



DATE: May 14, 2010
TO: ALL RESPONDENTS
FROM: LCBO PURCHASING DEPARTMENT
SUBJECT: RFP #2010-16 - Microsoft SCCM 2007 Implementer

The Liquor Control Board of Ontario invites bids for Microsoft SCCM 2007 Implementer

Technical Response - Envelope #1

Respondents **must** submit one (1) original Technical Response, signed by an authorized representative (prominently marked "Original") and should submit three (3) identical copies in a sealed envelope. Do NOT include any reference to, or any pricing information in Envelope #1.

Pricing Response - Envelope #2

Respondents must submit one (1) original Pricing Response Form (prominently marked "Original") and should submit three (3) identical copies in a sealed envelope separate apart from the Technical Response. The sealed envelope containing the Pricing Response Form should be placed with the rest of the Response into a sealed package.

Envelope #1 and Envelope #2

Envelopes #1 and #2 are to be separate sealed envelopes, as indicated above, bundled together in a third sealed package and must be submitted to:

RFP #2010-16
Liquor Control Board of Ontario,
Purchasing Department,
1 Yonge Street, Suite 1404,
Toronto, Ontario, M5E 1E5.
Attn: Jim Matera, Purchasing Supervisor

In the interests of a timely and fair process, **late proposals will not be considered and will be returned unopened. All proposals must bear an original signature. Unsigned proposals will be disqualified.** In order to be considered, all proposals must be signed and received on time no later than **2:00:59 p.m. Toronto Time, June 2, 2010.**

All general inquiries should be directed by fax to Jim Matera, Purchasing Supervisor at 416-864-6853, or by email at jim.matera@lcbo.com. Enquiries must be received prior to **3:00:59 p.m. on May 20, 2010.** The LCBO will not be required to respond to late enquires.

Thank you.

Jim Matera
Purchasing Supervisor



**REQUEST FOR PROPOSALS
for**

Microsoft SCCM 2007 Implementer

RFP # 2010-16

Closing Date and Time:

July 2, 2010 at 2:00:59 p.m. Toronto time

Purchasing Contact:

Jim Matera, Purchasing Supervisor

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1.0 INTRODUCTION

This Request for Proposals (“**RFP**”) is an invitation to interested vendors to submit proposals (“**Responses**”) to the Liquor Control Board of Ontario (“**LCBO**”) for the provision of the services of a Microsoft System Centre Configuration Manager (“**SCCM**”) 2007 Implementer.

This RFP is intended to assist each person who submits a Response in response to this RFP (a “**Respondent**”) in gaining an understanding of the LCBO’s requirements. However, each Respondent is responsible for verifying all the information required for its Response.

Please be advised that the LCBO is under no obligation to proceed with this Project after receiving and reviewing Responses, and that under no circumstances will any Respondent receive payment of any kind for submitting information in response to this RFP. Further, the LCBO may decide, if it deems appropriate, to award to more than one Respondent on the basis of the Respondent’s ability to meet a particular requirement or requirements, as determined by the LCBO.

2.0 PROJECT DESCRIPTION

LCBO’s IT End User Computing department requires an individual to fill the role of a qualified Microsoft SCCM 2007 implementer to work on several operational projects concurrently at the LCBO’s head office location at 55 Lakeshore Boulevard East, Toronto, Ontario. These projects are briefly outlined below:

Upgrade current Systems Management Server (“**SMS**”) 2003 site

This project involves the upgrade and development of the SCCM 2007 SP2 site at LCBO. The main functional requirements are:

1. Hardware and Software asset management
2. Software Deployment
3. Software Update Management
4. Software Metering
5. Custom Reporting

Upgrade Current Microsoft Deployment Toolkit (“**MDT**”) 2008 to MDT 2010

This project involves the upgrade of our current MDT 2008 imaging server to MDT 2010. With SCCM 2007 integration, we also need to introduce “Zero-Touch” technology to LCBO.

Implement additional 3rd party plug-ins, if required

If deemed necessary, we will enhance SCCM’s functionality with 3rd party plug-ins. A decision will be made during the planning phase of this project.

3.0 REQUIREMENTS/QUALIFICATIONS

Under general direction from an assigned Systems Analyst, through investigation and fact-finding, the individual provided by the successful Respondent will assist with the formulation of scope and objectives SCCM site implementation and development, enhancement and maintenance tasks. The person in this role will: analyze, document, and communicate existing hardware and software requirements; prepare system overview documentation and detailed specifications from which SCCM site will be developed; create or modify tasks and procedures to solve the most complex problems within software deployment and OS deployment; design, code, test, and document site hierarchy; execute (if necessary) system implementation fallback and contingency plans; and provide input to support changes in support processes as required.

3.1 Responsibilities:

The individual provided by the successful Respondent will:

- Report to the department Systems Manager
- Maintain plans, actions logs, issues logs and necessary project documentation
- Follow up on action items
- Resolve issues
- Track time against specific tasks and projects
- Keep management informed
- Research and review industry solutions
- Ensure deliverables are to specifications/requirements
- Testing
- Implementation and training planning

3.2 Qualifications:

Respondents must propose **only** one (1) candidate to perform the services required by the LCBO.

The individual proposed by the Respondent (the “**Candidate**”) should demonstrate, deep, detailed understanding of several of the following:

- SCCM 2007 site architecture (planning and installation);
- Software Packaging and Deployment Processes
- Systems Management methodologies
- Software Update Management
- Client server technology
- Installation and Configuration of Microsoft Deployment Technology Server 2010
- Implementation of “Zero-Touch” within SCCM 2007
- Strong knowledge of SQL Server 2008 and “SQL Reporting Services”
- Strong troubleshooting and root cause analysis abilities
- A demonstrated ability with problem/change management process, well-developed analytical, organizational, and strong customer service orientation and excellent verbal and written communication skills

The Candidate should also have the following qualifications:

- A minimum of 5 years experience using SMS 2003, SCCM 2007
- experience in all aspects of Software Deployment using SMS/SCCM
- experience in Microsoft Software Updates and 3rd party application patching (e.g., Adobe Reader, Adobe Flash Player....)
- experience with Project Management tools and concepts
- above-average written and verbal communication skills
- excellent team participation and people skills
- excellent skills integrating MDT 2010 with SCCM 2007
- experience with implementing SCCM 3rd party plug-ins such as:
 - products from 1e
 - products from SCCM Experts

4.0 BUSINESS REQUIREMENTS

4.1 Type of Contract

Each Respondent who is selected will be required to enter into an Agreement with the LCBO in the form attached in Appendix "A" to this RFP.

4.2 Term of Assignment

The LCBO requires such services from July 19, 2010 to September 17, 2010.

4.3 No Guarantee of Volume of Work or Exclusivity

The LCBO makes no representation or guarantee as to the value or volume of work to be assigned to the successful Respondent. The contract that will be executed with the successful Respondent (the "**Agreement**") will not be an exclusive contract for the supply of the services described in this RFP. The LCBO may contract with other suppliers for the same or similar services as those described in this RFP.

4.4 Replacement of successful Respondent's Personnel

- 4.4.1 If at any time the successful Respondent, for reasons beyond its control, is unable to provide the services of the Candidate proposed in its Response (or any approved replacement), it shall provide a replacement person acceptable to the LCBO who possesses equal or superior qualifications, experience and ability, at the same hourly rate.
- 4.4.2 The successful Respondent, prior to replacing or substituting the individual who will be performing the services specified in the Agreement, shall provide a written notice to the LCBO, requesting the LCBO's approval to replace or substitute such individual. The request shall identify: the person being replaced; their role and/or responsibility in the performance of the Work; the reason why it is necessary to replace that person; and the name, qualifications, experience and references of the proposed replacement. The LCBO reserves the right to require the proposed replacement to attend an interview before the LCBO decides whether or not to approve the proposed replacement. The proposed replacement must be acceptable to the LCBO. In the event the proposed replacement is acceptable to the LCBO, the LCBO shall give the successful Respondent written permission to make the replacement or substitution.
- 4.4.3 The successful Respondent shall not replace the individual who will be performing the services specified in the Agreement without the written permission of the LCBO. Such permission shall not be unreasonably withheld.

4.5 Payments to Successful Respondent

Invoices should be sent no later than 30 days after project completion. The LCBO has adopted an electronic payment system for suppliers. The successful Respondent will be asked to provide banking information including its Bank Code, Transit Number and Account Number to ensure receipt of payment / remittance accurately and on time. The successful Respondent will also have the option of receiving payment details by email or EDI through its financial institution.

4.6 Materials and Copyright

All designs, drawings, sketches, graphic representations, specifications, computer generated designs, papers, data, reports, plans and other materials and documents created by the successful Respondent to carry out the services to be performed for the LCBO (the "Materials") will be the property of the LCBO and the successful Respondent shall not make any use of the same, except with prior written approval of the LCBO. The successful Respondent agrees that all right, title and interest in the Materials prepared for the LCBO will vest in the LCBO and that the LCBO will have the right to copy such Materials and to use them for any purpose. The successful Respondent shall deliver all Materials to the LCBO after completion of the projects or at termination of the contract unless otherwise specified.

4.7 Indemnity

The successful Respondent shall be responsible for all damages occasioned wholly or in part by any act or omission of the successful Respondent, its employees, agents or subcontractors. The successful Respondent will be required to indemnify the LCBO, its officers, directors, members, agents and employees, and save them harmless from and against any and all claims, demands, actions, causes of action, lawsuit, proceeding, damages, losses, costs, liabilities and expenses (including legal fees on a solicitor and client basis) which may be made against or incurred by the LCBO, in any way based upon, occasioned by or attributable to anything done or omitted to be done by the successful Respondent, its employees, agents or subcontractors in connection with the contract to be entered into by the LCBO and the successful Respondent .

4.8 Compliance with Laws, Regulations and Standards

The Respondent shall comply with all applicable federal, provincial, and municipal laws, regulations, codes, ordinances, policies, directives and orders, and carry on its business in compliance with the highest professional standards prevailing in its industry. The successful Respondent shall be responsible for providing services in a professional and competent manner by persons qualified and skilled in their occupations. If any of the services or deliverables provided are not in accordance with the requirements of the Agreement, the successful Respondent shall make the necessary corrections at its own expense.

4.9 Insurance

The successful Respondent shall carry such insurance as may be required by the LCBO, and shall furnish satisfactory proof thereof when required by the LCBO within ten (10) days from the date of request. The successful Respondent shall maintain at its sole cost and expense, the following insurance coverages with financially sound and reputable insurance companies:

- 4.9.1 Comprehensive General Liability insurance in the amount of at least \$2,000,000.00, that protects the successful Respondent and its employees and agents, from all claims, demands, actions, and causes of action that may be taken or made against the successful Respondent for any loss of or damage to property, or personal injury including bodily injury or death, that may arise with respect to the successful Respondent's performance of work as set out in the Agreement. This policy must also include contractual liability, non-owned automobile liability, completed operations coverage as well as a cross liability clause. This policy must add the LCBO as an additional insured but only with respect to and during the successful Respondent's performance of its obligations as set out in the Agreement.
- 4.9.2 Automobile Liability insurance with limits of not less than \$1,000,000.00 per occurrence, which must include legal liability for damage to non-owned automobiles. This policy must provide coverage for bodily injury or property damage arising out of the ownership, use or operation of all owned and/or leased automobiles.
- 4.9.4 These policies must provide the LCBO with 30 days notice of cancellation or material change. Certificate(s) of Insurance evidencing the insurance coverage required in 4.9.1, 4.9.2 above, must be submitted within ten (10) days of the contract award. The insuring company must originally sign the Certificate(s). The insurance policies must be maintained in full force and effect at all times throughout the term of the contract.

4.10 Workplace Safety and Insurance

The successful Respondent shall submit a valid clearance certificate of Workplace Safety and Insurance Act (WSIA) coverage to the LCBO prior to the commencement date of the Agreement, if requested by the LCBO. In addition, the successful Respondent shall, from time to time at the request of the LCBO, provide additional WSIA clearance certificates. The successful Respondent shall pay when due, and ensure that each of its subcontractors/consultants pays when due, all amounts required to be paid by it and its subcontractors/consultants, from time to time during the term of the Agreement, under the WSIA, failing which the LCBO shall have the right, in addition to and not in substitution for any other right it may have pursuant to the Agreement or otherwise at law or in equity, to pay to the Workplace Safety and Insurance Board any amount due pursuant to the WSIA and unpaid by the successful Respondent or its subcontractors/consultants and to deduct such amount from any amount due and owing from time to time to the successful Respondent pursuant to the Agreement together with all costs incurred by the LCBO in connection therewith.

5.0 INFORMATION REQUIRED IN RESPONSES

In order to facilitate the evaluation process, Respondents are requested to reference and entitle their submission Response with each corresponding section number and title of the sections outlined in this RFP.

The Proposal requirements set out in this Section 5.0 are either “Mandatory Proposal Requirements” or “Desirable Proposal Requirements” (both as defined below). By submitting a Proposal, the Respondent will be considered to have read and understood each of the Mandatory Proposal Requirements and Desirable Proposal Requirements.

“Mandatory Proposal Requirements” are Proposal requirements described in this Section 5.0 by “must” and “required to” and similar expressions. Mandatory Proposal Requirements must be satisfied for the Proposal to be considered compliant; any material failure (as determined by the LCBO in its sole discretion) to meet such requirements will result in the automatic disqualification of the Proposal.

“Desirable Proposal Requirements” are Proposal requirements described in this Section 5.0 by “should” and similar expressions. Desirable Project Requirements do not have to be satisfied in order for the Proposal to be considered compliant; any failure to meet such requirements will not on that basis alone result in the automatic disqualification of the Proposal, but it may result in the Proposal receiving a lower evaluation score as a result.

5.1 Technical Response – Envelope #1

The Respondent must submit the following information below in accordance with Section 7.1.1 of this RFP.

5.1.1 Attachment #1 – RFP Submission Form

Respondents must complete and submit Attachment #1- RFP Submission Form with their Response with an original signature.

5.1.2 Mandatory Information Required in Responses:

- **Resumes and Qualifications to fill the Role:**

Respondents must provide the Curriculum vitae of their proposed Candidate including his/her name.

Respondents must propose **only** one (1) candidate to perform the services identified in the RFP required by the LCBO.

- **References:**

Respondents must provide three (3) references for which the Candidate has performed services similar to the service requirements described in this RFP.

- Name of Company
- Contact name
- Telephone number
- Scope of services performed

5.2 Pricing Response – Envelope #2

The Respondent must submit the following information below in accordance with Section 7.1.2 of this RFP.

5.2.1 Attachment #2 Pricing Response Form

Respondents must complete and submit Attachment #2- Pricing Response Form.

5.2.2 Respondent must provide the proposed Candidate's Rate per hour inclusive of all labour, materials, insurance costs and all other overhead, exclusive of all taxes.

5.2.3 All Pricing must be in Canadian dollars excluding all taxes.

5.2.4 The LCBO will not accept any costs, and will not reimburse the successful Respondent for, any hospitality, food or incidental expenses.

6.0 RESPONSE EVALUATION

Responses will be evaluated on the following criteria:

6.1 Stage 1 – Mandatory Requirements

Stage 1 will consist of a review of Responses to determine which Responses comply (PASS/FAIL) with all of the Mandatory Requirements. Responses which do not comply with all of the Mandatory Requirements will be disqualified and not evaluated further.

6.1.2 Stage 2 – Technical Criteria

Stage 2 will consist of a scoring of each qualified Response on the basis of the rated criteria (see Section 6.2 of the RFP). Respondents **must attain a minimum overall score of 30 out of a possible 40** in order for their Response to move to Stage 3. Those Responses that do not attain the minimum score will not be evaluated further.

Notwithstanding the point scoring threshold set out in Section 6.1.2 of this RFP, if no Respondents advanced to Stage 3 of the evaluation process the LCBO reserves the right to reduce the point scoring threshold to **25 out of a possible 40** and move those Responses to Stage 3.

6.1.3 Stage 3 – Presentation/Demonstration/Interviews

The LCBO will conduct individual Presentations/Meetings with those Respondents who advance to Stage 3 for the purposes of clarifying items based on the Responses submitted and to allow the Respondents to conduct a presentation and/or demonstration of the proposed solution/product, including any new concept designs. Respondents may not be provided with the same questions in the course of their presentation and/or demonstration, but will be asked questions pertaining to the Response submitted. By submitting a Response, each Respondent agrees to conduct presentation and/or demonstration, without charge to the LCBO, if requested. The LCBO reserves the right to request more than one presentation and/or demonstration from these Respondents.

Only those Respondents scoring a **minimum score of 60 out of a possible 80 for Stage 2 and Stage 3** will be deemed qualified for consideration under Stage 4 of the process.

6.1.4 Stage 4 – Reference Checks

Notwithstanding the point scoring threshold set out in Section 6.1.4 of this RFP, if no Respondents advanced to Stage 4 of the evaluation process the LCBO reserves the right to reduce the point scoring threshold to **50 out of a possible 80** and move those Responses to Stage 4.

The LCBO reserves the right to verify information contained in a Respondent's Response (including the Respondent's experience and/or ability to successfully perform the Project work) by whatever means the LCBO considers advisable in its sole discretion, including, but not limited to contacting any or all of the references submitted by the Respondent to be evaluated and scored on the basis of the rated criteria (see Section 6.2 of the RFP).

Only **those Respondents scoring a minimum score of 63 out of a possible 85 for Stage 2, Stage 3 and Stage 4** will be deemed qualified for consideration under Stage 5 of the process.

6.1.5 Stage 5 – Evaluation of Pricing

Notwithstanding the point scoring threshold set out in Section 6.1.5 of this RFP, if no Respondents advanced to Stage 5 of the evaluation process the LCBO reserves the right to reduce the point scoring threshold to **53 out of a possible 85** and move those Responses to Stage 5, from highest scoring to lowest scoring in sequence, that meet the reduced threshold.

Upon completion of Stage 4 for all Respondents, the sealed pricing envelope provided by each Respondent will then be opened and Stage 5 will consist of a scoring of the pricing submitted on the basis of the rated criteria (see Section 6.2 of the RFP). The evaluation of price/cost shall be undertaken after the evaluation of mandatory requirements and any rated requirements has been completed.

Pricing will be scored based on a relative pricing formula as follows:

$$\frac{\text{Lowest Pricing}}{\text{Respondent's Pricing}} \times \text{Weighting Factor for Pricing} = \text{Score for Pricing}$$

Example: If the lowest hourly rate is \$75.00/hr for the proposed candidate, the response would receive the maximum of 15:

$$\frac{75.00}{75.00} \times 15 = 15$$

A Response containing an hourly rate of \$100.00/hr receives 11.25

$$\frac{75.00}{100.00} \times 15 = 11.25$$

6.1.6 Stage 6 – Cumulative Score

At the conclusion of Stage 5, all scores from Stage 2, Stage 3, Stage 4 and Stage 5 will be added and the Response that achieves the highest total score will be selected as the successful Respondent to enter into contract with the LCBO.

