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AGREEMENT

THIS AGREEMENT (this “**Agreement**”), made for [the provision of X services] is effective as of the [**insert start date for the Term**] (the “**Effective Date**”),

BETWEEN:

ONTARIO SHORES CENTRE FOR MENTAL HEALTH SCIENCES

(“**Ontario Shores**”)

AND:

[***LEGAL NAME OF SUPPLIER***]

(the “**Supplier**”)

The parties agree as follows:

ARTICLE 1 – INTERPRETATION AND GENERAL PROVISIONS

1.01 Defined Terms

When used in the Contract, the following words or expressions have the following meanings:

“**Authority**” means any government or regulatory authority, agency, body or department, whether federal, provincial or municipal, having or claiming jurisdiction over the Contract, the parties or the Deliverables, including without limitation the IPC (defined below); and “**Authorities**” means all such authorities, agencies, bodies and departments;

“**Business Day**” means any working day, Monday to Friday inclusive, but excluding statutory holidays and other days on which Ontario Shores is closed for administrative business;

“**Client**” means any entity falling within the operation of Ontario Shores;

“**Conflict of Interest**” includes, but is not limited to, any situation or circumstance where:

- (a) in relation to the RFP process, the proponent 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 information in the preparation of its proposal that is confidential to Ontario Shores and not available to other proponents; (ii) communicating with any person with a view to influencing preferred treatment in the RFP process; or (iii) engaging in conduct that compromises or could be seen to compromise the integrity of the open and competitive RFP process and render that process non-competitive and unfair; or
- (b) in relation to the performance of its contractual obligations, the Supplier’s other commitments, relationships or financial interests (i) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgment; or (ii) could or could be seen to compromise, impair or be incompatible with the effective performance of its contractual obligations.

For greater certainty, a Conflict of Interest includes, without limitation, any Conflict of Interest, perceived, potential and actual, which exists now or may reasonably arise in the future;

“Contingency Plan” has the meaning set out in Section 3.17;

“Contract” means the aggregate of: (a) this Agreement, including Schedule 1 (Schedule of Deliverables, Rates and Supplementary Provisions) and any other schedule attached at the time of execution; (b) the RFP; (c) the Proposal; and (d) any amendments executed in accordance with the terms of the Contract;

“Deliverables” means everything developed for or provided to Ontario Shores in the course of performing under the Contract or agreed to be provided to Ontario Shores under the Contract by the Supplier or its directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors, including but not limited to any goods or services or any and all Intellectual Property and any and all concepts, techniques, ideas, information, documentation and other materials, however recorded, developed or provided;

“Delivery” has the meaning set out in Section 3.14;

“Expiry Date” means the expiry date of the Initial Term or, if the Term is extended, the expiry date of the Extension Term;

“FIPPA” means the *Freedom of Information and Protection of Privacy Act* (Ontario);

“Force Majeure Event” means an act of God or of the public enemy; civil war; insurrection or riot; act of war; act of government; act of terrorism; fire; flood; storm; explosion; earthquake; unusually severe weather; pandemic; epidemic or quarantine restriction; strike or organized labour trouble (causing cessation, slowdown or interruption of work); or failure or fluctuation in electrical power, heat light, air conditioning or telecommunication equipment; and any other similar event that is beyond the applicable party’s control and occurring without its fault or negligence;

“Ontario Shores’ Policies” means all of Ontario Shores’ policies, procedures, protocols, rules and regulations in force from time to time that are relevant or applicable to the Deliverables or the performance of the Contract by the Supplier, including without limitation, those regarding confidentiality, privacy, acceptable use of information technology, collection, use and disclosure of Personal Information and Personal Health Information, and respectful workplace;

“Indemnified Parties” means Ontario Shores, its directors, officers, employees, agents, volunteers, contractors and subcontractors;

“Industry Standards” means the industry standards generally applicable to Persons engaged in the provision of the Deliverables or goods or services similar in nature to the Deliverables, and includes, but is not limited to (a) the provision of any and all labour, supplies, equipment and other goods or services that are necessary and can reasonably be understood or inferred to be included within the scope of the Contract or customarily furnished by Persons providing Deliverables of the type provided hereunder in similar situations in Ontario; and (b) adherence to commonly accepted norms of ethical business practices, which shall include the Supplier establishing, and ensuring adherence to, precautions to prevent its employees or agents from providing or offering gifts or hospitality of greater than nominal value to any person acting on behalf of or employed by Ontario Shores;

“Intellectual Property” means any intellectual, industrial or other proprietary right of any type in any form protected or protectable under the laws of Canada, any foreign country, or any political subdivision of any country, including, without limitation, any intellectual, industrial or proprietary rights protected or protectable by legislation, by common law or at equity;

“IPC” means the Information and Privacy Commissioner/Ontario;

“Liens” means, collectively, encumbrances, liens, security interests or other defects in title;

“Losses” means the aggregate of any and all claims, proceedings, suits, actions, losses, damages, liabilities, assessments, levies, duties, fines, expenses, judgments, and costs (including legal fees and costs on a solicitor and client basis);

“Material Adverse Effect” means a change, effect or circumstance that is materially adverse to, or could reasonably be expected to have a material adverse effect on, the financial condition or results of operations of the Company;

“Newly Created Intellectual Property” means any Intellectual Property created by the Supplier in the course of performance of its obligations under the Contract;

“Ontario Shores Address” and **“Ontario Shores Representative”** mean:

Ontario Shores Centre for Mental Health Sciences
700 Gordon Street
Whitby, ON L1N 5S9

NAME
Phone:
Email

Or

Signatory Name
Address
Phone
Email

“Ontario Shores Confidential Information” means all information of Ontario Shores, or any of its Clients, licensors, or third parties providing services to Ontario Shores, that is of a confidential nature, including all confidential information in the custody or control of Ontario Shores, regardless of whether it is identified as confidential or not, and whether recorded or not, and however fixed, stored, expressed or embodied, which comes into the knowledge, possession or control of the Supplier in connection with the Contract. For greater certainty, Ontario Shores Confidential Information shall:

- (a) include: (i) all new information derived at any time from any such information whether created by Ontario Shores, the Supplier or any third party; (ii) all information (including Personal Information and Personal Health Information) that Ontario Shores is obliged, or has the discretion, not to disclose under provincial or federal legislation or otherwise at law; but
- (b) not include information that: (i) is or becomes generally available to the public without fault or breach on the part of the Supplier of any duty of confidentiality owed by the Supplier to Ontario Shores or to any third party; (ii) the Supplier can demonstrate to have been rightfully obtained by the Supplier, without any obligation of confidence, from a third party who had the right to transfer or disclose it to the Supplier free of any obligation of confidence; (iii) the Supplier can demonstrate to have been rightfully known to or in the possession of the Supplier at the time of disclosure, free of any obligation of confidence when disclosed; or (iv) is independently developed by the Supplier; but the exclusions in this subparagraph shall not apply to Personal Information and Personal Health Information, and shall in no way limit the meaning of Personal Information, Personal Health Information, or the obligations attaching thereto under the Contract or by the Requirements of Law;

“**Person**” if the context allows, includes any individuals, persons, firms, partnerships or corporations or any combination thereof;

“**Personal Health Information**” has the meaning given to it in PHIPA, as may be amended or replaced from time to time;

“**Personal Information**” has the meaning given to it in FIPPA, as may be amended or replaced from time to time;

“**PHIPA**” means the *Personal Health Information Protection Act, 2004* (Ontario);

“**Proceeding**” means any action, claim, demand, lawsuit, or other proceeding;

“**Proposal**” means all the documentation submitted by the Supplier in response to the RFP;

“**Rates**” means the applicable prices, in Canadian funds, to be charged for the applicable Deliverables, as set out in Schedule 1, representing the full amount chargeable by the Supplier for the provision of the Deliverables, including but not limited to: (a) all applicable duties, tariffs and taxes, excluding Harmonized Sales Tax; (b) all labour and material costs; (c) shipping and handling; (d) all insurance costs; and (e) all other overhead including any fees or other charges required by the Requirements of Law. Any increase or decrease, after the date of the Contract, in such included duties and taxes, shall increase or decrease such included duties and taxes, accordingly;

“**Record**”, for the purposes of the Contract, means any recorded information, including any Personal Information and Personal Health Information, in any form: (a) provided by Ontario Shores to the Supplier, or provided by the Supplier to Ontario Shores, for the purposes of the Contract; or (b) created by the Supplier in the performance of the Contract; and shall include or exclude any information specifically described in Schedule 1;

“**Requirements of Law**” mean all applicable requirements, laws, statutes, codes, acts, ordinances, orders, decrees, injunctions, by-laws, rules, regulations, official plans, permits, licences, authorisations, directions, and agreements with all Authorities that now or at any time hereafter may be applicable to either the Contract or the Deliverables or any part of them, including without limitation any privacy orders or guidance of the IPC;

“**RFP**” means the Request for Proposals dated [● for ●, reference number ●] issued by Ontario Shores for the Deliverables and any addenda to it;

“**Statement of Work**” means one or more documents [prepared following the template attached hereto as Schedule ●], each of which document is signed by Ontario Shores and the Supplier and contains a statement to the effect that the performance of Deliverables under the Statement of Work is subject to the terms and conditions of this Agreement;

“**Supplier Address**” and “**Supplier Representative**” mean:

[insert Supplier’s mailing address **]**

[insert name and title, telephone and email address for Supplier representative, as well as same information for back -up person if available**]**

“**Supplier’s Intellectual Property**” means Intellectual Property owned by the Supplier prior to its performance under the Contract or created by the Supplier during the Term of the Contract independently of the performance of its obligations under the Contract;

“**Term**” means the period of time from the Effective Date up to and including the earlier of: (i) the Expiry Date or (ii) the date of termination of the Contract in accordance with its terms;

“**Termination Service Plan**” has the meaning set out in Section 3.06(c); and

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

1.02 **No Indemnities from Ontario Shores**

Despite anything else in the Contract, any express or implied reference to Ontario Shores providing an indemnity or any other form of indebtedness or contingent liability that would directly or indirectly increase the indebtedness or contingent liabilities of Ontario Shores, whether at the time of execution of the Contract or at any time during the Term, shall be void and of no legal effect.

