



Information and Privacy Commissioner of Ontario
Commissaire à l'information et à la protection de la vie privée de l'Ontario

AGREEMENT IPC16P002

THIS AGREEMENT (the "Agreement"), made in duplicate, for expert advisory services for a strategic plan for an enterprise information management system effective as of the first day of September 2016

BETWEEN:

NORTAK SOFTWARE LTD.

herein called the "Vendor"

Of the First Part

- and -

THE INFORMATION AND PRIVACY COMMISSIONER OF ONTARIO
FOR AND ON BEHALF OF

THE OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER OF ONTARIO

herein called the "Client"

Of the Second Part

WHEREAS the Office of the Legislative Assembly of Ontario (the "Legislative Assembly") on behalf of the Client has invited Proposals for an expert technology services advisor to assist the Client with its strategic plan for an enterprise information management system pursuant to its Request for Proposal 16P-002 process;

WHEREAS the Legislative Assembly issued Addendum #1 to the Request for Proposal 16P-002 (such Request for Proposal and the Addenda being collectively hereunder referred to as the "RFP");

WHEREAS in response to the RFP, the Vendor submitted a Proposal dated June 20, 2016;

WHEREAS the Legislative Assembly issued email messages to the Vendor dated July 29, 2016, August 4, 2016, and August 8, 2016, requesting clarification of the Proposal, and July 13, 2016 and July 15, 2016 requesting a presentation meeting and related documents;

WHEREAS the Vendor submitted email responses dated August 3, 2016, August 8, 2016, and August 9, 2016, to the Legislative Assembly's email messages requesting clarification of the Proposal, and documents pursuant to the Vendor's presentation of July 21, 2016, including the Vendor's email response dated July 25, 2016 (the Legislative Assembly's clarification request email messages, presentation request email messages and the Vendor's email responses including presentation documents are contained within Schedule D of this Agreement); and

WHEREAS the Client selected the Vendor as the successful Proponent for its Project;

NOW, THEREFORE, in consideration of the mutual covenants, agreements and conditions herein, the parties hereto agree as follows:

Article 1 – Definitions

1.1 Whenever used in this Contract:

- 1.1.1 “Business Day”** means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year’s Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day; and any other day that the Legislative Assembly and the Client have elected to be closed for business pursuant to the Standing Orders of the Legislative Assembly.
- 1.1.2 “Business Hours”** means the hours of operation detailed in the Agreement and/or as determined by mutual agreement from time to time by the Client and the Vendor.
- 1.1.3 “Client Confidential Information”** means all information: (i) provided by the Client to the Vendor; (ii) that is confidential by its nature and/or of value to the Client including Client’s Intellectual Property; and (iii) in the custody or control of the Client 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 Vendor in connection with the Agreement. For the purposes of greater certainty, Client Confidential Information shall:
- a) Include: (i) all new information derived at any time from any such information whether created by the Client, the Vendor or any third party; (ii) all information, including personal information, that the Client has the discretion not to disclose, in consideration of provincial or federal legislation; and (iii) this Agreement; and
 - b) Not include information, with the exception of Client’s records and personal information, that: (i) is or becomes generally available to the public without fault or breach on the part of the Vendor of any duty of confidentiality owed by the Vendor to the Client or to any third party; (ii) the Vendor can demonstrate to have been rightfully obtained without any obligation of confidence, from a third party who had the right to transfer or disclose it to the Vendor free of any obligation of confidence; (iii) the Vendor can demonstrate to have been rightfully known to or in the possession of the Vendor at the time of disclosure, free of any obligation of confidence when disclosed; or (iv) was independently developed by the Vendor; but the exclusions in this subparagraph shall in no way limit the meaning of personal information or the obligations attaching thereto under the Contract or at law;
- 1.1.4 “Client Address” and “Client Representative”** mean:
- Office of the Information and Privacy Commissioner of Ontario
Sherry Liang, Assistant Commissioner, Tribunal Services
2 Bloor Street East
Suite 1400
Toronto, Ontario
M4W 1A8
- Telephone No.: 416-326-3333
Email: sherry.liang@ipc.on.ca

- 1.1.5 **“Client Intellectual Property”** means the intellectual property of the Client including proprietary information, and every other right, title and interest in and to all concepts, techniques, ideas, processes, templates, information and materials, however recorded, (including images and data) provided by the Client to the Vendor for this Agreement, and which shall remain the sole property of the Client at all times;
- 1.1.6 **“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 the Client 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 under the Contract, the Vendor’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 hereunder;
- 1.1.7 **“Contract”** means the aggregate of the following:
- a) The executed Agreement IPC16P-002, including Schedule A (Compensation Rates/Project Team);
 - b) Schedule B (the detailed Project Work Plan as set out in the RFP subsequent to its approval by the Client);
 - c) Schedule C (RFP);
 - d) Schedule D (Vendor’s Proposal Clarifications and Presentation Documents)
 - e) Schedule E (Vendor’s Proposal in response to RFP); and
 - f) Any amendments (other executed documents) to this Agreement including documents or letters entered into pursuant to paragraphs 2.4.1, 2.4.2, and 2.4.3 of this Agreement;
- 1.1.8 **“Indemnified Parties”** means the Office of the Information and Privacy Commissioner of Ontario; the Legislative Assembly of Ontario, its Speaker, Members of Provincial Parliament; and employees of them;
- 1.1.9 **“Industry Standards”** include, but are not limited to a) the provision of any and all labour, Supplies, equipment and other goods or services that are necessary and can reasonably be understood or inferred to be included within the scope of the Contract or customarily furnished by Persons providing Work 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 Vendor 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 the Client;