6.2 Evaluation Criteria

The following is an overview of the categories and weighting for the rated criteria of the RFP.

Criteria	Weighting Factor
Stage 1 - Mandatory Requirements	PASS/FAIL
Stage 2 – Rated Criteria Candidate’s knowledge of and experience with: <ul style="list-style-type: none">• SCCM 2007• SMS 2003• Software Deployment using SMS/SCCM• Microsoft Deployment Technology (MDT) Server 2010• Microsoft Windows Server 2008• SQL Server 2008 and “SQL Reporting Services”• Problem/Change Management Process• Complexity of candidate’s previous assignments	40
Stage 3 – Interviews <ul style="list-style-type: none">• Panel Questions	40
Stage 4 – Reference Checks	5
Stage 5 – Pricing <ul style="list-style-type: none">• Hourly Rates	15

7.0 PROCEDURES FOR SUBMISSION OF RESPONSES

7.1 Responses Submitted Only in Prescribed Manner

Respondents must prepare a Response in accordance with the manner described below.

7.1.1 Technical Response - Envelope #1

Respondents **must submit one (1) original Technical Response, signed by an authorized representative (prominently marked “Original”) and should submit three (3) identical copies in a sealed envelope. Do NOT include any reference to, or any pricing information in Envelope #1.**

7.1.2 Pricing Response - Envelope #2

Respondents **must submit one (1) original Pricing Response Form (prominently marked “Original”) and should submit three (3) identical copies in a sealed envelope separate apart from the Technical Response.** The sealed envelope containing the Pricing Response Form should be placed with the rest of the Response into a sealed package.

7.1.3 Envelope #1 and Envelope #2

Envelopes #1 and #2 are to be separate sealed envelopes, as indicated above, bundled together in a third sealed package and must be submitted in accordance with Section 7.2 of this RFP. Responses submitted in any other manner may be disqualified.

7.2 Last Date for Submitting Responses

Responses must be submitted in a sealed package clearly marked as follows:

RFP # 2010-16
LCBO Purchasing Department
1 Yonge Street, Suite 1404
Toronto, Ontario
M5E 1E4
Attention: Jim Matera, Purchasing Supervisor

Responses must be received at the above address **no later than 2:00:59 p.m. Toronto time on July 2, 2010.** For the purpose of calculating time, the LCBO clock at the prescribed location for

submission shall govern. Please note that facsimile or email transmissions will NOT be accepted.

7.3 Late or Unsigned Response

Late or unsigned Responses will **NOT** be considered and will be returned. All Responses must be signed. **Late or unsigned Responses will be disqualified.**

7.4 No Liability for Expenses

The LCBO will not be liable for: (i) any costs incurred by any Respondent in the preparation and submission of a Response including, if applicable, costs incurred for interviews or presentations; or (ii) any expenses, costs, losses or any direct or indirect damages incurred or suffered by any Respondent as a result of participating in, or otherwise in connection with, this RFP.

7.5 Enquiries

No Respondent may claim any advantage from any error, inconsistency or omission in this RFP. Any Respondent who has questions as to the meaning of any part of this RFP or the project, or who believes the RFP contains any error, inconsistency or omission, must make a written enquiry prior to June **23, 2010, at 2:00:59 p.m. Toronto time**, requesting clarification, interpretation or explanation in writing to the attention of Jim Matera, Purchasing Supervisor, via facsimile at 416-864-6853 or email at jim.matera@lcbo.com. The LCBO will not be required to respond to late or verbal enquiries.

The LCBO reserves the right to distribute any and all questions and answers to all other Respondents. Respondents are requested **NOT** to make verbal inquiries of LCBO staff and are reminded that oral information provided to any Respondent will not be binding on the LCBO.

7.6 Changes to RFP

Any changes or revisions to the RFP will be issued as a formal addendum to all Respondents. Each addendum shall form an integral part of this RFP. If any addendum is issued, the LCBO may, in its discretion, extend the Response submission deadline for a reasonable period of time.

7.7 Contact Person

Each Respondent is requested to designate, as early as possible, one individual to whom any additional information deemed relevant to the RFP may be communicated.

7.8 Irrevocable Response

The Response submitted is irrevocable by the Respondent and shall remain open for acceptance by the LCBO for a period of one hundred and eighty (180) days after the closing date of this RFP.

7.9 One Response

Respondents may not submit more than one Response.

7.10 Changes to Response

No alteration will be accepted after the specified closing time for submitting Responses. However, the Respondent may alter or withdraw its Response at any time before the closing date and time.

7.11 Oral Information

No information given orally by the LCBO or by means of telephone or email will be binding nor will it be construed as to change the requirements of the RFP in any way.

7.12 Lowest Price

The Response with the lowest quoted price will not necessarily be selected. While price is an important element in the evaluation process, there are many other factors that the LCBO will consider in evaluating Responses. (Please refer to Section 6.0 – Response Evaluation).

7.13 Respondent to Ensure it Understands RFP

It is each Respondent's responsibility to ensure that it has all the necessary information concerning the intent and requirements of this RFP. The LCBO makes no representation warranty or guarantee as to the accuracy of the information contained in the RFP or any addenda. All data shown or contained in this RFP or provided by way of addenda are estimates only and are provided for the sole purposes of indicating to Respondents the general size of work.

7.14 Confidential Responses

The LCBO will consider all Responses as confidential, subject to the provisions of and the disclosure requirements of the *Freedom of Information & Protection of Privacy Act*, as may be amended from time to time. The LCBO will however have the right to make copies of all Responses received for its internal review process.

7.15 Incomplete Responses

The LCBO reserves the right to reject any Response whether or not completed properly and whether or not it contains all required information. Without prejudice to this right, the LCBO may request clarification, including supplementary information related to the clarification, where any Respondent's intent is unclear and may waive or request amendment where in the opinion of the LCBO there is a MINOR irregularity or omission in the information that is to be submitted in a required document. Any response by the Respondent to such a request shall, if accepted by the LCBO, form an integral part of the Respondent's Response.

7.16 Verification

The Respondent agrees the LCBO may, if deemed necessary, verify with the Respondent or any third party any information provided in any Response.

7.17 Misleading Information

If there is any evidence of misleading or false information having been given, the LCBO may, at its sole discretion, reject the Response.

7.18 Award of Project

The LCBO will have the right to select from among the Responses received, one or more Respondents to whom the project will be awarded. The LCBO reserves the right in its sole discretion and for any reason whatsoever:

- (i) to accept or to reject any or all Responses in whole or in part;
- (ii) not to proceed with all or any part of the project;
- (iii) to cancel this RFP in its entirety.

The acceptance of a Response and the award of this project or any part thereof will be made in writing and only in writing. The successful Respondent or Respondents, as the case may be, will be required to enter into and duly execute a written Agreement acceptable to the LCBO. In the event that the successful Respondent fails or refuses to enter into and duly execute an agreement acceptable to the LCBO within ten (10) business days after the LCBO gives notice of the award of an agreement, or such other time as is stipulated by the LCBO, the LCBO reserves the right, at its sole discretion, to award the agreement to another Respondent, not to accept any Response, or to call for a new response, and the defaulting Respondent shall be liable for all losses, damages, costs and expenses (including consequential losses and damages, and legal fees on a solicitor and client basis) suffered or incurred by the LCBO as a direct or indirect result thereof, including but not limited to any increase in the price of performance over the price submitted by the defaulting Respondent in its Response.

7.19 Information Obtained From LCBO

All requirements, designs, documentation, plans, and information obtained by the Respondent in connection with this RFP are the property of the LCBO and must be treated as confidential and not used for any other purpose other than replying to this RFP and the fulfilment of any subsequent contract. Upon request of the LCBO, all such designs, documents, plans and information shall be returned to the LCBO.

7.20 Conflict of Interest

The Respondent is required to disclose any real, apparent or potential conflict of interest that comes to its attention in preparing its Response, during the evaluation or during the term of any subsequent agreement. The Respondent shall accept any determination by the LCBO, including any requirements to withdraw from the bidding or agreement.

7.21 Award to More Than One Respondent

The LCBO reserves the right to award a contract to one Respondent alone, or if it deems appropriate, the project may be divided and contracts awarded to more than one Respondent.

7.22 Governing Law of the RFP Process

The RFP process and the agreement resulting there from shall be governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein.

7.23 Litigation

The LCBO may, in its absolute discretion, reject a Respondent's Response if the Respondent, or any officer or director of the Respondent, is or has been involved within five (5) years of the date of this RFP, either directly or indirectly through another corporation, (i) in a legal action taken by the LCBO, any of its Board members, officers or employees in connection with any matters related to the LCBO, or (ii) in a legal action against the LCBO, any of its Board members, officers or employees, in connection with any matter related to the LCBO, including without limitation, arising from the LCBO's exercise of its powers, duties or functions.

Attachment #1

RFP SUBMISSION FORM

Response Submitted By:

(Full Legal Name of Respondent)

(Address)

(Phone No.)

(Fax No.)

We, the undersigned, declare that we have carefully examined all of the RFP document and any Addenda issued; visited and investigated the site, if applicable and examined all conditions and aspects affecting the Project; and if notified in writing of the acceptance of this Response within one hundred and eighty (180) days of the latest date specified in the RFP document for receipt of Responses, we agree to provide all materials and perform all the services and or work shown and described in the RFP document.

I have authority to bind the above-named Respondent:

Signature

Date

Name

Title

Attachment #2

PRICING RESPONSE FORM

Response Submitted By:

(Full Legal Name of Respondent)

(Address)

(Phone No.)

(Fax No.)

We understand that this Pricing Response Form, forms part of our Response to this RFP and is irrevocable for one hundred and eighty (180) days of the latest date specified in the RFP document or any Addenda for receipt of Responses.

Respondent must provide a fee based on an hourly Rate inclusive of all labour and materials, insurance costs and all other overhead, exclusive of all taxes.

Prices will be subject to GST/HST, as applicable

All Pricing must be in Canadian dollars excluding all taxes.

1. Fixed Fee (Hourly Rate)

Description		Hourly Rate
Microsoft SCCM 2007 Implementer		\$_____/hr
		Excluding all taxes

APPENDIX "A"

FORM OF AGREEMENT

THIS AGREEMENT is made as of • , 2010

BETWEEN:

LIQUOR CONTROL BOARD OF ONTARIO

(referred to as the "LCBO")

AND:

•

(referred to as the "**Vendor**")

In consideration of their respective agreements set out below, the parties agree as follows:

ARTICLE 1. DEFINITIONS

1.1 In this Agreement, these words and expressions have these meanings:

"**Agreement**" means this Agreement together with all Attachments and all agreements amending or supplementing this Agreement.

"**Attachment**" means an attachment to this Agreement listed in Section 2.13 (Attachments).

"**Authority**" means any government authority, agency, body or department, whether federal, provincial or municipal, having or claiming jurisdiction over this Agreement; and "**Authorities**" means all such authorities, agencies, bodies and departments.

"**Business Day**" means any working day, Monday to Friday inclusive, excluding statutory and other Ontario provincial government 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 day which the government of the Province of Ontario has elected to be closed for business.

"**Ceiling Price**" means the maximum total amount, in Canadian funds, as set out in Attachment "B", that the Vendor may charge the LCBO, or the LCBO must pay the Vendor, excluding:

- (a) all applicable duties and taxes; and
- (b) all LCBO approved expenses.

"Change Order" means a written amendment executed by the Parties, which specifies the changes agreed, as further described in Section 8.3 (Change Orders).

"Computer Code" means computer programming code and software programs (including both object and source code) executable or not executable, including any Reusable Code.

"Confidential Vendor Information" means all information of the Vendor and its Subcontractors that is confidential by its nature or in the circumstances in which it is received and is identified as confidential or as a trade secret and whether recorded or not, and however fixed, stored, expressed or embodied, which comes into the knowledge, possession or control of the LCBO in connection with this Agreement, including: (a) information relating to algorithms, Computer Code, designs, drawings, flowcharts, formulae, Intellectual Property Rights, Inventions, patterns, plans, procedures, processes, reports, schematics, specifications, templates, and working papers; and (b) electronic data, other than LCBO Data, stored or processed by the Vendor; but Confidential Vendor Information shall not include: (d) Confidential Work Information; (e) information that ceases to benefit from protection as confidential information or as a trade secret under legislation or at law as a result of the LCBO's use or disclosure of Deliverables for any purpose whatsoever that is not expressly excluded by the Agreement; (f) information that is or becomes generally available to the public without fault or breach by the LCBO, but only after that information becomes generally available to the public; (g) information that the LCBO can demonstrate to have been rightfully obtained by it, without any obligation of confidence of any kind, from a third party who had the right to transfer or disclose it to the LCBO free of any obligation of confidence; (h) information that the LCBO can demonstrate to have been rightfully known to or in its possession, free of any obligation of confidence, when disclosed; or (i) information that is independently developed by the LCBO without the use of any Confidential Vendor Information.

"Confidential Work Information" means all information that (a) is confidential by its nature or in the circumstances in which it is conceived, developed or produced, and (b) is conceived, developed or produced by one or more of the Personnel of the Vendor in the performance of Work, whether with one or more of the Personnel of the LCBO or not. "Confidential Work Information" includes all Joint Work Material, Joint Work Inventions, Vendor-Developed Software, and Vendor Work Inventions.

"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 (i) having, or having access to, information in the preparation of its proposal that is confidential to the LCBO 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 in a contract with the LCBO, 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 judgement; or (ii) could or could be seen to compromise, impair or be incompatible with the effective performance of its contractual obligations.

"Consultant Materials" means, in respect of each of the Vendor's Personnel who has executed a

Consultant's agreement in the form set out in Attachment "C", anything that is proprietary to such individual and that is incorporated into any Deliverables or used by such individual to perform Work, and in respect of which such individual has granted to the LCBO a non-exclusive, perpetual, irrevocable, world-wide, fully paid-up, royalty-free, transferable licence to exercise all Intellectual Property Rights in any way and for any purpose whatsoever, and to have or permit others to do so.

"Custom-Developed Software" means, collectively, all Computer Code (including both object and source code forms, unless otherwise specified) recorded in any form or upon any medium, and developed or produced by the Vendor or its Subcontractors as a result of the Agreement, consisting of: (a) the Vendor-Developed Software; and (b) the Vendor Materials, if any, that are incorporated into any of the foregoing. Despite the foregoing, "Custom-Developed Software" excludes all LCBO Data, LCBO Materials, and LCBO Confidential Information.

"Custom Software Documentation" means all Documentation, developed or produced by the Vendor or its Subcontractors as a result of the Agreement, for Computer Code developed or produced by the Vendor or its Subcontractors as a result of the Agreement, whether such Documentation is developed or produced for use by the Vendor or its Subcontractors under the Agreement or for use by the LCBO or others. "Custom Software Documentation" includes such documents to be developed as described in the Agreement.

"Deliverables" means (a) anything and everything, in all forms and however recorded, that has been or will be created, developed, generated, prepared or produced in the performance of Work for the LCBO, or delivered or provided to the LCBO at any time during the Term or following the termination of the Agreement, by the Vendor (or its Personnel, Subcontractors or others for whom it is responsible at law) as a result of the Agreement, as may be more fully described in the Agreement, including all assets, Computer Code, Custom-Developed Software, designs, Documentation, drawings, images, know-how, manuals, materials, methods, methodologies, patterns, plans, procedures, processes, products, recorded information, reports, schematics, specifications, Technical Information, techniques, technologies, templates, Vendor Work Information, and working papers, of any kind; data and information (whether or not contained in or on any database or electronic information storage system or media); data collected as part of the Work; and (b) all contributions made by one or more of the Personnel of the Vendor to any Joint Work Material. "Deliverables" include all developments and modifications to the foregoing developed or produced by the Vendor (or its Personnel, Subcontractors or others for whom it is responsible at law) for the LCBO from time to time under the Agreement, and copies of the above.

"Development Tool" means any Vendor Materials that the Vendor or its Subcontractors use or would need to use to develop or modify, implement or maintain the Custom-Developed Software and that may be required by the LCBO, its advisors, agents, Personnel, Subcontractors or sublicensees to develop or modify, implement or maintain the Custom-Developed Software or to exercise the Intellectual Property Rights licensed to or assigned to the LCBO as a result of the Agreement.

"Documentation" means documents, whether in printed or electronic form, including installation guides, instructional materials, layouts, maintenance materials, manuals, system documentation, training materials, and user guides, and includes all developments and modifications to the foregoing.

"Effective Date" means •, 2010.

"Encumbrance" means any encumbrance of any kind whatsoever, and includes an assignment, charge,

hypotec, hypothecation, lien, mortgage, pledge, security interest, trust or deemed trust (whether contractual, statutory or otherwise arising), or other right or claim of others.

"FIPPA" means the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended or replaced from time to time.

"Fiscal Year" means the period running from April 1 in one calendar year to and including March 31 in the next calendar year.

"Hourly Rate" means the rate per hour in Canadian funds, as set out in Attachment "B", that the Vendor may charge the LCBO for Work performed for the LCBO, excluding: (a) LCBO approved expenses, and (b) federal goods and services tax.

"Indemnified Parties" means the LCBO and its officers, directors, advisors, agents, appointees and employees.

"Insolvency Event" means, in respect of any Person: the making of an assignment by such Person for the benefit of its creditors; the failure of such Person to pay its debts generally as they become due; the filing or commencement of a petition or other proceeding in respect of such Person under any bankruptcy, reorganization, moratorium, arrangement of debt or insolvency law; the appointment of a receiver, receiver and manager, or interim receiver in respect of such Person or any material part of its assets or business; the declaration of bankruptcy or insolvency of such Person; the acknowledgement (in writing or otherwise) by such Person of its insolvency or inability to pay its debts generally as they become due; the suspension of business by such Person; the making by such Person of any proposal, arrangement or compromise with its creditors under the *Bankruptcy and Insolvency Act* (Canada), any other statute, or otherwise; or the taking of any action for the purposes of any of the foregoing.

"Intellectual Property Rights" means any intellectual or industrial property rights protected or protectable under the laws of Canada, any foreign country, or any political subdivision of any country, including any intellectual property rights protected by legislation (such as legislation governing copyrights, industrial designs, integrated circuit topographies, patents or trademarks) or by common law (such as confidential information and trade secrets); and at any time in the future, with respect to any licence to exercise Intellectual Property Rights, includes any intellectual or industrial property rights protected or protectable at such time under the laws of Canada, any foreign country, or any political subdivision of any country.

"Invention" means any new and useful art, process, machine, manufacture or composition of matter, or any new and useful improvement to any of them, whether or not patentable.