1.03 **Entire Agreement**

The Contract embodies the entire agreement between the parties with regard to the provision of Deliverables and supersedes any prior understanding or agreement, collateral, oral or otherwise with respect to the provision of the Deliverables, existing between the parties at the date of execution of the Contract.

1.04 **Severability**

If any term or condition of the Contract, or the application thereof to the parties or to any Persons or circumstances, is to any extent invalid or unenforceable, the remainder of the Contract, and the application of such term or condition to the parties, Persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby.

1.05 **Interpretive Value of Contract Documents**

In the event of a conflict or inconsistency in any provisions in the Contract: (a) the main body of this Agreement shall govern over the Schedules to this Agreement; (b) this Agreement (including its Schedules) shall govern over the RFP and the Proposal; and (c) the RFP shall govern over the Proposal.

1.06 **Interpretive Value of Headings**

The headings in the Contract are for convenience of reference only and in no manner modify, interpret or construe the Contract.

1.07 **Force Majeure**

Subject to Section 3.17,

(a) No Liability. Neither party shall be liable for any default or delay in the performance of its obligations under this Agreement if and to the extent such default or delay is caused, directly or indirectly, by a Force Majeure Event, and if and to the extent such default or delay could not have been prevented by reasonable foresight or precautions or circumvented through the use of alternate sources, or work-around plans, including but not limited to the implementation of the Contingency Plan.

(b) Future Obligations. The non-performing party shall be excused from further performance or observance of the obligations affected by a Force Majeure Event for the period that such circumstances prevail together with a reasonable period following thereafter to allow for any transition or recovery. The non-performing party shall use reasonable commercial efforts to recommence performance or observance without delay.

(c) Notice. A party so experiencing a Force Majeure Event shall immediately notify the party, to whom performance is due, by telephone, email or facsimile communication or in person (if not in writing within twenty-four (24) hours of the inception of such delay) and describe at a

reasonable level of detail the circumstances of the delay and any factors causing the delay, if known at the time of such written confirmation.

- (d) Updates. Each party shall provide the other party with frequent updates and otherwise use commercially reasonable efforts to keep the other party fully informed of the status of the recovery efforts.
- (e) Future Performance. Except as set forth in this Section 1.07, the Supplier will continue to receive its Rates during a Force Majeure Event. If a Force Majeure Event affecting the Supplier substantially prevents, hinders, or delays performance of the Deliverables and the Supplier is unable to continue the performance of the Deliverables during the Force Majeure Event pursuant to the Contingency Plan, then the Supplier shall, upon Ontario Shores' request, suspend the affected Deliverables and Ontario Shores may, at its option and sole cost, procure such Deliverables from an alternate service provider and cease paying the applicable Rates payable to the Supplier for such Deliverables until such time as the Supplier resumes providing the Deliverables.
- (f) Termination. In the event the Supplier for whatever reason is unable to continue the provision of the Deliverables during the Force Majeure Event, Ontario Shores may within fifteen (15) days after written notice is given to the Supplier of Ontario Shores' intent to terminate (A) Ontario Shores may terminate any portion of this Agreement, Statement of Work or category of Deliverables so affected and the Rates payable hereunder shall be equitably adjusted to reflect those terminated Deliverables and (B) Ontario Shores may terminate this Agreement, any Statement of Work or category of Deliverables as of a date specified by Ontario Shores in a written notice of termination to the Supplier, in either case Ontario Shores shall pay the following amounts:
 - (i) subject to paragraph 1.07(e), for the Deliverables rendered by the Supplier prior to the effective date of such termination, in accordance with Article 4 and Schedule 1 of this Agreement; and
 - (ii) any amounts payable for the Deliverables provided by the Supplier in accordance with Section 8.06 of this Agreement.

1.08 Notices by Prescribed Means

Notices shall be in writing and shall be delivered by postage-prepaid envelope, personal delivery, email or facsimile and shall be addressed to, respectively, Ontario Shores Address to the attention of Ontario Shores Representative and to the Supplier Address to the attention of the Supplier Representative. Notices shall be deemed to have been given: (a) in the case of postage-prepaid envelope, five (5) Business Days after such notice is mailed; (b) in the case of personal delivery or facsimile one (1) Business Day after such notice is received by the other party; or (c) in the case of email once positive confirmation of receipt is received by the sender. In the event of a postal disruption, notices must be given by personal delivery or by facsimile. Unless the parties expressly agree in writing to additional methods of notice, notices may only be provided by the methods contemplated in this paragraph.

1.09 Acceptable Forms of Signature

Signatures will be accepted when received handwritten on a mailed document, handwritten on the document and scanned electronically or handwritten on the document and faxed.

1.10 Governing Law

The Contract shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

ARTICLE 2 – NATURE OF RELATIONSHIP BETWEEN ONTARIO SHORES AND SUPPLIER

2.01 Supplier's Power to Contract

The Supplier represents and warrants that it has the full right and power to enter into the Contract and there is no agreement with any other Person which would in any way interfere with the rights of Ontario Shores under the Contract.

2.02 Signatories May Bind the Parties

The parties represent that their respective signatories have the authority to legally bind them to the extent permissible by the Requirements of Law.

2.03 Supplier Not a Partner, Agent or Employee

The Supplier shall have no power or authority to bind Ontario Shores or to assume or create any obligation or responsibility, express or implied, on behalf of Ontario Shores. The Supplier shall not hold itself out as an agent, partner or employee of Ontario Shores. Nothing in the Contract shall have the effect of creating a joint venture, employment, partnership or agency relationship between Ontario Shores and the Supplier (or any of the Supplier's directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors).

2.04 Responsibility of Supplier

The Supplier agrees that it is liable for the acts and omissions of its directors, officers, employees, agents, partners, affiliates, volunteers and subcontractors. This paragraph is in addition to any and all of the Supplier's liabilities under the Contract and under the general application of law. The Supplier shall advise these individuals and entities of their obligations under the Contract and shall ensure their compliance with the applicable terms of the Contract. In addition to any other liabilities of the Supplier pursuant to the Contract or otherwise at law or in equity, the Supplier shall be liable for all damages, costs, expenses, losses, claims or actions arising from any breach of the Contract resulting from the actions of the above mentioned individuals and entities. This paragraph shall survive the termination or expiry of the Contract.

2.05 No Subcontracting or Assignment

The Supplier shall not subcontract or assign the whole or any part of the Contract or any monies due under it without the prior written consent of Ontario Shores. Such consent shall be in the sole discretion of Ontario Shores and subject to the terms and conditions that may be imposed by Ontario Shores. Without limiting the generality of the conditions which Ontario Shores may require prior to consenting to the Supplier's use of a subcontractor, every contract entered into by the Supplier with a subcontractor shall be in writing and shall adopt all of the terms and conditions of the Contract as far as applicable to those parts of the Deliverables provided by the subcontractor. Nothing contained in the Contract shall create a contractual relationship between any subcontractor or its directors, officers, employees, agents, partners, affiliates or volunteers and Ontario Shores.

2.06 Duty to Disclose Change of Control

In the event that the Supplier undergoes a change in control the Supplier shall immediately disclose such change in control to Ontario Shores and shall comply with any terms and conditions subsequently prescribed by Ontario Shores resulting from the disclosure.

2.07 Conflict of Interest

The Supplier shall: (a) avoid any Conflict of Interest in the performance of its contractual obligations; (b) disclose to Ontario Shores without delay any actual or potential Conflict of Interest that arises during the performance of its contractual obligations; and (c) submit any information to Ontario Shores that Ontario Shores considers necessary to properly assess any Conflict of Interest and comply with any requirements prescribed by Ontario Shores to resolve any Conflict of Interest. In addition to all other contractual rights or rights available at law or in equity, Ontario Shores may immediately terminate the Contract upon giving notice to the Supplier where: (a) the Supplier fails to disclose an actual or potential Conflict of Interest; (b) the Supplier fails to comply

with any requirements prescribed by Ontario Shores to resolve a Conflict of Interest; or (c) the Supplier's Conflict of Interest cannot be resolved. This paragraph shall survive any termination or expiry of the Contract.

2.08 Contract Binding

The Contract shall enure to the benefit of and be binding upon the parties and their successors, executors, administrators and their permitted assigns.

ARTICLE 3 - PERFORMANCE BY SUPPLIER

3.01 Commencement of Performance

The Supplier shall commence performance upon receipt of written instructions from Ontario Shores. The Supplier shall:

- (a) perform, and provide, the Deliverables in accordance with the Industry Standards, the Contract and the Requirements of Law;
- (b) provide the Deliverable with the degree of care, skill and diligence of a prudent, knowledgeable and experienced provider of goods and services which are similar to the Deliverables; and
- (c) comply with the Requirements of Law and Ontario Shores' Policies.

3.02 Termination Service and Planning

The Supplier shall within **[12 months]** following the execution of a Statement of Work, prepare and deliver to Ontario Shores a comprehensive transition plan to provide for the orderly wind-down and transfer of the Deliverables, the transfer of any relevant Personal Information or Personal Health Information, knowledge and as applicable associated assets in order to allow a successor to commence providing the Deliverables in a manner that ensures continuity of care (the "Termination Service Plan"). Upon receipt by the Supplier of notice from Ontario Shores, the Supplier will perform its obligations set out in the Termination Service plan, and the Supplier will provide any other assistance reasonably required by Ontario Shores for the orderly wind-down and transfer of the Deliverables, the transfer of any relevant Personal Information or Personal Health Information, knowledge and as applicable associated assets.

3.03 Documentation

Supplier shall provide Documentation acceptable to Ontario Shores of all activities and Deliverables. Such Documentation shall be available to Ontario Shores and to any Client in both printed and electronic form. When submitting a Deliverable to Ontario Shores, Supplier shall supply all Documentation that is required for Ontario Shores or any Client to install, compile, configure, implement, support, administer, maintain, and otherwise effectively use the Deliverable.

