written consent of the Local Government, which consent shall not be unreasonably withheld, delayed or conditioned; provided that the Local Government may withhold its consent if such settlement requires the Local Government to (i) admit wrongdoing, (ii) take or refrain from taking any action, or (iii) pay for any part of the settlement account. As part of any settlement, the Local Government shall receive the benefit of a legally binding and enforceable unconditional release, drafted in form and substance to the satisfaction the Local Government.

If the Supplier fails to assume and direct the defence and settlement of an Indemnified Claim as contemplated under this Agreement, in addition to any other remedy available under this Agreement the Indemnified Parties may assume and direct the defence and settlement of the Indemnified Claim and the Supplier shall be liable to be reimburse the Indemnitee for all resulting costs and expenses, including legal costs.

- 11.10 In addition to Section 11.09, should the Services become, or in the Supplier's reasonable determination be likely to become, the subject of an Indemnified Claim in respect of an allegation of infringement of the intellectual property rights of a third party, the Supplier shall, at its expense and election:
- (a) obtain for the Local Government the right to continue using the Services, on the terms and conditions set out in this Agreement; or
 - (b) modify or substitute the infringing portion of the Services in a manner that (i) does not infringe on the intellectual property rights of a third party, and (ii) results in the Supplier providing the modified services in accordance with the terms and conditions of this Agreement.
- 11.11 The Local Government shall not be liable for any damages or injury (including death) to any person or to any property of the Supplier as a result of or arising out of this Agreement or the provision of the Services or Goods by the Supplier under this Agreement, unless such damages are direct damages and are caused solely and directly by or as a result of the negligence of the Local Government. In no event shall the Local Government be liable for any indirect or consequential damages that are sustained by the Supplier, howsoever caused, as a result of or arising out of this Agreement or the provision by the Supplier of any Services or Goods hereunder.
- 11.12 The Local Government shall not be liable for any claim, of a Supplier's subcontractor arising out of or related to this Agreement or the provision of the Services hereunder, regardless of how caused.
- 11.13 If the Supplier or its workers are employed in an industry prescribed by legislation where coverage is required under the *Worker's Compensation Act* (New Brunswick) the Supplier shall verify prior to signing this Agreement that they are registered and in good standing by obtaining a clearance certificate from WorkSafe NB. The Supplier shall also provide a copy of the clearance certificate to the Local Government prior to the Parties signing the Agreement.
- 11.14 If at any time during the Term, or Renewal Term, of this Agreement the Supplier's WorkSafe NB coverage lapses, the Supplier, upon receipt of an invoice, shall pay the Local Government for any charges that the Local Government incurs.

12 RESOURCES

- 12.1 In the event that the Supplier requires access to equipment or office space of the Local Government in order to carry out any part of the Services, the Supplier shall comply with all applicable safety and security legislation and all policies and directives of the Local Government relating to any buildings, premises, equipment or software to which the Supplier is given access.
- 12.2 The Supplier shall assign a sufficient number of qualified, competent and skilled personnel to carry out its obligations under this Agreement. In the event that the Supplier's Proposal included the names or titles of specific personnel or any proposed subcontractor to provide the Services, or any part thereof, the Supplier's personnel and any subcontractors so indicated in the Proposal shall be required to provide the Services and no substitutions shall be permitted without the prior written consent of the Local Government. If the Local Government, in its sole discretion, considers a proposed substitute to be acceptable, the Local Government may consent to the substitution,

provided however that such consent may be subject to such terms and conditions as the Local Government designates in writing to the Supplier. Notwithstanding the foregoing, the Local Government shall have the right at any time, in its sole discretion, to require that the Supplier replace, at no cost or expense to the Local Government, any Supplier personnel or subcontractor involved in providing the Services whom the Local Government determines to be unsuitable, and in such event, the Supplier shall immediately appoint a duly qualified, competent and skilled replacement to fill the position vacated.

13 TITLE AND ACCEPTANCE

- 13.1 Unless otherwise expressly provided in this Agreement, title (and ownership) to all deliverables, or any part thereof, comprising the Services to be provided by the Supplier shall vest in the Local Government on delivery and acceptance by the Local Government. Upon payment being made by the Local Government on account of materials, parts, work in process, or finished work, title therein shall vest in and remain with the Local Government, provided however that the risk of any loss or damage thereto shall remain with the Supplier until their acceptance by the Local Government. Vesting of title in the Local Government as a result of payments made by the Local Government to the Supplier shall not constitute acceptance, or be deemed to constitute acceptance, by the Local Government of any such materials, Goods, parts, work in progress or finished work, and shall not relieve the Supplier of its obligations to perform the Services in accordance with the requirements of this Agreement.
- 13.2 The Supplier shall promptly pay for all labour, services and materials that it requires to provide the Services. The Supplier agrees that it shall not do or permit anything to be done that would result in any liens, charges or encumbrances being placed on or attaching to any materials, Goods, parts, work in process, finished work or deliverables comprising the Services to be provided to the Local Government under this Agreement.

