

Request for Quotes (RFQ)
Terms and Conditions
June 6, 2013

1.0 INTERPRETATION

In this document, unless the context otherwise requires,

“Acceptance” means the Goods are the same as ordered, undamaged, in an Operable State, and if applicable:

- (a) have the same components as the Goods quoted.
- (b) are appropriately labeled, in accordance with Clause 7.7.

“Alberta Purchasing Connection (“APC”)” means the Government of Alberta’s electronic tendering system.

“Alberta Time” means Mountain Standard Time or Daylight Saving Time as provided for in the Daylight Saving Time Act of Alberta.

“Approved Organizations” means organizations, including hospitals, as defined in the Hospitals Act, schools, post-secondary educational institutions, municipalities, Metis settlements and any organizations that carry out services or programs on behalf of the Government of Alberta.

“Authorized Reseller” means an entity authorized by a Manufacturer or Canadian Distributor to act on its behalf, in Alberta, for the Goods.

“Blanket Contract” means a written agreement between a vendor and Her Majesty which allows for the supply of Goods within a commodity group or groups, with pricing and/or discounts off a Manufacturer’s or the vendor’s published catalogue or price list, where there is no commitment from Her Majesty to purchase any Goods.

“Business Day” means from 08:15 to 16:30, Alberta Time, Monday to Friday, excluding holidays observed by the Government of Alberta.

“Canadian Distributor” means an entity authorized by a Manufacturer to act on its behalf, in Alberta, for the Goods.

“Confidential Information” means Purchaser Confidential Information and Vendor Confidential Information.

“Confidentiality Legislation” means any statutory or regulatory requirement to keep information confidential as amended, revised or substituted from time to time, including the Alberta Freedom of Information and Protection of Privacy Act.

“Contract” means the written agreement which includes the RFQ, if applicable, and the Quote between the successful vendor and the Purchaser for the supply of the Goods.

“Corporate Purchasing Section” means the Corporate Purchasing Section of Procurement Services, Department of Service Alberta of Her Majesty.

“Disposal Surcharge” means any environmental surcharge/fee which vendors are required by law to collect and remit.

“Equivalent” means equal to or better than the functionality and performance of the item specified in the RFQ.

“Evaluation” means confirming the Quote and Goods meet the RFQ requirements.

“Goods” means the products quoted by the vendor, including all components and any products to be produced and/or any services to be supplied under the Contract.

“Her Majesty” means Her Majesty the Queen in right of Alberta.

“Manufacturer” means an entity that:

- (a) uses components from one or more sources to assemble the Goods that it sells under its brand or name.
- (b) has a third party, on its behalf, use components from one or more sources to assemble the Goods that it sells under its brand or name.
- (c) develops the Goods.

“Operable State” means operating in accordance with the Manufacturer's published specifications and/or diagnostic tests, industry standards, the RFQ and the Quote.

“Procurement Services” means the Procurement Services unit of the Department of Service Alberta of Her Majesty.

“Purchaser” means:

- (a) departments of Her Majesty.
- (b) boards, commissions and organizational units that form part of the public service of Alberta but are not part of a department of Her Majesty.
- (c) corporations that are an agent of Her Majesty.

“Purchaser Confidential Information” means any information concerning the Purchaser or third parties or any of the business or activities of the Purchaser or third parties acquired by the vendor as a result of participation in the RFQ process or Contract, which is required by any Confidentiality Legislation to be kept confidential by the

Purchaser or is supplied by the Purchaser in confidence, including but not limited to such information that is contained in data management systems of the Purchaser or is financial, personal data or business information and plans of or relating to the Purchaser or third parties.

“Quote” means the vendor's offer to supply the Goods in response to the RFQ.

“Request for Quotes” (RFQ) means the invitation, including any amendments issued by the Corporate Purchasing Section, to submit a Quote for the goods to be purchased.

“Standing Offer” means a written agreement between a vendor and Her Majesty which allows for the supply of Goods with pricing, where there is no commitment from Her Majesty to purchase any Goods.

“Supply Arrangement” means a Standing Offer or Blanket Contract.

“Vendor Confidential Information” means information, supplied in confidence, concerning the vendor or third parties or any of the business or activities of the vendor or third parties and which is acquired by the Purchaser as a result of participation in the Contract.

“Warranty Period” means the period that commences upon receipt of the Goods, at the Purchaser's site, and is the greater of the period stated in the RFQ, or the standard Manufacturer's, Canadian Distributor's or Authorized Reseller's warranty, including any warranty extensions.

“Warranty Service” means the service provided during the Warranty Period to repair or replace the Goods, at the vendor's expense, inclusive of but not limited to, parts, labor, freight and insurance to and from the Purchaser's site.