3.04 Supplier Representations, Warranties and Covenants

The Supplier represents, warrants and covenants to Ontario Shores that:

- (a) Supplier will not breach any agreement or other obligation to keep in confidence, or to refrain from using, the confidential, proprietary, trade secret or Personal Information of another client or any other person, and will not use any such information in connection with the Deliverables
- (b) the Deliverables will not infringe any Intellectual Property Rights, contractual rights or other proprietary or personal rights of any person;
- (c) any Deliverables that are services shall be provided fully and diligently in a professional and competent manner by persons qualified and skilled in their occupations;

- (d) any Deliverables that are goods (i) are fit for their intended purpose and shall be free from defects in workmanship and material and (ii) shall not be subject to any Liens;
- (e) Deliverables will be provided in accordance with: (a) the Contract; (b) Industry Standards; and (c) Requirements of Law;
- (f) if any of the Deliverables, in the opinion of Ontario Shores, are inadequately provided or require corrections, the Supplier shall forthwith make the necessary corrections to the Deliverables and any property affected by such Deliverables at the Supplier's own expense as specified by Ontario Shores in a rectification notice;
- (g) Supplier's operations have been and are now conducted in compliance with all Requirements of Law which have been and are now applicable to the business or products of the Supplier except for non-compliance which does not have a Material Adverse Effect and the Supplier has not received any notice of any alleged violation of any such Requirements of Law;
- (h) Supplier has developed and implemented corporate policies and procedures designed to provide for compliance in all material respects with applicable Requirements of Law and has complied with such policies and procedures in all material respects; and
- (i) there are no, and there have not during the last five years been, any adverse or negative past performance evaluations or ratings relating to the business or products of the Supplier which have been communicated to the Supplier.

The warranty provisions in the Contract are in addition to, and without prejudice to, any right or remedy otherwise available to Ontario Shores for the Supplier's failure to fulfill its responsibilities under the Contract.

3.05 Use and Access Restrictions

The Supplier acknowledges that unless it obtains specific written preauthorization from Ontario Shores, any access to or use of Ontario Shores' property, technology or information that is not necessary for the performance of its contractual obligations with Ontario Shores is strictly prohibited. The Supplier further acknowledges that Ontario Shores may monitor the Supplier to ensure compliance with this paragraph. This paragraph is in addition to and shall not limit any other obligation or restriction placed upon the Supplier. The Supplier shall comply with Ontario Shores' site policies and requirements while at Ontario Shores' site.

3.06 Notification by Supplier to Ontario Shores

During the Term, the Supplier shall advise Ontario Shores promptly of: (a) any contradictions, discrepancies or errors found or noted in the Contract; (b) supplementary details, instructions or directions that do not correspond with those contained in the Contract; (c) any omissions or other faults that become evident and should be corrected in order to provide the Deliverables in accordance with the Contract and Requirements of Law, and (d) any changes to the truth or accuracy of any of the representations, warranties and covenants given by the Supplier in this Agreement.

3.07 Condonation Not a Waiver

Any failure by Ontario Shores to insist in one or more instances upon strict performance by the Supplier of any of the terms or conditions of the Contract shall not be construed as a waiver by Ontario Shores of its right to require strict performance of any such terms or conditions, and the obligations of the Supplier with respect to such performance shall continue in full force and effect.

3.08 Changes by Written Amendment Only

Any changes to the Contract shall be by written amendment signed by the parties. No changes shall be effective or shall be carried out in the absence of such an amendment.

3.09 **Supplier to Comply With Reasonable Change Requests**

Ontario Shores may, in writing, request changes to the Contract, which may include altering, adding to, or deleting any of the Deliverables. The Supplier shall comply with all reasonable Ontario Shores' change requests and the performance of such request shall be in accordance with the terms and conditions of the Contract. If the Supplier is unable to comply with the change request, it shall promptly notify Ontario Shores and provide reasons for such non-compliance. In any event, any such change request shall not be effective until a written amendment reflecting the change has been executed by the parties.

3.10 **Pricing for Requested Changes**

Where an Ontario Shores' change request includes an increase in the scope of the previously contemplated Deliverables, Ontario Shores shall set out, in its change request, the proposed prices for the contemplated changes. Where the Rates in effect at the time of the change request:

- (a) include pricing for the particular type of goods or services contemplated in the change request, the Supplier shall not unreasonably refuse to provide those goods or services at prices consistent with those Rates; or
- (b) are silent to the applicable price for the particular goods or services contemplated in the change request, the price shall be negotiated between Ontario Shores and the Supplier within a reasonable period of time;

and in any event, such change request shall not become effective until a written amendment reflecting the change has been executed by the parties.

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

The Supplier acknowledges that it is providing the Deliverables to Ontario Shores on a non-exclusive basis. Ontario Shores makes no representation regarding the volume of goods and services required under the Contract. Ontario Shores reserves the right to contract with other parties for the same or similar goods and services as those provided by the Supplier and reserves the right to obtain the same or similar goods and services internally.

3.12 **Performance by Specified Individuals Only**

The Supplier agrees that to the extent that specific individuals are named in the Contract as being responsible for the provision of the Deliverables that are services, only those individuals shall provide the Deliverables under the Contract. The Supplier shall not replace or substitute any of the individuals named in the Contract without the prior written approval of Ontario Shores, which may not arbitrarily or unreasonably be withheld. Should the Supplier require the substitution or replacement of any of the individuals named in the Contract, it is understood and agreed that any proposed replacement must possess similar or greater qualifications than the individual named in the Contract. The Supplier shall not claim fees for any replacement individual greater than the Rates established under the Contract. The Supplier agrees not to undertake any other commissions or contracts which would adversely affect its ability to provide the Deliverables.

3.13 **Ontario Shores' Rights and Remedies and Supplier Obligations Not Limited to Contract**

The express rights and remedies of Ontario Shores and obligations of the Supplier set out in the Contract are in addition to and shall not limit any other rights and remedies available to Ontario Shores or any other obligations of the Supplier at law or in equity.

3.14 **Cooperation with Other Consultants of Ontario Shores**

The Supplier shall at all times fully coordinate, collaborate, cooperate and consult with any other suppliers or consultants retained by Ontario Shores and any agencies funding the Deliverables, if so requested by Ontario Shores.

3.15 **Delivery of Goods**

Any Deliverables that are goods shall be delivered to the location(s) specified in Schedule 1, or, if no such location(s) are specified, to Ontario Shores Address or such other location(s) as may be specified by Ontario Shores from time to time ("**Delivery**"). Risk of loss or damage to any Deliverables that are goods shall remain with Supplier until Delivery. Title to the Deliverables that are goods shall pass to Ontario Shores upon Delivery, free and clear of all Liens.

3.16 **Schedule**

The Supplier acknowledges that time is of the essence with respect to the provision of the Deliverables. Supplier shall perform or deliver, as applicable, the Deliverables in accordance with the schedule set out in Schedule 1 to the Contract.

3.17 **Canadian Police Information Centre (CPIC) Clearance for Vulnerable Sector Clearance**

The Supplier shall, within ten (10) days following execution of this Agreement, at its sole cost and expense, provide Canadian Police Information Centre (CPIC) for working with a Vulnerable Sector security clearance checks dated no earlier than one hundred and eighty (180) days prior to the date of the Contract to Ontario Shores in respect of all officers, directors, agents, employees or volunteers of Supplier who may have contact with Personal Information, Personal Health Information, or patients of Ontario Shores while performing any obligations under the Contract. Any officer, director, agent, employee or volunteer of Supplier to whom security clearance is not granted shall be immediately replaced by Supplier with a person to whom security clearance has been granted. Supplier agrees to comply with the Government of Ontario's "Contractor Security Screening Process" as may be amended from time to time.

3.18 **Contingency Plan**

(a) The Supplier shall develop a contingency plan ("**Contingency Plan**") that is congruent with Ontario Shores' emergency preparedness plans in the event Ontario Shores requests that the Supplier continue to provide the Deliverables to Ontario Shores during a Force Majeure Event. Such Contingency Plan shall be developed by the Supplier and approved by the Parties prior to the Effective Date and shall ensure that Ontario Shores gets better or equal access to the Supplier's supplies and the Deliverables as any other healthcare institution in Ontario during a Force Majeure Event.

(b) Upon the occurrence of a Force Majeure Event that triggers the Contingency Plan, the Supplier shall, in conjunction with Ontario Shores' emergency preparedness plans, implement and comply with the Contingency Plan for the benefit of Ontario Shores.

(c) The Supplier shall conduct exercises to assess the Contingency Plan not less than once each rolling twelve-month period during the Term. The Supplier shall notify Ontario Shores of the test results of the exercises. The Supplier will notify Ontario Shores in advance of the applicable exercise to be conducted by the Supplier and will permit Ontario Shores, at Ontario Shores' option, to participate in any such exercises relative to those portions of the Contingency Plan that apply to the Deliverables. If the Supplier identifies risk through the exercises described in this Section 3.17, the Supplier will promptly revise the Contingency Plan to mitigate the risk.

(d) The Supplier shall participate in Ontario Shores' emergency planning exercises as appropriate and provided such participation will not interfere with or delay the provision of the Deliverables or the Supplier's ability to fulfill its obligations under this Agreement.

ARTICLE 4 - PAYMENT FOR PERFORMANCE AND AUDIT

4.01 **Currency**

All amounts stated in or payable under this Agreement will be denominated and payable in Canadian dollars.

4.02 Payment According to Contract Rates

Ontario Shores shall, subject to the Supplier's compliance with the provisions of the Contract, pay the Supplier for the Deliverables provided at the Rates established under the Contract.