- 1.1.10 **"Person"** dependent on the context, includes any person, firm, partnership, corporation, other business entity, or any combination thereof;
- 1.1.11 **"Project"** means the development of a strategic plan for an enterprise information management system for the Client;
- 1.1.12 **"Proposal"** means all the documentation of the Vendor submitted in response to this RFP;
- 1.1.13 **"Requirements of Law"** means all applicable requirements, laws, statutes, codes, acts, ordinances, orders, decrees, injunctions, by-laws, rules, regulations, official plans, permits, licences, authorizations, directions, and agreements with all authorities and utilities that now or at any time hereafter may be applicable to either the Contract or the Work or any part of them;
- 1.1.14 **"RFP"** means the Request for Proposal 16P-002 dated June 2, 2016, for Expert Advisory Services for a Strategic Plan for an Enterprise Information Management System, and any addenda to it, issued by the Legislative Assembly on behalf of the Client for the Work;
- 1.1.15 **"Subcontractor"** means any Person having a contract with the Vendor for the execution of a part or parts of the Work;
- 1.1.16 **"Supplies"** means all goods, items, materials, forms, commodities, articles, hardware, software, and all other things required to be furnished and used by the Vendor in connection with this Agreement;
- 1.1.17 **"Vendor Address"** and **"Vendor Representative"** mean:
- Nortak Software Ltd.
Craig Mackay, V.P. Information Solutions
1105 Cadboro Road
Gloucester, Ontario
K1J 7T8
- Telephone No.: 613-234-7212 ext. 276
Facsimile No.: 613-234-3219
Email: craig.mackay@nortak.com
- 1.1.18 **"Work"** and **"Services"** mean the provision of professional services by the Vendor including everything developed for or provided, or agreed to be developed or provided, by the Vendor or its employees, volunteers, agents, or Subcontractors, to the Client in the course of performing under the Agreement, including but not limited to any and all tasks, duties, responsibilities, Supplies, deliverables, or Intellectual Property – concepts, source code, techniques, ideas, information, documentation, and other materials, however recorded, developed or provided – during the Term of the Agreement.

Article 2 – General Conditions

2.1 No Indemnities from Client

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

2.2 Entire Agreement

The Contract constitutes the entire Agreement between the parties with regard to the performance of the Work and supersedes any prior understanding or agreement, collateral, oral, or otherwise, existing between the parties at the date of execution of the Agreement.

2.3 Order of Precedence

In the event of any conflict or inconsistency between the different parts/terms of this Agreement (including Schedule A), the order of precedence shall be, in descending order of priority, as follows:

- 2.3.1 this Agreement (including Schedule A);
- 2.3.2 any amendments (other executed documents) to this Agreement including documents or letters entered into pursuant to paragraphs 2.4.1, 2.4.2, and 2.4.3 of this Agreement;
- 2.3.3 the Detailed Project Work Plan as set out in the RFP subsequent to its approval by the Client (Schedule B);
- 2.3.4 the RFP (Schedule C);
- 2.3.5 the Vendor's Proposal clarifications and presentation documents (Schedule D); and
- 2.3.6 the Vendor's Proposal (Schedule E).

2.4 Contract Amendments

- 2.4.1 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.
- 2.4.2 The Client may, in writing, request changes to the Contract, which may include altering, adding to, or deleting any of the Work. The Vendor shall comply with all Client change requests and the performance of such request shall be in accordance with the terms and conditions of the Contract. If the Vendor is unable to comply with the change request, it shall promptly notify the Client 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.
- 2.4.3 Where a Client change request includes an increase in the scope of the previously contemplated Work, the Client shall set out, in its change request, the proposed remuneration, as appropriate, for the contemplated changes. The remuneration shall be negotiated between the Client and the Vendor within a reasonable period of time and shall be consistent with the remuneration amounts of the Contract in effect at the time of the change request.

2.5 Independent Vendor

The Vendor shall have no power or authority to bind the Client or to assume or create any obligation or responsibility, express or implied, on behalf of the Client. The Vendor shall not hold itself out as an agent, partner, or employee of the Client. Nothing in the Contract shall have the effect of creating an employment, partnership, or agency relationship between the Client and the Vendor (or any of the Vendor's directors, officers, employees, agents, partners, affiliates, volunteers, or Subcontractors) or constitute an appointment under the *Public Service of Ontario Act, S.O. 2006, c. P.47*, as amended.