"Joint Work Invention" means any Invention conceived, or conceived and developed, by one or more of the Personnel of the Vendor in the performance of Work with one or more of the Personnel of the LCBO.

"Joint Work Material" means all Deliverables that are created, developed, generated, prepared or produced by one or more of the Personnel of the Vendor in the performance of Work with one or more of the Personnel of the LCBO; but does not include any Joint Work Inventions. The foregoing includes Computer Code (including both object and source code forms, unless otherwise specified) and Custom Software Documentation, recorded in any form or upon any medium, and includes (a) developments and modifications to such Computer Code, and (b) algorithms, flowcharts, formulae, interfaces, navigational devices, menus, menu structures or arrangements, icons, help, operational instructions, processes, scripts (including any application program interfaces), commands, syntax, and the literal and non-literal expressions of ideas that access, direct, manipulate, operate or otherwise affect the Deliverables.

"LCBO Confidential Information" means all information of the LCBO that is confidential by its nature or in the circumstances in which it is received, including all confidential information in the custody or control of the LCBO, regardless 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 or its Subcontractors in connection with the Agreement, including: (a) information relating to algorithms, Computer Code, designs, drawings, flowcharts, formulae, Intellectual Property Rights, Inventions, patterns, plans, procedures, processes, reports, schematics, specifications, templates, and working papers; (b) electronic data stored or processed by the LCBO (c) all Confidential Work Information; (d) new information derived at any time from any such information whether created by the LCBO, the Vendor or any third party; and (e) information that the LCBO is obliged, or has the discretion, not to disclose under provincial or federal legislation; but LCBO Confidential Information shall not include information that: (f) is or becomes generally available to the public without fault or breach by the Vendor, but only after that information becomes generally available to the public; (g) the Vendor can demonstrate to have been rightfully obtained by the Vendor, without any obligation of confidence of any kind, from a third party who had the right to transfer or disclose it to the Vendor free of any obligation of confidence; (h) the Vendor can demonstrate to have been rightfully known to or in the possession of the Vendor, free of any obligation of confidence, when disclosed; or (i) is independently developed by the Vendor without the use of any LCBO Confidential Information.

"LCBO Data" means all data (including all information whether or not Personal Information, and whether or not contained in or on any database or electronic information storage system or media owned by or in the custody or control of the LCBO, recorded in any Record of any kind and in any form, provided by the LCBO to the Vendor to enable the Vendor to perform the Services or otherwise owned by or in the custody or control of the LCBO; all Personal Information collected by the Vendor as part of the Services; and all such data that are created, developed, generated, prepared or produced as a result of any compilation (whether combined or compiled with other data or not) or developments or modifications to the data described above, but where the Vendor's data are combined or compiled with the LCBO Data, excluding the Vendor's data that are proprietary to the Vendor immediately prior to the Project Start Date or are proprietary to the Vendor but are not first created or produced in the performance of Work.

"LCBO Materials" means: (a) materials, including all algorithms, audio or video recordings, Computer Code, Documentation, images, reports, software development tools, specifications, Technical Information, and technologies, recorded in any form and on any media, that are proprietary to the LCBO and provided to the Vendor to enable the Vendor to perform the Services; and all such materials that are created, developed, generated, prepared or produced as a result of any developments or modifications to the material described above; (b) all procurement documents issued by the LCBO; (c) all materials described in the Agreement as remaining the property of the LCBO; and (d) all Third-Party LCBO Materials.

"LCBO Work Information" means (a) all algorithms, audio or video recordings, Computer Code, Documentation, images, reports, software development tools, specifications, Technical Information, and technologies, recorded in any form and on any media, and all other assets, materials, recorded information, and products of any kind, in all forms and however recorded; that are created, developed, generated, prepared or produced by the LCBO or by one or more of the Personnel of the LCBO; and (b) any contribution made by one or more of the Personnel of the LCBO to any Joint Work Material.

"LCBO Work Invention" means: (a) any Invention conceived, or conceived and developed, solely or jointly by one or more of the Personnel of the LCBO and (b) any contribution made by one or more of the Personnel of the LCBO to any Joint Work Invention.

"Moral Rights" has the same meaning as in the *Copyright Act*, R.S.C. 1985, c. C-42, as amended or replaced from time to time, and includes comparable rights in applicable jurisdictions.

"Newly-Created Materials" means the Deliverables, but excluding the Vendor Materials and all Consultant Materials.

"Party" means the LCBO and the Vendor and "Parties" means both of them.

"Person" includes if the context allows, an individual, company, corporation, limited liability company, limited liability partnership, partnership, unincorporated association, government or government agency, authority or entity however designated or constituted and includes successors to the foregoing.

"Personal Information" at all times, has the same definition as in subsection 2(1) of *FIPPA*, which, at the date first written above, is recorded information about an identifiable individual and includes all such information obtained by the Vendor from the LCBO or created by the Vendor pursuant to the Agreement.

"Personal Knowledge", in connection with any Personnel, means concepts, ideas or know-how acquired by the individual that are not retained in any electronic, optical, printed, written or other recorded form, which relate to information technology and are of a generic technical nature, and not specific to the operation and activities of the LCBO, that amount to no more than an enhancement of that individual's personal knowledge, skill or expertise.

"Personnel" means collectively, in the case of the Vendor, individuals who provide services to the Vendor or any of its Subcontractors in connection with the Agreement, whether as employees or independent contractors, and individuals who are assigned by the Vendor to perform Work for the LCBO pursuant to the Agreement.

"Privacy Provisions" means, collectively, the provisions, if any, set out in Attachment "B" that relate to (a) the collection, use, disclosure or transfer of personal information; (b) compliance with *FIPPA*; and (c) compliance with any other legislation that would address the management of personal information or other privacy issues.

"Proceeding" means any action, claim, demand, lawsuit, or other proceeding.

"Project End Date" means the Project End Date set out in Attachment "B".

"Project Start Date" means the Project Start Date set out in Attachment "B".

"Proposal" means the proposal submitted by the Vendor in response to the RFP, and includes any clarifications provided by the Vendor at the request of the LCBO.

"Proprietary Vendor Materials" means algorithms, Computer Code, Documentation, software development tools, Technical Information or technologies that are proprietary to the Vendor immediately prior to the Project Start Date or are proprietary to the Vendor but are not first created or produced in the performance of Work, and that are incorporated into any Deliverables or that are used by the Vendor to provide the Services.

"Record" means any recorded information, including any Personal Information, in any form: (a) provided by the LCBO to the Vendor, or provided by the Vendor to the LCBO for the purposes of the Agreement; or (b) created by the Vendor in the performance of the Agreement; and shall include or exclude any information specifically and expressly described in the Agreement as being included or excluded from this definition of "Records".

"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 of, and agreements with, all Authorities that now or at any time hereafter may be applicable to this Agreement, the Vendor, the LCBO, the Services, or the Deliverables, or any part of them.

"RFP" means the Request for Proposals #2010-16 for Microsoft SCCM 2007 Implementer issued by the LCBO and any addenda to it.

"Role" means the role set out in Attachment "A".

"Services" means all services and work to be provided or performed by the Vendor pursuant to the Agreement, and includes everything that is necessary to be done, supplied or delivered by the Vendor and by those for whom the Vendor is responsible.

"Specifications" means the specifications for any Deliverables set out in, or incorporated by reference into, the Agreement. "Specifications" may include detailed technical design specifications and functional specifications, and may include drawings, samples and models. "Specifications" include specifications for any Deliverables developed pursuant to the Agreement, provided that they have been accepted by the LCBO.

"Subcontractor" means, in the case of each Party, any contractor or subcontractor at any tier of that Party.

"Technical Information" means recorded information of a scientific or technical nature in any form and on any media, including any designs, drawings, know-how, methods, methodologies, patterns, plans, procedures, processes, reports, schematics, specifications, techniques, templates, and working papers, but does not include Custom-Developed Software, data, databases, Documentation, Inventions or software.

"Term" means the period of time commencing on the Effective Date and ending on the Project End Date.

"Third-Party LCBO Materials" means any algorithms, Computer Code, content, data, Documentation, materials, software development tools, Technical Information, technologies, and any other recorded information in any form and on any media, and any components of the LCBO Materials, that are not proprietary to the LCBO; and that are licensed by the LCBO from any third parties; but only to the extent that they are protected by Intellectual Property Rights or are not to be disclosed pursuant to obligations of confidentiality.

"Vendor-Developed Software" means, collectively, all Computer Code (including both object and source code forms, unless otherwise specified) and the Custom Documentation, recorded in any form or upon any medium, and developed or produced by the Vendor or its Subcontractors as a result of the Agreement, whether developed or produced for use by the Vendor or its Subcontractors under the Agreement or for use by the LCBO or others, and (a) includes all developments and modifications to such Computer Code developed or produced by the Vendor or its Subcontractors for the LCBO from time to time, and (b) includes all algorithms, flowcharts, formulae, interfaces, navigational devices, menus, menu structures or arrangements, icons, help, operational instructions, processes, scripts (including any application program interfaces), commands, syntax, and the literal and non-literal expressions of ideas that access, direct, manipulate, operate or otherwise affect the Deliverables. Despite the foregoing, "Vendor-Developed Software" excludes all LCBO Data, LCBO Materials, LCBO Confidential Information, and Vendor Materials.

"Vendor Materials" means all Proprietary Vendor Materials and all materials described in Attachment "B" as remaining the property of the Vendor. Despite the foregoing, "Vendor Materials" excludes all Joint

Work Inventions, Joint Work Material, Newly-Created Materials, LCBO Data, LCBO Materials, Vendor-Developed Software, Vendor Work Inventions, and Vendor Work Information.

"Vendor Work Information" means: (a) Technical Information, developed or produced by the Vendor or its Subcontractors in the performance of Work under the Agreement, that relates to Computer Code developed or produced by the Vendor or its Subcontractors in the performance of Work under the Agreement; and (b) any contribution made by one or more of the Personnel of the Vendor to any Joint Work Material; but excludes all LCBO Work Information.

"Vendor Work Invention" means: (a) any Invention conceived, or conceived and developed, solely or jointly by one or more of the Personnel of the Vendor in the performance of Work; and (b) any contribution made by one or more of the Personnel of the Vendor to any Joint Work Invention.

"Work" means work performed under, or as a result of, the Agreement.

"WSIA" means the *Workplace Safety and Insurance Act, 1997*, S.O. 1997, c.16, Sch. A., as amended or replaced from time to time.

"WSIB" means the Workplace Safety and Insurance Board of Ontario.

ARTICLE 2. INTERPRETATION

2.1 In this Agreement, unless it is otherwise clear from the context, the following terms shall have the following meanings:

- (a) **"development and modification"** includes enhancement, improvement, and revision; "developments and modifications" includes all of these terms in the plural; and, **"development or modification"** and **"developments or modifications"** includes, and **"develop and modify"**, **"develop or modify"** and **"developed or modified"** have, corresponding meanings.
- (b) **"including"** means "including without limitation" and **"includes"** means "includes without limitation"; the use of the word "including" or "includes" is not intended to limit any statement that precedes it to the items immediately following it.

2.2 No Indemnities from LCBO - Despite anything else in this Agreement, any express or implied reference to the LCBO 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 LCBO, whether at the time of execution of this Agreement or at any time during the Term of this Agreement, shall be void and of no legal effect.

2.3 Entire Agreement - This Agreement embodies the entire agreement between the Parties with regard to its subject matter and supersedes any prior understanding or agreement, collateral, written or otherwise, related to the subject matter of this Agreement that exists between the Parties at the date of execution of this Agreement.

2.4 Amendments - Any changes to this Agreement shall only be made by written amendment signed by the LCBO and the Vendor, except where this Agreement expressly provides for a deemed amendment. No changes shall be effective or shall be carried out in the absence of such an amendment.

- 2.5 Severability** - If any term or condition of this Agreement, or the application thereof to the Parties or circumstances, is to any extent invalid or unenforceable, the remainder of this Agreement, and the application of such term or condition to the Parties or circumstances other than those to which it is held invalid or unenforceable, shall not be affected by it.
- 2.6 Conflict in Documents** - In the event of a conflict or inconsistency in any provisions in this Agreement, the RFP and the Proposal, or any of them, this Agreement shall govern over the RFP and the Proposal; and the RFP shall govern over the Proposal. In the event of any conflict or inconsistency between the terms and conditions of this Agreement or a Change Order, or any other document, this Agreement shall prevail.
- 2.7 Headings** - The division of this Agreement into Articles, Sections and subsections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The Article and Section headings in this Agreement are not intended to be full or accurate descriptions of the text to which they refer. References in this Agreement to an Article, Section, subsection or Attachment refer to the applicable Article, Section, subsection or Attachment of this Agreement unless otherwise stated.
- 2.8 Force Majeure** - Neither Party shall be liable for damages caused by delay or failure to perform its obligations under the Agreement where such delay or failure is caused by an event beyond its reasonable control. The Parties agree that an event shall not be considered beyond one's reasonable control if a reasonable business person applying due diligence in the same or similar circumstances under the same or similar obligations as the provisions of the Agreement would have put in place contingency plans to either materially mitigate or negate the effects of such event. Without limiting the generality of the foregoing, the Parties agree that force majeure events shall include acts of God, natural disasters, acts of war, riots, plagues, epidemics, insurrection and terrorism but shall not include shortages or delays relating to supplies or services. If a Party seeks to excuse itself from its obligations under the Agreement due to a force majeure event, that Party shall immediately notify the other Party of the delay or non-performance, the reason for such delay or non-performance and the anticipated period of delay or non-performance. If the anticipated or actual delay or non-performance exceeds fifteen (15) Business Days, the other Party may immediately terminate the Agreement by giving notice of termination and such termination shall be in addition to the other rights and remedies of the terminating Party under the, Agreement at law or in equity.
- 2.9 Notices by Prescribed Means** - Notices shall be in writing and shall be delivered by postage-prepaid envelope, or delivery as follows:
- (a) Notices to the LCBO shall be addressed to:
- Liquor Control Board of Ontario
55 Lakeshore Blvd E
Toronto ON M5E 1A4
- Attention: Manager, End User Computing
- (b) Notices to the Vendor shall be addressed to:
-

Attention: •

Notices by postage-prepaid envelope shall be deemed to have been given on the fifth Business Day after mailing. Notices by delivery shall be deemed to have been given on the first Business Day after receipt by the other Party. In the event of a postal disruption, notices must be given by delivery. Unless the Parties expressly agree in writing to additional methods of notice, notices may only be provided by the methods contemplated in this Section.

Each Party may change its address or designated representative for receipt of notices by providing notice to the other Party.

- 2.10 Currency** - All amounts set out in the Agreement and all payments shall be in Canadian funds.
- 2.11 Rights and Remedies** - The rights and remedies of the Parties under this Agreement are cumulative, and are in addition to and not in substitution for any rights or remedies provided at law or in equity, and shall not merge upon termination of this Agreement.
- 2.12 No Waiver** - No provision of this Agreement shall be deemed waived, amended, or modified by either Party unless such waiver, amendment, or modification is in writing and signed by the Party against whom it is sought to enforce the waiver, amendment, or modification.
- 2.13 Attachments** - The following attachments form part of this Agreement:
- (a) Attachment “A” - Role
 - (b) Attachment “B” - Statement of Work
 - (c) Attachment “C” - Consultant’s Agreement

ARTICLE 3. SCOPE

- 3.1 General** - This Agreement sets out terms and conditions applicable to the performance of the Services.
- 3.2 Acquisition of Services** –The Vendor agrees to provide to the LCBO, and the LCBO agrees to acquire from the Vendor, all of the Services that fall within the scope of Attachment “B”.
- 3.3 Work Volumes; Non-Exclusivity** - The Vendor acknowledges and agrees that the LCBO makes no representation, warranty, guarantee or other agreement regarding the volume of services to be acquired from the Vendor pursuant to this Agreement. The Vendor acknowledges that it enters into this Agreement on a non-exclusive basis. The LCBO reserves the right to contract with other parties for the same or similar services as those provided by the Vendor and reserves the right to obtain them internally.

ARTICLE 4. LEGAL RELATIONSHIPS AMONGST THE PARTIES & THIRD PARTIES

- 4.1 Vendor and its Personnel Not an Agent, Employee or Partner** - The Vendor shall have no power or authority to bind the LCBO or to assume or create any obligation or responsibility, express or implied, on behalf of the LCBO. The Vendor shall not hold out itself, or any of its Personnel, as an agent, employee or partner of the LCBO. Nothing in this Agreement shall have the effect of creating an agency, employment or partnership relationship between the LCBO and the Vendor (or any of the Vendor's directors, officers, Personnel, agents, partners, affiliates, volunteers or Subcontractors) pursuant to the *Employment Standards Act, 2000*, S.O. 2000, c. 41, as amended, or any other legislation or at common law, or constitute an appointment under the *Public Service of Ontario Act, 2006*, S.O. 2006, c. 35, as amended. The Vendor is solely responsible for all legally required employer and employee contribution and deductions, compensation and benefits for itself and its Personnel.
- 4.2 Responsibility of Vendor** - The Vendor agrees that it is liable for the acts and omissions of its Subcontractors' directors, officers, Personnel, agents, partners, affiliates, and volunteers. The LCBO shall have no vicarious liability for any acts or omissions of the Vendor's and its Subcontractors' directors, officers, Personnel, agents, partners, affiliates, and volunteers. This Section is in addition to any and all of the Vendor's liabilities under this Agreement and under the general application of law. The Vendor shall advise these individuals and entities of its obligations under this Agreement and, without limiting the generality of the foregoing, shall take appropriate action to ensure compliance with (a) this Agreement generally and (b) any Privacy Provisions. In addition to any other liabilities of the Vendor pursuant to this Agreement, or otherwise at law or in equity, the Vendor shall be liable for all damages, costs, expenses, losses, claims or actions arising from any breach of this Agreement resulting from the actions of the above mentioned individuals and entities.
- 4.3 Subcontracting or Assignment** - The Vendor shall not subcontract or assign the whole or any part of this Agreement without the prior written consent of the LCBO. Such consent shall be in the sole discretion of the LCBO and subject to the terms and conditions that may be imposed by the LCBO. Without limiting the generality of the conditions which the LCBO 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 the Agreement as far as applicable to those parts of the Services provided by the Subcontractor. Nothing in this Agreement shall create a contractual relationship between any Subcontractor or its employees and the LCBO.
- 4.4 Duty to Disclose Change of Control** - If the Vendor undergoes a change in control, the Vendor shall disclose such change in control to the LCBO Representative within fourteen (14) calendar days and shall comply with any reasonable terms and conditions subsequently prescribed by the LCBO resulting from the disclosure.