2.0 GENERAL

2.1 In this document:

- (a) headings are used for convenience only and will not affect the meaning or interpretation of the clauses.
- (b) words in the singular include the plural and vice versa.
- (c) “must”, “shall” and “will” mean a requirement that must be met in order for the Quote to receive consideration.
- (d) references to “Government of Alberta”, “Her Majesty”, “Corporate Purchasing Section”, “Purchaser”, “Service Alberta” and “Procurement Services” mean “Her Majesty the Queen in right of Alberta” and are used only for administrative purposes.

2.2 All questions regarding the RFQ must be directed to the Purchasing Officer identified in the RFQ, prior to the RFQ closing date and time. The vendor is responsible for notifying the Purchasing Officer of any incorrect part/version

number and/or product description, discontinued or scheduled to be discontinued item, ambiguity, error, omission, oversight, contradiction, or item subject to more than one interpretation in the RFQ. If deemed appropriate by the Corporate Purchasing Section, the RFQ will be amended.

- 2.3 Verbal communication is not binding on any party.
- 2.4 The RFQ is subject to Chapter 5 (Procurement) and the MASH Annex of the Agreement on Internal Trade (AIT).
- 2.5 If the RFQ is to establish Supply Arrangements, the vendor must also sell the Goods directly to Approved Organizations, under the same terms and conditions as indicated in the RFQ. A list of Approved Organizations, authorized by the Minister of Service Alberta to access the Supply Arrangements, is posted on APC and will be updated from time to time.
- 2.6 Time is of the essence of the RFQ and the Contract.
- 2.7 The successful vendor must conform with the laws in force in the Province of Alberta.
- 2.8 The vendor must, upon request, allow the Corporate Purchasing Section and the Purchaser to visit its premises during Business Days for any reason considered appropriate by the Corporate Purchasing Section or the Purchaser related to compliance with the RFQ requirements and performance of the Contract.
- 2.9 Quotes received from entities which are, in the opinion of the Corporate Purchasing Section, owned by any level of government or funded through annual government budgets/appropriations will be rejected.
- 2.10 The Corporate Purchasing Section reserves the right, at its sole discretion, to cancel the RFQ.
- 2.11 The vendor must fully disclose, in writing, to the Purchasing Officer on or before the closing date of the RFQ, the circumstances of any possible conflict of interest or what could be perceived as a possible conflict of interest if the vendor were to become a contracting party pursuant to the RFQ. The Corporate Purchasing Section will review any submissions by vendors under this requirement and may reject any Quotes where, in the opinion of the Corporate Purchasing Section, the vendor could be in a conflict of interest or could be perceived to be in a possible conflict of interest position if the vendor were to become a contracting party pursuant to this RFQ.
- 2.12 The vendor, upon request by the Corporate Purchasing Section, shall deliver copies of all written ethical standards, conflict of interest policies, and codes of conduct established or observed by the vendor in its business practices or in relation to its employees or subcontractors.

3.0 AUTHORIZATION

The vendor, if other than the Manufacturer, must:

- (a) be a Canadian Distributor or Authorized Reseller for the Goods prior to the RFQ closing date and time and, upon request, provide written confirmation of such authorization from the Manufacturer. The Corporate Purchasing Section may, at its sole discretion, waive this requirement.
- (b) upon request, provide written confirmation from the Manufacturer that all rights granted in relation to the Goods are agreed to by the Manufacturer.

4.0 QUOTE PREPARATION/SUBMISSION

- 4.1 The vendor should, when submitting a Quote, obtain the RFQ directly from APC to facilitate receiving any RFQ amendments issued by the Corporate Purchasing Section. Quotes that do not comply with the RFQ requirements, including if the RFQ has been amended, will be rejected.
- 4.2 Where alternative Quotes are submitted, the vendor should identify each alternative as a separate Quote.
- 4.3 The Corporate Purchasing Section will disqualify a Quote if, in the opinion of the Corporate Purchasing Section, the vendor submits any false, deceptive or fraudulent information.
- 4.4 The vendor shall be responsible for all costs of preparing its Quote. Quotes, upon receipt by the Corporate Purchasing Section, will become the property of and be retained by Her Majesty, subject to Clause 4.6.
- 4.5 The Quote must remain open for acceptance by the Corporate Purchasing Section, without changes, for 90 days from the RFQ closing date. However, if a Contract is not awarded within this timeframe, the Quote may be extended upon written agreement of the vendor and the Corporate Purchasing Section.
- 4.6 The vendor may amend or rescind its Quote prior to the RFQ closing date and time, by submitting written notice to Procurement Services and referencing the RFQ number and closing date. Rescinded Quotes will, at the vendor's choice, either be returned to the vendor at the vendor's expense, or destroyed by the Corporate Purchasing Section, after the RFQ closing date and time. The vendor cannot amend its Quote after the RFQ closing date and time.
- 4.7 The vendor, by submitting a Quote, consents to the Corporate Purchasing Section and the Purchaser providing references to third parties in relation to the Goods and/or the vendor.