14 FORCE MAJEURE

- 14.1 The Supplier shall not be liable for a failure or delay in performing any of its obligations hereunder that occurs without the fault or negligence of the Supplier and is attributable solely to a cause beyond its reasonable control ("Force Majeure Event"). For the purposes of this Agreement, the following shall be considered to be a Force Majeure Event: flood, fire, explosion, power failure, acts of God, war, terrorism, civil commotion, pandemic, epidemic, the enactment of any law, order, regulation or by-law, labour strikes or disputes, slowdowns, picketing, boycotts, stop-work order, injunction or other causes beyond their reasonable control excluding a non-performing Party's lack of or insufficient financial resources to discharge its duties, liabilities or obligations hereunder.
- 14.2 Where the Supplier claims that a Force Majeure Event has occurred, the Supplier shall be required to give immediate written notice thereof to the Local Government, which notice shall describe the Force Majeure Event, its cause, the probable duration of the delay resulting therefrom, and the steps being taken by the Supplier to mitigate the impact of the Force Majeure Event on the performance of the Supplier's obligations hereunder.
- 14.3 Notwithstanding the foregoing provisions of this Section 14 if a delay or failure arising from a Force Majeure Event continues for ten (10) consecutive days, the Local Government may, in its sole discretion, terminate this Agreement upon three (3) days prior written notice to the Supplier. In the case of termination by the Local Government

pursuant to this Section 14.3, the Supplier shall be entitled to receive payment only for the Services provided prior to the termination date which have met the requirements of this Agreement, and such payment shall constitute full and final satisfaction of the Local Government's obligations to the Supplier hereunder.

15 REPRESENTATIONS, ACKNOWLEDGMENTS AND WARRANTIES

15.1 The Supplier represents and warrants to the Local Government, with the intention and knowledge that the Local Government is relying on each such representation and warranty in entering into this Agreement, that:

- (a) All statements contained in the Supplier's Proposal, and any certificate or other document delivered to the Local Government as part negotiations between the Parties or under this Agreement or in connection with the Services to be provided hereunder are true and correct;
- (b) The Supplier has no knowledge of any fact that may materially adversely affect the Supplier's business or operations or its financial condition, or its ability to fulfill its obligations to the Local Government under this Agreement;
- (c) The Supplier has the personnel, experience, qualifications and other resources to provide the Services in accordance with the requirements of this Agreement in a timely, efficient and professional manner in accordance with the Required Standard of Care.

"Required Standard of Care" means: (a) using the Standards, practices, methods and procedures among the highest commercial standards of practice and professionalism as understood in the Province of New Brunswick; (b) conforming to applicable laws and all rules of professional conduct applicable to the Supplier or the Supplier personnel; (c) exercising the degree of skill and care, diligence, prudence and foresight which would be expected from a leading person or professional performing work similar to those called for under this Agreement and (d) using only proper materials and methods as are suited to the function and performance intended;

"Standards" means, at a given time, those specifications, manuals, codes, practices, methods and procedures applicable to the Required Standard of Care;

- (d) The Supplier is validly existing under the laws of the location of its head office and the Supplier has all necessary corporate power, authority and capacity to enter into, meet and perform its obligations under this Agreement;
- (e) The entering into of this Agreement by the Supplier and the performance of its obligations hereunder has been authorized by all necessary corporate action;
- (f) The Supplier is not aware of any legal action instituted, threatened or pending against the Supplier that could have a material adverse effect on its ability to perform its obligations under this Agreement;
- (g) This Agreement has been duly authorized, executed and delivered by the Supplier and constitutes a valid and binding obligation of the Supplier enforceable against it in accordance with its terms, subject only to applicable bankruptcy, insolvency

and other similar laws affecting the enforceability of the rights of creditors generally;