2.6 Force Majeure

Neither party shall be liable for damages caused by delay or failure to perform its obligations under the Contract where such delay or failure is caused by an event beyond its reasonable control. Delays in or failure of performance by either party under the Contract shall not constitute default hereunder or give rise to any claim for damages. In the event that the performance of the Contract in the reasonable opinion of either party is made impossible by an occurrence beyond the reasonable control of the party affected, then either party shall notify the other in writing. The Client shall either terminate the Contract forthwith and without any further payments being made, or authorize the Vendor to continue the performance of the Contract with such adjustments as may be required of the occurrence in question and agreed upon by both parties. In the event the parties cannot agree upon the aforementioned adjustments, it is agreed by the parties that the Contract shall be terminated. The parties agree that force majeure events shall include but are not limited to, natural disasters, decrees of Governments, and acts of war, insurrection, sabotage, atomic and nuclear incidents, and terrorism, but shall not include shortages or delays in or failure of performance relating to Supplies or Services, lack of finances, or labour disruptions, strikes, and lockouts. Each party shall be responsible for their own costs in respect of force majeure events.

2.7 Notices

Notices shall be in writing, shall be delivered by postage-prepaid envelope, personal delivery, electronic mail, or facsimile transmission, and shall be addressed to, respectively, the Client Address to the attention of the Client Representative and to the Vendor Address to the attention of the Vendor Representative. Notices shall be deemed to have been sufficiently and effectually given a) in the case of postage-prepaid envelope, five Business Days after such notice is mailed; or b) in the case of personal delivery, electronic mail, or facsimile, one Business Day after such notice is received by the other party. In the event of a postal disruption, notices must be given by personal delivery, electronic mail 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.

2.8 No Subcontracting, No Assignment

The Vendor 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 the Client. Such consent shall be in the sole discretion of the Client and shall be subject to the terms and conditions that may be imposed by the Client. Without limiting the generality of the conditions which the Client may require prior to consenting to the Vendor's use of a Subcontractor, every contract entered into by the Vendor with a Subcontractor shall adopt all of the terms and conditions of this Contract as far as applicable to those parts of the Work provided by the Subcontractor. Nothing contained in the Contract shall create a contractual relationship between any Subcontractor or its employees and the Client.

2.9 Change In Control

The Vendor shall keep the Contract under its control. In the event that the Vendor undergoes a change in control the Vendor shall immediately disclose such change in control to the Client and shall comply with any terms and conditions subsequently prescribed by the Client resulting from the disclosure.

2.10 Conflict of Interest

The Vendor shall a) avoid any Conflict of Interest in the performance of its contractual obligations; b) disclose without delay any actual or potential Conflict of Interest that arises during the performance of its contractual obligations; and c) comply with any requirements prescribed by the Client to resolve any Conflict of Interest. In addition to all other contractual rights or rights available at law or in equity, the Client may, at its sole and absolute discretion, immediately terminate the Contract upon giving notice to the Vendor where a) the Vendor fails to disclose an actual or potential Conflict of Interest; b) the Vendor fails to comply with any requirements prescribed by the Client to resolve a Conflict of Interest; or c) the Vendor's Conflict of Interest cannot be resolved.

2.11 Security

The Client may require that the Vendor's employees and other Persons assigned to the Contract to be cleared by the Canadian Police Information Centre (CPIC) prior to the commencement of any of the Work.

2.12 Dispute Resolution

2.12.1 In the event of any dispute or claim arising between the Client and the Vendor as to their respective rights and obligations under the Agreement, either party may give the other written notification of such dispute or claim. The notification of dispute or claim shall be made within 30 calendar days of the dispute or cause of action arising. If the dispute or claim cannot be resolved to the satisfaction of both parties, the matter shall be referred to arbitration, in accordance with the *Arbitration Act, S.O. 1991*, as amended.

2.12.2 Despite paragraph 2.12.1 and in accordance with this Agreement, the Vendor shall continue to provide the rights and perform the Services of this Agreement unless directed otherwise by the Client.

2.13 Time is of the Essence

Time shall be in all respects of the essence of the Contract.

2.14 Severability

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

2.15 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.

2.16 Representatives May Bind the Parties

The parties represent that their respective representatives have the authority to legally bind them to the extent permissible by the Requirements of Law, and acknowledge that they have read and understand this Agreement.

2.17 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 – Term**3.1 Term**

The Term shall commence on September 1, 2016, and will remain in effect until January 31, 2017, unless changed in accordance with Article 2.4 or terminated sooner in accordance with Article 12.

Article 4 - Vendor's Performance**4.1 Commencement of Performance**

The Vendor shall commence performance upon receipt of written instructions from the Client.