4.03 Default Billing and Payment Process

Unless the parties expressly set out an alternative billing and payment process in Schedule 1, the following process shall govern:

- (a) the Supplier shall provide Ontario Shores with a monthly billing statement no later than ten (10) Business Days after the end of each month and that billing statement shall include: (i) the reference number assigned to the Contract by Ontario Shores; (ii) a brief description of the Deliverables provided for the relevant month; (iii) taxes, if payable by Ontario Shores, identified as separate items; and (iv) back-up documents requested by Ontario Shores;
- (b) Ontario Shores shall approve or reject the billing statement within fifteen (15) Business Days of receipt of the statement and in the event that Ontario Shores rejects the billing statement, it shall so advise the Supplier promptly in writing, and the Supplier shall provide additional information as required by Ontario Shores to substantiate the billing statement; and
- (c) each billing statement is subject to the approval of Ontario Shores before any payment is released, and payment of undisputed amounts shall be made within thirty (30) Business Days of such approval;

and any subparagraph set out above that is not expressly replaced in Schedule 1 with an alternative provision shall remain in full force and effect. Except as set out in Schedule 1, Ontario Shores shall not make any payments on account of Deliverables which are goods until such goods have been Delivered in accordance with Section 3.14.

4.04 Hold Back or Set Off

Ontario Shores may hold back payment or set off against payment if, in the opinion of Ontario Shores acting reasonably, the Supplier has failed to comply with any requirements of the Contract. Supplier shall continue to provide the Deliverables in accordance with the Contract notwithstanding any disputed amounts withheld or set off.

4.05 No Expenses or Additional Charges

There shall be no other charges payable by Ontario Shores under the Contract to the Supplier other than the Rates established under the Contract. Despite anything to the contrary in the Contract, the following expenses shall not be reimbursed by Ontario Shores: (i) expense claims and reimbursements not in compliance with Ontario Shores' "Business Travel and Expense Reimbursement Policy" in effect on the date of this Agreement, (ii) travel costs (including accommodations) which are not submitted as individually detailed line items, and (iii) meals, hospitality and incidental expenses of any kind.

4.06 Payment of Taxes and Duties

Unless otherwise stated, the Rates include, and Supplier shall pay, all applicable taxes, including excise taxes incurred by or on the Supplier's behalf with respect to the Contract, except only for Harmonized Sales Tax to be paid by Ontario Shores. Supplier shall remit to the Canada Revenue Agency any Harmonized Sales Tax paid by Ontario Shores.

4.07 Interest on Late Payment and Overpayments.

If a payment is in arrears through no fault of the Supplier, the interest charged by the Supplier, if any, for any late payment shall not exceed the pre-judgment interest rate established under section 127(2) of the *Courts of Justice Act* (Ontario), in effect on the date that the payment went

into arrears. Supplier shall promptly reimburse to Ontario Shores the amount of any overpayment made by Ontario Shores.

4.08 Document Retention and Audit

For seven (7) years after the Expiry Date or any date of termination of the Contract, the Supplier shall maintain all necessary records to substantiate (a) all charges and payments under the Contract and (b) that the Deliverables were provided in accordance with the Contract and with Requirements of Law. During the Term, and for seven (7) years after the Term, the Supplier shall permit and assist Ontario Shores in conducting audits of the operations of the Supplier to verify (a) and (b) above. Ontario Shores shall provide the Supplier with at least ten (10) Business Days prior notice of its requirement for such audit. The Supplier shall provide or make available all documents and information as are reasonably required by Ontario Shores' auditor to make its determination. The determination of Ontario Shores' auditor shall be final and binding on the Supplier and all charges and payments under the Contract shall be (or not be) adjusted in accordance with such determination. Within five (5) days after the final determination of Ontario Shores' auditor, payment of the amount owing as a result of such final determination, if any, shall be made by the Supplier to Ontario Shores in accordance with such determination. The fees and expenses of Ontario Shores' auditor in acting in accordance with this section shall be shared equally by the parties. The Supplier's obligations under this paragraph shall survive any termination or expiry of the Contract.

4.09 Payment Not Waiver

No payment of any account by Ontario Shores shall be deemed to be an acknowledgment by Ontario Shores that it has waived any right to subsequently contest the validity of the account or that it is an acceptance of the Deliverable.

4.10 Final Payment

The Supplier acknowledges that receipt of final payment by the Supplier shall constitute a full and final release of Ontario Shores with respect to its obligations pursuant to the Contract and with respect to all claims against Ontario Shores pursuant to the Contract except those made in writing prior to receipt of final payment and still unsettled and subject to any applicable rights or remedies provided by the *Construction Lien Act* (Ontario).

4.11 Liens

If a Lien arising from the performance of the Deliverables is given to Ontario Shores or registered against Ontario Shores' property, then, within ten (10) Business Days after Supplier is notified by Ontario Shores of such Lien, the Supplier shall, at its expense, vacate or discharge the Lien. If the Supplier fails to do so, Ontario Shores may, at the Supplier's expense, vacate or discharge the Lien. The Supplier indemnifies Ontario Shores for all expenses and costs it incurs as a result of such Lien and any related Proceeding. This provision does not apply to any construction liens claimed by the Supplier.

ARTICLE 5 – CONFIDENTIALITY, PRIVACY AND SECURITY

5.01 Supplier Obligations

The Supplier will comply with all of the obligations set out in Schedule 2.

ARTICLE 6 – INTELLECTUAL PROPERTY

6.01 Ontario Shores' Intellectual Property

The Supplier agrees that all Intellectual Property and every other right, title and interest in and to all concepts, techniques, ideas, information and materials, however recorded, (including images and data) provided by Ontario Shores to the Supplier shall remain the respective property of Ontario Shores at all times.

6.02 Ownership of Intellectual Property

Ontario Shores shall be the sole owner of any Newly Created Intellectual Property. The Supplier irrevocably assigns to and in favour of Ontario Shores and Ontario Shores 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 Ontario Shores all rights of integrity and other moral rights to all Newly Created Intellectual Property in the Deliverables, immediately following the creation thereof, for all time. To the extent that any of the Deliverables include, in whole or in part, the Supplier's Intellectual Property, the Supplier grants to Ontario Shores a perpetual, worldwide, non-exclusive, irrevocable, transferable, royalty free, fully paid up right and licence to use that Supplier Intellectual Property in connection with Ontario Shores' use of the applicable Deliverable.

6.03 Presumption Governing Ownership

The presumption governing the Contract shall be that Ontario Shores shall be the sole owner of any Intellectual Property in any form contained in any of the Deliverables, unless otherwise specified by Ontario Shores. If the Supplier's Intellectual Property forms any part of the Deliverables, the Supplier shall notify Ontario Shores as such prior to the delivery of the particular Deliverable containing any such Supplier Intellectual Property. In the absence of any such notice the presumption shall remain that Ontario Shores is the sole owner of any Intellectual Property contained in the Deliverables.

6.04 Supplier's Grant of Licence

For those parts of the Deliverables that are Supplier Intellectual Property, the Supplier grants to Ontario Shores, including each Client, a perpetual, worldwide, non-exclusive, irrevocable, transferable, royalty free, fully paid up right and licence: (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 Ontario Shores or a Client.

6.05 No Restrictive Material in Deliverables

The Supplier shall not incorporate into any Deliverables anything that would restrict the right of Ontario Shores or of any Client to modify, further develop or otherwise use the Deliverables in any way that Ontario Shores or the Client deems necessary, or that would prevent Ontario Shores or any Client from entering into any contract with any contractor other than the Supplier for the modification, further development of or other use of the Deliverables.

6.06 Supplier Representation and Warranty Regarding Third-Party Intellectual Property

The Supplier represents and warrants that the provision of the Deliverables shall not infringe or induce the infringement of any Third-Party Intellectual Property rights. The Supplier further represents and warrants that it has obtained assurances with respect to any Supplier Intellectual Property and Third-Party Intellectual Property that any rights of integrity or any other moral rights associated therewith have been waived.

6.07 Ontario Shores May Prescribe Further Compliance

Ontario Shores reserves the right to prescribe the specific manner in which the Supplier shall perform its obligations relating to this Article.

6.08 Ownership

All documents prepared by or for the Supplier under the Contract shall be the property of Ontario Shores upon submission to Ontario Shores, free and clear of all Liens.

6.09 Survival

The obligations contained in this Article shall survive the termination or expiry of the Contract.

ARTICLE 7 – INDEMNITY AND INSURANCE

7.01 Supplier Indemnity

- (a) The Supplier will indemnify, defend and hold harmless the Indemnified Parties from and against any and all Losses suffered or incurred arising from or in connection with or relating to the following:
- (i) any breach by the Supplier of Schedule 2;
 - (ii) any death, bodily injury, sickness, disease or injury of any kind, of any Person to the extent caused by any negligent act or omission of the Supplier, its personnel, or approved subcontractors;
 - (iii) any damage, loss or destruction of any tangible, real, personal or intangible property, including any Ontario Shores' Intellectual Property, to the extent caused by any negligent act or omission of the Supplier, its personnel, or approved subcontractors;
 - (iv) any negligence, gross negligence or wilful misconduct on the part of the Supplier, whether as a result of an act or an omission of the Supplier or of any Person for whom the Supplier is responsible hereunder, including any crime, fraudulent or dishonest acts committed by any current or former Supplier personnel, acting alone or in collusion with others;
 - (v) any Losses relating to the Supplier's personnel's dishonest or fraudulent conduct, or computer fraud;
 - (vi) any amounts (including taxes) assessed against Ontario Shores which are the obligation of the Supplier; or
 - (vii) any Losses directly attributable to a breach of the Supplier's insurance obligations set out in Section 7.02 and Losses that would have been recoverable under this Agreement, without regard to this indemnity, had the Supplier not breached said insurance obligations.
- (b) The Supplier will indemnify, defend and hold harmless the Indemnified Parties from and against any and all Losses suffered or incurred arising from or in connection with or relating to any claim by a third Party alleging that:
- (i) the Deliverables or Ontario Shores' use of the Deliverables; or
 - (ii) the Supplier's performance of the Contract or Ontario Shores' receipt of the Deliverables under this Agreement,

infringes, violates or constitutes a misappropriation of any intellectual property right of any Person.
- (c) The parties agree that the indemnity contained herein shall survive termination of this Agreement.