- 4.8 Quotes, other than facsimile Quotes, will be accepted during Business Days and should be submitted in a sealed envelope with the RFQ number and closing date clearly marked on the envelope. The vendor may deliver its Quote to Procurement Services by hand, courier, mail or facsimile. Electronic Quotes in any other form (e.g. diskette files, disk files, tape files, e-mail or e-mailed files) will not be accepted as the Vendor's Quote. Upon receipt, all Quotes are kept in a secure area until opened publicly, immediately after the RFQ closing date and time. A vendor submitting a Quote by facsimile does so at its own risk. The Corporate Purchasing Section is not responsible for ensuring that facsimile Quotes are received and legible. Since facsimile Quotes are not received in a sealed envelope, vendors should be aware that facsimile Quotes, by their nature, have a higher risk of not being kept confidential. Her Majesty will, however, take reasonable measures to maintain confidentiality.

Vendors should be aware that Canada Post only delivers Government of Alberta mail with Edmonton addresses to the main Canada Post depot in Edmonton. The Government of Alberta then picks up the mail and distributes it in accordance with the address label. Vendors should consider the above when choosing the method of delivery for their Quote as it is the vendor's responsibility to ensure its Quote is received before the RFQ closing date and time at the location specified in the RFQ.

- 4.9 The Quote must be:
- (a) signed by an authorized representative of the vendor. This signature will be deemed as the vendor's acceptance of the RFQ terms and conditions; and
 - (b) received by Procurement Services at the Capital Health Centre, South Tower, 9th floor, 10030 – 107 Street, Edmonton, Alberta T5J 3E4 before 14:01:00 Alberta Time on the RFQ closing date,
- or the Quote will be rejected.
- Quotes received after the RFQ closing date and time will, at the vendor's choice, either be returned to the vendor at the vendor's expense, or destroyed by the Corporate Purchasing Section after the RFQ closing date and time.

5.0 RFQ CLOSING

- 5.1 The RFQ will close at 14:00:59 Alberta Time on the RFQ closing date.
- 5.2 The official time of receipt of Quotes will be determined by Procurement Services' time recorder clock used to time and date stamp Quotes upon receipt.
- 5.3 Quotes will be opened publicly, immediately after the RFQ closing date and time at the address indicated in Clause 4.9(b). Unless otherwise stated in the RFQ, the following information will be disclosed at the public opening:
- (a) vendors' names
 - (b) prices quoted
 - (c) Goods quoted

6.0 PRICING

- 6.1 The vendor should quote in Canadian funds, with the exception of RFQs that are establishing a Supply Arrangement which must be quoted in Canadian funds. For RFQs that are not establishing a Supply Arrangement, unless the vendor indicates otherwise in its Quote or the RFQ requires the vendor to quote in either Canadian or a specific foreign currency, the Quote will be deemed to be in Canadian funds. Where applicable, Quotes in foreign currencies will be converted to Canadian funds by the Corporate Purchasing Section and evaluated on the converted amount. This conversion will be based on the daily noon foreign exchange rate appearing on the Bank of Canada's website <http://www.bankofcanada.ca/fmd/exchange.html> on the RFQ closing date. The Contract will be issued in the converted Canadian funds and payment will be made in this amount. If all Quotes received are quoted in the same foreign currency, the Contract will be issued and payment will be made in that foreign currency.
- 6.2 The vendor:
- (a) must quote firm net unit prices, unless otherwise stated in the RFQ, in accordance with the unit of measure ("UOM") specified in the RFQ. If an incorrect UOM is quoted, the Corporate Purchasing Section may convert a vendor's Quote to the UOM specified in the RFQ, if the Quote contains sufficient information to permit such conversion.
 - (b) must, in the net unit prices quoted, include all costs to complete delivery, Acceptance and Warranty Service of the Goods to the destination indicated in the RFQ, including but not limited to packaging, handling, shipping, unloading, duty, customs, brokerage fees, insurance charges, and any Disposal Surcharge. However, if the RFQ is establishing other than a Supply Arrangement, these costs may be quoted separately:
 - (i) when the Contract is to be awarded to one vendor;
 - (ii) for each line item when the Contract is to be awarded by line item; or
 - (iii) for each category when the Contract is to be awarded by category.
 - (c) should extend the net unit price amount in accordance with the quantity specified for the item and total the Quote. If a net extended amount or total Quote is incorrect, the net unit price will apply. If there are discrepancies between words and figures, words will apply.
- 6.3 The vendor is encouraged to offer early payment discounts to the Purchaser, however, these discounts will not be considered when evaluating the Quote.
- 6.4 With the exception of Approved Organizations, this is to certify that the Purchaser of the Goods is the Government of Alberta or a listed tax-free Government of Alberta Agency, therefore the Purchaser is not subject to the Goods and Services Tax ("GST") or the Harmonized Sales Tax ("HST"). The vendor is responsible to determine whether or not each Purchaser is subject to the GST or the HST. The Government of Alberta's GST Registration Number is 124072513.