- 4.2 Performance Warranty
The Vendor hereby represents and warrants that the Work shall be properly coordinated with the Client Representative, provided fully and diligently in a professional, careful, competent, continuous, consistent, and timely manner by Persons qualified and skilled in their occupations, and furthermore that all Work will be provided in accordance with a) the Contract; b) Industry Standards; and c) Requirements of Law. If any parts of the Work, in the opinion of the Client, are inadequately provided or require corrections, the Vendor shall forthwith make the necessary corrections at its own expense as specified by the Client in a rectification notice.
- 4.3 Requirements of Law
Without limiting the generality of the foregoing paragraph, the Vendor shall give the required notices and perform the required inspections under the Requirements of Law including for the preservation of public health and safety. Prior to the commencement of the Contract and during the Term, the Vendor must obtain and maintain at its cost all permits, licences, or other authorizations under the Requirements of Law to perform the Work. Upon request, the Vendor shall provide the Client proof/copies of such documents. Failure of the Vendor to provide the requested proof/copies within 10 Business Days or such other timeframe as the Client deems reasonable, shall be cause for the Client to terminate the Contract pursuant to Article 12. The Vendor shall ensure that it meets all its responsibilities under the *Occupational Health and Safety Act*, any legislation about employer/employee relationships, and all other applicable law with respect to the Services and the performance of this Agreement.
- 4.4 Restrictions
The Vendor acknowledges that unless it obtains specific written preauthorisation from the Client, any access to or use of Client property, technology or information that is not necessary for the performance of its contractual obligations with the Client is strictly prohibited. The Vendor further acknowledges that the Client may monitor the Vendor to ensure compliance with this paragraph. This paragraph is in addition to and shall not limit any other obligation or restriction placed upon the Vendor.
- 4.5 Notification
During the Term, the Vendor shall advise the Client promptly of a) any contradictions, discrepancies or errors found or noted in the Contract; b) supplementary details, instructions or directions that do not correspond with those contained in the Contract; and c) any omissions or other faults that become evident and should be corrected in order to provide the Work in accordance with the Contract and Requirements of Law.
- 4.6 Strict Performance Requirement
Any failure by the Client to insist in one or more instances upon strict performance by the Vendor of any of the terms or conditions of the Contract shall not be construed as a waiver by the Client of its right to require strict performance of any such terms or conditions, and the obligations of the Vendor with respect to such performance shall continue in full force and effect.
- 4.7 Communication
The Vendor shall communicate with the Client Representative on a regular basis about matters pertaining to the Work, using the prescribed protocol, procedure, method, equipment and technology.
- 4.8 Inspection by Client
The Vendor shall, during the Term, permit and facilitate the inspection of the Vendor's Work, by the Client.
- 4.9 Client Rights and Remedies/Vendor Obligations
The express rights and remedies of the Client and obligations of the Vendor set out in the Contract are in addition to and shall not limit any other rights and remedies available to the Client or any other obligations of the Vendor at law or in equity.

Article 5 - Interpretation of Vendor's Performance**5.1 Client Interpreter and Judge**

The Client Representative is in the first instance the interpreter and judge of the Vendor's performance of the Contract. The Client Representative shall decide on the completeness and adequacy of the Work, and on any question arising between the parties, and in particular, without limiting the generality of the foregoing any questions as to:

- 5.1.1 the meaning of anything that comprises the Work;
- 5.1.2 whether or not the quality or quantity of any of the Vendor's Supplies or Services supplied or proposed to be supplied by the Vendor meets the requirements of the Contract; and
- 5.1.3 whether or not the Vendor's Supplies, Services, or other material provided by the Vendor for performing the Work under the Contract are adequate to ensure that the Work will be performed in accordance with the Contract and that the Contract will be carried out in accordance with its terms.

5.2 The Vendor shall perform the Work in accordance with the decisions and directions of the Client Representative.

Article 6 – Vendor's Personnel

- 6.1 The Vendor shall provide employed Persons including Subcontractors, if any, who are experienced and skilled to perform the Services that make up the Work, including management staff responsible for the supervision of the Work, and shall submit proof of Persons' qualifications upon request of the Client.
- 6.2 The Client has the absolute right to approve or disapprove any proposed Vendor changes in management staff listed in Schedule A and other Persons performing the Work. The Client, in each instance, will be provided with a résumé of the proposed substitute and an opportunity to interview that Person prior to giving its approval or disapproval.
- 6.3 The Client shall provide the related direction of the Work performed by the Vendor. This shall not, however, relieve the Vendor from responsibility for quality of Work and achievements of successful results to the satisfaction of the Client.
- 6.4 The Client shall have the right to request that the Vendor remove any of its Persons or any of its Subcontractors from the performance of the Work. Such request shall not be considered as a request for the Vendor to terminate the employment or other arrangement of that Person or Subcontractor. The decision to terminate such employment or other arrangement shall be made solely by the Vendor. The Vendor agrees to indemnify and hold harmless the Client from and against any and all Claims by whomever in consequence and in respect of any termination of employment or other arrangement of any of its Persons or Subcontractors.
- 6.5 The Vendor agrees to be solely responsible for any and all payments and/or deductions required to be made including those required for Canada Pension Plan, *Employment Insurance Act*, *Workplace Safety and Insurance Act*, and *Income Tax Act*, and all other matters arising out of the relationship between the Vendor and its employees.