7.02 **Supplier's Insurance**

- (a) Commercial General Liability. Supplier will procure and maintain in force throughout the Term and for a period of one year thereafter:
- a. commercial general liability of not less than **[\$10,000,000]** in the aggregate and **[\$1,000,000]** per occurrence and should include coverage for products/completed operations, personal injury, death and property damage. Ontario Shores will be added as an additional named insured;

- b. professional errors & omissions liability insurance of no less than **[\$5,000,000]** in coverage per claim basis;
 - c. workers compensation insurance or any alternative plan or coverage permitted or required under applicable law in statutory amounts and employer's liability insurance with a minimum limit of not less than **[\$1,000,000]**;
 - d. if a licensed motor vehicle is used by or on behalf of the Supplier in the performance of the Contract, standard motor vehicle insurance that provides for third party liability for not less than **[\$5,000,000]** per occurrence for bodily injury, death and damages to property and that provides for statutory accident benefits;
 - e. property insurance for all risks of physical loss of or damage to Ontario Shores' premises, business personal property or other property that is in the possession, care, custody or control of the Supplier pursuant to this Agreement. Such insurance shall be written on a replacement cost basis and shall be endorsed to name Ontario Shores as a loss payee; and
 - f. commercial crime insurance, including blanket coverage for employee dishonesty and computer fraud, for loss or damage arising out of or in connection with any fraudulent or dishonest acts committed by the Supplier's personnel, acting alone or in collusion with others, including the property and funds of others in their possession, care, custody or control, with a minimum limit per event.
- (b) Certificates of Insurance. Within thirty (30) calendar days of the Effective Date and at expiry of each of the policy terms, the Supplier will provide copies of certificates or renewal certificates of such insurance policies as well as, upon Ontario Shores' reasonable request, policy declaration pages. Supplier will notify Ontario Shores at least thirty (30) calendar days prior to the cancellation of such insurance policies;
- (c) Additional Insureds. The commercial general liability insurance policy required under this Section 7.02 will add the Indemnified Parties as additional named insureds with respect to liability arising out of operations performed for them by or on behalf of Supplier, but only to the extent of damages directly caused by the acts, omissions or negligence of Supplier and those for whom it is responsible, including its subcontractors. All such liability insurance shall contain provisions for cross-liability and severability of interests as between Ontario Shores and the Supplier;
- (d) Primary Insurance. Except as otherwise specifically provided in this paragraph 7.02(d), the insurance policy required to be obtained and maintained by the Supplier under subparagraph 7.02(a)(i) shall be primary and non-contributory with respect to any other insurance or self-insurance that Ontario Shores may have or obtain with respect to any claim, unless any loss, claim or action is caused by the sole negligence of an additional insured.
- (e) Additional Insurance. Supplier will procure and maintain in force such other coverage requested by Ontario Shores from time to time, acting in a commercially reasonable manner, and will provide evidence thereof to Ontario Shores for Ontario Shores' approval, upon Ontario Shores' request provided, however, that if Ontario Shores requires the Supplier to obtain any additional insurance, the Supplier shall be entitled to seek compensation for the cost of such additional insurance;
- (f) Own Protection. Without limiting the generality of the foregoing, the Supplier will determine what additional insurance coverage is necessary for its own protection and to fulfill its obligations under this Agreement. The Supplier will provide and maintain any such additional insurance;

- (g) Compliance. Compliance with this Section 7.02 will not relieve the Supplier from compliance with any other obligations set out in this Agreement;
- (h) Notice of Claims. The parties acknowledge that in the event of any claim which may be covered by any insurance of Supplier, that the following process will be followed:
 - a. The Supplier shall notify Ontario Shores of any claim, demand or cause of action forthwith upon receipt; and
 - b. If Ontario Shores receives notice of any claim, demand or cause of action and if Ontario Shores at any time believes that any or all liability rests with the Supplier or that Ontario Shores is owed a defence under any policy, then Ontario Shores will provide notice, in writing as soon as reasonably practicable, of the claim to the Supplier. The Supplier may, at its option, investigate any such claim at its own expense.

7.03 Supplier Participation in Proceedings

The Supplier shall, at its expense, to the extent requested by Ontario Shores, participate in or conduct the defence of any Proceeding against any Indemnified Parties referred to in this Article and any negotiations for their settlement. Ontario Shores may, at the expense of Supplier, elect to participate in or conduct the defence of any such Proceeding by notifying the Supplier in writing of such election without prejudice to any other rights or remedies of Ontario Shores under the Contract, at law or in equity. Each party participating in the defence shall do so by actively participating with the other's counsel. The Supplier shall enter into no settlement unless it has obtained the prior written approval of Ontario Shores. If the Supplier is requested by Ontario Shores to participate in or conduct the defence of any such Proceeding, Ontario Shores agrees to cooperate with and assist the Supplier to the fullest extent possible in the Proceedings and any related settlement negotiations. If Ontario Shores conducts the defence of any such Proceedings, the Supplier agrees to cooperate with and assist Ontario Shores to the fullest extent possible in the Proceedings and any related settlement negotiations. This paragraph shall survive any termination or expiry of the Contract.

7.04 Insurance Not Limiting

The provisions of Section 7.02 shall not diminish, limit or otherwise affect the liability or responsibility of the Supplier to Ontario Shores under or in relation to any other provisions of the Contract. The Supplier shall be responsible for paying any deductible amounts under its insurance policies.

ARTICLE 8 – TERM, TERMINATION, EXPIRY AND EXTENSION

8.01 Term

This agreement will be effective as of the Effective Date and will remain in effect for a period of [XX] years until the date immediately preceding the [XX] anniversary of the Effective Date (the “**Expiry Date**”), subject to the provisions of this Agreement (the “**Initial Term**”).

8.02 Option to Extend and Statement of Work

Ontario Shores has the right to extend the Initial Term for a further term of [XX] years, such extension to be on the same terms (including the Rates in effect at the time of extension), conditions and covenants contained in the Contract, excepting the option to extend (the “**Extension Term**”). The option shall be exercisable by Ontario Shores giving notice to the Supplier not less than sixty (60) days prior to the original Expiry Date. The notice shall set forth the precise duration of the extension. Absent formal exercise by Ontario Shores of its option to extend, there shall be no tacit extension of the Term or renewal of the Contract. For clarity, nothing in this Agreement shall be interpreted so as to construe an “evergreen agreement”.

Each Statement of Work shall specify its term and any extension rights in respect of such Statement of Work. If the Statement of Work does not specify a term, it shall be deemed to have a term of twelve (12) months from its effective date. Ontario Shores has the right to extend the term of any Statement of Work for further terms of twelve (12) months each. The option shall be exercisable by Ontario Shores giving notice to the Supplier not less than sixty (60) days prior to the expiry of the relevant Statement of Work. Absent formal exercise by Ontario Shores of its option to extend, there shall be no tacit extension of the term of any Statement of Work or renewal of any Statement of Work. For clarity, nothing in this Agreement shall be interpreted so as to construe any Statement of Work as “evergreen”. If the term of any Statement of Work extends past the end of the Term, then such Statement of Work will survive until the termination or expiration of the term of such Statement of Work.

8.03 **Immediate Termination of Contract**

Ontario Shores may immediately terminate the Contract upon giving notice to the Supplier where:

- (a) the Supplier is adjudged bankrupt, makes a general assignment for the benefit of its creditors or a receiver is appointed on account of the Supplier’s insolvency;
- (b) the Supplier breaches any provision in Schedule 2 (Confidentiality and Privacy) of the Contract;
- (c) the Supplier breaches the Conflict of Interest paragraph in Article 2 (Nature of Relationship Between Ontario Shores and Supplier) of the Contract;
- (d) the Supplier, prior to or after executing the Contract, makes a material misrepresentation or omission or provides materially inaccurate information to Ontario Shores;
- (e) the Supplier undergoes a change in control without first obtaining the written approval of Ontario Shores or 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 Ontario Shores;
- (g) the Supplier’s acts or omissions constitute a substantial failure of performance or a material or fundamental breach of the Contract; or
- (h) the Supplier’s actions are determined, for any reason, to be materially detrimental to Ontario Shores, or the continuing operation of Ontario Shores, as determined by Ontario Shores in its sole and absolute discretion,

and the above rights of termination are in addition to all other rights of termination available at law, or events of termination by operation of law.

8.04 **Termination on Notice**

Ontario Shores reserves the right to terminate the Contract, without cause, upon thirty (30) calendar days’ prior notice to the Supplier.

8.05 **Supplier’s Obligations on Termination**

On termination of the Contract, the Supplier shall, in addition to its other obligations under the Contract and at law:

- (a) at the request of Ontario Shores, provide Ontario Shores with any completed or partially completed Deliverables;

- (b) provide Ontario Shores with a report detailing: (i) the current state of the provision of Deliverables by the Supplier at the date of termination; and (ii) any other information requested by Ontario Shores pertaining to the provision of the Deliverables and performance of the Contract;
- (c) promptly return all Ontario Shores' Property as well as all Documentation, data and information in the possession or under the control of Supplier;
- (d) execute such documentation as may be required by Ontario Shores to give effect to the termination of the Contract;
- (e) permit Ontario Shores to purchase, at a price equal to Supplier's net book value plus applicable taxes, any equipment and licenses for software the use of which was dedicated to Ontario Shores prior to the termination or expiration of such Statement of Work;
- (f) comply with any other instructions provided by Ontario Shores, including but not limited to instructions for facilitating the transfer of its obligations to another Person;
- (g) in the event Supplier fails to correct a rejected Deliverable, project or solution so that it conforms to the applicable Specifications without material errors, defects or deficiencies, as determined in Ontario Shores' reasonable discretion, Ontario Shores may, without penalty, terminate the applicable Statement of Work or such portion thereof as Ontario Shores may determine and Supplier shall promptly refund to Ontario Shores all amounts paid for the rejected Deliverable, project or solution after the failed attempt to fix the deficiencies; and
- (h) the Termination Service Plan shall be performed by the Supplier for a period of 90 days before the termination of a Statement of Work and shall continue unless terminated earlier by Ontario Shores, for a 90 days period and thereafter

This paragraph shall survive any termination of the Contract.