- (h) The Supplier can perform the Services (and deliver the Goods), and the Local Government shall be entitled to utilize the Services and Goods, in accordance with the requirements of this Agreement without infringing any trade secret, patent, copyright, industrial design or other intellectual property right enforceable in Canada, and the Supplier has obtained, and will maintain, at its own expense, all requisite and appropriate authorizations and permissions, including those concerning any licenses, assignments, copyrights, patents and other intellectual property rights that are required by the Supplier to meet its obligations to the Local Government hereunder;
- (i) The Services, including the software (and its functionality and applications), hardware and hosting solutions, firmware, processing capability and electronic interfaces required for the Services will interface, interoperate and be compatible with third party components used by the Local Government (as disclosed in the RFP), in the manner described in the Proposal;
- (j) The Supplier's information security processes and procedures, as well as supporting standards and operating directives shall at a minimum comply with Section 8, Information Security;
- (k) The Supplier owns or has secured all rights to intellectual property necessary for the Supplier to provide the Services and documentation to the Local Government as is contemplated under this Agreement;
- (l) Neither the Supplier nor any subcontractor has incorporated open source software code or applications within hosting solutions, software or electronic interfaces that may materially and adversely impact the delivery or use of the Services to the Local Government;
- (m) The hosting solutions, software applications, and electronic interfaces to enable access to and use of the Services do not (i) contain any malicious, disabling or defective code, viruses, Trojan horses, spyware, back doors, email bombs, worms or traps (collectively, "Malware") or (ii) demonstrate any compatibility or interoperability problems that might cause the Services to become unavailable to the Local Government, damage or corrupt Confidential Information, Materials, Personal Information or Data, or interfere with the Local Government's software applications, storage media, programs, equipment or communications;
- (n) In the event that the Supplier, a subcontractor or any third party introduces Malware into the hosting solutions, software applications, and electronic interfaces that enable access to and use of the Services, or causes a Data Breach, the Supplier will, acting in a timely manner, remedy the effects of the Malware or Data Breach (i) in accordance with applicable law and this Agreement, and as may be supplemented by industry standards in regard to security breaches, business continuity and disaster recovery plans, and (ii) in a manner that restores operational efficiency and safeguards Confidential Information, Materials, Data and Personal Information; and

- (o) The Supplier shall obtain and maintain required approvals, permits and licenses from the applicable governmental authorities to enable the provision of the Services to the Local Government as is contemplated under this Agreement.

15.2 The Supplier acknowledges and agrees that:

- (a) All Services that it or any subcontractor will supply and deliver to the Local Government comply with the technical, hardware and firmware requirements outlined in Schedule A, specifically including but not limited to: reporting requirements; scalability; SLA requirements; data storage and backup requirements; data security, data encryption and data transmission requirements;
- (b) It does not own the information submitted by the Local Government through the cloud-based software solution. The Local Government retains all right, title and interest in and to the Data. "Data" means all information, reports, personal information, research, spreadsheets, evaluations, feedback, assessments, logs, maps, databases, findings, graphics, images, artwork, icons, photographs, charts, text, documents, user generated content, production content, software outputs, raw or processed data, media content, web pages, video, sound, digital material or statistics that are (i) produced by, delivered to or comes into the custody or control of, the Local Government as a result of the provision of the Services, or (ii) produced, collected or used by the Supplier for the Local Government's benefit in the provision of the Services;
- (c) It shall not in connection with providing the Services have access to or collect, use, disclose or otherwise process personal information (as defined in Schedule C) about identifiable individuals from the Local Government;
- (d) If during the Term, or Renewal Term, of this Agreement, it accesses or receives personal information or Data from the Local Government, the Supplier shall protect the personal information and Data by making security arrangements against risks of unauthorized access, collection, use, disclosure or disposal of the personal information or Data. In addition, the Supplier shall not use or disclose, store any personal information or Data outside Canada or permit access to any personal information or Data from outside Canada. As between the Parties, all personal information or Data supplied or generated by the Local Government is and shall at all times remain the exclusive property of the Local Government;
- (e) No personal information, Data or Confidential Information will be sold, shared, utilized or transferred by the Supplier;
- (f) That it has and will maintain an established information security program compliant to a recognized cyber security standard equivalent to either ISO/IEC 27001, NIST SP 800-53, NIST CSF, or ISA 62443 standards and containing appropriate administrative, technical and physical measures to protect Client data. The Supplier shall also implement and enforce security arrangements that will ensure all personal information and Data that it may collect, use or have access to is protected at all times from unauthorized access or disclosure and shall provide written confirmation of its security arrangements to the Local Government upon request;

- (g) It will not acquire any rights (directly or indirectly) to use or own any personal information or Data other than the right to use it for the sole purpose of fulfilling its obligations to the Local Government under this Agreement;
- (h) All processes that store or transmit personal information or Data are maintained in a secure environment and the environment and processes shall be compliant with the recognized cyber security standard employed. It will at its own cost ensure its systems and processes remain compliant with the standard;
- (i) The locations of its data centers and servers are in Canada and the Supplier acknowledges and confirms that they shall remain in Canada;
- (j) If it becomes aware of a security breach or any other event that compromises the security, confidentiality or integrity of any Data, the Supplier shall take immediate action to contain, investigate and mitigate and notify the Local Government;
- (k) If a subcontractor generates de-identified, aggregate data the Supplier and/or a subcontractor shall not share any information that identifies the Local Government or any department or division of the Local Government with any third party. The aggregated data that is used in this manner shall be anonymized and shall not be associated with any device (or hardware). Neither the Supplier nor any subcontractor will attempt to disaggregate the data or re-associate it with the Local Government or any of its devices without the consent of the Local Government, unless compelled to do so by court order or unless it is required for delivery of the Services (e.g. data and system security or troubleshooting and fixing fault purposes);
- (l) In connection with the termination of all or any part of the Services, the Supplier shall cooperate with the Local Government and comply with the reasonable directions of the Local Government to effect the orderly transition and migration to the Local Government, or a third party designated by the Local Government (including an alternate service provider) from the Supplier of all such terminated Services and Data then being performed or provided by the Supplier or for which the Supplier is responsible for performing or providing under this Agreement. The Parties shall work together to develop a transition out plan, if requested by the Local Government; and
- (m) Upon request from the Local Government, the Supplier shall return or destroy (and certify such destruction under the signature of an individual who can bind the corporation) any and all Data or Confidential Information of the Local Government unless retention of such information is required by law, regulation, court order.