Article 7 – Invoices / Payments**7.1 Vendor's Fees**

- 7.1.1 The total fixed fee and other rates set out in Schedule A as Compensation Rates will remain in effect for the Term of the Agreement.
- 7.1.2 The Compensation Rates are in Canadian funds and include remuneration, overhead and other expenses incurred by the Vendor, in accordance with the completed Pricing Form (Appendix 7.4) of the RFP as clarified.

7.2 Invoices

- 7.2.1 The Client is subject to the Harmonized Sales Tax (HST).
- 7.2.2 The Vendor will submit invoices for payment of the Vendor's fees for Services, in arrears, in accordance with the compensation Rates under this Agreement to the mailing address below or email address: Finance_inv@ola.org.

Legislative Assembly of Ontario
Attn: Executive Director, Administrative Services
Room 2501, Whitney Block
99 Wellesley Street West
Toronto, Ontario
M7A 1A6

Reference: Agreement Number IPC16P002

7.3 Payment

- 7.3.1 The Client shall review and approve invoices for payment for the Vendor's performance of Services within 30 days of the date of receipt of the invoices subject to confirmation by the Client of the Vendor's statement of completion of the Services and the Client's acceptance and approval of the completed Services. The Services performed by the Vendor shall be to the satisfaction of the Client in its sole and absolute discretion and no Services will be considered complete until accepted and approved by the Client.
- 7.3.2 The Client shall have the right to accept or reject the Vendor's performance of the Services or require its correction. The Client shall have the right to hold back or set-off part of any payment if, in the opinion of the Client, acting reasonably, the Vendor has failed to comply with the requirements of the Agreement, and may obtain the Services to rectify the deficiencies and complete the Project to its satisfaction from another vendor.
- 7.3.3 The total amount payable to the Vendor for Services for the Term shall not exceed the total fixed fee amount specified in Schedule A.
- 7.3.4 Upon request of the Client the Vendor shall submit to the Client a quotation for optional/additional Services, which shall include the services to be performed, work schedule including the number of hours/days required for completing the assignment, and the total cost. The Client may, in its sole discretion, accept or reject the quotation. The Client will not pay invoices for any optional/additional Services performed by the Vendor without having obtained written approval from the Client of the Vendor's quotation and written direction from the Client to commence any optional/additional Services.

Article 8 – Confidentiality**8.1 Confidentiality and Promotion Restrictions**

Any public ceremony, other publicity, or publications related to the Contract shall be at the sole discretion of the Client. The Client may, in its sole discretion, acknowledge the Work provided by the Vendor in any such publicity or publication. The Vendor shall not advertise or make use of its association with the Client without the prior written consent of the Client. The Vendor shall not use the Legislative Assembly of Ontario Coat of Arms or any other insignia and/or logo, or erect any sign or advertisement related to the Contract, unless it has received the prior written approval of the Client to do so, which approval may be unreasonably withheld. Without limiting the generality of this paragraph, the Vendor shall not, among other things, at any time directly or indirectly communicate with the media in relation to the Contract unless it has first obtained the express written authorization to do so by the Client.

8.2 Client Confidential Information

During and following the Term, Vendor shall a) keep all Client Confidential Information confidential and secure; b) limit the disclosure of Client Confidential Information to only those Persons who have a need to know it and who have been specifically authorized to have such disclosure; c) not directly or indirectly disclose, destroy, exploit or use any Client Confidential Information (except for the purpose of providing the Work, or except if required by order of a court or tribunal), without first obtaining: (i) the written consent of the Client and (ii) in respect of any Client Confidential Information about any third party, the written consent of such third party; d) provide Client Confidential Information to the Client on demand; and e) return all Client Confidential Information to the Client before the termination or expiry of the Term, with no copy or portion kept by the Vendor.

8.3 Restrictions on Copying

The Vendor shall not copy any Client Confidential Information, in whole or in part, unless copying is essential for the provision of the Work.

8.4 Injunctive and Other Relief

The Vendor acknowledges that breach of any provisions of this Article may cause irreparable harm to the Client or to any third party to whom the Client owes a duty of confidence, and that the injury to the Client or to any third party may be difficult to calculate and inadequately compensate for damages. The Vendor agrees that the Client 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.

8.5 Notice and Protective Order

If the Vendor or any of its directors, officers, employees, agents, representatives or advisors become legally compelled to disclose any Client Confidential Information, the Vendor will provide the Client with prompt notice to that effect in order to allow the Client to seek one or more protective orders or other appropriate remedies to prevent or limit such disclosure, and it shall co-operate with the Client and its legal counsel to the fullest extent. If such protective orders or other remedies are not obtained, the Vendor will disclose only that portion of Client Confidential Information which the Vendor is legally compelled to disclose, only to such person or persons to which the Vendor is legally compelled to disclose, and the Vendor shall provide notice to each such recipient (in co-operation with legal counsel for the Client) that such Client Confidential Information is confidential and subject to non-disclosure on terms and conditions equal to those contained in the Agreement and, if possible, shall obtain each recipient's written agreement to receive and use such Client Confidential Information subject to those terms and conditions.