4.5 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 LCBO to resolve any Conflict of Interest. In addition to all other contractual rights or rights available at law or in equity, the LCBO may, at its sole and absolute discretion, immediately terminate this Agreement, 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 LCBO, as the case may be, to resolve a Conflict of Interest; or (c) the Vendor's Conflict of Interest cannot be resolved. This Section shall survive the termination or expiry of this Agreement.

4.6 Binding Nature - This Agreement is binding upon, and enures to the benefit of, the Parties and their respective successors and permitted assigns.

ARTICLE 5. TERM

5.1 Term of Agreement - This Agreement shall be in effect from and including the Effective Date and shall remain in force until and including the Project End Date, unless terminated earlier in accordance with the terms of this Agreement.

5.2 The Project End Date may be extended by a Change Order.

ARTICLE 6. PERFORMANCE BY VENDOR

6.1 Performance - The Vendor shall diligently carry out and complete the Services in accordance with the Agreement and Requirements of Law, and the Vendor shall:

- (a) provide 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 Agreement or customarily furnished by Persons providing services of the type provided under the Agreement in similar situations in the Province of Ontario;
- (b) adhere to commonly accepted norms of ethical business practices, including 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 LCBO; and
- (c) cause its Personnel assigned under the Agreement to:
 - (i) provide LCBO reports that conform to LCBO reporting standards (as may be amended from to time). LCBO reports shall include but are not limited to, status reports, project milestone reports, project action logs, project issues logs, project documentation logs and change requests;
 - (ii) provide project plans (in Microsoft Project);
 - (iii) follow LCBO Project Management methodology;
 - (iv) participate in meetings, including but not limited to, one-on-one meetings, progress/status meetings to review and resolve any issues relating to a particular project and project meetings as required by LCBO senior management; and
 - (v) track time against specific tasks/projects.

6.2 Use and Access Restrictions - The Vendor acknowledges that unless it obtains specific written

preauthorization from the LCBO, any access to or use of LCBO property, technology or information that is not necessary for the performance of its contractual obligations with the LCBO is strictly prohibited. The Vendor further acknowledges that LCBO may monitor the Vendor to ensure compliance with this Section. This Section is in addition to and shall not limit any other obligation or restriction placed upon the Vendor.

ARTICLE 7. PERSONNEL

7.1 Personnel Qualifications - The Vendor shall provide qualified Personnel. The Vendor shall not permit any individual to perform any Work if the individual does not have the experience level or the qualifications set out in Attachment “A”.

7.2 Security Verification - Prior to any of the Vendor's or its Subcontractor's Personnel performing Work, the Vendor shall obtain a written consent from the individual, for any security or background checks of that individual that the LCBO may, in its sole discretion, deem necessary. The Vendor shall not permit any individual to perform any Work if the individual refuses to provide such consent or is found unacceptable by the LCBO as a result of a security or background check. No reasons shall be provided to the Vendor. The security or background check may include, without limitation, a Canadian Police Information Centre (CPIC) search and a credit check.

At the request of the LCBO at any time or times during the course of the individual performing Work, the Vendor shall also obtain a new or additional written consent from any of its and its Subcontractors' Personnel, and such other information as the LCBO may require, for any security or background checks that the LCBO may, in its sole discretion, deem necessary. At the request of the LCBO at any time or times, the Vendor shall immediately, upon receipt of the request, remove any individual from performing any Work if the individual refuses to provide such consent or is found unacceptable by the LCBO as a result of any security or background check, and shall propose replacement Personnel in accordance with Section 7.4 (Replacement of Personnel).

At the request of the LCBO at any time or times, the Vendor shall also obtain a written consent from any of its and its Subcontractors' directors, officers, or agents, and such other information as the LCBO may require, for any security or background checks that the LCBO may, in its sole discretion, deem necessary.

7.3 Performance by Named Individuals Only - The Parties agree that only those individuals named in Attachment “B” shall perform the Services on behalf of the Vendor. The Vendor shall use commercially reasonable efforts to maintain continuity under the Agreement by using the same Personnel to perform the Services throughout the Term. The Vendor shall not replace or substitute any of the individuals named in Attachment “B” without the prior written approval of the LCBO, which may not be arbitrarily or unreasonably withheld.

7.4 Replacement of Personnel - If the LCBO, in its sole discretion, deems any of the Vendor's Personnel to be inappropriate, the LCBO may require the Vendor to replace such Personnel. The

Vendor shall immediately, upon receipt of the LCBO's request, remove any individual from performing any Work. The Vendor shall submit to the LCBO the name and resume of a suitable replacement for each of the Personnel deemed inappropriate by the LCBO. The Vendor shall provide the LCBO with the opportunity to interview its proposed Personnel, at no cost to the LCBO. The Vendor agrees that any proposed replacement Personnel must be qualified in the Role and must possess similar or greater qualifications than the individual being replaced. The Vendor shall not charge the LCBO more than the Hourly Rate for the individual being replaced, even if the replacement Personnel holds a more senior position or has more experience than the individual being replaced. If the Vendor fails to propose any replacement Personnel within a reasonable period of time, or proposes replacement Personnel who the LCBO deems, in its sole discretion, to be inappropriate or not available in a timely manner, the LCBO may immediately terminate the Agreement by giving notice of termination and such termination shall be in addition to the other rights and remedies of the LCBO under the, Agreement at law or in equity.

ARTICLE 8. CHANGE MANAGEMENT

8.1 Change Requests and Impact Assessments – The LCBO may request a change to the Agreement by submitting to the Vendor a written change request reasonably detailing the scope and priority of the desired changes. The Vendor shall promptly evaluate each change requested by the LCBO. The Vendor shall promptly provide the LCBO with a written impact assessment which addresses relevant factors, including the implications for Roles, Personnel, deadlines, milestones, Hourly Rates and any other terms and conditions of the Agreement. Such evaluation and assessment by the Vendor shall be made without charge to the LCBO. If the Vendor does not have sufficient resources to perform any requested changes in accordance with any time limits set out in the change request, the Vendor shall promptly notify the LCBO.

8.2 Pricing for Requested Changes - Where the same Role is contemplated in the change request, the Hourly Rate shall apply to the Change Order.

Where a change in the Role is contemplated in the change request, the Hourly Rate may be negotiated between the LCBO and the Vendor within a reasonable period of time.

8.3 Change Orders - Each Change Order must contain:

- (a) an effective date;
- (b) a description of any additional Services to be performed, the names of the Vendor's Personnel necessary to perform such additional Services, specifying the Hourly Rate for each named individual, and the availability of such Personnel over the relevant time period, if applicable;
- (c) a description of any Services or named individuals deleted from Attachment “B”, if applicable;
- (d) a description of any other changes to the performance required of either Party, if applicable;
- (e) a statement of the impact of the changes on the Services, Deliverables, deadlines, milestones, costs or other requirements of Attachment “B”, if applicable;

- (f) any new Ceiling Price or Project End Date, if applicable; and
- (g) signatures of the duly authorized signing officers of each Party.

8.4 No Payment Without Executed Change Order - No change request shall be implemented or incorporated as part of the Agreement unless and until a Change Order has been executed by both Parties. Under no circumstances will the Vendor be entitled to payment for any goods or services provided pursuant to a change request that have not been described in a Change Order.

ARTICLE 9. DELIVERY

9.1 Delivery of Work Product and Source Code - Except as expressly provided, during the provision of the Services, the Vendor shall deliver or cause its Personnel to deliver to the LCBO, at its request, a copy of the Deliverables, including a copy of all Custom-Developed Software (including all components and related source code) and Vendor Work Information. Upon the termination of the Agreement for any reason, the Vendor shall immediately deliver or cause its Personnel to deliver to the LCBO all such Deliverables.

9.2 Survival - The provisions of this Article shall survive the termination or expiry of this Agreement.

ARTICLE 10. INSPECTION AND DOCUMENTATION

10.1 Inspection - All Deliverables provided under the Agreement shall be subject to inspection or testing, or both, by the LCBO. If any of the Deliverables provided are not in accordance with the requirements of the Agreement and are not to the satisfaction of the LCBO, the LCBO may reject it or may issue a rectification notice to the Vendor setting out the manner and time-frame for rectification. Within seven (7) Business Days of receipt of a rectification notice, the Vendor shall either comply with that rectification notice, or provide a rectification plan satisfactory to the LCBO. If the Vendor fails to either comply with that rectification notice or provide a satisfactory rectification plan, the LCBO may immediately (a) accept all or any part of the Deliverables (although of diminished value) as the case may be, at a revised cost acceptable to both the LCBO and the Vendor; or (b) terminate the Agreement. Where the Vendor has been given a prior rectification notice, the same subsequent type of non-compliance by the Vendor shall allow the LCBO to immediately terminate the Agreement. If the Agreement is terminated pursuant to this Section, the Vendor shall refund to the LCBO all moneys paid by the LCBO to the Vendor under the Agreement within fifteen days of the date of termination.

10.2 Documentation – The Vendor shall provide the LCBO from time to time with any documentation that the LCBO requests or which is required by this Agreement.

ARTICLE 11. LIMITS ON CHARGES

11.1 Rate - The Hourly Rate cannot be increased at any time during the Term of this Agreement. Any amount paid in excess of a Hourly Rate is deemed to be an overpayment.

11.2 Expenses - The LCBO is not responsible for any expenses, including but not limited to any travel, meal or accommodation expenses incurred by the Vendor that are not pre-approved in writing by the LCBO and charged in accordance with the LCBO's policies that apply to travel expenses by LCBO employees, as may be amended or replaced from time to time. All expenses shall be

listed as separate line items on its invoices, and all such expenses shall be supported with receipts.

- 11.3 Ceiling Price** - The Vendor shall not invoice the LCBO for more than the Ceiling Price. Any amount paid in excess of the Ceiling Price is deemed to be an overpayment.
- 11.4 Maximum Charges** - If the total of the charges for completion of the Services, which are permitted under this Article, is less than the Ceiling Price, the Vendor shall not invoice the LCBO for more than that lesser total amount. Any amount paid in excess of such lesser total amount is deemed to be an overpayment.
- 11.5 Overpayments** - The Vendor agrees to repay any overpayment immediately upon demand by the LCBO.
- 11.6 Survival** - The provisions of this Article shall survive the termination or expiry of this Agreement.

ARTICLE 12. PAYMENT FOR PERFORMANCE

12.1 Payment Subject to Limits - Subject to Article 11 (Limits on Charges), the provisions of this Article, and the Vendor's compliance with the provisions of this Agreement, the LCBO shall pay the Vendor for Services provided at the Hourly Rates set out in Attachment "B". Services may not be pre-paid.

12.2 Default Billing and Payment Process - Unless the Vendor and the LCBO expressly set out an alternative billing and payment process in Attachment "B", the process in this Section shall govern, and any part of the process in this Section that is not expressly replaced with an alternative provision in Attachment "B" shall remain in full force and effect:

- (a) The Vendor shall provide the LCBO with a monthly invoice no later than ten (10) Business Days after the end of each month and that invoice shall include:
 - (i) the reference number assigned to the Agreement by the LCBO;
 - (ii) a brief description of the Deliverables and Services provided for the relevant month;
 - (iii) the Hourly Rate , and the amount of provincial sales taxes, if payable by the LCBO, identified as separate items;
 - (iv) the total billable time worked by each individual in each Role;
 - (v) any expenses, identified as separate items, that are pre-approved in accordance with Section 11.2 (Expenses);
 - (vi) federal goods and services tax payable by the LCBO; and
 - (vii) attached copies of all statement of hours worked for such month, approved by the LCBO.
- (b) The LCBO shall approve or reject each invoice within fifteen (15) Business Days of its receipt. If the LCBO rejects the invoice, it shall so advise the Vendor promptly in writing and the Vendor shall provide additional information as required by the LCBO to substantiate the invoice.
- (c) Each invoice must be approved by the LCBO before any payment is released. Payment shall be made within thirty (30) Business Days of such approval.
- (d) Invoices relating to Services performed in any Fiscal Year must be submitted no later than one week after March 31 in any year.

12.3 Performance Holdback - If, in the opinion of the LCBO acting reasonably, the Vendor has failed

to complete any Services, or deliver any Deliverables to the LCBO, by any applicable completion, delivery or milestone date set out in Attachment “B” or a Change Order or established by mutual agreement pursuant to the Agreement, the LCBO may hold back up to 15 percent of the Ceiling Price until the Vendor completes such Services, or delivers such Deliverables, as the case may be. The holdback will be released no more than 45 calendar days after completion of such Services or delivery of such Deliverables, as the case may be.

- 12.4 No Expenses or Additional Charges** - There shall be no other charges payable by the LCBO to the Vendor under the Agreement other than (a) the Hourly Rates set out in Attachment “B”, (b) applicable taxes payable by the LCBO, and (c) any LCBO expenses pre-approved in accordance with Section 11.2 (Expenses).
- 12.5 Payment of Taxes and Duties** - Unless otherwise stated, the Vendor shall pay all applicable taxes, including excise taxes incurred by or on the Vendor's behalf with respect to the . Agreement
- 12.6 Withholding Tax** - The LCBO shall withhold any applicable withholding tax from amounts due and owing to the Vendor under the Agreement and shall remit it to the appropriate government in accordance with applicable tax laws.
- 12.7 Interest on Late Payment** - No interest arising from late payment shall be payable by the LCBO where such late payment arises through the fault of the Vendor. The interest rate for any late payment shall not exceed the general rate of interest on overpayment of taxes (set quarterly by the Ontario Ministry of Finance in the Ontario Gazette), which was in effect on the date that the payment went into arrears. No payment shall be in arrears prior to the expiry of 45 Business Days after delivery of an invoice that conforms to the requirements of the Agreement and the expiry of 45 Business Days after the date that the invoice is due and payable.
- 12.8 Document Retention and Audit** - During the Term and for seven (7) years after the termination or expiry of the Agreement , the LCBO shall have the right to examine and make copies of all books, records, accounts and supporting data of the Vendor which the LCBO reasonably deems pertinent to verifying, before or after payment is made to the Vendor, (a) time charged by the Vendor and the accuracy of the Vendor's time recording system, (b) all charges and payments under the, Agreement and (c) that the Deliverables and the Services were provided in accordance with the Agreement and with Requirements of Law. The Vendor shall, at its cost, retain and maintain in an organised, accessible mode, all such books, records, accounts and supporting data for such period, and shall assist the LCBO in conducting such audit. The LCBO shall provide the Vendor with at least ten (10) Business Days prior notice of its requirement for such audit. The Vendor's obligations under this Section shall survive the termination or expiry of this Agreement.
- 12.9 Survival** - The provisions of this Article shall survive the termination or expiry of this Agreement.

ARTICLE 13. OWNERSHIP OF RIGHTS

- 13.1 LCBO's Ownership of Rights in Confidential Work Information, Joint Work Inventions,**

Joint Work Material, Newly-Created Materials, Vendor-Developed Software, Vendor Work Inventions and Vendor Work Information - Without affecting any Intellectual Property Rights or other interests in or to LCBO Data, and subject to Section 13.2 and Section 13.5, all Intellectual Property Rights in the Confidential Work Information, Joint Work Inventions, Joint Work Material, Newly-Created Materials, Vendor-Developed Software, Vendor Work Inventions and Vendor Work Information shall immediately, as and when they come into existence, vest in and remain the property of the LCBO. The Vendor shall have no right in or to any such Intellectual Property Rights in the Confidential Work Information, Joint Work Inventions, Joint Work Material, Newly-Created Materials, Vendor-Developed Software, Vendor Work Inventions and Vendor Work Information, except any right that may be granted in writing by the LCBO.

- 13.2 Pre-Existing Intellectual Property Rights** - All Intellectual Property Rights (including all Intellectual Property Rights to Reusable Code) existing immediately prior to (a) in respect of each of the Vendor's Personnel who has executed a consultant's agreement in the form set out in Attachment "C", the applicable date specified in the consultant's agreement which is the same as or later than the Project Start Date; but otherwise (b) the Project Start Date, and all rights to Inventions first conceived, developed or reduced to practice prior to such date, shall be retained by each Party and each third party that owned such rights immediately prior to such date.
- 13.3 Ownership of Tangible Materials** - The LCBO shall own, and have unrestricted ownership rights in, all tangible materials as and when delivered by the Vendor to the LCBO in connection with the Agreement. The Vendor hereby irrevocably assigns, sells and transfers all right, title and interest in and to such tangible materials to the LCBO (other than any right, title or interest in and to such tangible materials assigned, sold or transferred to the LCBO by the Personnel of the Vendor) at no additional cost as and when delivered. The Vendor shall, at its own expense, promptly do any and all acts and cause to be executed and deliver to the LCBO any and all assignments, documents and instruments that the LCBO may reasonably request at any time or from time to time to carry out the intent of this Section.
- 13.4 Vendor Trademarks and Designations** - Nothing in the Agreement or the performance of the Agreement shall grant to the LCBO any right, title, interest or licence in or to the names, trade names, logos, trade dress, designs or other trademarks or designations of the Vendor, its Subcontractors or third-party licensors, except as expressly stated.
- 13.5 Survival** - The provisions of this Article shall survive the termination or expiry of this Agreement.

ARTICLE 14. CUSTOM-DEVELOPED SOFTWARE AND LCBO DATA

- 14.1 Restriction** - The Vendor shall not create, develop or modify any Custom-Developed Software or Vendor-Developed Software that cannot be exploited without the use of LCBO Data.

ARTICLE 15. ASSIGNMENTS OF RIGHTS TO CONFIDENTIAL WORK INFORMATION, JOINT WORK INVENTIONS, JOINT WORK MATERIAL, NEWLY-CREATED MATERIALS, VENDOR-DEVELOPED SOFTWARE, VENDOR WORK INVENTIONS AND VENDOR WORK INFORMATION

- 15.1 Assignment** - The Vendor hereby irrevocably assigns, sells and transfers to the LCBO for no additional consideration: (a) all Intellectual Property Rights and all right, title and interest throughout the world in and to the Confidential Work Information, Joint Work Inventions, Joint

Work Material, Newly-Created Materials, Vendor-Developed Software, Vendor Work Inventions and Vendor Work Information other than (i) any Intellectual Property Rights or interests in Intellectual Property Rights that came into existence prior to the Project Start Date, and (ii) any Intellectual Property Rights and any right, title or interest, in and to the Confidential Work Information, Joint Work Inventions, Joint Work Material, Newly-Created Materials, Vendor-Developed Software, Vendor Work Inventions and Vendor Work Information, assigned, sold and transferred to the LCBO by the Personnel of the Vendor; and (b) all of the Vendor's right, title and interest in and to each copyright referred to in Section 19.3 and subsection 19.5 (c).