- 6.5 If, from the RFQ closing date until Acceptance of the Goods, the vendor offers to any third party the same Goods in similar quantities and circumstances, at a lower price than stated in the Quote, the price to the Purchaser for these Goods must then be lowered by the vendor to this lower price for all Goods ordered after the offer to the third party.

7.0 SPECIFICATIONS

- 7.1 The Goods must:
- (a) be new. Despite this provision, the Corporate Purchasing Section, at its sole discretion, may purchase Goods with components that are refurbished and warranted by the Manufacturer as new.
 - (b) be the most current production and proven technology.
 - (c) comply with the RFQ requirements.
 - (d) conform to federal and provincial legislation.
- 7.2 Goods having a shelf-life must be marked with expiry dates and supplied sufficiently in advance of their expiry dates to permit reasonable use or consumption by the Purchaser.
- 7.3 All components of the Goods must be compatible and meet or exceed the RFQ requirements and the Manufacturer's published specifications.
- 7.4 Where the RFQ:
- (a) does not specify Manufacturers' names, brands, models and/or part numbers, the Quote must contain sufficient information for the Corporate Purchasing Section to identify the Goods quoted, or the Quote will be rejected.
 - (b) specifies Manufacturers' names, brands, models and/or part numbers to describe the performance and/or the quality of the items in the RFQ, unless the Quote indicates otherwise, the Quote will be deemed to be for the items specified in the RFQ.
 - (c) specifies Manufacturers' names, brands, models and/or part numbers and indicates that no other Manufacturers' names, brands, models and/or part numbers will be accepted, the vendor must quote the Manufacturers' names, brands, models and/or part numbers specified in the RFQ, or the Quote will be rejected.
- 7.5 The vendor must, upon request, provide the Manufacturer's published specification sheets and/or technical information ("Literature") for the Goods to enable the Corporate Purchasing Section to evaluate compliance with the RFQ requirements. If any specifications in the RFQ are not identified in the Literature, the vendor must, upon request, provide written confirmation from the Manufacturer or Canadian Distributor validating that the Goods meet those specifications.

- 7.6 Goods that, as of the RFQ closing date, have:
- (a) not commenced production or are not commercially available, will be rejected by the Corporate Purchasing Section;
 - (b) been or are scheduled to be discontinued or replaced with new models or versions, may be rejected by the Corporate Purchasing Section.
- 7.7 Where applicable, the Goods must bear evidence of certification to Canadian standards by an organization accredited by the Standards Council of Canada. This certification must, where applicable, be for the complete assembly of the Goods.
- 7.8 Deviations from the RFQ requirements may result in rejection of the Quote. The vendor should state each deviation, and the Corporate Purchasing Section will determine the acceptability of any minor deviations.

8.0 PROVISION OF GOODS FOR EVALUATION

- 8.1 Prior to Contract award the vendor must, upon request, supply the Goods for Evaluation at no additional cost to Her Majesty:
- (a) within five Business Days of a request to do so.
 - (b) for a minimum of 10 Business Days.
- 8.2 If requested, the vendor must set up and install the Goods for Evaluation testing at the Purchaser's site.
- 8.3 The vendor must pay all costs to supply the Goods for Evaluation at the location indicated in the RFQ and be responsible for the Goods, in the event of loss or damage, while at the Purchaser's site during Evaluation. All costs referred to in this clause must include, but are not limited to, packaging, handling, shipping, unloading, duty, customs, brokerage fees and insurance charges.
- 8.4 If the Goods supplied for Evaluation are not in an Operable State, the vendor must, at the vendor's expense, make the necessary adjustments, repairs or replacements within a reasonable period of time. Failure to provide the Goods for Evaluation, or failure of the Goods to be in an Operable State during Evaluation, will result in rejection of the Quote.
- 8.5 The vendor must remove the Goods, at its expense and risk, within 10 Business Days after receiving notification from the Purchaser or the Corporate Purchasing Section unless, during Evaluation, the Goods are either consumed or tested to destruction.
- 8.6 Results obtained during Evaluation are the property of Her Majesty.