8.6 Survival

The provisions of this Article shall survive any expiry or termination of the Contract for a period of seven years upon completion/expiry or termination of the Contract.

Article 9 – Intellectual Property**9.1 Client Intellectual Property**

The Vendor 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 the Client to the Vendor shall remain the sole property of the Client at all times.

9.2 Vendor's Intellectual Property

The Vendor shall retain all rights, title and interest (including, without limitation, all copyrights, patents, service marks, trademarks, trade secrets and other intellectual property rights) in and to all technical or internal designs, methods, ideas, concepts, knowhow, techniques, generic documents and templates that the Vendor: (a) developed previously; (b) developed during the Term independently of the performance of its obligations under the Agreement; or (c) acquired or developed after the expiry or termination of the Agreement; provided the Vendor's intellectual property does not contain any Client Confidential Information or Client Intellectual Property. Rights and ownership by the Vendor shall not extend to or include all or any part of the Client Confidential Information or Client Intellectual Property.

9.3 License

The Vendor grants, to the extent that the Vendor may include Vendor's Intellectual Property in materials and deliverables to the Client, or to the extent of any third party's interest therein shall cause to be granted, to the Client a fully paid-up, non-exclusive, royalty-free, irrevocable, worldwide license in perpetuity to use and make copies of such materials and deliverables as part of this Agreement, provided the use and copies are for internal business purposes and on the condition such materials and deliverables cannot be distributed to third parties – other than persons or entities as required by law to receive such information – without the prior written permission of the Vendor. The Client reserves the right to divulge, publish and make reasonable modifications to such materials and deliverables as it deems necessary for internal business purposes.

9.4 Creditors of Vendor

The Vendor agrees to use its best efforts to protect any materials and deliverables containing Client Confidential Information or Client Intellectual Property from falling into possession or levy by or upon authority of creditors of the Vendor, or committees, representatives or trustees thereof. All rights are vested with the Client in perpetuity.

9.5 Ownership of Intellectual Property

Any new documents, reports, ideas, concepts, know-how or techniques developed jointly by the Vendor and the Client personnel during the course of this Agreement shall be the property of the Client.

9.6 Client May Prescribe Further Compliance

The Client reserves the right to prescribe the specific manner in which the Vendor shall perform its obligations relating to this Article.

9.7 Survival

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

Article 10 – Liability and Indemnity**10.1 Vendor's Indemnity**

The Vendor agrees at all times to defend, indemnify, and save the Indemnified Parties, and their agents harmless, from and against any and all liabilities, losses, costs, damages and expenses (including total legal, expert and consultant fees, which shall be in the control of the Client), causes of action, actions, claims, demands, lawsuits or other proceedings of any kind by whomever made or incurred, as a result of third party claims, for bodily and personal injury (including death) and damage to or loss of property, arising out of or resulting from: (a) the performance of the Services by the Vendor; (b) acts of willful misconduct or negligence of the Vendor; and (c) a breach by the Vendor of its obligations including, without limitation, failure to perform Services, omissions or delays on the part of the Vendor, with respect to this Agreement.

10.2 Client's Indemnity

The Vendor shall not be liable for claims for loss, damage, or injury caused solely and directly by the negligence or willful misconduct act of the Client.

10.3 Vendor's Liability for Damages

Subject to paragraph 10.5 Vendor's Liability for Property Damage, Bodily Injury (Including Death) or Personal Injury, for which there are no limits on the liability of the Vendor, if circumstances arise where the Client is entitled to recover from the Vendor damages arising in the course of the performance of the Vendor's obligations of the Services or otherwise in connection with the Services, the Vendor's aggregate liability to the Client for direct damages under the Services shall not exceed two hundred and fifty thousand dollars (\$250,000.00).

10.4 Client's Liability for Damages

Subject to paragraph 10.6 Client's Liability for Property Damage, Bodily Injury (Including Death) or Personal Injury, for which there are no limits on the liability of the Client, if circumstances arise where the Vendor is entitled to recover damages from the Client in connection with the Services, the aggregate liability of the Client to the Vendor for direct damages under the Services shall not exceed two hundred and fifty thousand dollars (\$250,000.00).

10.5 Vendor's Liability for Property Damage, Bodily Injury (Including Death) or Personal Injury

The limitation of liability in paragraph 10.3 Vendor's Liability for Damages shall not apply in respect of damages for any property damage, bodily injury (including death) or personal injury.

10.6 Client's Liability for Property Damage, Bodily Injury (Including Death) or Personal Injury

The limitation of liability in paragraph 10.4 Client's Liability for Damages shall not apply in respect of damages for any property damage, bodily injury (including death) or personal injury.