15.2 Assignment by Personnel, Subcontractors and Others - To the extent that any right, title or interest or any Intellectual Property Rights in or to any Confidential Work Information, Joint Work Inventions, Joint Work Material, Newly-Created Materials, Vendor-Developed Software, Vendor Work Inventions and Vendor Work Information or in or to any copyright referred to in Section 19.3 or subsection 19.5 (c), vest, by operation of law or otherwise, in any of the Vendor's advisors, agents, Personnel, Subcontractors, suppliers or others for whom the Vendor is responsible at law, the Vendor shall cause each of them to assign and transfer to the LCBO at no cost all of such right, title and interest and all of such Intellectual Property Rights other than any Intellectual Property Rights or interests in Intellectual Property Rights that came into existence prior to (a) in respect of each of the Vendor's Personnel who has executed a consultant's agreement in the form set out in Attachment "C", the applicable date specified in the consultant's agreement which is the same as or later than the Project Start Date; but otherwise (b) the Project Start Date.

15.3 Invention Agreements - Prior to allowing any Person to perform services under the Agreement, the Vendor shall, by written agreement, require such Person,

- (a) to promptly report and fully disclose in writing to the Vendor each Vendor Work Invention, identifying those concepts or ideas thought to be new, useful and unobvious, and indicating whether they are thought to be an improvement on prior art or capable of commercial exploitation; and
- (b) upon request, during and after employment, to execute all assignments, documents and instruments necessary or advantageous to file patent applications on Vendor Work Inventions and Joint Work Inventions and to establish the LCBO's rights in the Vendor Work Inventions and Joint Work Inventions.

15.4 Disclosure to the LCBO - The Vendor shall promptly report and fully disclose in writing to the LCBO all Confidential Work Information, Joint Work Material, Newly-Created Materials, Vendor-Developed Software, Vendor Work Inventions and Vendor Work Information, and all contributions made by the Personnel of the Vendor to any Joint Work Inventions, including copies of all written disclosures submitted to the Vendor pertaining to them. The Vendor's disclosure shall include a description of the specific components in sufficient detail to permit the LCBO to clearly identify such components and to distinguish them from the Vendor Materials and the LCBO Materials. In any event, the Vendor shall make such disclosure not later than the time of completion of the Services or such earlier time as the LCBO may require.

15.5 Audit Rights - During the Term and for seven (7) years following the termination or expiry of the Agreement, the LCBO shall have the right to examine and make copies of all records and supporting data of the Vendor which the LCBO reasonably deems pertinent to the identification of

Confidential Work Information, Joint Work Material, Newly-Created Materials, Vendor-Developed Software, Vendor Work Inventions, Vendor Work Information, or any contribution made by one or more of the Personnel of the Vendor to any Joint Work Invention, upon reasonable notice and with no more than minimal disruption to the Vendor's ongoing operations, and the Vendor shall, at its cost, retain and maintain in an organised, accessible mode, all such records and supporting data for such period.

- 15.6 Intellectual Property Rights Applications** - The Vendor shall, at the LCBO's expense, give the LCBO all reasonable assistance in the preparation and the prosecution of any applications or registrations in any jurisdiction for or of any Intellectual Property Rights on or arising out of the Joint Work Inventions, Joint Work Material, Newly-Created Materials, Vendor-Developed Software, Vendor Work Inventions, and Vendor Work Information, including the assistance of the inventors in the case of patent applications on any Vendor Work Inventions and Joint Work Inventions.
- 15.7 Further Assurances** - The Vendor shall, at its own expense, promptly do any and all acts and cause to be executed and deliver to the LCBO any and all assignments, documents and instruments relating to the Intellectual Property Rights in the Confidential Work Information, Joint Work Inventions, Joint Work Material, Newly-Created Materials, Vendor-Developed Software, Vendor Work Inventions and Vendor Work Information, which the LCBO may reasonably request at any time or from time to time to carry out the intent of this Article and Article 13.
- 15.8 Power of Attorney** - If the LCBO is unable for any reason whatsoever to secure the Vendor's signature to any document assigning, perfecting, recording or acknowledging the LCBO's ownership of any Confidential Work Information, Joint Work Inventions, Joint Work Material, Newly-Created Materials, Vendor-Developed Software, Vendor Work Inventions or Vendor Work Information, the Vendor hereby irrevocably designates and appoints the LCBO and its duly authorized officers as its attorneys-in-fact, with full power of substitution, to act for and on behalf of and instead of the Vendor to execute and file any such document and to do all lawfully permitted acts to further the purposes of this Section with the same legal force and effect as if executed by the Vendor.
- 15.9 Survival** - The provisions of this Article shall survive the termination or expiry of this Agreement.

ARTICLE 16. VENDOR MATERIALS

- 16.1 Request for Consent** - The Parties acknowledge that from time to time, the Vendor may wish to incorporate Vendor Materials into the Joint Work Material, Newly-Created Materials, the Custom-Developed Software or the Vendor Work Information, or may wish to use Development Tools to provide any of the Services. Prior to incorporating any Vendor Materials into any Joint Work Material, Newly-Created Materials, Custom-Developed Software or Vendor Work Information or using any Development Tools to provide any of the Services, the Vendor shall:
- (a) fully disclose to the LCBO in writing:
 - (i) all Vendor Materials that the Vendor proposes to incorporate, which shall include a description of the specific components in sufficient detail to permit the LCBO to clearly identify and to distinguish them from the Newly-Created Materials, the Vendor-Developed Software and the LCBO Materials;
 - (ii) all Development Tools that the Vendor proposes to use to provide any of the Services; and

- (b) obtain the LCBO's prior written consent to such incorporation or use, which consent shall be in the sole discretion of the LCBO and subject to the terms and conditions as agreed to by the LCBO.

16.2 Subcontractors - If any applicable Intellectual Property Rights are owned by a Subcontractor, the Vendor shall either obtain a licence from that Subcontractor that permits compliance with Sections 16.4, 16.5, 16.6 and 17.1 or arrange for the Subcontractor to convey directly to the LCBO the same rights by execution of the form provided for that purpose by the LCBO, in which case the Vendor shall deliver that form to the LCBO, duly completed and executed by the Subcontractor, no later than the time of disclosure to the LCBO of those Vendor Materials.

16.3 Ownership of Vendor Materials - The LCBO acknowledges that the Vendor shall have and continue to retain all Intellectual Property Rights in and to all Vendor Materials, except as otherwise set out in the Agreement. The LCBO shall not acquire by virtue of this Agreement any Intellectual Property Rights in or to any Vendor Materials, except as otherwise set out in the Agreement.

16.4 Operation and Support Licence - Without restricting any licence or right in the Vendor Materials that LCBO may hold, it is a provision of the Agreement that the Vendor hereby grants to the LCBO, at no cost, a non-exclusive, perpetual, irrevocable, world-wide, fully-paid and royalty-free licence to exercise the Intellectual Property Rights in any Vendor Materials incorporated into any Custom-Developed Software and Vendor Work Information as may be required for the following purposes, and to have or permit others to do so in accordance with Section 16.7:

- (a) for the installation, integration, operation, use, maintenance or support of the Deliverables;
- (b) for disclosure to any third-party contractor engaged by the LCBO (or actual or potential proponent for such a contract) to be used solely for the purposes set out in subsection (a), if the LCBO determines, in its sole discretion, that the Vendor is unable or unwilling to carry out the maintenance or support on commercially reasonable terms and within reasonable delivery times;
- (c) as may be required in order for the LCBO to exercise its Intellectual Property Rights in the Confidential Work Information, Joint Work Inventions, Joint Work Material, Newly-Created Materials, Vendor-Developed Software, Vendor Work Inventions and Vendor Work Information;

and the Vendor shall make any such Vendor Materials (including, in the case of software, source code) promptly available to the LCBO for any such purpose.

The licence set out in this Section is non-transferable by the LCBO.

16.5 Development Licence - Without restricting the scope of any other licence or right in the Vendor Materials that the LCBO may hold, it is a provision of the Agreement that the Vendor hereby grants to the LCBO at no cost, a non-exclusive, perpetual, irrevocable, world-wide, fully-paid and royalty-free licence to exercise the Intellectual Property Rights in any Vendor Materials incorporated into any Custom-Developed Software and Vendor Work Information as are necessary

in order for the LCBO to further develop or modify the Custom-Developed Software, Vendor Work Inventions, Joint Work Inventions and Vendor Work Information, and to have or permit others to do so in accordance with Section 16.7. The LCBO may reproduce any designs, drawings, plans or other Vendor Materials for purposes of further development or modification of the Custom-Developed Software, Vendor Work Inventions, Joint Work Inventions and Vendor Work Information by or for the LCBO. The Vendor agrees to make any such Vendor Materials (including, in the case of software, source code) promptly available to the LCBO for any such purpose.

The licence set out in this Section is non-transferable by the LCBO.

- 16.6 Licence to the LCBO to Vendor Materials Incorporated into Newly-Created Materials and Joint Work Material** - It is a provision of this Agreement that the Vendor hereby grants to the LCBO a non-exclusive, perpetual, irrevocable, world-wide, fully paid-up, royalty-free licence to exercise all Intellectual Property Rights in the Vendor Materials that are incorporated into any Newly-Created Materials or Joint Work Material, in any way and for any purpose whatsoever and to have or permit others to do so

The licence rights to the Vendor Materials that are incorporated into any Newly-Created Materials or Joint Work Material shall arise immediately, as and when the Vendor Materials, or any part of them, are incorporated into the Newly-Created Materials or the Joint Work Material. The licence set out in this Section is non-transferable by the LCBO.

- 16.7 Vendor Materials and Third-Party Contractors** - The Vendor acknowledges that the LCBO may wish to enter into contracts with one or more third parties in respect of the licence rights set out in Sections 16.4, 16.5 and 16.6, whether by a competitive process or not. Without restricting the generality of Sections 16.4, 16.5 and 16.6, the Vendor agrees that the LCBO's licence in relation to the Intellectual Property Rights in the Vendor Materials includes the right to disclose the Vendor Materials to such third parties and to any actual and potential proponents for such contracts, and to sublicense or otherwise authorize any such third parties engaged by the LCBO to do anything solely on behalf of the LCBO that the LCBO may do with the Vendor Materials and the Intellectual Property Rights in the Vendor Materials. Subject to Section 16.6, the LCBO shall require actual and potential proponents and such third parties not to use or disclose any confidential Vendor Materials incorporated into the Custom-Developed Software except as may be necessary to bid for or to carry out any such contracts or except if required by order of a court or tribunal.
- 16.8 Title to Improvements and Modifications to Vendor Materials** - All Intellectual Property Rights arising from any further development or modification of the Vendor Materials that is conceived, developed, effected or first reduced to practice by or for the LCBO in the exercise of any licence set out in Sections 16.4, 16.5 and 16.6 shall vest in the LCBO, or as the LCBO directs, and shall not vest in the Vendor, its Personnel or Subcontractors except pursuant to a subsequent written contract executed by the LCBO and the Vendor, its Personnel or Subcontractors, as the case may be.
- 16.9 Scope - Proprietary Vendor Materials** - The licences in Sections 16.4, 16.5 and 16.6 are in addition to and not in lieu of the LCBO's rights under any other licence provisions set out elsewhere in this Agreement that apply to Proprietary Vendor Materials. If a conflict arises between such other licence provisions and Sections 16.4, 16.5 and 16.6, Sections 16.4, 16.5 and 16.6 shall govern.

16.10 General - Without limiting any of Sections 16.4, 16.5, 16.6, 16.7 or 16.8, the LCBO's rights under this Article:

- (a) apply despite any terms to the contrary in any click-wrap licence, documentation, invoice, shrink-wrap licence, Technical Information, web site, or in any other terms or licence attached to or delivered by the Vendor with any Deliverables, except to the extent that the LCBO has agreed in writing pursuant to subsection (b) of Section 16.1;
- (b) include the right to reproduce and use Vendor Materials incorporated into any Newly-Created Materials and Joint Work Material, and any developed or modified form of them, on any and all computer systems owned, leased or operated by the LCBO anywhere in the world at any time; and
- (c) are in addition to and not in lieu of its rights under any other provisions of this Agreement.

16.11 Survival - The provisions of this Article shall survive the termination or expiry of this Agreement.

ARTICLE 17. SPECIFIC THIRD-PARTY SUBLICENSEES

17.1 Third-Party Non-Governmental Entities - Without restricting Sections 16.4, 16.5 or 16.6, the Vendor agrees that the LCBO's licence rights under this Agreement in relation to the Intellectual Property Rights in the Vendor Materials incorporated into any Custom-Developed Software, Vendor Work Information, Joint Work Material or Newly-Created Materials include the right to disclose such Vendor Materials to any third-party non-governmental entities that provide services to or on behalf of the LCBO as a result of alternative service delivery, backward or forward integration, outsourcing, privatization, partnering, procurement endeavours or similar activity, and to sublicense or otherwise authorize such third-party non-governmental entities to exercise the licence rights granted to the LCBO under the Agreement to the extent that they are exercised for or on behalf of the LCBO. The LCBO may disclose the Vendor Materials incorporated into any Joint Work Material or Newly-Created Materials without restriction to any such third-party non-governmental entities. The LCBO shall require such third-party non-governmental entities not to use or disclose any confidential Vendor Materials incorporated into the Custom-Developed Software except as may be necessary to provide services to or on behalf of the LCBO as contemplated in this Section.

17.2 Patent Licences - To the extent necessary for the LCBO to exercise any licence granted under the Agreement, it is a provision of this Agreement that the Vendor hereby grants to the LCBO a licence under any patent now held or later obtained by the Vendor. Such patent licence shall be co-extensive and co-terminus with such licence. Nothing contained in this Article or in Article 14 shall be deemed to grant to the Vendor any rights with respect to any Inventions, including any Vendor Work Inventions, Joint Work Inventions, and LCBO Work Inventions.

17.3 Survival - The provisions of this Article shall survive the termination or expiry of this Agreement.

ARTICLE 18. PERSONAL KNOWLEDGE, SKILL AND EXPERTISE, AND GENERIC CONCEPTS, IDEAS AND KNOW-HOW

18.1 Personal Knowledge, Skill and Expertise - Each Party understands and agrees that each of the Personnel of the other Party, in connection with the performance of this Agreement, may acquire

Personal Knowledge. Subject to Article 21, Article 22, the Privacy Provisions and any other statute under which the LCBO has the discretion or obligation not to disclose any records or other information, the use by such Personnel of the other Party of such Personal Knowledge in the ordinary course of their employment with the other Party (including its subsidiaries, its parent, or other subsidiaries of its parent, in the case of the Vendor) does not breach the Agreement provided, however, that nothing in this Section grants to any Personnel the right to obtain a patent in respect of any such Personal Knowledge.

- 18.2 Indemnity** - The Vendor hereby agrees at all times to defend, indemnify and hold harmless the Indemnified Parties, from and against any and all liability, losses, costs, damages, expenses (including all reasonable legal, expert and consultant fees), causes of action, and Proceedings by whomever made, sustained, brought or prosecuted in any way based upon, occasioned by or attributable to anything done or omitted to be done by the Vendor or its Personnel or Subcontractors or the Vendor's licensees or other authorized users, in connection with the use by any such Person of any Personal Knowledge referred to in Section 18.1 (Personal Knowledge, Skill and Expertise) or any concepts, ideas or know-how referred to in Section 18.3 (Use of Generic Concepts, Ideas, or Know-How by Vendor).
- 18.3 Use of Generic Concepts, Ideas, or Know-How by Vendor** - Subject to Article 21 and the Privacy Provisions and any other statute under which the LCBO has the discretion or obligation not to disclose any records or other information, the LCBO acknowledges that the Vendor shall be entitled on a non-exclusive, non-transferable, perpetual, world-wide, irrevocable, fully-paid up, royalty-free basis to use in its business, and for purposes of developing and incorporating into other works and licensing such works to others, any concepts, ideas or know-how, whether patented (or patentable) or not, that are developed or created by the Vendor in the course of providing the Services, and that are not retained by the Vendor in any electronic, optical, printed, written or other recorded form, but only to the extent they are of a generic technical nature and are not specific to the operation and activities of the LCBO, and only to the extent that they are not protected by the Intellectual Property Rights of any third party, and provided, however, that the rights of the Vendor under this Section do not include the right to obtain a patent in respect of any such concepts, ideas or know-how. The rights of the Vendor under this Section do not include the right to disclose personnel information, financial information, statistical information, business plans or processes, pre-existing code, documentation or any other such information or intellectual property of the LCBO.
- 18.4 Scope** - Nothing in this Article grants or waives any Intellectual Property Rights of either Party or any other person.
- 18.5 Survival** - The provisions of this Article shall survive the termination or expiry of this Agreement.

ARTICLE 19. PROPERTY OF THE LCBO

- 19.1 Ownership of LCBO Materials** - The Vendor acknowledges that the LCBO and its third-party licensors shall have and continue to retain all right, title and interest, including all Intellectual Property Rights, in and to all LCBO Materials, all assets acquired or held by the LCBO prior to the Project Start Date or during the Term, and all assets provided by the LCBO to the Vendor in connection with this Agreement. The Vendor shall not acquire by virtue of this Agreement, any

right, title or interest, including any Intellectual Property Rights, in or to any LCBO Materials.

- 19.2 Ownership of Third-Party LCBO Materials** - Nothing in this Agreement or the performance of this Agreement shall grant to the Vendor any right, title or interest in or to any Third-Party LCBO Materials. To the extent any right, title or interest in or to any Third-Party LCBO Materials vests, by operation of law or otherwise, in the Vendor (or its Personnel, Subcontractors or others for whom it is responsible at law), the Vendor shall, and hereby does, irrevocably assign and transfer to the LCBO at no cost all of its right, title and interest in and to all such Third-Party LCBO Materials, and the same shall be deemed to form part of the LCBO Materials.
- 19.3 Works of Joint Authorship** - Subject to Section 13.2 and Section 16.3, if any Joint Work Material or Newly-Created Materials is a work of joint authorship, the copyright in the work of joint authorship shall immediately, as soon as it comes into existence, vest in the LCBO, and the Vendor and its Subcontractors shall have no right, title or interest in or to it.
- 19.4 Proscribed Intellectual Property Rights Registrations** - The Vendor shall not file any application, and shall not contest any application filed by the LCBO, in any jurisdiction for the registration of any Intellectual Property Rights arising out of any Newly-Created Materials, Custom-Developed Software, LCBO Materials, LCBO Work Inventions, Vendor Work Inventions, Joint Work Inventions, LCBO Work Information, Vendor Work Information, or Joint Work Material, whether or not such Intellectual Property Rights depend or would depend upon any pre-existing Intellectual Property Rights.
- 19.5 Collective Works and Compilations** - Despite any other provision in this Agreement, if any Joint Work Material or Newly-Created Materials is a collective work or a compilation:
- (a) the LCBO shall retain its right, title and interest in and to its contribution to such collective work or compilation;
 - (b) ownership of all right, title and interest in and to the Vendor's and its Subcontractors' contributions to such collective work or compilation shall be governed by Section 13.1; and
 - (c) the copyright in such collective work or compilation shall immediately, as soon as it comes into existence, vest in the LCBO, and the Vendor and its Subcontractors shall have no right, title or interest in or to it.
- 19.6 LCBO Work Inventions and LCBO Work Information** - The LCBO retains all of its Intellectual Property Rights and all of its right, title, and interest throughout the world to each LCBO Work Invention and to all LCBO Work Information.
- 19.7 Intellectual Property Rights to LCBO Materials** - To the extent any Intellectual Property Rights or any other right, title or interest in or to any LCBO Materials vests, by operation of law or otherwise, in the Vendor (or its Personnel, Subcontractors or others for whom it is responsible at law), the Vendor shall, and hereby does, irrevocably assign, sell and transfer to the LCBO at no cost all of its Intellectual Property Rights and other right, title and interest in or to all such LCBO Materials.

