



## TERM SHEET

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*The following terms are to be included in any agreement between the NCC and a selected proponent. Although the final wording of the provisions may be subject to negotiation, proponents responding to this RFP should be prepared to enter into an agreement for the provision of the Deliverables that includes the provisions as described below:*

### **No Indemnities from the NCC**

The NCC will not provide an indemnity or any other form of indebtedness or contingent liability that would directly or indirectly increase the indebtedness or contingent liabilities of the NCC beyond the obligation to pay for the Deliverables in accordance with the contract.

### **Governing Law**

The contract will be governed by and construed in accordance with the laws of the province of Ontario and the federal laws of Canada.

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

The contract will not create an employment, partnership or agency relationship between the NCC and the Supplier (or any of the Supplier's directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors).

### **Responsibility of Supplier**

The Supplier will be responsible for the acts and omissions of its directors, officers, employees, agents, partners, affiliates, volunteers and subcontractors.

### **Assignment**

The Supplier will be prohibited from subcontracting or assigning any part of the contract without the prior written consent of the NCC, which shall be subject to the terms and conditions that may be imposed by the NCC.

### **Conflict of Interest**

The Supplier will avoid any actual or potential conflict of interest in its performance of the contract, will disclose any such conflict of interest and that the Supplier's conflict of interest, will comply with any instruction from the NCC to deal with any conflict of interest and that the Supplier's conflict of interest will give the NCC the right immediately terminate the contract.

### **Performance Warranty**

The Supplier will represent and warrant that the Deliverables will be provided fully and diligently in a professional and competent manner by persons qualified and skilled in their occupations and furthermore that all Deliverables will be provided in accordance with contract terms, industry standards and requirements of law.

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

The Supplier will be providing the Deliverables to the NCC on a non-exclusive basis, and that the NCC makes no representation regarding the volume of goods and services required under the contract.



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### **Replacement of Identified Individuals**

If specific individuals are identified in the contract as being responsible for providing the Deliverables, only those individuals are to provide the Deliverables and the Supplier will not be permitted to remove or replace any of the individuals identified in the contract without the NCC's consent.

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

The NCC will be required to pay the Supplier for the Deliverables provided in accordance with the provisions of the contract at the rates established under the contract.

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

There will be no other charges payable by the NCC under the contract other than the rates established under the contract and that the Supplier will pay all applicable taxes, including excise taxes incurred by or on the Supplier's behalf under the contract.

### **Document Retention and Audit**

The NCC will have the right to audit the Supplier's performance of the contract for a period of seven years and the Supplier must retain all relevant documents to substantiate its performance of all Deliverables.

### **Confidentiality**

The Supplier will maintain the confidentiality of the NCC's confidential information in accordance with the specific restrictions prescribed by the NCC and, to the extent that the contract includes handling personal information, will comply with all of the prescribed requirements to protect that personal information.

### **Ownership of Data**

The NCC will at all times own the data associated with the Deliverables and will have all rights associated with that ownership, including the right to access the data.

### **Entities and Territorial Limitation**

The Supplier shall ensure that any personal information including personal health information that is provided to the Supplier, or to which the Supplier obtains access as a result of the Contract, shall not be disclosed to any person outside of Canada or removed from Canada, unless such disclosure or removal, as the case may be, is expressly permitted in writing by the NCC. The Supplier shall not provide any Deliverables from a location outside of Canada without the prior written consent of the NCC. The consent of the NCC may be granted or withheld in the NCC's sole and unfettered discretion, which may not be challenged by the Supplier on any basis whatsoever.

### **Security Processes and Safeguards**

The NCC reserves the right to require the Supplier, at the Supplier's expense, to engage a mutually agreed third party to audit the privacy and security procedures and safeguards of the Supplier. If at any time, the NCC deems that the Supplier has in place insufficient security controls, the result of which, in the NCC's sole opinion which may not be challenged on any basis whatsoever, exposes the NCC to unacceptable risk, the Supplier shall promptly implement controls satisfactory to the NCC to mitigate the risk exposure.



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### **Injunctive and Other Relief**

The Supplier acknowledges that breach of any confidentiality provisions (including but not limited to those relating to the protection of all personal information) may cause irreparable harm to the NCC or to any third-party to whom the NCC owes a duty of confidence, and that the injury to the NCC or to any third-party may be difficult to calculate and inadequately compensable in damages. The Supplier agrees that the NCC is entitled to obtain injunctive relief (without proving any damage sustained by it or by any third-party) or any other remedy against any actual or potential breach of such confidentiality provisions.

### **Acceptance Testing Requirement**

The Deliverables in their entirety, and each part of the Deliverables, shall be subject to testing by the NCC.

### **Ownership of Intellectual Property**

Unless the Contract expressly states otherwise, the NCC shall be the sole owner of any newly created intellectual property, and the following provisions shall apply: (a) the Supplier irrevocably assigns to and in favour of the NCC and the NCC accepts every right, title and interest in and to all newly created intellectual property in the Deliverables, immediately following the creation thereof, for all time and irrevocably waives in favour of the NCC all rights of integrity and other moral rights to all newly created intellectual property in the Deliverables, immediately following the creation thereof, for all time; (b) to the extent that any of the Deliverables include, in whole or in part, the Supplier's intellectual property, the Supplier grants to the NCC a licence to use that Supplier Intellectual Property, the total consideration for which shall be payment of the Rates to the Supplier by the NCC; (c) at the request of the NCC, at any time or from time to time, the Supplier shall execute and agrees to cause its directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors to execute an irrevocable written waiver of any moral rights or other rights of integrity in the applicable Deliverable(s) in favour of the NCC.