10.7 Proceedings

The Vendor shall, at its expense, to the extent requested by the Client, conduct the defence of any proceeding (i.e. action, claim, demand, lawsuit, or other proceeding) against the Client, the Legislative Assembly, and their agents, and any negotiations for their settlement. The Client may elect to participate in or conduct the defence of any such proceeding by notifying the Vendor in writing of such election without prejudice to any other rights or remedies of the Client under the Agreement, at law or in equity. Each party participating in the defence shall do so by actively participating with the other's counsel. The Vendor shall enter into no settlement unless it has obtained the prior written approval of the Client. If the Client elects to participate in the defence of any such proceeding, the Client agrees to co-operate with and assist the Vendor to the fullest extent possible in the proceedings and any related settlement negotiations. If the Client, with the consent of the Vendor, conducts the defence of any such proceedings, the Vendor agrees to co-operate with and assist the Client to the fullest extent possible in the proceedings and any related settlement negotiations.

Article 11 – Insurance

- 11.1 The Vendor, at its own cost and expense, will carry adequate insurance coverage and will provide certificates from insurers having a secure A.M. Best rating of B+ or greater, or the reasonable equivalent based on the requisite insurance reasonably available within Ontario, evidencing such insurance to the Client upon its request. The Vendor will provide and maintain during the Term of Agreement, all the necessary and appropriate insurance that a prudent person in the business of the Vendor would maintain, including, but not limited to: comprehensive commercial general liability insurance for any property damage, bodily injury (including death) or personal injury; and errors & omissions (professional) liability insurance, insuring liability for errors and omissions in the performance or failure to perform the Services contemplated in this Agreement – each insurance shall be in an amount not less than two million dollars (\$2,000,000.00) CDN, per occurrence with an annual aggregate limit three times the occurrence limit. The commercial general liability insurance policy will include employees liability coverage (or compliance with paragraph 11.3 below). Each insurance policy will name the Office of the Information and Privacy Commissioner of Ontario and the Legislative Assembly of Ontario as additional insured.
- 11.2 It is the sole responsibility of the Vendor to determine what additional insurance coverage, if any, is necessary and advisable for its own protection, or to fulfill its obligations under this Agreement. The Vendor shall provide and maintain any such additional insurance its own cost and expense.
- 11.3 If the Vendor is subject to the *Workplace Safety and Insurance Act* (WSIA), it shall submit a valid clearance certificate of Workplace Safety and Insurance Board (WSIB) coverage to the Client prior to the Agreement effective date. The Vendor shall provide additional WSIB clearance certificates upon request of the Client.
- 11.4 Additional Insurance
It is the sole responsibility of the Vendor to determine what additional insurance coverage, if any, are necessary and advisable for its own protection or to fulfill its obligations under this Contract. Any such additional insurance shall be provided and maintained by the Vendor at its own expense.

Article 12 – Termination

- 12.1 Termination for Convenience
The Client may terminate this Agreement or any part thereof – including part of the Services – at any time upon 30 calendar days' notice to the Vendor, without reason or cause, and without cost or penalty to the Client. In such case, the Client will only make payment for Services actually completed by the Vendor and accepted and approved by the Client up to the date of termination and in accordance with the Agreement.
- 12.2 Termination for Cause
Notwithstanding paragraph 12.1 Termination for Convenience, the Client, without obligation or liability to the Vendor, and without cost or penalty, may terminate this Agreement for cause at any time by providing to the Vendor a notice of termination that stipulates an effective termination date, if, in accordance with this Agreement, the Vendor:
- 12.2.1 Breaches or defaults or fails to comply with any of the provisions, terms, and conditions of this Agreement including the obligation of performing Services of consistently professional quality on a timely basis, or otherwise impedes or jeopardizes the Agreement;
- 12.2.2 Breaches the Conflict of Interest and Confidentiality provisions of the Agreement;