19.8 LCBO-Developed Software - Despite any other provision in this Agreement, nothing in this Agreement assigns, sells, transfers or grants to the Vendor, or to any other Person, any right, title or interest in the Intellectual Property Rights, or any other rights, in or to any Computer Code or Documentation, recorded in any form or upon any medium, and developed or produced by the LCBO or its Personnel, Subcontractors or sublicensees, whether as a result of this Agreement or otherwise, including,

- (a) all developments and modifications to such Computer Code, and
- (b) all algorithms, flowcharts, formulae, interfaces, navigational devices, menus, menu structures or arrangements, icons, help, operational instructions, processes, scripts (including any application program interfaces), commands, syntax and the literal and non-literal expressions of ideas that access, direct, manipulate, operate or otherwise affect such Computer Code.

19.9 Survival - The provisions of this Article shall survive the termination or expiry of this Agreement.

ARTICLE 20. CONSULTANTS' AGREEMENTS

20.1 Consultants' Agreements - Prior to allowing any individual to contribute to the creation, development or modification, or production of any Deliverables as a result of this Agreement, the Vendor and each of its Subcontractors shall have each such individual execute a consultant's agreement in the form of Attachment "C" and shall provide two original copies of each executed consultant's agreement to the LCBO prior to providing or using such individual to perform any Services under the Agreement. At the completion of the Services, upon request, the Vendor shall provide to the LCBO, from each such individual, original, executed assignments of copyright and waivers of Moral Rights.

20.2 Moral Rights Waivers - The Vendor acknowledges and agrees that all Moral Rights with respect to the Deliverables under the Agreement shall be waived irrevocably and without restriction in favour of the LCBO.

20.3 Survival - The provisions of this Article shall survive the termination or expiry of this Agreement.

ARTICLE 21. LCBO CONFIDENTIAL INFORMATION

21.1 Confidentiality - During and following the Term of this Agreement, the Vendor shall keep all LCBO Confidential Information confidential. The Vendor shall keep all LCBO Confidential Information secure and shall provide LCBO Confidential Information to the LCBO on demand and, in any event, shall return all LCBO Confidential Information to the LCBO before the termination or expiry of the Agreement, with no copy or portion kept by the Vendor in any form or on any media. The Vendor shall limit the disclosure of LCBO Confidential Information to only those of its advisors, agents, Personnel and Subcontractors who have a need to know it in order to

perform the Services under the Agreement and who have been specifically authorized to have such disclosure. The Vendor agrees that the Vendor, its advisors, agents, Personnel and Subcontractors shall not directly or indirectly disclose, destroy, exploit or use any LCBO Confidential Information (except in order to perform the Services, or except if required by order of a court or tribunal), without first obtaining:

- (a) the written consent of the LCBO, and
- (b) in respect of any LCBO Confidential Information about any third party, the written consent of such third party.

21.2 Restrictions on Copying - The Vendor shall not copy any LCBO Confidential Information, in whole or in part, unless necessary or materially advantageous for the performance of the Services. On each copy made by the Vendor, the Vendor must reproduce all notices which appear on the original.

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

21.4 Notice and Protective Order - If the Vendor or any of its advisors, agents, directors, officers, Personnel, representatives or Subcontractors become legally compelled to disclose any LCBO Confidential Information, the Vendor will provide the LCBO with prompt notice to that effect to allow the LCBO to seek one or more protective orders or other appropriate remedies to prevent or limit such disclosure, and it shall co-operate with the LCBO 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 LCBO 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 LCBO- that such LCBO Confidential Information is confidential and subject to non-disclosure on terms and conditions substantially similar to and not materially less protective than those in this Agreement, and not materially less protective than any more protective terms and conditions set out the Agreement, and, if possible, shall obtain each recipient's written agreement to receive and use such LCBO Confidential Information subject to those terms and conditions.

21.5 Vendor's Advisors, Agents, Personnel and Subcontractors - The Vendor shall advise its advisors, agents, Personnel and Subcontractors of the requirements of this Article and take appropriate action to ensure their compliance with its terms. In addition to any other liabilities of the Vendor pursuant to this Agreement or otherwise at law or in equity, the Vendor shall be liable for any and all liability, losses, costs, damages, expenses (including all reasonable legal, expert and consultant fees), causes of action, and Proceedings arising from any non-compliance with this Article by the Vendor's advisors, agents, Personnel and Subcontractors. The Vendor shall request every person (including its advisors, agents and Subcontractors), other than those individuals referred to in Section 20.1, involved in any way in providing Services under the Agreement to

execute a confidentiality agreement in a form acceptable to the LCBO. as may be required by the LCBO, and shall provide an original copy of each executed confidentiality agreement to the LCBO prior to providing or using such person to perform any Services under the Agreement.

21.6 Conflict with Privacy Provisions - If a conflict or inconsistency arises between any provision in this Article and the Privacy Provisions, the Privacy Provisions shall govern.

21.7 Survival - The provisions of this Article shall survive the termination or expiry of this Agreement.

ARTICLE 22. CONFIDENTIAL VENDOR INFORMATION

22.1 Confidentiality - During and following the Term of this Agreement, the LCBO shall keep all Confidential Vendor Information confidential, subject to the Privacy Provisions and any right of the LCBO under this Agreement, to disclose. The LCBO agrees to limit the disclosure of Confidential Vendor Information to only those of their advisors, agents, Personnel and Subcontractors, who have a need to know it and who have been specifically authorized to have such disclosure. The LCBO agrees that it and its advisors, agents, Personnel and Subcontractors, shall not directly or indirectly disclose, destroy, exploit or use any Confidential Vendor Information (except to enable the LCBO to exercise its rights under this Agreement, or except if required by order of a court or tribunal), without first obtaining:

- (a) the written consent of the Vendor, and
- (b) in respect of any Confidential Vendor Information about any third party, the written consent of such third party.

22.2 Restrictions on Copying - The LCBO shall not copy any Confidential Vendor Information, in whole or in part, unless necessary or materially advantageous to enable the LCBO to exercise its rights under this Agreement. On each copy made by the LCBO, the LCBO must reproduce all notices which appear on the original.

22.3 Declaratory Order and Other Relief - The LCBO acknowledges that breach of any provisions of this Article may cause irreparable harm to the Vendor or to any third party to whom the Vendor owes a duty of confidence, and that the injury to the Vendor or to any third party may be difficult to calculate and inadequately compensable in damages. The LCBO agrees that the Vendor is entitled to obtain an order declaratory of the rights of the Parties (without proving any damage sustained by it or by any third party) or any other remedy available at law against any actual or potential breach of the provisions of this Article.

22.4 Conflict with Privacy Provisions - If a conflict or inconsistency arises between any provision in this Article and the Privacy Provisions, the Privacy Provisions shall govern.

22.5 Survival - The provisions of this Article shall survive the termination or expiry of this Agreement.

ARTICLE 23. REPRESENTATIONS, WARRANTIES AND COVENANTS

23.1 Representations and Warranties of the Vendor - The Vendor makes the following representations and warranties to the LCBO as of the date of execution of this Agreement, and acknowledges that the LCBO is relying upon them:

- (a) the Vendor is duly incorporated and validly subsisting under the laws of its governing

jurisdiction with full power, right and authority to enter into this Agreement, and to perform its obligations under this Agreement;

- (b) the individual executing this Agreement on behalf of the Vendor is duly authorized to do so;
- (c) this Agreement constitutes a legal, valid and binding agreement of the Vendor enforceable in accordance with its terms;
- (d) there is no agreement with any other Person which would in any way interfere with the rights of the LCBO under this Agreement;
- (e) all Services will be performed in a professional and competent manner by persons qualified and skilled in their occupations;
- (f) the Vendor has not entered into any arrangement which would in any way restrict the LCBO's ability to exercise the Intellectual Property Rights granted under the Agreement;
- (g) there are no claims made nor Proceedings pending or anticipated relating to the ownership of the Deliverables or any part of the Deliverables;
- (h) the Vendor has, or shall obtain, all the rights for it to grant all of the rights and licences that it grants under the Agreement;
- (i) neither the Deliverables nor the Services shall in any way infringe or violate any Intellectual Property Rights or any other right of any third party including, to the Vendor's knowledge, any patents or patent applications;
- (j) to the extent that the Agreement provides that any right, title or interest in or to any Deliverables or Intellectual Property Rights vests in the LCBO at any time, upon such vesting all such right, title and interest will be transferred to the LCBO, free and clear of any Encumbrances;
- (k) the Vendor has not entered into any agreement or arrangement that would restrict a Subcontractor from licensing or selling to the LCBO goods or services relating to the Deliverables on the usual commercial basis and at market prices, for the purpose of installing, integrating, operating, using, maintaining, supporting, developing or modifying any of the Deliverables;
- (l) the media containing any Deliverables shall be new and free from defects in manufacture, materials, and design, and shall function properly under ordinary use for 90 days after receipt;
- (m) the Deliverables shall function properly under ordinary use and operate in conformance with their applicable Specifications and Documentation from the date of receipt until the expiry of the one (1) year period immediately following completion of the Services; and
- (n) the Deliverables are free from any and all defects in performance and workmanship and the Vendor agrees to remedy and correct defects in the Deliverables that arise during the one (1) year period immediately following completion of the Services, to the satisfaction of, and at no cost to, the LCBO.

Throughout the Term of this Agreement, the Vendor covenants to take any actions required to ensure that the foregoing representations and warranties continue to be true and covenants not to take any actions that would cause any of the foregoing representations and warranties not to be true, and acknowledges that the LCBO is relying upon such covenants.

23.2 Representations and Warranties of the LCBO – The LCBO makes the following representations and warranties to the Vendor as of the date of execution of this Agreement, and acknowledges that the Vendor is relying upon them:

- (a) the execution and delivery of this Agreement has been duly authorized; and
- (b) this Agreement constitutes a legal, valid and binding agreement of the LCBO enforceable in accordance with its terms.

23.3 Survival - The provisions of this Article shall survive the termination or expiry of this Agreement .

ARTICLE 24. INDEMNIFICATION

24.1 Intellectual Property Indemnification - The Vendor hereby agrees at all times to defend, indemnify and hold harmless the Indemnified Parties from and against any and all liability, losses, costs, damages, expenses (including all reasonable legal, expert and consultant fees), causes of action, and Proceedings by whomever made, sustained, brought or prosecuted in any way based upon, occasioned by or attributable to any actual or possible use, infringement, inducement of infringement or violation of any Intellectual Property Rights or infringement of any Moral Rights that results from or is alleged to result from:

- (a) the performance of the Services by the Vendor (or its Personnel, Subcontractors or others for whom it is responsible at law);
- (b) the failure of the Vendor (or its Personnel, Subcontractors or others for whom it is responsible at law) to perform the Vendor's obligations pursuant to Section 20.1 (Consultants' Agreements) or Section 20.2 (Moral Rights Waivers);
- (c) the exercise by any Indemnified Parties of any rights under the Agreement; or
- (d) the use or disposal by any Indemnified Parties of anything supplied by the Vendor (or its Personnel, Subcontractors or others for whom it is responsible at law) as a result of the Agreement.

If any such performance, exercise of rights, use or disposal is held, or is likely, in the reasonable opinion of the LCBO, to be held to constitute an infringement, inducement of infringement or violation of any Intellectual Property Rights or an infringement of any Moral Rights, and such performance, exercise of rights, use or disposal is enjoined or threatened to be enjoined or held or threatened to be held improper by way of declaration, then without prejudice to any other rights and remedies as may be available to any of the Indemnified Parties under this Agreement, or at law or in equity, the Vendor shall, at its expense, either:

- (e) obtain such rights and waivers as are necessary so that such performance, exercise of rights, use or disposal becomes non-infringing; or
- (f) replace or modify the Services or anything supplied so that the infringing portion no longer infringes (without any loss of quality or functionality) to the LCBO's satisfaction;

and shall make every reasonable effort to correct the situation with minimal effect upon the operations of the LCBO. If neither of the foregoing alternatives is reasonably available, the LCBO may terminate this Agreement without further obligation or liability to the Vendor and, without prejudice to any other rights and remedies as may be available to any of the Indemnified Parties under this Agreement, or at law or in equity, the Vendor shall refund to the LCBO all amounts paid with respect to such Services or anything supplied that infringes.

24.2 LCBO Modification - The Vendor shall not have any liability to the LCBO under Section 24.1 (Intellectual Property Indemnification) to the extent that any infringement or violation of any Intellectual Property Rights, other than Moral Rights, is caused by further development or modification made by the LCBO to the Newly-Created Materials, Custom-Developed Software, Vendor Work Inventions or Vendor Work Information.

24.3 Confidentiality Indemnification - The Vendor hereby agrees at all times to defend, indemnify and hold harmless the Indemnified Parties from and against any and all liability, losses, costs, damages, expenses (including all reasonable legal, expert and consultant fees), causes of action, and Proceedings by whomever made, sustained, brought or prosecuted in any way based upon, occasioned by or attributable to a breach by the Vendor of its obligations under Article 21 (LCBO Confidential Information).

24.4 Other Indemnification - Except for any liability arising pursuant to the indemnities provided for in Section 18.2 (Indemnity), 24.1 (Intellectual Property Indemnification) or 24.3 (Confidentiality Indemnification), the Vendor hereby agrees at all times to defend, indemnify and hold harmless the Indemnified Parties from and against any and all liability, losses, costs, damages, expenses (including all reasonable legal, expert and consultant fees), causes of action and Proceedings by whomever made, sustained, brought or prosecuted in any way based upon, occasioned by or attributable to anything done or omitted to be done by the Vendor, its Subcontractors or their respective directors, officers, agents, employees or independent contractors in the course of the performance of the Vendor's obligations under the Agreement or otherwise in connection with this Agreement, including any property damage, bodily injury (including death) or personal injury.

24.5 Notice - The LCBO shall notify the Vendor in writing of the commencement of any Proceeding referred to in Section 18.2 (Indemnity), 24.1 (IP Indemnification), 24.3 (Confidentiality Indemnification), or 24.4 (Other Indemnification).

- 24.6 Defence** - The Vendor shall, at its expense, participate in or conduct the defence of any Proceedings against the LCBO and its advisors, agents, appointees and employees, referred to as Indemnified Parties in Section 18.2 (Indemnity), 24.1 (Intellectual Property Indemnification), 24.3 (Confidentiality Indemnification), or 24.4 (Other Indemnification), and any negotiations for their settlement. The LCBO may elect to participate in or conduct the defence of any such Proceedings by notifying the Vendor in writing of such election without prejudice to any other rights or remedies of the LCBO under this Agreement, at law or in equity. Each party participating in the defence shall do so by actively participating with the other's counsel. No settlement shall be entered into by the Vendor unless it has obtained the prior written approval of the LCBO.

If the Vendor is requested by the LCBO to participate in or conduct the defence of any such Proceedings, the LCBO agrees to co-operate with and assist the Vendor to the fullest extent possible in the Proceedings and any related settlement negotiations. If the LCBO conducts the defence of any such Proceedings, the Vendor agrees to co-operate with and assist the LCBO to the fullest extent possible in the Proceedings and any related settlement negotiations.

- 24.7 Survival** - The provisions of this Article shall survive the termination or expiry of this Agreement.

ARTICLE 25. RESTRICTIVE MATERIAL

- 25.1 No Restrictive Material** - Without limiting any other provisions of this Agreement, except with the LCBO's prior written consent, the Vendor shall not incorporate or permit those for whom it is responsible to incorporate into any Deliverables, and shall not use or permit the use in the provision of the Services, any Restrictive Material that would restrict the right of the LCBO to develop or modify or otherwise use the Deliverables in any way that the LCBO deems desirable, or that would prevent the LCBO at any time from entering into any contract with any contractor other than the Vendor for the development or modification or other use of the Deliverables. In this Article, "Restrictive Material" means:

- (a) any art, process, machine, manufacture or composition of matter, or any improvement in any of the foregoing; or
- (b) any recorded information of any nature in any form, including any algorithm, collection, compilation, Computer Code, data, database, design, document, documentation, drawing, flowchart, formula, know-how, manual, method, methodology, pattern, performance, plan, procedure, process, recording, report, schematic, signal, specification, technique, template, work or working paper, including any modification to any of the foregoing;

that is proprietary to or the confidential information of the Vendor, its Personnel or Subcontractors or any advisor, agent or supplier of the Vendor, whether copyrightable or patentable, and however recorded or stored.

- 25.2 Exclusion** - Despite the foregoing provisions of this Article, the Vendor does not require the prior written consent of the LCBO to incorporate into any Deliverables or use in the provision of the Services, any Restrictive Material for which an express licence has been granted to the LCBO and the LCBO that is consistent with this Agreement.