15.3 The Parties agree that, except as expressly provided in this Agreement, there are no other warranties (express or implied) provided by the Supplier with respect to the performance of the Services, including the implied warranties of merchantability and fitness for a particular purpose.

16 CONFLICT OF INTEREST

16.1 The Supplier shall not permit an actual or potential conflict of interest to arise between its obligations to the Local Government under this Agreement and its obligations to any third

party. The Supplier shall immediately notify the Local Government in writing if any such potential or actual conflict of interest should arise at any time during the Term or Renewal Term.

16.2 In this Agreement, conflict of interest means:

- (a) The Supplier has an unfair advantage or engages in conduct, directly or indirectly, that may give it an unfair advantage, including but not limited to (i) having, or having access to, confidential information of the Local Government in the preparation of its Proposal that is not available to other proponents; (ii) communicating with any person with a view to influencing or obtaining preferred treatment (including, but not limited to, the lobbying of decision makers); or (iii) engaging in conduct that compromises or could be seen to compromise the integrity of the Agreement or provision of the Services or scope of work; or
- (b) In relation to the performance of its contractual obligations contemplated in the Agreement that is the subject of this procurement, the Supplier's other commitments, relationships or financial interests (i) could or could be seen to, exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgement; or (ii) could or could be seen to, compromise, impair or be incompatible with the effective performance of its contractual obligations.

17 ASSIGNMENT AND SUBCONTRACTING

17.1 The Supplier shall not assign this Agreement or any of its rights or obligations hereunder or subcontract the performance of any of the Services without the prior written consent of the Local Government, which consent may be withheld by the Local Government in its sole discretion. Any purported assignment or subcontracting by the Supplier without such consent shall be of no force or effect.

17.2 The Local Government's consent to an assignment of this Agreement or the subcontracting of the performance of any of the Services to be provided by the Supplier hereunder, shall not relieve the Supplier from any of its obligations under this Agreement and the Supplier shall, notwithstanding any such consent by the Local Government, remain responsible for the performance of the Services and all other obligations of the Supplier set out herein.

17.3 Subject to Section 17.1, the Supplier shall only engage subcontractors or personnel that are qualified and competent to perform the Services under this Agreement in a timely, efficient and professional manner.

17.4 Subject to Section 17.1, the Supplier shall include in every agreement an obligation of its subcontractors to comply at all times with the confidentiality, protection and handling of personal information requirements of this Agreement including but not limited to Schedule C.

17.5 Subject to Section 17.1, the Supplier shall ensure that no approved subcontractor who cannot comply with the confidentiality, protection and handling of personal information requirements of this Agreement has any access, custody or use of any personal information or confidential information as defined under this Agreement.

17.6 The Supplier shall remain responsible to the Local Government for the Services under this Agreement including any Services performed by a subcontractor. Subject to Section 17.1, the Supplier may use subcontractors provided it remains responsible for such subcontractors and shall remain liable for the performance of the assigned or delegated obligations hereunder.

18 ACCOUNTS AND AUDIT

18.1 The Supplier shall keep proper and accurate books and records, including all invoices, receipts and vouchers, relating to the Services and all expenditures and commitments made in connection therewith. The Supplier shall make such books and records available to the Local Government for review or audit within ten (10) days following receipt of a request from the Local Government to do so. The Supplier agrees that it shall retain all such books and records and make them available for review or audit by the Local Government for a period of three (3) years after the date of final payment by the Local Government hereunder. Any review or audit by the Local Government pursuant to this Section 18.1 shall be carried out by the Local Government at the Local Government's expense.

19 GENERAL

19.1 **Local Government's Representative:** All references in this Agreement to the Local Government, include any person duly authorized to act on behalf of the Local Government thereunder.

19.2 **Sections, Headings and Interpretation:** The division of this Agreement into sections and the insertion of headings are for convenience of reference only and do not affect its interpretation. Except where the context requires otherwise, references to the terms "herein," "hereof," "hereunder" and similar expressions refer to this Agreement as a whole, and not to any specific Section or Schedule.

19.3 **Time of the Essence:** Time shall be of the essence in this Agreement.