8.06 Supplier's Payment Upon Termination

On termination of the Contract, Ontario Shores shall only be responsible for the payment of the Deliverables provided under the Contract up to and including the effective date of any termination. Termination shall not relieve the Supplier of its warranties and other responsibilities relating to the Deliverables performed or money paid. In addition to its other rights of hold back or set off, Ontario Shores may hold back payment or set off against any payments owed if the Supplier fails to comply with its obligations on termination.

8.07 Termination in Addition to Other Rights

The express rights of termination in the Contract are in addition to and shall in no way limit any rights or remedies of Ontario Shores under the Contract, at law, in equity or otherwise.

ARTICLE 9 – GOVERNANCE AND DISPUTE RESOLUTION

9.01 Relationship Managers. Each party shall appoint a relationship manager with sufficient authority and ability to act as their primary point of contact with the other party in connection with this Agreement. For clarity, Ontario Shores' relationship manager shall be Ontario Shores' Representative and the Supplier's relationship manager shall be the Supplier's Representative, unless either party gives notice to the other in writing of any alternate or replacement relationship manager. Each relationship manager is to be provided at no additional cost and is required to be familiar with this Agreement and related Deliverables and timetables including pricing and invoicing matters. The parties may from time to time each agree to appoint a service manager to manage the parties' relationship under a specific Statement of Work. The roles and

responsibilities of any such service managers shall be described in the applicable Statement of Work.

9.02 **Project Team.** The parties shall each form a Project Team, comprised of each party's relationship manager and representatives from each party which will monitor the progress and performance under this Agreement. The Project Team from each party will meet at least once monthly to review the status of all Deliverables and projects, review project plans and schedules, review Supplier's performance of projects relative to best practices and continuous improvement objectives, and agree on remediation plans where required.

9.03 **Dispute Resolution**

Any disagreement or dispute (a "**Dispute**") between the parties arising out of or relating to the Contract shall be resolved as detailed in this section, provided that the foregoing shall not prevent either party from seeking an injunction or other equitable relief from a court in order to protect its Intellectual Property rights or its confidential information or Personal Information or Personal Health Information.

- a. **Internal Resolution.** The parties will in good faith attempt to resolve any Dispute promptly and in an amicable manner by referring the Dispute to their respective relationship managers. If the parties' relationship managers are unable to resolve the Dispute within ten (10) days, either one of them may require the Dispute to be referred to the parties' senior officers.
- b. **Referral to Senior Officers.** If a Dispute is not resolved by the senior officers within ten (10) days, either party may require that the Dispute be referred to the Chief Financial Officer of Ontario Shores and Chief Executive Officer of Supplier.
- c. **Arbitration Demand.** If the Chief Executive Officer of Supplier and the Chief Financial Officer of Ontario Shores are unable to resolve a Dispute within fourteen (14) days after the referral to them pursuant to Section 9.03(c), either party may, on written notice to the other party, demand that the Dispute be submitted to binding arbitration in conformity with the Arbitration Procedures set out in Schedule 3.

ARTICLE 10 – GENERAL

10.01 **Survival**

The provisions of the Contract, which expressly or by their nature are intended to survive the expiration or termination of the Contract, shall survive such expiration or termination.

10.02 **Expenses**

Except as otherwise provided in this Contract each party shall pay all costs and expenses (including the fees and disbursements of legal counsel and other advisers) it incurs in connection with the negotiation, preparation and execution of this Contract and the transactions contemplated by this Contract.

10.03 **Limitation of Liability**

In no event is Ontario Shores liability for any damages on any basis, in contract, tort or otherwise, of any kind and nature whatsoever, arising in respect of the Contract, howsoever caused, including damages of any kind and nature caused by Ontario Shores' negligence (including gross negligence), or by a fundamental breach of contract or any other breach of duty whatsoever, to exceed the payments actually paid to the Supplier by Ontario Shores during the period immediately preceding receipt by Ontario Shores of notice of such liability. The Supplier acknowledges that it has set its fees under this Contract in reliance on the limitations and exclusions of liability set forth in this Contract and such reliance forms an essential basis of this Contract.

10.04 **Further Assurances**

The parties shall, with reasonable diligence, do all things and provide all such reasonable assurances as may be required to consummate the transactions contemplated by this Contract, and each party shall provide such further documents or instruments required by any other party as may be reasonably necessary or desirable to effect the purpose of this Contract and carry out its provisions.

10.05 **Execution and Delivery/Counterparts**

This Contract may be executed by the parties in counterparts and the counterparts may be executed and delivered by electronic means, with all counterparts together constituting one agreement.

IN WITNESS WHEREOF the parties hereto have executed the Contract effective as of the date first above written.

ONTARIO SHORES CENTRE FOR MENTAL HEALTH SCIENCES

Signature:

Name:

Title:

Date of Signature:

Signature:

Name:

Title:

Date of Signature:

[Supplier]

Signature:

Name:

Title:

Date of Signature:

I have authority to bind the Supplier.

Schedule 1 – Schedule of Deliverables, Rates and Supplementary Provisions

[To be completed after selection of the successful proponent]

A. DESCRIPTION OF DELIVERABLES

[The list of Deliverables should include a detailed scope of work. For example, if the Supplier is providing any testing or commissioning work or obtaining permits/licenses, it should be set out. Add appendices as necessary.]

B. Schedule or Time Lines or Milestones

C. Reporting Requirements

D. RATES AND DISBURSEMENTS

[Set out the rates]

The Rates set out in this Schedule 1 are not subject to adjustment during the Term.

Attach a copy of proposal

Schedule 2 – Confidentiality and Privacy Obligations of the Supplier

1. Confidentiality and Promotion Restrictions

Any publicity or publications related to the Contract shall be at the sole discretion of Ontario Shores. Ontario Shores may, in its sole discretion, acknowledge the Deliverables provided by the Supplier in any such publicity or publication. The Supplier shall not make use of its association with Ontario Shores without the prior written consent of Ontario Shores. Without limiting the generality of this paragraph, the Supplier shall not, among other things, at any time directly or indirectly communicate with the media in relation to the Contract, including issuing any news release or publicity in connection with the Contract, unless it has first obtained the express written authorization to do so by Ontario Shores.

2. Ontario Shores' Confidential Information

During and following the Term, the Supplier shall: (a) keep all Ontario Shores' Confidential Information confidential and secure; (b) limit the disclosure of Ontario Shores' Confidential Information to only those of its directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors who have a need to know it for the purpose of providing the Deliverables and who have been specifically authorized to have such disclosure and who have agreed to be bound by confidentiality obligations identical in principle with those in the Contract; (c) not directly or indirectly disclose, destroy, exploit or use any Ontario Shores' Confidential Information (except for the purpose of providing the Deliverables, or except if required by order of a court or tribunal), without first obtaining: (i) the written consent of Ontario Shores and (ii) in respect of any Ontario Shores' Confidential Information about any third-party, the written consent of such third-party; (d) provide Ontario Shores' Confidential Information to Ontario Shores on demand; and (e) return all Ontario Shores' Confidential Information to Ontario Shores before the end of the Term, with no copy or portion kept by the Supplier. The Supplier acknowledges that Ontario Shores' Confidential Information is and at all times shall remain the exclusive property of Ontario Shores or others identified by Ontario Shores and Supplier shall not have any proprietary right to or interest in Ontario Shores' Confidential Information.

3. Restrictions on Copying

The Supplier shall not copy any Ontario Shores' Confidential Information, in whole or in part, unless copying is essential for the provision of the Deliverables. On each copy made by the Supplier, the Supplier must reproduce all notices which appear on the original.

4. Injunctive and Other Relief

The Supplier acknowledges that breach of any provisions of this Article may cause irreparable harm to Ontario Shores or to any third-party to whom Ontario Shores owes a duty of confidence, and that the injury to Ontario Shores or to any third-party may be difficult to calculate and inadequately compensable in damages. The Supplier agrees that Ontario Shores is entitled to obtain injunctive relief (without proving any damage sustained by it or by any third-party) or any other remedy against any actual or potential breach of the provisions of this Article.

5. Notice and Protective Order

If the Supplier or any of its of its directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors become legally compelled to disclose any Ontario Shores' Confidential Information, the Supplier will provide Ontario Shores with prompt notice to that effect in order to allow Ontario Shores to seek one or more protective orders or other appropriate remedies to prevent or limit such disclosure, and it shall cooperate with Ontario Shores and its legal counsel to the fullest extent. If such protective orders or other remedies are not obtained, the Supplier will disclose only that portion of Ontario Shores Confidential Information which the Supplier is legally compelled to disclose, only to such person or persons to which the Supplier is legally compelled to disclose, and the Supplier shall provide notice to each such recipient (in cooperation with legal counsel for Ontario Shores) that such Ontario Shores' Confidential Information is confidential and subject to non-disclosure on terms and conditions equal to those contained in the Contract and, if possible, shall obtain each recipient's written agreement to

receive and use such Ontario Shores' Confidential Information subject to those terms and conditions.