ARTICLE 26. INSURANCE AND LIABILITY

- 26.1 General** - Without limiting any other provision in this Article, the Vendor shall, at its own expense, put in effect and maintain throughout the Term of this Agreement, with insurers acceptable to the LCBO, all the necessary and appropriate insurance that a prudent business person would acquire in like circumstances.
- 26.2 Commercial General Liability Insurance** - The insurance required by Section 26.1 shall include commercial general liability insurance on an occurrence basis that is acceptable to the LCBO, to an inclusive limit not less than two million Canadian dollars (C\$2,000,000.00) per occurrence of property damage, bodily injury (including death) or personal injury, and which provides the following minimum coverage:
- (a) the Indemnified Parties as additional insureds with respect to any liability arising in the course of the performance of the Vendor's obligations under this Agreement or arising otherwise in connection with this Agreement;
 - (b) cross liability;
 - (c) a contractual liability coverage endorsement;
 - (d) a products and completed operations endorsement;
 - (e) a non-owned automobile coverage with blanket contractual endorsement;
 - (f) an employer's liability coverage endorsement, if the Vendor is not subject to the WSIA; and
 - (g) 30 days written notice to the LCBO of cancellation, material change or termination.
- 26.3 Errors and Omissions Liability Insurance** - The insurance required by Section 26.1 shall include errors and omissions liability insurance, insuring liability for errors and omissions in the performance of or failure to perform the Services, in the amount of not less than two million Canadian dollars (C\$2,000,000.00) per claim and in the annual aggregate.
- 26.4 Proof of Insurance** - The Vendor shall provide to the LCBO proof of the insurance required by Sections 26.2 and 26.3 in the form of valid certificates of insurance that reference this Agreement and confirm the coverage set out in this Article, on or before the Effective Date of this Agreement (and renewal replacements on or before any subsequent policy renewals). Upon the request of the LCBO, a copy of each applicable policy shall be made available to the LCBO.
- 26.5 Subcontractors** - The Vendor shall ensure that each of its Subcontractors complies with the insurance requirements set out in this Article by obtaining similar types of insurance and providing the Vendor with evidence of such compliance.
- 26.6 Excess Liability** - The insurance amounts provided for shall not be construed so as to relieve or limit the liability of the Vendor in excess of such coverage and shall not preclude the LCBO from

taking such other actions as are available to it under any provisions of this Agreement or otherwise at law or in equity.

- 26.7 Proof of WSIB Coverage** - If the Vendor is subject to the WSIA, it shall submit a valid WSIB clearance certificate of WSIA coverage to the LCBO, prior to the Effective Date of this Agreement. In addition, the Vendor shall, from time to time at the request of the LCBO, provide additional WSIB clearance certificates. The Vendor covenants and agrees to pay when due, and to ensure that each of its Subcontractors pays when due, all amounts required to be paid by it and by its Subcontractors, from time to time during the Term of this Agreement, under the WSIA, failing which the LCBO shall have the right, in addition to and not in substitution for any other right it may have pursuant to the Agreement or otherwise at law or in equity, to pay to the WSIB any amount due pursuant to the WSIA and unpaid by the Vendor or its Subcontractors and to deduct such amount from any amount due and owing from time to time to the Vendor pursuant to the Agreement together with all costs incurred by the LCBO in connection therewith.
- 26.8 The LCBO's Liability for Property Damage, Bodily Injury (Including Death) or Personal Injury** - The Vendor agrees that the LCBO and its advisors, agents, appointees, employees and independent contractors, and the LCBO's Subcontractors shall not be liable for any property damage, bodily injury (including death) or personal injury to the Vendor, its Subcontractors or their respective directors, officers, agents, employees and independent contractors or for any Proceeding by any third party against the Vendor, its Subcontractors or their respective directors, officers, agents, employees and independent contractors arising in the course of the performance of the Vendor's obligations under the Agreement or arising otherwise in connection with the Agreement, except to the extent the damage or injury is caused by the negligence or wilful misconduct of the LCBO or its advisors, agents, appointees, employees or independent contractors or the LCBO's Subcontractors.
- 26.9 Survival** - The provisions of this Article shall survive the termination or expiry of this Agreement.

ARTICLE 27. TERMINATION OF AGREEMENT

- 27.1 Termination of Agreement by the LCBO** - Despite Section 5.1 (Term of Agreement), the LCBO may terminate this Agreement immediately upon written notice to the Vendor if any of the following events occurs:
- (a) the Vendor fails to comply with any of the terms of this Agreement if that failure continues unremedied for ten (10) Business Days or more after written notice of that failure is given by the LCBO to the Vendor;
 - (b) any Insolvency Event occurs with respect to the Vendor;
 - (c) the Vendor breaches any provision in Article 21 (LCBO Confidential Information) or any Privacy Provisions;
 - (d) the Vendor subcontracts for the provision of part or all of the Services or sells, assigns or transfers its interest in this Agreement or any of its obligations under it to any third Person

without the prior written approval of the LCBO except as expressly contemplated and permitted by Section 4.3 (Subcontracting or Assignment);

- (e) the Vendor, prior to or after executing this Agreement, makes a material misrepresentation or omission or provides materially inaccurate information to the LCBO; or
- (f) the Vendor undergoes a change in control which, in the sole opinion of the LCBO adversely affects the Vendor's ability to satisfy some or all of its obligations under this Agreement.

Any termination of this Agreement under this Section is without prejudice to the LCBO's right to exercise or pursue any other remedies that may be available to the LCBO under this Agreement, at law or in equity. All such other remedies shall survive any termination of this Agreement and remain in full force and effect thereafter.

27.2 Termination of Agreement for Convenience - The LCBO reserves the right to terminate this Agreement at any time, without cause and without penalty, upon thirty (30) days prior written notice to the Vendor.

27.3 Obligations on Termination of Agreement - Upon termination of this Agreement, the Vendor shall, in addition to its other obligations under this Agreement and at law:

- (a) promptly return all LCBO Data and LCBO Materials to the LCBO;
- (b) provide the LCBO with a report detailing (i) the current state of the provision of Services by the Vendor, up to and including at the date of termination, and (ii) any other information requested by the LCBO pertaining to the provision of the Services;
- (c) execute such documentation as may be required by the LCBO to give effect to the termination of this Agreement; and
- (d) comply with any other reasonable instructions provided by the LCBO, including but not limited to instructions for facilitating the transfer of its obligations to another Person.

27.4 Express Rights in Addition to Other Rights - The express rights of termination in this Agreement are in addition to and shall in no way limit any rights or remedies of the LCBO under this Agreement, at law or in equity.

27.5 Survival - The provisions of this Article shall survive the termination or expiry of this Agreement.

27.6 Payment of Vendor Upon Termination - If the Agreement is terminated pursuant to Section 27.2 (Termination for Convenience), the LCBO shall be liable to the Vendor only for payment for Services properly performed up to and including the effective date of the termination. Termination shall not relieve the Vendor of its warranties and other responsibilities relating to the Services performed or money paid. In addition to its other rights of hold back, the LCBO may hold back payment or set off against any payments owed if the Vendor fails to comply with its obligations on termination.

ARTICLE 28. GENERAL

- 28.1 Governing Law** - This Agreement shall be governed by the laws in effect in the Province of Ontario and the applicable federal laws of Canada. The Parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals from them. The Parties agree that the *United Nations Convention on Contracts for the International Sale of Goods* does not apply to this Agreement and is strictly excluded.
- 28.2 Promotion Restrictions** - Any publicity or publications related to this Agreement shall be at the sole discretion of the LCBO. The LCBO may, in its sole discretion, acknowledge any Services provided by the Vendor in any such publicity or publication. The Vendor shall not make use of its association with the LCBO in relation to this Agreement without the prior written consent of the LCBO. Without limiting the generality of this Section, the Vendor shall not, among other things, at any time directly or indirectly communicate with the media in relation to this Agreement unless it has first obtained the express written authorization to do so by the LCBO.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first written above.

LIQUOR CONTROL BOARD OF ONTARIO

Per:

Signature: _____

Name: _____

Title: _____

•

Per:

Signature: _____

Name: _____

Title: _____

I have authority to bind the corporation.

ATTACHMENT “A” TO AGREEMENT - ROLE

1. **Description:**

The requirement is for a **Microsoft SCCM 2007 Implementer** to fill the role of a qualified Microsoft SCCM 2007 implementer to work on several operational projects concurrently. The individual provided by the successful Respondent will be required to perform services at the LCBO’s head office location at 55 Lakeshore Boulevard East, Toronto, Ontario. These projects are briefly outlined below:

Upgrade current Systems Management Server (“SMS”) 2003 site

This project involves the upgrade and development of the SCCM 2007 SP2 site at LCBO. The main functional requirements are:

6. Hardware and Software asset management
7. Software Deployment
8. Software Update Management
9. Software Metering
10. Custom Reporting

Upgrade Current Microsoft Deployment Toolkit (“MDT”) 2008 to MDT 2010

This project involves the upgrade of our current MDT 2008 imaging server to MDT 2010. With SCCM 2007 integration, we also need to introduce “Zero-Touch” technology to LCBO.

Implement additional 3rd party plug-ins, if required

If deemed necessary, we will enhance SCCM’s functionality with 3rd party plug-ins. A decision will be made during the planning phase of this project.

Under general direction from an assigned Systems Analyst, through investigation and fact-finding, the individual provided by the Supplier will assist with the formulation of scope and objectives SCCM site implementation and development, enhancement and maintenance tasks. The person in this role will: analyze, document, and communicate existing hardware and software requirements; prepare system overview documentation and detailed specifications from which SCCM site will be developed; create or modify tasks and procedures to solve the most complex problems within software deployment and OS deployment; design, code, test, and document site hierarchy; execute (if necessary) system implementation fallback and contingency plans; and provide input to support changes in support processes as required.

The individual provided by the Supplier will:

- Report to the department Systems Manager
- Maintain plans, actions logs, issues logs and necessary project documentation
- Follow up on action items
- Resolve issues
- Track time against specific tasks and projects
- Keep management informed
- Research and review industry solutions
- Ensure deliverables are to specifications/requirements
- Testing
- Implementation and training planning

2. Qualifications

The Personnel provided by the Supplier must have a deep, detailed understanding of several of the following:

- SCCM 2007 site architecture (planning and installation);
- Software Packaging and Deployment Processes
- Systems Management methodologies
- Software Update Management
- Client server technology
- Installation and Configuration of Microsoft Deployment Technology Server 2010
- Implementation of “Zero-Touch” within SCCM 2007
- Strong knowledge of SQL Server 2008 and “SQL Reporting Services”
- Strong troubleshooting and root cause analysis abilities
- A demonstrated ability with problem/change management process, well-developed analytical, organizational, and strong customer service orientation and excellent verbal and written communication skills

The Personnel provided by the Supplier must also have the following qualifications:

- A minimum of 5 year's experience using SMS 2003, SCCM 2007
- experience in all aspects of Software Deployment using SMS/SCCM
- experience in Microsoft Software Updates and 3rd party application patching (e.g., Adobe Reader, Adobe Flash Player....)
- experience with Project Management tools and concepts
- above-average written and verbal communication skills
- excellent team participation and people skills
- excellent skills integrating MDT 2010 with SCCM 2007
- experience with implementing SCCM 3rd party plug-ins such as:
 - products from 1e
 - products from SCCM Experts

**ATTACHMENT “B” TO AGREEMENT -
STATEMENT OF WORK**

1. **Statement of Work** - The Vendor agrees to provide to the LCBO and the LCBO agrees to acquire from the Vendor, the Services described in Attachment “A” upon and subject to the terms of this Agreement.
2. **Ceiling Price:** C\$•
3. **Project Start Date:** •, 2010
4. **Project End Date:** •, 2010
5. **Names, Roles and Hourly Rates of Vendor's Personnel:**

Individual's Legal Name	Role	Hourly Rate
•	Microsoft SCCM 2007 Implementer	\$•

6. **Invoices** - Invoices for payment of any charges under this Agreement shall be sent to:

Liquor Control Board of Ontario
55 Lakeshore Boulevard East, 3rd Floor
Toronto, Ontario
M5E 1E5

Attention: Hugh Kelly, Senior Vice-President Information Technology

or such other address as the LCBO may from time to time communicate to the Vendor in writing.

ATTACHMENT “C” TO AGREEMENT - CONSULTANT’S AGREEMENT

CONSULTANT’S AGREEMENT

THIS AGREEMENT is made effective this •

BETWEEN:

LIQUOR CONTROL BOARD OF ONTARIO
(referred to as the “**LCBO**”)

AND:

•
(referred to as the “**Consultant**”)

The LCBO and • (the “**Vendor**”) entered into an Agreement • (the “**Master Agreement**”), pursuant to a Request for Proposals for Microsoft SCCM 2007 Implementer issued by the LCBO and dated •, 2010 reference number RFP 2010-16 under which the LCBO may acquire the services of individuals assigned by the Vendor to perform certain types of work.

The Vendor agreed to cause each and every individual who is assigned by the Vendor to perform services for the LCBO, pursuant to the Master Agreement to execute this Agreement.

In consideration of the LCBO permitting the Consultant at any time and from time to time to perform Work assigned by the Vendor pursuant to and subject to the terms of the Master Agreement and the Consultant’s covenants in this Agreement, (the receipt and adequacy of which is acknowledged by the execution of this Agreement), the LCBO and the Consultant agree as follows:

ARTICLE 1. DEFINITIONS

1.1 In this Agreement, these words and expressions have these meanings:

“**Agreement**” means this consultant's Agreement.

“**Computer Code**” means computer programming code and software programs (including both object and source code) executable or not executable, including any reusable code, libraries, routines, sub-routines, and utilities.

“**Confidential Work Information**” means all information that (a) is confidential by its nature or in the circumstances in which it is conceived, developed or produced, and (b) is conceived, developed or produced solely or jointly by the Consultant in the performance of Work. “Confidential Work Information” includes all Consultant Work Inventions and Newly-Created Materials.

“**Conflict of Interest**” includes, but is not limited to, any situation or circumstance where in relation to the performance of Work, the Consultant’s other commitments, relationships or financial interests: (a) could, or could be seen to, exercise an improper influence over the objective, unbiased and impartial exercise of the Consultant’s independent judgement; or (b) could or could be seen to compromise, impair or be incompatible with the effective performance of the Consultant’s contractual obligations.



“Consultant Materials” means anything and everything, in all forms and however recorded, which is proprietary to the Consultant but is not first created or produced in the performance of Work, and which is incorporated into any Deliverables or which is used by the Consultant to perform the Work, including all algorithms, content, Computer Code, data, designs, documentation, flowcharts, formulae, know-how, materials, methods, methodologies, plans, procedures, processes, software development tools, technical information, techniques, technologies, templates, and any other recorded information in any form or on any media. Despite the foregoing, “Consultant Materials” exclude all Consultant Work Inventions.

“Consultant Work Invention” means: (a) any Invention conceived, or conceived and developed, by the Consultant in the performance of Work; and (b) any contribution made by the Consultant in the performance of Work to any Invention conceived, or conceived and developed, by the Consultant with one or more other individuals.

“Deliverables” means anything and everything, in all forms and however recorded, which has been or will be created, developed or produced for the LCBO, or delivered or provided to the LCBO, by the Consultant, whether solely or with one or more other individuals, as a result of the Vendor assigning the Consultant to perform Work for the LCBO including all: assets, audio or video recordings, Computer Code, data dictionaries, designs, documentation, drawings, flowcharts, know-how, manuals, materials, methods, methodologies, patterns, plans, procedures, processes, recorded information, products, reports, schematics, specifications, techniques, templates, and working papers, of any kind; data and information (whether or not contained in or on any database or electronic information storage system or media); data collected by the Consultant as part of the Work; algorithms, formulae, interfaces, navigational devices, menus, menu structures or arrangements, icons, help, operational instructions, processes, scripts (including application program interfaces), commands, syntax, and the literal and non-literal expressions of ideas that access, direct, manipulate, operate or otherwise affect any of the above; and copies, developments and modifications of the above.

“Development Tool” means any Consultant Materials that the Consultant uses or would need to use to develop or modify, implement or maintain the Deliverables and that may be required by the LCBO or its advisors, agents, employees, independent contractors, subcontractors, sublicensees or any other person to develop or modify, implement or maintain the Deliverables or to exercise the Intellectual Property Rights licensed to or assigned to the LCBO as a result of this Agreement.

“FIPPA” means the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended or replaced from time to time.

“Indemnified Parties” means the LCBO and its advisors, agents, appointees and employees.

“Intellectual Property Rights” means any intellectual or industrial property rights protected or protectable under the laws of Canada, any foreign country, or any political subdivision of any country, including any intellectual property rights protected by legislation (such as legislation governing copyrights, industrial designs, integrated circuit topographies, patents or trademarks) or by common law (such as confidential information and trade secrets).

“Invention” means any new and useful art, process, machine, manufacture or composition of matter, or any new and useful improvement to any of them, whether or not patentable.



“LCBO Materials” means anything and everything, in all forms and however recorded, which is provided by the LCBO to the Consultant to enable the Consultant to perform the Work or which is proprietary to, owned by, or in the custody or control of the LCBO.

“LCBO Confidential Information” means all information of the LCBO and contractors and subcontractors at any tier that is confidential by its nature or in the circumstances in which it is received, including all confidential information in the custody or control of the LCBO regardless 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 Consultant as a result of the Vendor assigning the Consultant to perform Work for the LCBO or as a result of the Consultant performing Work for the LCBO, including: (a) information relating to algorithms, Computer Code, designs, drawings, flowcharts, formulae, Intellectual Property Rights, Inventions, patterns, plans, procedures, processes, reports, schematics, specifications, templates, and working papers; (b) electronic data stored or processed by the LCBO; (c) all Confidential Work Information; (d) new information derived at any time from any such information whether created by the LCBO, the Consultant or any third party; and (e) information that the LCBO is obliged, or has the discretion, not to disclose under provincial or federal legislation; but LCBO Confidential Information shall not include information that: (f) is or becomes generally available to the public without fault or breach by the Vendor or the Consultant, but only after that information becomes generally available to the public; (g) the Consultant can demonstrate to have been rightfully obtained by the Consultant, without any obligation of confidence of any kind, from a third party who had the right to transfer or disclose it to the Consultant free of any obligation of confidence; (h) the Consultant can demonstrate to have been rightfully known to or in the possession of the Consultant, free of any obligation of confidence, when disclosed; or (i) is independently developed by the Consultant without the use of any LCBO Confidential Information.

“Moral Rights” has the same meaning as in the *Copyright Act*, R.S.C. 1985, c. C-42, as amended or replaced from time to time, and includes comparable rights in applicable jurisdictions, and includes the right of attribution of authorship, the right to restrain any distortion, mutilation or other modification of any work and the right to prohibit any use of any work in association with a product, service, cause or institution that may be prejudicial to my honour or reputation.

“Newly-Created Materials” means the Deliverables, excluding Consultant Materials and Vendor Materials.

“Personal Information” at all times, has the same definition as in subsection 2(1) of FIPPA, which, at the date first written above, is recorded information about an identifiable individual, and includes all such information obtained by the Consultant from the LCBO or created by the Consultant as a result of the Vendor assigning the Consultant to perform Work for the LCBO.

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

“Record”, for the purposes of this Agreement, means any recorded information, including any Personal Information, in any form: (a) provided by the LCBO or the Vendor to the Consultant, or provided by the Consultant to the LCBO or the Vendor in connection with the Work; or (b) created by the Consultant as a



result of the Consultant performing Work for the LCBO.

"Vendor Materials" means anything and everything, in all forms and however recorded, which is proprietary to the Vendor (for example, algorithms, content, Computer Code, data, designs, documentation, flowcharts, formulae, know-how, materials, methods, methodologies, plans, procedures, processes, software development tools, technical information, techniques, technologies, templates, and other recorded information).