9.0 EVALUATION AND CONTRACT AWARD

- 9.1 Quotes will be evaluated and awarded by line item, based on the lowest cost and compliance with all requirements of the RFQ, with equal weight being allocated to each requirement. In the event of tie Quotes, the Corporate Purchasing Section will determine the successful vendor by considering criteria, including but not limited to the following:
- (a) previous performance.
 - (b) earliest delivery date quoted, if advantageous to the Purchaser.
 - (c) Goods quoted that exceed the RFQ requirements.
 - (d) value-added services quoted, over and above the RFQ requirements.
- 9.2 Where the RFQ specifies commercial off-the-shelf software and where the Manufacturer's license agreement is required to form part of the Contract, the vendor must either include the license agreement with its Quote or provide it upon request. The Corporate Purchasing Section reserves the right, at its sole discretion, to negotiate with the Manufacturer to modify any provision of the license agreement, provided that the Quote is compliant with the administration, performance, delivery and contractual requirements of the RFQ. If negotiations do not result in modification of the license agreement acceptable to the Corporate Purchasing Section, the Quote will be rejected.
- 9.3 The Corporate Purchasing Section may, at its sole discretion:
- (a) obtain clarification on any aspect of a Quote, without being obligated to seek clarification on all other Quotes.
 - (b) eliminate, substitute or accept any line item or detail in a Quote.
 - (c) accept or waive a minor and inconsequential irregularity, or where practical to do so, may request a vendor to correct a minor and inconsequential irregularity with no change in the price quoted.
 - (d) reject in whole or part, the lowest cost or any or all Quotes.
- 9.4 The vendor must be available during Business Days to:
- (a) respond to the Corporate Purchasing Section and/or the Purchaser during Evaluation; and
 - (b) sign the Contract, if applicable.
- 9.5 The vendor must, upon request, provide the Corporate Purchasing Section and/or the Purchaser with vendor references, including name of organization, contact name and telephone number, who can verify the vendor's satisfactory provision, performance and/or servicing of goods the same as or similar to those in the Quote, including similar quantities. The Corporate Purchasing Section and the Purchaser may contact vendor references, in addition to those provided by the vendor. If a vendor receives, in the opinion of the Corporate Purchasing Section, unsatisfactory references, including past unsatisfactory performance with Her Majesty, its Quote will be rejected.

- 9.6 The Quote will form part of the Contract. Claims made in the Quote will constitute contractual warranties.
- 9.7 The Contract will be interpreted and applied in the courts, and in accordance with the laws in force, in Alberta.
- 9.8 The vendor must not assign, subcontract or otherwise dispose of any of its rights, obligations or interests, other than identified in the Contract, without the Purchaser's written consent which will not be unreasonably withheld. If the Purchaser consents to subcontracting, the vendor will remain responsible for the Contract obligations and liabilities. The vendor may assign its rights to payment to any third party.
- 9.9 The Contract to be entered into will be finalized with the vendor by Her Majesty and will contain all the terms and conditions specified in the RFQ.

If, in the opinion of Her Majesty, it appears that a Contract will not be finalized with the preferred vendor within 30 days, the Corporate Purchasing Section may contract with other vendors submitting compliant Quotes.

10.0 DELIVERY

- 10.1 If complete delivery of the Goods is not made within the time period indicated in the Contract, the Purchaser may cancel the Contract.
- 10.2 The Goods must be:
- (a) supplied as received from the Manufacturer and, where applicable, in the Manufacturer's original packaging, and a packing slip must accompany each shipment.
 - (b) as supplied for Evaluation.
- 10.3 The vendor shall be responsible for all costs incurred for replacement of Goods damaged prior to delivery to the Purchaser.
- 10.4 The vendor must not ship the Goods by collect shipments, for payment upon receipt by the Purchaser, or at the Purchaser's risk.

11.0 ACCEPTANCE TESTING

- 11.1 Upon Contract award and after receipt of the Goods, the Purchaser may perform a visual inspection and/or test the Goods supplied to determine if they are in accordance with Acceptance. This will be completed within 10 Business Days of receipt of the Goods and, if applicable, installation of all components of the Goods. The Goods will be deemed accepted after 10 Business Days, unless the Purchaser notifies the vendor that the Goods are not in accordance with Acceptance.

- 11.2 If the Purchaser determines that the Goods supplied are:
- (a) in accordance with Clause 10.2 and Acceptance, the Goods will be accepted.
 - (b) not in accordance with Clause 10.2 or Acceptance, the vendor must, at the vendor's expense, make the necessary adjustments, repairs or replacements within a reasonable period of time. This obligation will not apply to Goods that have been modified or repaired, after receipt by the Purchaser, by anyone not authorized by the vendor, Manufacturer or Canadian Distributor.
- 11.3 If any Goods supplied are rejected by the Purchaser, the vendor must:
- (a) remove the Goods, at its expense and risk, within 10 Business Days after notification from the Purchaser that the Goods have been rejected.
 - (b) immediately, at the Purchaser's option, either replace the Goods or, if applicable, issue a credit or refund to the Purchaser all monies paid.