6. FIPPA Records and Compliance

The Supplier and Ontario Shores acknowledge and agree that FIPPA applies to and governs all Records and may require the disclosure of such Records to third parties. Furthermore, the Supplier agrees:

- (a) to keep Records secure and ensure that reasonable measures respecting Records in its custody or under the control are developed, documented and put into place to preserve Records in accordance with any recordkeeping or records retention requirements, rules or policies, whether established under FIPPA or otherwise, that apply to Ontario Shores;
- (b) to provide Records to Ontario Shores within seven (7) calendar days of being directed to do so by Ontario Shores for any reason including an access request or privacy issue;
- (c) not to access any Personal Information unless Ontario Shores determines, in its sole discretion, that access is permitted under FIPPA and is necessary in order to provide the Deliverables;
- (d) not to directly or indirectly use, collect, disclose or destroy any Personal Information for any purposes that are not authorized by Ontario Shores;
- (e) to ensure the security and integrity of Personal Information and keep it in a physically secure and separate location safe from loss, alteration, destruction or intermingling with other records and databases and to implement, use and maintain the most appropriate products, tools, measures and procedures to do so;
- (f) to restrict access to Personal Information to those of its directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors who have a need to know it for the purpose of providing the Deliverables and who have been specifically authorized by Ontario Shores to have such access for the purpose of providing the Deliverables;
- (g) to implement other specific security measures that in the reasonable opinion of Ontario Shores would improve the adequacy and effectiveness of the Supplier's measures to ensure the security and integrity of Personal Information and Records generally; and
- (h) that any confidential information supplied to Ontario Shores may be disclosed by Ontario Shores where it is obligated to do so under FIPPA, by an order of a court or tribunal or pursuant to a legal proceeding or other Requirements of Law;

and the provisions of this paragraph shall prevail over any inconsistent provisions in the Contract.

7. PHIPA Records and Compliance

The Supplier may have access to Personal Health Information in the course of fulfilling its obligations. Ontario Shores is a health information custodian under PHIPA and has statutory obligations to safeguard its patients' Personal Health Information.

8. Supplier Requires Access to Personal Health Information

The parties agree and acknowledge that the Supplier will require access to Personal Health Information in the course of fulfilling its obligations under the Contract. The following provisions set out the obligations of the Supplier with respect to its access, collection, use, disclosure, retention and disposal of Personal Health Information under the Contract.

Personal Health Information

9. Supplier is Agent under PHIPA

The parties acknowledge and agree that the Supplier, when accessing, collecting, using, disclosing, retaining or disposing of Personal Health Information, does so solely on behalf of Ontario Shores and as Ontario Shores may direct while providing the Deliverables. As such, the Supplier is an “agent” of Ontario Shores, as the term “agent” is defined in PHIPA, and with all the responsibilities of an agent imposed by PHIPA.

10. Use of Personal Health Information

The Supplier shall use the Personal Health Information disclosed by Ontario Shores solely for the purposes of providing the Deliverables and for no other purpose whatsoever. The Supplier shall not disclose any Personal Health Information to any third parties except for Supplier Personnel, without the prior written consent of Ontario Shores in each instance.

11. No Contact with Patients

Despite the fact that the Supplier is an agent of Ontario Shores under PHIPA, the Supplier shall not have any contact with patients for any purpose whatsoever, unless expressly authorized by Ontario Shores.

12. Obligations not Conditional

The Supplier’s obligations under these privacy and security terms and conditions are absolute and are not conditional on Ontario Shores’ compliance with any of its obligations under the Contract, including its obligation to pay the Supplier.

Supplier Personnel

13. Supplier Personnel

For the purposes of these privacy and security terms and conditions, “Supplier Personnel” includes the Supplier’s employees, contractors, subcontractors, and agents.

14. Training of Supplier Personnel

The Supplier has provided training to its Supplier Personnel with respect to the Supplier’s legal obligations with respect to Personal Information under FIPPA and PHIPA and will provide additional training with respect to the Supplier’s specific obligations to protect Personal Health Information under PHIPA and the Contract. The Supplier shall ensure that the Supplier Personnel are aware of and agree in writing in the form of a “Pledge of Confidentiality” to be bound by the provisions relating to Personal Information and Personal Health Information that are set out in the Contract, including without limitation those regarding notification set out in paragraph 22 below.

15. Access by Supplier Personnel

The Supplier shall give access to Personal Information and Personal Health Information only to those members of the Supplier Personnel who have a legitimate need to access the Personal Information and Personal Health Information in order to fulfill the Supplier’s obligations under the Contract.

16. Removal of Personnel

In the event of a breach of these provisions by any of the Supplier Personnel, Ontario Shores may require that personnel member to cease providing Deliverables.

Supplier’s Own Privacy Practices

17. Compliance with Privacy Legislation

The Supplier has a privacy policy and privacy breach protocol in compliance with applicable privacy legislation, addressing its practices relating to the collection, use, disclosure, retention and disposal of Personal Information and Personal Health Information, and containment, notification, investigation and remediation of privacy breaches. The Supplier monitors and enforces compliance with its own privacy policy, including without limitation by way of audits, activity logs, limitations on access to Personal Information and Personal Health Information,

discipline of policy violators, including reporting of discipline under any Requirements of Law, and any other practices recommended by the Privacy and Information Commissioner/Ontario (the "IPC").

18. Privacy Compliance Officer

The Supplier has an appointed privacy compliance officer who shall be given the responsibility for the Supplier's compliance with the privacy and security terms and conditions under the Contract.

19. Safeguards

The Supplier has in place effective administrative, technological and physical safeguards to stop theft, loss and unauthorized access, copying, modification, use, disclosure or disposal of Personal Information and Personal Health Information. These safeguards are consistent with industry practice.

Confidentiality and Security Safeguards with respect to Personal Health Information

20. Receipt of Ontario Shores' Privacy Policy

The Supplier acknowledges receipt of Ontario Shores' privacy policy and will only access, collect, use, disclose, retain and dispose of Personal Information and Personal Health Information as permitted by Ontario Shores.

21. Monitoring of its Activities

The Supplier shall monitor its activities to ensure that its Supplier Personnel are complying with the privacy and security terms and conditions of the Contract. In particular, the Supplier shall monitor and report to Ontario Shores, upon the reasonable request of Ontario Shores, the Supplier's access, use and disclosure of Personal Information and Personal Health Information under the Contract.

22. Theft, Loss or Unauthorized Access of Personal Health Information

In the event that the Supplier becomes aware that Personal Information or Personal Health Information has been stolen or lost, or a person has obtained unauthorized access to Personal Information or Personal Health Information, or the Supplier has used, disclosed or disposed of the Personal Information or Personal Health Information other than as contemplated in the Contract, the Supplier shall at the first reasonable opportunity notify Ontario Shores' privacy officer by telephone followed by written notice. The Supplier shall not contact the IPC without the advance written approval of Ontario Shores

23. Indemnity

The Supplier hereby agrees to indemnify and hold harmless Ontario Shores from all costs, damages, fines, penalties or other liabilities arising out of a breach of its obligations under FIPPA, PHIPA, the common law, or any other Requirements of Law and the Contract with respect to the Supplier's failure to comply with the privacy and security terms and conditions of the Contract.

24. Ontario Shores' Review of Supplier's Practices and Procedures

Ontario Shores may, upon reasonable notice, assess and review the Supplier's practices and procedures for receiving and processing Personal Information or Personal Health Information under the Contract, for the purposes of ensuring that the privacy and security terms and conditions of the Contract are being complied with. For these purposes, the Supplier shall provide Ontario Shores with reasonable access to the policies, procedures and protocols used for purposes of providing the Deliverables and any other documents that may be relevant. Any review or assessment by Ontario Shores pursuant to this paragraph 24, or Ontario Shores' failure to do so, shall not limit or reduce the Supplier's responsibilities under the Contract.

Handling Complaints

25. Cooperation with Privacy Assessment or Audit and Privacy Breach Reporting.

The Supplier will cooperate with any privacy assessment or audit conducted by Ontario Shores or any third party retained by Ontario Shores, as well within any privacy breach reporting by Ontario Shores to the IPC.

26. Complaint by Ontario Shores

In the event that Ontario Shores makes a complaint to the Supplier in respect of the Supplier's compliance with the privacy and security terms and conditions of the Contract, the Supplier shall, within five (5) Business Days of receipt of the complaint, investigate the matter and provide Ontario Shores with an oral report stating the cause of the deficiency, if any, and the steps taken to prevent a recurrence, if required. Within a further five (5) Business Days, the Supplier shall provide Ontario Shores with a written report documenting the complaint, investigation, deficiency, if any, and the steps taken to prevent a recurrence, if required.

27. Cooperation with Complaint to Ontario Shores.

The Supplier shall cooperate with Ontario Shores in responding to any complaints about Personal Information or Personal Health Information that may relate to the Supplier's obligations under the Contract.

28. Injunctive Relief

The Supplier hereby recognizes that any breach of the privacy and security terms and conditions of the Contract will result in irreparable harm to Ontario Shores or to any third-party to whom Ontario Shores owes a duty of confidence that cannot be calculated or fully or adequately compensated by the recovery of damages. As a result, Ontario Shores shall, in addition to any other relief available to it, be entitled to the remedy of injunction without having to establish the inadequacy of any other remedy available to it (or such third-party). The Supplier hereby undertakes not to make any defence in proceedings regarding the granting of an injunction or specific performance based on the availability to Ontario Shores of other remedies.

Termination of the Contract

29. Termination upon Breach

At Ontario Shores' discretion, it may terminate the Contract immediately, upon written notice, as a result of any breach of these privacy and security terms and conditions by the Supplier.

30. Return of Personal Information and Personal Health Information

On the termination or expiration of the Contract, the Supplier shall return all Personal Information and Personal Health Information received or created under the Contract to Ontario Shores and ensure that such Personal Information and Personal Health Information has been permanently removed from any media or hardware on which it was stored. The Supplier will provide Ontario Shores with a sworn statement or other evidence satisfactory to Ontario Shores that it has complied with this provision. The provisions of this paragraph shall prevail over any inconsistent provisions in the Contract.

31. Survival

The provisions of this Article shall survive any termination or expiry of the Contract.

Schedule 3 - Arbitration Procedures

1. Definitions and Interpretation

(a) **Definitions**

Unless otherwise defined in this Schedule, all terms defined in the Agreement which are used in this Schedule have the same meaning as provided for those terms in the Agreement. Where used in this Schedule, unless the context or subject matter otherwise requires, the following words and phrases will have the meaning set forth below:

“Approved Arbitrator” means a retired judge of the Supreme Court of Canada, Ontario Superior Court or Court of Appeal or a senior qualified lawyer who is impartial and independent of the parties;

“Arbitrator” means the arbitrator appointed pursuant to Section 2 of this Schedule;

“Dispute” means any matter which a party, in accordance with the terms of the Agreement, submits to arbitration in accordance with the terms of this Schedule;

“Procedures” means the arbitration procedures described in this Schedule;

“Schedule” means this schedule of arbitration procedures.