19.4 **Currency:** All dollar amounts referred to in this Agreement are Canadian dollars, unless expressly provided or stated otherwise.

19.5 **Severability / Partial Invalidity:** If any term or provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, it shall be deemed to be severed from this Agreement, and the remaining terms and conditions shall nevertheless remain in full force and effect.

19.6 **Agreement and Amendments:** This Agreement constitutes the entire agreement and understanding between the Supplier and the Local Government with respect to the Services (and Goods), and supersedes all prior negotiations, communications and other agreements, whether written or oral, relating to the subject matter hereof. Any amendment or modification to this Agreement shall have no force or effect unless it is in writing and signed by duly authorized representatives of each of the Local Government and the Supplier.

The following documents form part of this Agreement:

- (a) this Agreement and
- (b) the attached Schedules.

- 19.7 **Waiver:** No term or provision of this Agreement, and no breach of this Agreement by the Supplier, shall be deemed to be waived or excused by the Local Government unless such waiver is in writing and signed by the Local Government. The waiver by the Local Government of any breach of a term or provision of this Agreement shall not be or be deemed to be a waiver of any continuing or subsequent breach by the Supplier of the same or any other term or provision of this Agreement.
- 19.8 **Remedies Cumulative:** The rights and remedies of the Local Government set out in this Agreement are cumulative and are in addition to and not in substitution for any other rights or remedies available to the Local Government at law or in equity.
- 19.9 **Disputes:** If a dispute arises between the Local Government and the Supplier arising out of or relating to this Agreement, or the subject matter hereof, the Local Government and the Supplier agree that they shall each make all reasonable efforts to resolve any such dispute on a timely basis through amicable negotiations. Disputes shall promptly be referred by each Party to their respective senior management representatives who have the authority to resolve and settle any such disputes on their behalf. In the event that such representatives cannot resolve the dispute within ten (10) days or such longer period as the Parties may agree in writing, either Party may elect, upon giving prior written notice to the other Party, to resolve the matter through mediation or arbitration by a mutually acceptable mediator or arbitrator in accordance with the *Arbitration Act*, SNB, 2014, c. 100, as amended or litigation proceedings in the courts of the Province of New Brunswick. Notwithstanding the foregoing, nothing in this Section 19.9 shall prevent the Local Government from exercising its rights of termination set out under this Agreement in the circumstances described therein. It is further agreed by the Parties that they shall pay their own costs of any mediation, arbitration or litigation.
- 19.10 **Enurement:** This Agreement shall enure to the benefit of and be binding on the Local Government and on the successors and permitted assigns of the Supplier.
- 19.11 **Notices:** Any notice to be given under this Agreement by the Local Government or the Supplier shall be in writing and delivered by hand, by email transmission or by registered mail, to the other Party at the address and to the attention of the contact individual indicated below:

To the Local Government:

The Office of the
 City Clerk
 397 Queen Street
 Fredericton, NB E3B 1B5
cityclerk@fredericton.ca

To the Supplier:

Yuill Herbert
 Principal
 210-128 Hastings Street
 Vancouver, BC V6B 1G8
yuill@ssg.coop

A notice shall be deemed to be duly given and received upon delivery, if delivered by hand; upon receipt of the email transmission, if the transmission is received by the intended recipient prior to the recipient's close of business (and otherwise on the next business day of the recipient); or three (3) business days after posting, if sent by registered mail with a return receipt. Either Party may change its address or contact for receipt of notices, provided that such Party gives notice thereof in accordance with this Section 19.11 and confirms the effective date of the change in such notice.

- 19.12 **Counterparts:** This Agreement may be signed by the Local Government and the Supplier in one or more counterparts (in original or electronic form), each of which when signed and

delivered will be deemed an original, but all of which together will constitute one and the same instrument; however, this Agreement will be of no force or effect until executed by all Parties. Executed signature pages delivered by facsimile or electronic mail will be deemed for all purposes to be original counterparts of this Agreement.