12.0 PAYMENT

- 12.1 The Purchaser will, upon receiving an invoice, pay the vendor the contracted price for the Goods within 30 days after Acceptance of the Goods.
- 12.2 The Purchaser may deduct from all payments to the vendor such amounts as required by the Canadian Income Tax Act, as amended or substituted from time to time.
- 12.3 The Purchaser may, upon the vendor's agreement, use the Government of Alberta's procurement card (Bank of Montreal MasterCard) to pay for Goods ordered from Supply Arrangements.

13.0 WARRANTY

- 13.1 Manufacturer or Canadian Distributor authorized Warranty Service must be provided during the Warranty Period. Where Warranty Service is to be provided by the:
- (a) vendor or a third party, these parties must, prior to the RFQ closing date and time, be authorized by the Manufacturer or Canadian Distributor to perform the Warranty Service. The vendor must, upon request, provide written confirmation from the Manufacturer or Canadian Distributor confirming the vendor or the third party is authorized to service the Goods on its behalf in accordance with the RFQ requirements.
 - (b) Manufacturer or an authorized third party, the vendor must, upon request, provide written confirmation from the Manufacturer or the authorized third party confirming the service arrangements, as specified in the RFQ, will be provided on behalf of the vendor.
- 13.2 Where the standard warranty for the Goods offered by the Manufacturer, Canadian Distributor or Authorized Reseller exceeds the Warranty Period and/or

Warranty Service indicated in the RFQ, the vendor's Quote should state the standard warranty. Such warranty must be provided at no additional cost.

- 13.3 During the Warranty Period, and during Business Days, the vendor must:
- (a) be available at a service depot in North America for telephone contact and to receive the Goods for servicing.
 - (b) provide telephone support to the Purchaser to assist with basic installation, setup and operation of the Goods. The cost of this telephone support must be included in the net unit price quoted.
- 13.4 All Goods repaired during the Warranty Period must be returned to the Purchaser in an Operable State and with Equivalent components.
- 13.5 If any defect in the Goods is not rectified by the vendor before the end of the Warranty Period, the Warranty Period must be extended until the defect has been corrected and the Goods function in accordance with the Contract, and for a reasonable period of time.
- 13.6 Despite anything in the RFQ, if a defect is not corrected during the Warranty Period within the time period indicated in the Contract, the Purchaser may reject the Goods in accordance with Clause 11.3.
- 13.7 The vendor will not be required to provide Warranty Service in circumstances where the Purchaser:
- (a) misuses or modifies the Goods.
 - (b) uses the Goods in an unsuitable physical or operating environment.
 - (c) causes accidental damage to the Goods.
- 13.8 The vendor must immediately provide full exchange, credit or refund, at the Purchaser's option, for defective software returned to the vendor within 30 days after receipt. Defective software includes, but is not limited to:
- (a) software that is defective in manufacture.
 - (b) software that is not the most current version.
 - (c) defective media.

14.0 CONFIDENTIALITY AND FREEDOM OF INFORMATION

- 14.1 The vendor and the vendor's employees, subcontractors and agents must, subject to any Confidentiality Legislation requirement:
- (a) not use, copy or disclose, except as necessary for the performance of the Goods or upon written authorization of the Purchaser, any Purchaser Confidential Information.
 - (b) adhere to security standards for Purchaser Confidential Information, including control of access to data and other information, using the same care and discretion a reasonably prudent vendor of such information would provide.