"Work" means all services and work provided or performed, or to be provided or performed, by the Consultant for the LCBO as a result of the Vendor assigning the Consultant to perform services for the LCBO and includes everything that is necessary to be done, supplied or delivered by the Consultant.

ARTICLE 2. INTERPRETATION

2.1 In this Agreement, unless it is otherwise clear from the context, the following terms shall have the following meanings:

- (a) **"developments and modifications"** includes enhancements, improvements, and revisions; and, **"development or modification"** and **"developments or modifications"** includes, and **"develop or modify"** has, corresponding meanings.
- (b) **"including"** means "including without limitation" and **"includes"** means "includes without limitation"; the use of the word "including" or "includes" is not intended to limit any statement that precedes it to the items immediately following it.

2.2 **Amendments** - Any changes to this Agreement shall only be made by written amendment signed by the LCBO and the Consultant. No changes shall be effective or shall be carried out in the absence of such an amendment.

2.3 **Severability** - If any term or condition of this Agreement, or the application thereof to the parties or circumstances, is to any extent invalid or unenforceable, the remainder of this Agreement and the application of such term or condition to the parties or circumstances other than those to which it is held invalid or unenforceable, shall not be affected by it.

2.4 **Headings** - The division of this Agreement into Articles, Sections and subsections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The Article and Section headings in this Agreement are not intended to be full or accurate descriptions of the text to which they refer.

2.5 **No Waiver** - No provision of this Agreement shall be deemed waived, amended, or modified by either party unless such waiver, amendment, or modification is in writing and signed by the party against whom it is sought to enforce the waiver, amendment, or modification.

ARTICLE 3. RELATIONSHIP WITH THE CONSULTANT

3.1 The Consultant acknowledges that the Consultant has agreed to enter into this Agreement at the request of the Vendor.



- 3.2 **Consultant Not an Agent or Employee** - The Consultant is not and shall not hold the Consultant out as an agent or employee of the LCBO in connection with this Agreement or as a result of the Vendor assigning the Consultant to perform Work for the LCBO. Nothing in this Agreement shall have the effect of creating an agency or employment relationship between the LCBO and the Consultant pursuant to the *Employment Standards Act, 2000*, S.O. 2000, c. 41, as amended, or any other legislation or at common law, or constitute an appointment under the *Public Service Act*, R.S.O. 1990, c. P.47, as amended. The Consultant understands that the LCBO has no obligation to the Consultant with respect to any compensation or benefits for any Work performed for the benefit of the LCBO, and that the Consultant will be paid directly by the Vendor.
- 3.3 **Temporary Work** - The Consultant acknowledges that Work will be performed only for a temporary period of time.

ARTICLE 4. RESTRICTIONS

- 4.1 **No Restrictive Material** - Without limiting any other provisions of this Agreement, except with the LCBO's prior written consent, the Consultant shall not incorporate into any Deliverables, and shall not use in the performance of the Work, any Restrictive Material that would restrict the right of the LCBO to develop or modify or otherwise use the Deliverables in any way that the LCBO deems desirable, or that would prevent the LCBO at any time from entering into any contract with any person other than the Consultant for the development or modification or other use of the Deliverables. In this Article, "Restrictive Material" means:

- (a) any art, process, machine, manufacture or composition of matter, or any improvement in any of the foregoing; or
- (b) any recorded information of any nature in any form, including any algorithm, collection, compilation, Computer Code, data, database, design, document, documentation, drawing, flowchart, formula, know-how, manual, method, methodology, pattern, performance, plan, procedure, process, recording, report, schematic, signal, specification, technique, template, work or working paper, including any modification to any of the foregoing;

that is proprietary to or the confidential information of the Consultant or the Vendor, (including any advisor, agent or supplier of the Vendor, and any contractor or subcontractor at any tier of the Vendor, and any individuals who provide services to any of them), whether copyrightable or patentable, and however recorded or stored.

- 4.2 **Exclusion** - Despite Section 4.1, the Consultant does not require the prior written consent of the LCBO to incorporate into any Deliverables or use in the performance of the Work, any Restrictive Material for which an express written licence has been granted to LCBO that is consistent with this Agreement.



ARTICLE 5. LCBO CONFIDENTIAL INFORMATION

5.1 Confidentiality - The Consultant shall keep all LCBO Confidential Information confidential and shall provide LCBO Confidential Information to the LCBO on demand by the LCBO or the Vendor and, in any event, shall return all LCBO Confidential Information to the LCBO before the termination or expiry of the Work, with no copy or portion kept by the Consultant in any form or on any media. The Consultant shall limit the disclosure of LCBO Confidential Information to only those who have a need to know it and who have been specifically authorized by the LCBO to have such disclosure. The Consultant shall not directly or indirectly disclose, destroy, exploit or use any LCBO Confidential Information (except if required by order of a court or tribunal), without first obtaining:

(a) the written consent of the LCBO, and

(b) in respect of any LCBO Confidential Information about any third party, the written consent of such third party.

5.2 Restrictions on Copying - The Consultant shall not copy any LCBO Confidential Information, in whole or in part, unless necessary or materially advantageous for the performance of the Work. On each copy made by the Consultant, the Consultant must reproduce all notices that appear on the original.

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

5.4 Notice and Protective Order - If the Consultant becomes legally compelled to disclose any LCBO Confidential Information, the Consultant will provide the LCBO with prompt notice to that effect to allow the LCBO to seek one or more protective orders or other appropriate remedies to prevent or limit such disclosure, and the Consultant shall co-operate with the LCBO and its legal counsel to the fullest extent. If such protective orders or other remedies are not obtained, the Consultant will disclose only that portion of LCBO Confidential Information which the Consultant is legally compelled to disclose, only to such person or persons to which the Consultant is legally compelled to disclose, and the Consultant shall provide notice to each such recipient - in co-operation with legal counsel for the LCBO- that such LCBO Confidential Information is confidential and subject to the terms and conditions of this Agreement and any more protective terms and conditions which have been agreed to between the LCBO and the Consultant, and, if possible, shall obtain each recipient's written agreement to receive and use such LCBO Confidential Information subject to those terms and conditions.

5.5 Conflict with Privacy Provisions - If a conflict or inconsistency arises between any provision in this Article and Article 6 (Privacy Provisions), Article 6 shall govern.



ARTICLE 6. PRIVACY PROVISIONS

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

- (a) to keep Records secure;
- (b) to provide Records to the LCBO within seven (7) calendar days of being directed to do so by the LCBO for any reason including an access request or privacy issue;
- (c) not to access any Personal Information unless (i) the LCBO determines, in its sole discretion, that access is permitted under FIPPA and is necessary in order to perform the Work, and (ii) the Consultant has a need to know the Personal Information and has been specifically authorized by the LCBO to have such access;
- (d) not to directly or indirectly use, collect, disclose or destroy any Personal Information for any purposes that are not authorized by the LCBO;
- (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; and
- (f) to adhere to any other specific security and information management measures that in the reasonable opinion of the LCBO would improve the adequacy and effectiveness of any measures used to ensure the security and integrity of Personal Information and Records generally.

ARTICLE 7. OWNERSHIP OF RIGHTS

7.1 LCBO's Ownership of Rights in Confidential Work Information, Newly-Created Materials and Consultant Work Inventions - Subject to Section 7.2, all Intellectual Property Rights in the Confidential Work Information, Newly-Created Materials and Consultant Work Inventions shall immediately, as and when they come into existence, vest in and remain the property of the LCBO. The Consultant shall have no right in or to any such Intellectual Property Rights in the Confidential Work Information, Newly-Created Materials and Consultant Work Inventions.

7.2 Pre-Existing Intellectual Property Rights - All Intellectual Property Rights existing immediately prior to the date first written above, and all rights to Inventions first conceived, developed or reduced to practice prior to that date, shall be retained by each party that owned such rights immediately prior to that date.

7.3 Works of Joint Authorship - The copyright in each work of joint authorship that is created or produced by the Consultant in the performance of Work with one or more other individuals shall immediately, as soon as it comes into existence, vest in the LCBO, and the Consultant shall have no right, title or interest in or to it.

7.4 Collective Works and Compilations - Despite any other provision in this Agreement, the copyright

in each collective work and each compilation that is created or produced by the Consultant in the performance of Work, whether solely or with one or more other individuals, shall immediately, as soon as it comes into existence, vest in the LCBO and the Consultant shall have no right, title or interest in or to it.

- 7.5 Disclosure of Inventions to the LCBO** - The Consultant shall promptly report and fully disclose in writing to the LCBO each Consultant Work Invention, identifying those concepts or ideas thought to be new, useful and unobvious, and indicating whether they are thought to be an improvement on prior art or capable of commercial exploitation. Disclosure of Consultant Work Inventions shall be in a form acceptable to the LCBO. In any event, the Consultant shall make such disclosure not later than the time of completion of the Work or such earlier time as the LCBO may require. Upon request, at all times while the Consultant is assigned by the Vendor to perform any Work for the LCBO and at all times afterwards, the Consultant shall execute all assignments, documents and instruments necessary or advantageous to file patent applications on Consultant Work Inventions and to establish the LCBO's rights in the Consultant Work Inventions.
- 7.6 Assignment** - The Consultant hereby irrevocably assigns, sells and transfers to the LCBO for no additional consideration: (a) all Intellectual Property Rights and all right, title and interest throughout the world in and to the Confidential Work Information, Newly-Created Materials and Consultant Work Inventions other than (i) any Intellectual Property Rights or interests in Intellectual Property Rights that came into existence prior to the date first written above, and (ii) any Intellectual Property Rights and interests in Intellectual Property Rights of the Vendor; and (b) all of the Consultant's right, title and interest in and to each copyright referred to in Section 7.3 and Section 7.4. On request of the LCBO from time to time and at any time and, in any event, immediately upon the Consultant ceasing to perform Work for the LCBO for any reason, the Consultant agrees to execute an assignment of copyright in the Newly-Created Materials (other than (i) any Intellectual Property Rights or interests in Intellectual Property Rights that came into existence prior to the date first written above, and (ii) any Intellectual Property Rights and interests in Intellectual Property Rights of the Vendor) and each copyright referred to in Section 7.3 and Section 7.4 (other than copyrights and interests in copyrights of the Vendor) to the LCBO.
- 7.7 Moral Rights Waivers** - The Consultant hereby expressly, irrevocably and without restriction, waives all Moral Rights, which the Consultant has or which the Consultant may acquire at any time with respect to the Deliverables, in favour of the LCBO, and all sublicensees and assignees, and all persons authorized at any time to use the Deliverables. At the completion of the Work or at any other time as the LCBO may require, the Consultant shall provide to the LCBO an express written, irrevocable and unrestricted waiver of Moral Rights in a form acceptable to the LCBO.
- 7.8 Ownership of Tangible Materials** – The LCBO shall own, and have unrestricted ownership rights in, all tangible materials as and when delivered by the Consultant to the LCBO as a result of the Consultant performing Work for the LCBO. The Consultant hereby irrevocably assigns, sells and transfers all right, title and interest in and to such tangible materials (other than any right, title or interest of the Vendor) to the LCBO for no additional consideration as and when delivered.



- 7.9 Intellectual Property Rights Applications** - The Consultant shall, at the LCBO's expense, give the LCBO all reasonable assistance in the preparation and the prosecution of any applications or registrations in any jurisdiction for or of any Intellectual Property Rights on or arising out of the Confidential Work Information, Newly-Created Materials and Consultant Work Inventions (and each copyright referred to in Section 7.3 and Section 7.4), including assistance in the case of patent applications.
- 7.10 Further Assurances** - The Consultant shall, at its own expense, promptly do any and all acts and execute and deliver to the LCBO any and all assignments, documents and instruments relating to the Intellectual Property Rights in the Confidential Work Information, Newly-Created Materials and Consultant Work Inventions (and each copyright referred to in Section 7.3 and Section 7.4), which the LCBO may reasonably request at any time or from time to time to carry out the intent of this Article.
- 7.11 Power of Attorney** - If the LCBO is unable for any reason whatsoever to secure the Consultant's signature to any document assigning, perfecting, recording or acknowledging the LCBO's ownership of any Intellectual Property Rights or any right, title or interest as contemplated in Section 7.6 or to any document waiving Moral Rights, the Consultant hereby irrevocably designates and appoints the LCBO and its duly authorized officers as its attorneys-in-fact, with full power of substitution, to act for and on behalf of and instead of the Consultant to execute and file any such document and to do all lawfully permitted acts to further the purposes of this Section with the same legal force and effect as if executed by the Consultant.
- 7.12 Proscribed Intellectual Property Rights Registrations** - The Consultant will not file any application, and will not contest any application filed by the LCBO, in any jurisdiction for the registration of any Intellectual Property Rights arising out of any Confidential Work Information, Newly-Created Materials or Consultant Work Inventions (or any copyright referred to in Section 7.3 or Section 7.4), whether or not such Intellectual Property Rights depend or would depend upon any pre-existing Intellectual Property Rights.

ARTICLE 8. CONSULTANT MATERIALS

- 8.1 Request for Consent** - Prior to incorporating any Consultant Materials into any Deliverables or using any Development Tools to perform Work, the Consultant shall:
- (a) fully disclose to the LCBO in writing:
 - (i) all Consultant Materials that the Consultant proposes to incorporate, which shall include a description of the specific components in sufficient detail to permit the LCBO to clearly identify and to distinguish the Consultant Materials from all other Deliverables and from LCBO Materials;
 - (ii) all Development Tools that the Consultant proposes to use to perform Work; and
 - (b) obtain the LCBO's prior written consent to such incorporation or use, which consent shall be in



the sole discretion of the LCBO and subject to the terms and conditions as agreed to by the LCBO.

8.2 Licences to the LCBO to Consultant Materials and Development Tools - The Consultant hereby grants to the LCBO a non-exclusive, perpetual, irrevocable, world-wide, fully paid-up, royalty-free, transferable licence to exercise all Intellectual Property Rights in the Development Tools and in the Consultant Materials that are incorporated into the Deliverables, in any way and for any purpose whatsoever, and to have or permit others to do so. Solely by way of example, each licence granted to the LCBO above includes the right to use, reproduce, produce any translation, improve, disclose without restriction, and sublicense.

The licence rights to the Consultant Materials that are incorporated into the Deliverables shall arise immediately, as and when the Consultant Materials, or any part of them, are incorporated into the Deliverables. The licence rights to each Development Tool shall arise immediately when the Development Tool is first used in the performance of Work.

8.3 Title to Improvements and Modifications to Consultant Materials and Development Tools - All Intellectual Property Rights arising from any further development or modification of the Consultant Materials or the Development Tools that is conceived, developed, effected or first reduced to practice by or for the LCBO in the exercise of the licence set out in Section 8.2 shall vest in the LCBO, or as the LCBO directs, and shall not vest in the Consultant.

ARTICLE 9. REPRESENTATIONS AND WARRANTIES

9.1 The Consultant makes the following representations and warranties to the LCBO as of the date of execution of this Agreement, and acknowledges that the LCBO is relying upon them:

- (a) the Consultant has not entered into any arrangement which would in any way restrict the LCBO's ability to exercise the Intellectual Property Rights granted under this Agreement;
- (b) there are no claims made nor Proceedings pending or anticipated relating to the ownership of the Consultant Materials, the Deliverables (other than any Vendor Materials incorporated into the Deliverables), or any part of them;
- (c) the Consultant has, or shall obtain, all the rights for it to grant all of the rights and licences that it grants under this Agreement;
- (d) the Consultant Materials and the Deliverables (other than any Vendor Materials incorporated into the Deliverables) shall not in any way infringe or violate any Intellectual Property Rights or any other right of any third party including, to the Consultant's knowledge, any patents or patent applications;
- (e) to the Consultant's knowledge, there are no claims made nor Proceedings pending or anticipated relating to the ownership of all or any part of the Vendor Materials incorporated into the Deliverables, if any; and

- (f) to the Consultant's knowledge, the Vendor Materials incorporated into the Deliverables, if any, shall not in any way infringe or violate any Intellectual Property Rights or any other right of any third party including any patents or patent applications.

At all times while the Consultant is assigned by the Vendor to perform any Work for the LCBO, the Consultant covenants to take any actions required to ensure that the foregoing representations and warranties continue to be true and covenants not to take any actions that would cause any of the foregoing representations and warranties not to be true, and acknowledges that the LCBO is relying upon such covenants.

ARTICLE 10. SURVIVAL

- 10.1 The provisions of this Agreement will remain in full force and effect from the date first written above, at all times while the Consultant is assigned by the Vendor to perform any Work for the LCBO, and at all times after the Consultant ceases for any reason to perform Work for the LCBO..

ARTICLE 11. GENERAL

- 11.1 **Governing Law** - This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. The Parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals from them.
- 11.2 **Delivery of Work Product, Development Tools and LCBO Materials** - At any time upon request, and upon the Consultant ceasing for any reason to perform Work for the LCBO, the Consultant shall immediately deliver to the LCBO all copies of the Deliverables (including all components and related source code), a copy of all Development Tools, and all LCBO Materials which are then in the Consultant's possession or control.
- 11.3 **Conflict of Interest** - The Consultant shall (a) avoid any Conflict of Interest in the performance of Work; (b) disclose without delay any actual or potential Conflict of Interest that arises during the performance of Work; and (c) comply with any requirements prescribed by the LCBO to resolve any Conflict of Interest. The Consultant acknowledges that the LCBO or the Vendor may terminate the Work if the Consultant does not comply with this Section or if the Consultant's Conflict of Interest cannot be resolved to the satisfaction of the LCBO.
- 11.4 **Use and Access Restrictions** - Unless the Consultant obtains specific written preauthorization from the LCBO any access to or use of LCBO property, technology or information that is not necessary for the performance of Work is strictly prohibited. The Consultant further acknowledges that the LCBO may monitor the Consultant to ensure compliance with this Section. This Section is in addition to and shall not limit any other obligation or restriction placed upon the Consultant.
- 11.5 **Contract Binding** - This Agreement shall enure to the benefit of and be binding upon the parties and their successors, executors, administrators and their permitted assigns.
- 11.6 **Promotion Restrictions** - Any publicity or publications related to the Vendor assigning the



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Consultant to perform Work for the LCBO, or related to the performance of Work by the Consultant, shall be at the sole discretion of the LCBO. The Consultant shall not at any time directly or indirectly communicate with the media in relation to the Work unless the Consultant has first obtained the express written authorization to do so by the LCBO.

11.7 **Rights and Remedies** - The rights and remedies of the parties under this Agreement are cumulative, and are in addition to and not in substitution for any rights or remedies provided at law or in equity.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first written above.

**LIQUOR CONTROL BOARD OF
ONTARIO**

Per:

Signature: _____

Name: _____

Title: _____

•

Witness:

Signature: _____