- 19.13 **Further Assurances:** The Supplier and the Local Government agree to execute and deliver all such further documents and instruments, and do or cause to be done all such acts and things, as either Party may reasonably consider necessary to evidence the intent and meaning of this Agreement.
- 19.14 **Words in the Singular:** Where the context so requires in this Agreement, words in the singular include the plural and vice versa.
- 19.15 **Contra Proferentem Rule Not Applicable:** Should any provision of this Agreement require judicial interpretation, mediation or arbitration, it is agreed that the court, mediator or arbitrator interpreting or construing the same shall not apply a presumption that the terms thereof shall be more strictly construed against one Party by reason of the rule of construction that a document is to be construed more strictly against the Party who itself or through its agent prepared the same, it is agreed that both Parties, directly or through their agents, have participated in the preparation hereof.
- 19.16 **Costs:** It is acknowledged that each Party shall pay his own costs, charges and expenses of and incidental to the preparation of this Agreement.
- 19.17 **Governing Law:** The Parties acknowledge and agree this Agreement shall be governed by, construed, interpreted and enforced in accordance with the laws of the Province of New Brunswick and any federal laws of Canada applicable therein. The Parties submit to the exclusive jurisdiction of the courts of the Province of New Brunswick, that is, any claim or dispute with respect to or in relation to this Agreement shall be determined by a court of competent jurisdiction within the Province of New Brunswick.
- 19.18 **Public Announcements:** Neither Party shall make any public announcement, statement or press release regarding this Agreement or any relationship between the Supplier and the Local Government, without the prior written consent of the other Party.
- 19.19 **Survival:** Any provision of this Agreement which expressly or by implication from its nature is intended to survive the termination or completion of the Agreement will continue in full force and effect after any termination, expiry or completion of the Agreement. More specifically, neither the expiry nor the earlier termination of this Agreement shall relieve or be deemed to relieve, a Party from any duties, obligations or liabilities hereunder that accrued prior to such expiration or termination, including but not limited to those duties and obligations set out in Section 5 (Suspension and Termination of Agreement), Section 6 (Confidentiality), Section 7 (Material Rights), Section 11 (Insurance, Liability and Indemnity), Section 15 (Representations, Acknowledgements and Warranties) and Schedule C (Privacy Protection Schedule).
- 19.20 **Other:** The Parties acknowledge and agree that they have had the opportunity to seek independent legal advice or to have this Agreement reviewed by their respective legal counsel.

SCHEDULE A SERVICES / SCOPE OF WORK

This Schedule A incorporates the following documents:

- (1)** Request for Proposal P22-21 for the Supply of Consultation Services for Net Zero Corporate Engagement Strategy as attached hereto and forming a part hereof issued by the Local Government on April 8, 2022, which describes the Services to be delivered by the Supplier to the Local Government.
- (2)** Supplier's Proposal dated May 5, 2022, as attached hereto and forming a part hereof.

As outlined in RFP P22-21, the Services shall include but will not be limited to the following:

Create a roadmap of the actions that will prepare the staff of the Local Government for a net-zero transition and to ensure everyone working for the local government:

1. recognizes the implications of climate change,
2. fully understands the changes, planning, and financial investment required for the CEEP to succeed, as well as the increasing costs of inaction,
3. contributes to the Local Government's Response, and
4. embraces their role in the transition to a net-zero municipal government

In addition, the Services also include the following:

The Supplier shall provide a strategy that expands upon section 10 in the CEEP by providing a multi-year roadmap of actions to address change management within the Local Government. In addition to a written strategy, the supplier must produce a work plan containing a detailed list of actions. Details provided for each action should include:

- Targeted department(s) or division(s)
- Estimated staff resourcing requirement
- Estimated financial resourcing requirement
- Recommended timeline
- Potential external partner
- Link to goal area in the CEEP and/or CCAP
- Indicator of success (where applicable)

The Supplier must only propose actions relating to communications channels or platforms that the Local Government is currently using.

**SCHEDULE B
FEE SCHEDULE**

The fees associated with providing the Services in connection with providing consultation services for a net zero corporate engagement strategy for the Local Government:

All costs related to the scope of work have been included in the bid price below:

	Year One Term Fees - June 1, 2022 to May 31, 2023	Renewal Term Fees - June 1, 2023 to May 31, 2024
Days: Monday-Friday Regular Hours: 7:00 am to 5:00 pm	\$20,000.00 HST extra	
Hourly Rate - Principal		\$ _____ HST extra <i>(*to be negotiated by the Parties)</i>
Hourly Rate - Others		\$ _____ HST extra <i>(*to be negotiated by the Parties)</i>

Pricing shall be firm for the Agreement. Unit Price (s) given includes all shop supplies, labour, parking fees and travel time or any other ancillary cost involved for the item to be completed. After the completion of the initial term, pricing will be negotiation by Parties. Pricing is to be adjusted annually based on the Consumer Price Index as published in October of the previous year as set by Statistics Canada, ("CPI").

Term:

Year 1 – June 1, 2022 to May 31, 2023

Additional Work

For additional work not covered under this Agreement the hourly rate shall include all charges including but not limited to shop supplies, tools, fuel, truck, travelling and accommodation charges, etc. The Local Government would only be charged and shall only pay for the time spent by the Supplier on site. (i.e. travel time from another location or jurisdiction and/or mileage shall not be charged to the Local Government)

The Local Government reserves the right to get quotes for work not covered under this Agreement, quotes will have to indicate the number of hours and list of supplies needed.

The Local Government shall not be bound to buy parts or supplies from this Agreement; the Local Government reserves the right to purchase parts or supplies through Local Government Policies. The Local Government will inform the Supplier at the start of the job if parts or supplies will be supplied by the Local Government. Only the labor rate stated will be charged when parts or supplies are supplied by the Local Government.