### **Supplier's Grant of Licence**

For those parts of the Deliverables that are Supplier Intellectual Property, the Supplier grants to the NCC a perpetual, world-wide, non-exclusive, irrevocable, transferable, royalty free, fully paid up right and license: (a) to use, modify, reproduce and distribute, in any form, those Deliverables; and (b) to authorize other Persons, including agents, contractors or sub-contractors, to do any of the former on behalf of the NCC.

### **Software Licence**

To the extent that the Deliverables include the licencing of software to the NCC, the Supplier shall grant a licence in the form of a "Software Licence" with terms and conditions satisfactory to the NCC that shall at a minimum include the following:

- (a) a perpetual, irrevocable, world-wide, royalty-free, fully paid up, non-exclusive, unrestricted, fully transferable licence grant to the software (machine-readable object code) and any related documentation;
- (b) the right of the NCC and its designated users (including, without limitation, the NCC -authorized third party users) to install, copy, distribute, deploy and otherwise use the software, including without limitation the ability to make such modifications to the software in this context as may be required, with title to the software and any modifications retained by the Supplier;



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- (c) the right of access to the software by an unlimited number of third party users, including the general public;
- (d) a licence to use the software in the environments and for the number of instances specified in the Contract;
- (e) a licence to use the software on any hardware and at any capacity;
- (f) a reasonable period of time in which to test and accept the software after it has been installed in the NCC's environment;
- (g) a formal payment protocol that confirms that no licensing fees or other payments under the Contract shall be payable until the software has been formally accepted in writing by the NCC;
- (h) a warranty that the Supplier has exclusive title to the software and documentation or otherwise has the right to grant the licence to the NCC;
- (i) a warranty that the software is free from all encumbrances and does not contain any disabling code;
- (j) a warranty that the software shall be compatible with future versions or releases of the operating system on which it was originally installed and shall be subsequently maintained to remain so compatible;
- (k) a warranty that the software otherwise conforms to the requirements, functional specifications, warranties and standards set out in the Contract;
- (l) a licence to use the software at an internal or third party disaster recovery site;
- (m) a licence to use any other Deliverables provided under the Contract; and
- (n) a licence to use the Deliverables in the manner contemplated by and as otherwise described in the Contract, including the originating solicitation document and Supplier proposal.

### **Escrow**

To the extent that the Deliverables include an obligation on the part of the Supplier to provide software escrow services to the NCC, the Supplier and the NCC will enter into a "Software Escrow Agreement" on terms satisfactory to the NCC which shall include as a minimum the following provisions and protections:

- (a) the delivery into escrow of all source code, documentation and executables for the software;
- (b) the release of escrow materials in the event that the Supplier becomes bankrupt, insolvent, or ceases to operate as a going concern, or is otherwise unable or unwilling to support, maintain or adequately develop the software;
- (c) the NCC's right to request the Supplier to demonstrate to the NCC that the escrowed materials are indeed what they purport to be;
- (d) the NCC's right to approve the Supplier's proposed escrow agent.

### **Supplier Indemnity**

The Supplier will be required to defend, indemnify and hold harmless the NCC (and its directors, officers, advisors, agents, appointees and employees) from and against any and all claims in any way based upon, occasioned by or attributable to anything done or omitted to be done by the Supplier or the Supplier's subcontractors in connection with the contract.



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### **Limitation of Liability**

The NCC and the selected supplier will negotiate commercially reasonable limitation of liability provisions that will, amongst other things, address the following:

- Limiting liability to direct damages (subject to a mutually agreeable definition of direct damages) and to a specific monetary cap
- Making any such limitations subject to standard exclusions for categories including but not limited to personal injury, physical harm, tangible property, confidentiality and privacy breaches, and third party intellectual property infringement claims

### **Supplier's Insurance**

The Supplier will be required to put in effect and maintain at its own cost and expense all appropriate insurance for the contract. The insurance policies shall be in a form and include such terms as are acceptable to the NCC, and the Supplier will be required to provide the NCC with proof of the required insurance upon request.

### **Immediate Termination**

The NCC will have the right to immediately terminate the contract upon giving notice to the Supplier where:

- (a) the Supplier is adjudged bankrupt, makes a general assignment for the benefit of its creditors or a receiver is appointed on account of the Supplier's insolvency;
- (b) the Supplier breaches any of the confidentiality provisions;
- (c) the Supplier breaches the conflict of interest provision;
- (d) the Supplier, prior to or after executing the Agreement, makes a material misrepresentation or omission or provides materially inaccurate information to the NCC;
- (e) the Supplier undergoes a change in control which adversely affects the Supplier's ability to satisfy some or all of its obligations under the contract;
- (f) the Supplier subcontracts for the provision of part or all of the Deliverables or assigns the contract without first obtaining the written approval of the NCC; or
- (g) the Supplier's acts or omissions constitute a substantial failure of performance.

### **Termination on Notice**

The NCC will have the right to terminate the contract, without cause, upon thirty (30) calendar days prior notice to the Supplier.