- 12.2.3 Becomes bankrupt, insolvent, or undergoes a change of control that adversely influences its ability to fulfill some or all of its obligations under the Agreement, or for any reason ceases to conduct business;
 - 12.2.4 Assigns or attempts to assign this Agreement, in whole or in part, including rights and obligations hereof, without obtaining the prior written consent of the Client;
 - 12.2.5 Is subject to criminal indictment or conviction or is found civilly or criminally liable by a trial court, jury or administrative body in connection with any matter involving breach of trust, breach of fiduciary duty, fraud, or theft; or
 - 12.2.6 Otherwise, is in breach or default of the Agreement;
- 12.3 The Client reserves the right to give the Vendor notice of breach, default, or failure including a timeframe for the Vendor to rectify fully such breach, default, or failure, without cost to the Client. The Client may terminate the Agreement for cause and without further notice if Vendor has not rectified the breach, default, or failure within the stipulated timeframe to the complete satisfaction of the Client in accordance with this Agreement.
- 12.4 The Vendor agrees that the Client has the right to seek damages and any other remedy available under this Agreement or otherwise available at law or in equity for the breach, default, or failure.
- 12.5 Rights upon Termination
- 12.5.1 Upon termination of this Agreement by the Client for any reason (including default by the Client), the Vendor will forthwith deliver to the Client all materials – papers, research, and other property – containing Client specific or Client proprietary information obtained from the Client for, or developed by the Vendor in, the performance of the Services.
 - 12.5.2 If the Vendor fails or delays to return aforementioned materials, the Client shall have the right to obtain access to and possession of all such material, immediately. The Vendor acknowledges that any failure or delay on its part in the delivery of such access and possession to the Client is and will be deemed wilful, and will cause irreparable injury to the Client, not adequately compensable in damages and for which the Client may have no adequate remedy at law. The Vendor, accordingly, agrees that the Client may, in such event, seek and obtain injunctive relief in any court of competent jurisdiction as well as damages from such failure or delay.
 - 12.5.3 In the event the Vendor becomes bankrupt, insolvent, undergoes a change in control, or otherwise ceases to conduct business, the Client will become the owner of all materials created or used by the Vendor under the Agreement.
 - 12.5.4 To the extent feasible, the Vendor will cooperate with and assist the Client in good faith and in every possible manner to achieve an orderly, timely, and efficient transfer of such Services and all applicable records to the Client or successor service provider designated by the Client.
 - 12.5.5 In the event the Vendor becomes bankrupt, insolvent, undergoes a change in control, or otherwise ceases to conduct business, the Client will have the right to offer employment (regular or term appointments on a full-time or part-time basis) to any employees of the Vendor assigned to the Agreement (notwithstanding anything to the contrary provided in the Agreement).
 - 12.5.6 The Client shall have the right to procure Services comparable to those terminated, as the Client may deem appropriate, and the Vendor will be liable to the Client for any excess cost of such comparable Services.

12.5.7 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, and shall in no way limit any rights or remedies of the Client under the Agreement, at law or in equity.

Article 13 – Records / Audits

13.1 Records for Audit Purposes

The Vendor shall maintain proper financial records and books of account for the Services provided under this Agreement (the "Records"). The Vendor agrees that the Client may inspect or arrange for its duly authorized representative or persons or entities as required by law to inspect, including the right to copy, any Records for audit purposes, both during and for a period of seven years following the expiry or termination of this Agreement, as and when the Client may require. The Client shall provide the Vendor with at least 14 calendar days' prior notice of its requirement for such inspection.

13.2 Access to Records

The Vendor shall permit and assist the Client in conducting its inspection of Records on the understanding no third party, other the Client's duly authorized representative or persons or entities as required by law to receive Records, shall be given access to Records without the Vendor's prior written consent.

IN WITNESS WHEREOF, the parties hereto have executed the Agreement by their respective officers duly authorized in that behalf on the 1st day of Sept. 2016, effective as of the date first above written.

THE INFORMATION AND PRIVACY COMMISSIONER OF ONTARIO

FOR AND ON BEHALF OF

THE OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER OF ONTARIO

Per: [Signature]
(Signature)

Name: BRIAN BEAMIST

Title: COMMISSIONER

I/We have authority to bind the Corporation.

NORTAK SOFTWARE LTD.

Per: [Signature]
(Signature)

Name: Craig Mackay

Title: V.P.

I/We have authority to bind the Corporation.

SCHEDULE A

Compensation Rates/Project Team

Compensation Rates

To achieve the Project goal and objectives, the Vendor will provide confidential, prompt, Services and the Project team personnel listed herein, and otherwise do all things necessary for or incidental to the performance of the Services as set out and all in accordance with, the Agreement.

Prices are in Canadian Funds, include all applicable duties, and exclude the Harmonized Sales Tax (HST). Vendor will add HST to invoices.

Total price of each Part is all-inclusive firm ceiling price and includes all labour, materials, travel, lodging, transportation and carriage costs, insurance costs, food costs, and all other overhead including but not limited to any fees or charges required by law.

NO.:	ITEM:	PART 1	PART 2	PART 3	PART 4	PART 5	PART 6
B-1	Total Price from Rows A-1 (Above)	\$12,400.00	\$80,000.00	\$47,650.00	\$19,050.00	\$30,600.00	\$20,950.00
B-2	Reimbursable Expenses ⁽ⁱ⁾	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
B-3	Total Ceiling Price (B-1 + B-2)	\$210,650.00					

The Term of the Agreement shall commence on the effective date of the Agreement with a targeted completion date of January 31, 2017, all in accordance with the Agreement.

Vendor's clarifications of the Pricing Form financial data (completed Appendix 7.4) are provided under Schedule D of this Agreement.

Project Team

Craig Mackay, Project Manager

██████████, Solution Architect/Team Lead

██████████, EIM/CRM Expert

██████████, Procurement Specialist

██████████, Solution Architect

Vendor's clarifications of each Project Team member's role by Part (including completed Appendix 7.4) are provided under Schedule D of this Agreement.