- 14.2 Prior to allowing any third party, other than the vendor's subcontractors or agents, access to electronic hardware, including loaner or replacement electronic hardware, used by the Purchaser, the Purchaser's employees, subcontractors or agents, the vendor must:
- (a) determine whether the electronic hardware contains any information or software because of such use.
 - (b) contact and follow the instructions of the Purchaser, if such information or software is present.
- 14.3 Confidential Information must be kept confidential the longer of six years, the Confidentiality Legislation requirement, if any, to keep Confidential Information confidential, or so long as the party retains Confidential Information of the other party.
- 14.4 The vendor shall return to the Purchaser or, with the Purchaser's prior written consent, destroy any Purchaser Confidential Information within 30 days of the Contract being completed or terminated. Further, if such information is in electronic format in electronic hardware of the vendor or of its employees, subcontractors or agents, that information shall be dealt with in accordance with the Contract.
- 14.5 The vendor may disclose Purchaser Confidential Information to:
- (a) employees of the vendor and any corporation, company or other entity that the vendor controls or controls the vendor and who have a need to know.
 - (b) the vendor's subcontractors and agents who have a need to know, provided that the vendor has a similar confidentiality agreement with them as required of the parties by this Section 14.0.
 - (c) anyone else with the Purchaser's prior written consent.
- 14.6 The Purchaser and the Purchaser's employees, subcontractors and agents must, subject to any Confidentiality Legislation requirement:
- (a) not use, copy or disclose, except as necessary for the performance of the Goods or upon written authorization of the vendor, any Vendor Confidential Information.
 - (b) maintain security standards for Vendor Confidential Information, including control of access to data and other information, using the same care and discretion it follows for its own Confidential Information, as of the date of execution of the Contract.
- 14.7 Subject to any Confidentiality Legislation requirement, the Purchaser may disclose Vendor Confidential Information to:
- (a) employees of the Purchaser who have a need to know.
 - (b) the Purchaser's subcontractors and agents who have a need to know, provided that the Purchaser has a similar confidentiality agreement with them as required of the parties by this Section 14.0.

- (c) anyone else with the vendor's, the vendor's subcontractor's or agent's prior written consent for their own Confidential Information.
- 14.8 A party has no obligation with respect to Confidential Information of the other party:
 - (a) that the first mentioned party already possesses without obligation of confidentiality; develops independently; or rightfully receives without obligation of confidentiality from another.
 - (b) that is or becomes publicly available without breach of this Section 14.0.
- 14.9 A party has no obligation under this Section 14.0 with respect to any ideas, concepts, know-how or techniques contained in the Confidential Information of the other party that are related to the first mentioned party's business activities ("Knowledge"). This does not, however, give such party the right to disclose, unless described elsewhere in the Contract:
 - (a) the source of the Knowledge.
 - (b) any financial, statistical or personal data.
 - (c) the other party's business plans.
- 14.10 Each party may disclose Confidential Information of the other party to their legal counsel who has an obligation to keep such information confidential.
- 14.11 The disclosure of a party's Confidential Information does not grant to the other party any license under any patents or copyrights.
- 14.12 No press release or other public announcement relating to the Contract shall be issued without the prior written consent of each party to the specific content and form of such press release or announcement, except for timely disclosure required to be made by any lawful government authority or regulatory body, by any stock exchange or operation of law, including but not limited to any Confidentiality Legislation, and except for public disclosure made by any Minister of Her Majesty, mindfully taking into consideration the sensitivity of specific confidentiality in the Contract. Each party shall use reasonable efforts to disclose such release or announcement proposed by it to the other party as soon as reasonably possible and the other party will use reasonable efforts to approve or otherwise comment on such release or announcement without delay.
- 14.13 In the event of a breach of any of the requirements of Section 14.0, the vendor must immediately notify the Purchaser of such breach and take immediate steps to mitigate the breach.
- 14.14 The vendor consents, and has obtained written consent from any individuals identified in the Quote, to the use of the information in the Quote by Her Majesty, Her Majesty's employees, subcontractors and agents, to enable Her Majesty to evaluate the Quote and use this information for other program purposes of Her Majesty.

14.15 The purpose of collecting information for the RFQ is to enable Her Majesty to ensure the accuracy and reliability of the information, as well as to evaluate the Quote and the vendor, and for other related program purposes of Her Majesty. Authority for this collection is the Government Organization Act of Alberta, Schedule 11, as amended or substituted from time to time. The vendor may contact the buyer identified in the RFQ regarding any questions about collection of information pursuant to the RFQ.

15.0 SAFETY AND SECURITY

Subject to the Purchaser's reasonable security requirements, the Purchaser will provide the vendor with access to its facilities and systems, as necessary to enable the vendor to fulfill its Contract obligations. The vendor, vendor's employees, subcontractors and agents, when using any Alberta government buildings, premises, equipment, electronic hardware and software must comply with all safety and security policies, regulations and directives relating to those buildings, premises, equipment, electronic hardware and software.

16.0 TITLE AND INTELLECTUAL PROPERTY

16.1 The vendor warrants it has the right to offer the Goods.

16.2 If Clause 16.1 is breached or if a third party claims that any Goods delivered to the Purchaser by the vendor, the vendor's subcontractors or agents under the RFQ, infringe any copyright, patent, trade secret, industrial design, trade mark or any other proprietary right enforceable in Canada, the vendor must at the vendor's expense, defend the Purchaser against that claim. In this regard, the vendor must pay all costs, damages and legal fees that a court finally awards or are agreed to in a settlement agreed to by the vendor, provided that the Purchaser:

- (a) promptly notifies the vendor in writing of the claim.
- (b) cooperates with the vendor in, and allows the vendor to control with the Purchaser's participation, the defense and any related settlement negotiations.