(b) **Governing Law and Jurisdiction**

The seat of the arbitration shall be Ontario and all Disputes referred to arbitration (including the scope of the agreement to arbitrate, the law relating to the enforcement of the agreement to arbitrate, any relevant limitation periods, the law governing the procedure of the arbitration, the law relating to available remedies, set-off claims, conflict of laws rules and claims to costs and interest) shall be governed by the laws of the Province of Ontario.

(c) **Time**

In the computation of time under the Procedures or an order or direction given by the Arbitrator pursuant to this Schedule, except where a contrary intention appears or the parties otherwise agree:

- (i) where there is a reference to a number of days between two events, those days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, even if they are described as clear days or the words “at least” are used;
- (ii) where the time for doing any act under this Schedule or any order or direction given by the Arbitrator expires on a day which is not a Business Day, the act may be done on the next day that is not a Business Day; and
- (iii) delivery of a document or notice provided for in this Schedule or any order or direction given by the Arbitrator made after 5:00 p.m. (Toronto time) or at any time on a day which is not a Business Day, shall be deemed to have been made on the next Business Day.

2. Commencement of Arbitration

Any party (the “Claimant”) may commence arbitration for a Dispute by delivering a written notice (a “Notice of Arbitration”) to the party against whom the Claimant seeks a remedy (the “Respondent”). In the Notice of Arbitration, the Claimant shall describe the substance of the Dispute and name three individuals whom the Claimant is prepared to appoint as arbitrator, each of such individuals to be an Approved Arbitrator. Within 10 days of the receipt of the Notice of Arbitration, the Respondent shall by Notice to the Claimant agree to the appointment of one of the

three individuals named by the Claimant or provide the Claimant with a list of three other individuals who are Approved Arbitrators. Within 10 days of receipt of the Respondent's list, by Notice to the Respondent, the Claimant shall agree to the appointment of one of such individuals, or provide a further list of three Approved Arbitrators. The parties shall continue to exchange lists of three Approved Arbitrators in this fashion until the Arbitrator is appointed. If the Arbitrator is not appointed within 30 days of the initial receipt by the Respondent of the Notice of Arbitration, either party may provide copies of the exchanged lists to **[ADR Chambers/Ontario Superior Court]** which shall appoint the Arbitrator.

3. **Arbitration Procedures**

- (a) The following procedures shall apply to the arbitration of any Dispute, except as the parties may otherwise agree or as the Arbitrator otherwise directs:
- (b) Within 20 days of the appointment of the Arbitrator, the Claimant shall deliver to the Respondent and the Arbitrator a written statement (the "Complaint") concerning the Dispute setting forth, with particularity, the full names, descriptions and addresses of the parties, the nature of the Complaint, the allegations of fact supporting the Dispute submitted for arbitration and the relief or remedy sought.
- (c) Within 30 days after the delivery of the Complaint, the Respondent shall deliver to the Claimant and the Arbitrator a written response (the "Answer") to the Complaint setting forth, with particularity, its position on the Dispute and the allegations of fact supporting the Answer.
- (d) If the Respondent fails to deliver an Answer within the time limit referred to in Section 3(b), the Respondent shall, subject to Section 3(f), be deemed to have admitted the allegations of fact alleged in the Complaint and have accepted the Claimant's entitlement to the relief and remedy set out in the Complaint.
- (e) Within 10 days after the delivery of any Answer, the Claimant may deliver to the Respondent and the Arbitrator a written reply to that Answer, setting forth, with particularity, its response, if any, to the Answer.
- (f) If the Respondent wants to submit any other Dispute to the Arbitrator it may, within the time provided for the delivery of the Answer to the Complaint, also deliver to the Claimant and the Arbitrator a counter-complaint (the "Countercomplaint") setting forth, with particularity, the nature of the Countercomplaint, the allegations of fact supporting the Countercomplaint and the relief or remedy sought, for the Arbitrator to decide. Within 20 days of the delivery of a Countercomplaint, the Claimant shall deliver to the Respondent making a Countercomplaint and the Arbitrator a written response to such Countercomplaint (the "Response to Countercomplaint") setting forth, with particularity, its position on the Countercomplaint and the allegations of fact supporting the Response to Countercomplaint. If the Claimant fails to deliver a Response to Countercomplaint within such 20 day period, the Claimant will be deemed, subject to Section 3(f), to have admitted the allegations of fact alleged in the Countercomplaint, and have accepted the Respondent's entitlement to the relief and remedy set out in the Countercomplaint. Within 10 days after the delivery of a Response to Countercomplaint, the Respondent may deliver to the Claimant and the Arbitrator a written reply to such Response to Countercomplaint setting forth, with particularity, its response to such Response to Countercomplaint. Any Dispute submitted to arbitration in accordance with this Section 3(e) shall be governed by, and dealt with as if it were the subject of a Notice of Arbitration, that shall be determined by the same Arbitrator as part of the same arbitration proceeding as the Notice of Arbitration.
- (g) The time limits set for the delivery of the documents referred to in Sections 3(a) to (e) inclusive of this Schedule may be extended by agreement of the parties or by the

Arbitrator for such period, on such terms, and for such reasons as the Arbitrator may determine upon application made to the Arbitrator in writing by either the Claimant or the Respondent on Notice to the other, with such application being made either before the expiry of the time limit in issue or within two days after such expiry, and the Arbitrator may relieve the applying party of the consequences of its failure to comply with the time limit in issue, provided, however, that the other party shall be given an opportunity to make submissions on the application.

- (h) Within 20 days following the completion of the steps set out in Sections 3(a) to (e) of this Schedule, a party may, upon Notice to the other party and to the Arbitrator, request the Arbitrator to give directions and make any order which is, in the discretion of the Arbitrator, reasonable regarding any procedural matters which properly should be resolved before the arbitration proceeds further, including the amendment of any pleadings, the provision of particulars, the production of documents and the need for examinations for discovery in connection with the arbitration, either by way of oral examination or written interrogatories, and a determination as to the manner in which evidence shall be presented to the Arbitrator (by way of agreed statement of facts, sworn evidence and transcripts of cross-examinations on such sworn evidence or *viva voce*, or some combination thereof). In making any order or giving any direction in respect of any procedural matter the Arbitrator may impose such terms as are reasonable in order to ensure the completion of the arbitration in a timely manner. The Notice requesting any direction or order pursuant to this subsection shall state the direction or order sought and set out the reasons for seeking such direction or order. Nothing in this Section shall be taken to limit the jurisdiction of the Arbitrator to deal with procedural matters in accordance with the Act.
- (i) If no party has requested directions in accordance with Section 3(g), the Arbitrator shall give directions regarding the further procedural steps in the arbitration, including any production of documents, any examinations for discovery, and the nature of any hearing ("Hearing"). In making any order or giving any direction in respect of any procedural matter the Arbitrator may impose such terms as are reasonable in order to ensure the completion of the arbitration in a timely manner. Each of the parties shall have an opportunity to make oral submissions to the Arbitrator in respect of such procedural steps.
- (j) Unless the time for making an award is extended by agreement of the parties or by court order, the Arbitrator shall make an award within 60 days after completion of any Hearing or other final procedural step in which evidence or argument are provided to the Arbitrator. The award shall be in writing and shall state the reasons on which it is based. Executed copies of all awards shall be delivered by the Arbitrator to each party as soon as is reasonably possible.

4. **Agreement to be Bound**

No individual shall be appointed as Arbitrator unless he or she agrees in writing to be bound by all provisions of this Schedule.

5. **Arbitrator Discretion**

Subject to the Act, the Agreement and this Schedule, the Arbitrator may conduct the arbitration in such manner as the Arbitrator considers appropriate.

6. **Interim Relief**

At the request of any party, the Arbitrator may take such interim measures as the Arbitrator considers necessary in respect of the Dispute, including measures for the preservation of assets, the conservation of goods or the sale of perishable goods. The Arbitrator may require security for the costs of such measures.

- (a) **Remedies**
The Arbitrator may make final, interim, interlocutory and partial awards. An award may grant any remedy or relief which the Arbitrator considers just and equitable. The Arbitrator shall state in the award whether or not the Arbitrator views the award as final or interim, for purposes of any judicial proceedings in connection with such award.
- (b) **Experts**
The Arbitrator shall not, without the written consent of the parties to the arbitration, appoint any expert or other consultant or retain any counsel to advise him or her.
- (c) **Appeal**
The decision of the Arbitrator shall be final and binding upon the parties hereto as to any matter or matters so submitted to arbitration. Despite the foregoing, any such decision may be appealed to a court of competent jurisdiction based on an error of law.
- (d) **Costs of Arbitration and Offers to Settle**
The fees and expenses of the Arbitrator and costs of the arbitration facilities shall be periodically billed to and paid in equal proportions by the parties to the arbitration and appeal as the arbitration or appeal proceeds. The Arbitrator shall have the power to award costs, including the fees and expenses of the Arbitrator and costs of the arbitration facilities, in whole or in part, upon hearing submissions by any party requesting same, and any responding submissions from the other party. Unless otherwise specifically ordered by the Arbitrator, any costs awarded shall be on a full indemnity basis, as such term or equivalent amended term is used in the Ontario Superior Court of Justice.
- (e) **Interest**
The Arbitrator may award pre- and post-judgment interest in accordance with the *Courts of Justice Act*.
- (f) **Notices**
All Notices and all other documents required or permitted by this Schedule to be given by any party to the arbitration to the other shall be given in accordance with Section 1.08 of the Agreement. All Notices and all other documents required or permitted by this Schedule to be given by any party to the arbitration to the Arbitrator shall be given in accordance with the Arbitrator's instructions.
- (g) **Confidentiality**
The existence of this arbitration and any element of the arbitration (including an appeal) shall be confidential and shall be subject to Article 5 - Confidentiality, Privacy and Security of the Agreement.