The Supplier acknowledges that the Local Government has no guarantee hours and material cost per year for the Term of this Agreement.

The Supplier acknowledges all prices/rates quoted are to include **ALL** charges including but not limited to labour, travel, vehicle/truck, fuel surcharge etc.

SCHEDULE C

PRIVACY PROTECTION SCHEDULE

Purpose

1. The purpose of this Schedule is to:
 - (a) enable the Local Government to comply with the Local Government's statutory obligations under the RTIPPA with respect to personal information that is collected, retained, used, or disclosed as a result of the provision of the Services;
 - (b) ensure that, as a service provider, the Supplier is aware of the obligations under the applicable legislation with respect to personal information that is collected, retained, used or disclosed as a result of the provision of the Services; and
 - (c) "Personal Information" or "personal information" means recorded information about an identifiable individual that comes into the custody or under the control of the Supplier as a result of the provision of the Services and has the meaning given in the RTIPPA (SNB 2009, c. R-10.6, as amended)

Under Section 1 of RTIPPA, definitions "personal information" means recorded information about an identifiable individual, including but not limited (a) the individual's name, (b) the individual's home address or electronic mail address or home telephone or facsimile number, (c) information about the individual's age, gender, sexual orientation, marital status or family status, (d) information about the individual's ancestry, race, colour, nationality or national or ethnic origin, (e) information about the individual's religion or creed or religious belief, association or activity, (f) personal health information about the individual, (g) the individual's blood type, fingerprints or other hereditary characteristics, (h) information about the individual's political belief, association or activity, (i) information about the individual's education, employment or occupation or educational, employment or occupational history, (j) information about the individual's source of income or financial circumstances, activities or history, (k) information about the individual's criminal history, including regulatory offences, (l) the individual's own personal views or opinions, except if they are about another person, (m) the views or opinions expressed about the individual by another person, and (n) an identifying number, symbol or other particular assigned to the individual.

Collection of personal information

2. Unless the Agreement otherwise specifies or the Local Government otherwise directs in writing, the Supplier may only collect or create personal information that is necessary for the performance of the Supplier's obligations or the exercise of the Supplier's rights, under the Agreement.
3. Unless the Agreement otherwise specifies, or the Local Government otherwise directs in writing, the Supplier must collect personal information directly from the individual the information is about.

4. Unless the Agreement otherwise specifies or the Local Government otherwise directs in writing, the Services must make provision to inform an individual (and obtain their consent) from whom personal information is collected:
 - (a) the purpose for collecting it;
 - (b) the legal authority for collecting it; and
 - (c) the title, business address and business telephone number of the person designated by the Local Government to answer questions about the collection of personal information.

Integrity of personal information

5. The Supplier must make every reasonable effort to ensure the integrity and completeness of any personal information that comes within the custody or control of the Supplier as a result of the provision of the Services where that personal information is to be used by the Supplier or the Local Government to make a decision that directly affects the individual the information is about.

Requests for access to personal information

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

Correction of personal information

7. Within five (5) business days of receiving a written direction from the Local Government to correct or annotate any personal information, the Supplier must annotate or correct the information in accordance with the direction.
8. When issuing a written direction under Section 7 of this Schedule, the Local Government must advise the Supplier the date the correction request to which the direction relates was received by the Local Government in order that the Supplier may comply with Section 10 of this Schedule.
9. Within five (5) business days of correcting or annotating any personal information under Section 8 of this Schedule, the Supplier must provide the corrected or annotated information to any party to whom, within one (1) year prior to the date the correction request was made to the Local Government, the Supplier disclosed the information being corrected or annotated.
10. If the Supplier receives a request for correction of personal information from a person other than the Local Government, the Supplier must promptly advise the person to make the request to the Local Government and, if the Local Government has advised the Supplier of the name or title and contact information of an official of the Local Government to whom such requests are to be made, the Supplier must also promptly provide that official's name or title and contact information to the person making the request.

Protection of personal information

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

Storage and access to personal information

12. The Supplier must not store personal information outside Canada or permit access to personal information from outside Canada.

Retention of personal information

13. Unless the Agreement otherwise specifies or unless the Local Government directs otherwise in writing, the Supplier must retain personal information for at least one (1) year following the date of its use and securely dispose of personal information no later than three years after its use.

Use of personal information

14. Unless the Local Government otherwise directs in writing, the Supplier may only use personal information if that use is required for the performance of the Services.

Disclosure of personal information

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

Notice of unauthorized disclosure

17. If the Supplier knows that there has been an unauthorized disclosure of personal information in the custody or under the control of the Supplier, the Supplier must immediately notify the Local Government and take all necessary steps to mitigate and remediate. If the Supplier becomes aware of a security breach or any other event that compromises the security, confidentiality or integrity of any personal information (an "Incident"), the Supplier shall take appropriate actions to contain, investigate and mitigate the Incident. The Supplier shall also notify the Local Government and any individual of each and every Incident as soon as reasonably possible.