16.3 If such a claim is made or appears likely to be made under Clause 16.2, the Purchaser agrees to permit the vendor to enable the Purchaser, at the vendor's cost and with the Purchaser's agreement, to continue to use the Goods or to provide the Purchaser with a non-infringing replacement or modification which meets the specifications and functionality required for the Goods in the Contract. If the vendor determines that none of these alternatives are reasonably available, the Purchaser will return the Goods to the vendor on the vendor's written request and the vendor must pay the Purchaser, upon the Purchaser's return of the Goods, the amount paid to the vendor for the Goods.

16.4 The vendor has no obligation regarding any claim based on any of the following:

- (a) the Purchaser's modification of the Goods.
- (b) the combination, operation or use of the Goods with any product, data or apparatus that the vendor did not provide, unless the vendor has specifically approved of the other products, data or apparatus for such combination, operation or use.
- (c) infringement by anything provided first by the Purchaser for use in creating the Goods.

16.5 Title to each Good, with the exception of Goods being rented or leased, commercial off-the-shelf software (including any customizations) and licensed internal code and machine code for computers, will pass to the Purchaser upon completion of delivery and Acceptance at the location indicated in the Contract.

16.6 Risk of loss for each Good will pass to the Purchaser upon completion of delivery and Acceptance at the location indicated in the Contract.

17.0 INDEMNITY AND HOLD HARMLESS

17.1 Each party shall indemnify and hold harmless the other, its employees and agents against and from any and all third party claims, demands, actions, or costs (including legal costs on a solicitor-client basis) to the extent arising from:

- i) that party's breach of this Contract, or
- ii) the negligence, other tortious act or wilful misconduct of that party, or those for whom it is legally responsible, in relation to the performance of its obligations under this Contract.

17.2 The vendor shall indemnify and hold harmless Her Majesty against and from any loss or damage to the real or personal property of the Her Majesty to the extent arising from the vendor breach of this Contract or from the negligence, other tortious act or wilful misconduct of the vendor, or those for whom it is legally responsible.

18.0 LOBBYISTS ACT

The vendor acknowledges that:

- (a) the Lobbyists Act establishes certain obligations and prohibitions with respect to lobbying and contracts for paid advice, as those terms are defined in the Lobbyists Act; and
- (b) it is responsible for complying with the Lobbyists Act during the RFQ process, and if the successful vendor, during the Contract.

19.0 WAIVER

Vendors shall not have any claim for compensation of any kind as a result of participating in this RFQ's process and, by submitting a Quote, each vendor shall be deemed to have waived its right to make a claim.

20.0 INSURANCE

The vendor must:

- (a) at its own expense and without limiting its liabilities in the Contract, insure its operations under a Contract of General Liability Insurance, in accordance with the Alberta Insurance Act, in an amount not less than \$2,000,000 inclusive per occurrence insuring against bodily injury, personal injury and property damage, including loss of use thereof.
- (b) at its own expense, maintain automobile liability insurance on all vehicles owned, operated or licensed in the name of the vendor and used in the performance of the Services in an amount not less than \$2,000,000.
- (c) provide the Purchaser with acceptable evidence of insurance, in the form of a detailed certificate of insurance prior to commencing the Services and at any time requested by the Purchaser.
- (d) comply with the Workers' Compensation Act of Alberta, when the Act applies, and must, upon demand by the Purchaser, deliver to the Purchaser a certificate from the Workers' Compensation Board ("Board") showing that the vendor is registered and in good standing with the Board.

21.0 TERMINATION

The Corporate Purchasing Section may immediately terminate all or any part of the Contract, without cause, upon written notice to the vendor. The Purchaser will only pay the vendor for the Goods delivered and services completed in accordance with the Contract, up to the effective date of the termination of the Contract.

22.0 SURVIVAL OF TERMS

- 22.1 Section 14.0, Confidentiality and Freedom of Information, will continue after the RFQ closing date.
- 22.2 Despite any other provision of the Contract, those clauses which by their nature continue after the conclusion or termination of the Contract will continue after such conclusion or termination, including:
 - (a) Section 13.0 - Warranty
 - (b) Section 14.0 - Confidentiality and Freedom of Information
 - (c) Section 16.0 - Title and Intellectual Property
 - (d) Section 17.0 – Indemnity and Hold Harmless
 - (e) Section 19.0 - Waiver

23.0 ORDER OF PRECEDENCE

The RFQ and the Quote will form part of the Contract. In the case of conflicts, discrepancies, errors or omissions among the RFQ, the Quote, and the main body of the Contract, the documents and amendments to them will take precedence and govern in the following order:

- (a) main body of the Contract
- (b) RFQ
- (c) Quote.