Inspection of personal information

18. In addition to any other rights of inspection the Local Government may have under the Agreement or under statute, the Local Government may, at any reasonable time during normal business hours and on reasonable notice to the Supplier, enter on the Supplier's premises to inspect any personal information in the custody or control of the Supplier as a result of its provision of the Services, and any of the Supplier's information management policies or practices relevant to the Supplier's management of personal information in connection with the Services or the Supplier's compliance with this Schedule, and the Supplier must permit, and provide reasonable assistance to, any such inspection. The inspection will be conducted in a manner as not to interfere unreasonably with the Supplier's business operations, and is subject to the Supplier's reasonable confidentiality and security policies, procedures and requirements.

Compliance with the applicable legislation and directions

19. The Supplier must in relation to personal information comply with the requirements of the applicable legislation, including any applicable order under the applicable legislation and any direction given by the Local Government that is permitted or required to be given under this Agreement or pursuant to legislation.
20. The Supplier acknowledges that it is familiar with the requirements of the applicable legislation governing personal information that are applicable to it.

Notice of non-compliance

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

Termination of Agreement

22. In addition to any other rights or remedies which the Local Government may have under the Agreement or otherwise at law, the Local Government may, upon any failure of the Supplier to comply with this Schedule in a material respect, declare such non-compliance to be an Event of Default and terminate the Services, or a component thereof, and/or the Agreement, in accordance with Section 5 of the Agreement.

Interpretation

23. In this Schedule, references to sections by number are to sections of this Schedule unless otherwise specified in this Schedule.
24. Any reference to the "Supplier" in this Schedule includes any subcontractor or agent retained by the Supplier to perform obligations under the Agreement and the Supplier must ensure that any such subcontractors and agents comply with this Schedule.
25. The obligations of the Supplier in this Schedule will survive the termination of the Agreement and will only expire when the Supplier no longer has any personal information generated as a result of the Services in its custody or control.
26. If a provision of the Agreement (including any direction given by the Local Government under this Schedule) conflicts with a requirement of the applicable legislation or an applicable order under the applicable legislation, the conflicting provision of the Agreement (or direction) will be inoperative to the extent of the conflict.
27. The Supplier must comply with the provisions of this Schedule despite any conflicting provision of this Agreement or, subject to Section 28 of this Schedule, the law of any jurisdiction outside Canada.
28. Nothing in this Schedule requires the Supplier to contravene the law of any jurisdiction outside Canada unless such contravention is required to comply with the applicable legislation.

PROVINCE OF NEW BRUNSWICK

COUNTY OF YORK

AFFIDAVIT OF CORPORATE EXECUTION

I, Jennifer Lawson, of the City of Fredericton, in the County of York and Province of New Brunswick, **MAKE OATH AND SAY AS FOLLOWS:**

1. THAT I am the City Clerk of the City of Fredericton, one of the parties named in the foregoing instrument and as such I have personal knowledge of the matters herein deposed to.
2. THAT the seal affixed to the foregoing instrument purporting to be the seal of the City of Fredericton is the Corporate Seal of the City of Fredericton and was so affixed by order of the City Council.
3. THAT the signature "Kate Rogers" subscribed to the foregoing instrument is the signature of Kate Rogers, the Mayor of the City of Fredericton, and the signature "Jennifer Lawson" subscribed thereto is my signature.
4. THAT the Mayor and City Clerk are officers of the City of Fredericton duly authorized to execute the foregoing instrument.

SWORN TO BEFORE ME at the)
City of Fredericton, in the County)
of York and Province of New)
Brunswick, this ____ day of)
June 2022.)

_____)
A Commissioner of Oaths)
Being a Solicitor)

_____)
Jennifer Lawson

PROVINCE OF _____

COUNTY OF _____

**Supplier to provide their standard affidavit or modify the following as they deem appropriate*

AFFIDAVIT OF CORPORATE EXECUTION

I, _____, of the City/Town of _____, in the County of _____ and Province of _____, **MAKE OATH AND SAY AS FOLLOWS:**

- 1. That I hold the office of _____ Ltd., (hereinafter called the "Corporation") and I am authorized to make this affidavit and have personal knowledge of the matters sworn to herein.
- 2. That the seal affixed to the foregoing instrument is the seal of the Corporation and was affixed to the instrument by order of the board of directors of the Corporation.
- 3. That the signature " _____ " subscribed to the foregoing instrument is my signature.
- 4. The President is the officer of the Corporation duly authorized to execute the foregoing instrument.

SWORN TO BEFORE ME at the)
 City of _____, in the County)
 of _____ and Province of)
 _____, this ____ day of)
 June, 2022.)

 A Commissioner of Oaths)
 Being a Solicitor)

DRAFT AFFIDAVIT