



CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

THIS AGREEMENT dated this _____ day of _____, 2016 (the "Agreement") between Canada Mortgage and Housing Corporation ("CMHC"), a corporation established pursuant to an act of the Parliament of Canada, and _____ (the "Proponent");

WHEREAS the Proponent wishes to receive from CMHC and CMHC wishes to provide to the Proponent a copy of CMHC RFP # 201600476 for Residential Real Property Services in British Columbia (the "RFP") in order that the Proponent may consider preparing or prepare a submission in response to such RFP (the "Purpose");

AND WHEREAS in connection with the Purpose the Proponent shall have access to and shall receive certain confidential and proprietary information regarding CMHC;

AND WHEREAS if the Proponent prepares a submission in response to the RFP, such submission shall constitute CMHC's confidential and proprietary information;

AND WHEREAS CMHC requires that the Proponent agrees to the terms and conditions set out in this Agreement as a condition to the Proponent being provided with the RFP;

NOW THEREFORE, in consideration of the sum of \$2.00 paid by each party to the other, the conveyance of the Confidential Information in contemplation of the Purpose, the undertakings and agreements contained herein, and for other good and valuable consideration (the receipt and sufficiency thereof being hereby acknowledged), CMHC and the Proponent hereby agree as follows:

ARTICLE 1: CONFIDENTIAL INFORMATION

1.1 "Confidential Information" means without limitation, all non-public information of CMHC, including but not limited to the following types of information or material, both existing and contemplated: the content of the RFP and of any submissions made in response to the RFP, the data test sample and the test report, the discussions between CMHC and the Proponent and this Agreement, any written information, functional, technical and business information including, without limitation, the sample test report, financial data, product/service specifications and designs, computer programs, process charts, data models, photographs, drawings, graphics, trade secrets, trademarks, corporate information, including contractual licensing arrangements, plans, strategies, tactics, policies, resolutions, patent, trade-mark and trade name applications, inventions, techniques, customer data and information, product development plans and marketing plans.

1.2 Notwithstanding the foregoing, Confidential Information does not include information that the Proponent can establish was made available to the Proponent on a non-confidential basis from a source other than CMHC provided that such source is not known by the Proponent, after due investigation, to be bound by a confidentiality agreement with, or other obligation of secrecy to CMHC and has the right to make such disclosure.

ARTICLE 2: RESTRICTIONS ON USE OR DISCLOSURE OF CONFIDENTIAL INFORMATION

2.1 **Non-Disclosure.** The Proponent covenants that it shall retain in confidence all Confidential Information. The Proponent shall not, without the prior written consent of CMHC (such consent to be at the sole discretion of CMHC), use, disclose or collect Confidential Information other than as authorized herein. However, the Proponent may disclose the Confidential Information in accordance with judicial or other governmental order, provided that Proponent provides CMHC with sufficient advance written notice of such disclosure to permit CMHC to seek a protective order or other protective remedy and Proponent shall comply with any such order or equivalent. In the event that such protective order or equivalent is not obtained, the Proponent shall use its best efforts to ensure that confidential treatment will be accorded to such Confidential Information.

The Proponent shall hold the Confidential Information in the strictest of confidence and shall use such high level of precautions necessary to prevent unauthorized use, access and disclosure of Confidential Information, including but not limited to, ensuring that Confidential Information is disclosed only to those of its officers and employees who: (a) have a need in connection with the Purpose to know the same; (b) who have been advised of the confidentiality obligations set out in this Agreement; and (c) who have agreed to be bound by such confidential obligations in writing. The Proponent shall advise its officers and employees upon disclosure to them of any Confidential Information of the proprietary nature thereof and shall use such high level of precautions necessary to prevent unauthorized use, access and disclosure. The Proponent shall notify CMHC immediately upon discovery of an unauthorized use or disclosure of the Confidential Information.

2.2 **Proprietary Rights.** CMHC retains all right, title and interest in and to Confidential Information, including ownership of all copyrights, trade-secrets and other intellectual property rights in the Confidential Information. No present or future intellectual property rights or licenses are offered, granted or implied in the disclosure of any Confidential Information to the Proponent, nor any right to use or disclose the information other than as set out in this Agreement. Without limiting the generality of the foregoing, no present or future intellectual property rights or licenses are offered, granted or implied in any reports, written advice, or any other materials (paper or electronic) created as a result of, or during, the services provided by the Proponent.

2.3 **Return of Documents.** The Proponent agrees that all originals, copies, records, notes and summaries (paper or electronic) of any nature pertaining to the Purpose provided by CMHC, including the Confidential Information, and all copies thereof, shall be surrendered or, at CMHC's option, certified destroyed, to CMHC immediately upon request. The Proponent agrees to notify CMHC immediately upon discovery of an unauthorized use or disclosure of the Confidential Information.

2.4 **Copies of Confidential Information - No Reverse Engineering.** The Proponent shall not record, make notes of, copy or reproduce any of the Confidential Information except directly in relation to the Purpose, nor shall the Proponent reverse engineer, decompile or disassemble any software that is Confidential Information.

ARTICLE 3: REMEDIES

3.1 The Proponent agrees that a breach by it of any term or condition of this Agreement would result in serious and irreparable harm to CMHC which could not be completely compensated by monetary damages. The Proponent expressly agrees that CMHC shall be entitled to secure an appropriate legal remedy, including injunction or declaratory judgment, in the event of a breach or threatened breach of any term of this Agreement to enable CMHC to protect its rights hereunder.

3.2 All rights and remedies conferred under this Agreement or by any other instrument or law shall be cumulative, and may be exercised singularly or concurrently. Failure by CMHC to enforce any provision of this Agreement shall not be deemed a waiver of future enforcement of that or any other provision.

3.3 Proponent agrees to defend, indemnify and hold CMHC harmless from and against all claims, liability and expenses, including reasonable legal fees and costs, arising out of any claims, suits and proceedings with respect to any breach by the Proponent or its affiliates, or their respective officers, employees, consultants, suppliers or agents, of this Agreement.

ARTICLE 4: GENERAL

4.1 **Notices.** All notices required under this Agreement shall be in writing and shall be deemed to have been given on the next day by fax or other electronic means or upon personal delivery, or in ten (10) days upon delivery in the mail, first class, with postage prepaid. Notices shall be sent to the address indicated in Section 2.4 of the RFP for CMHC, and in the Request for a Test Submission for the Proponent.

4.2 **No Warranties Relating to Confidential Information.** The Proponent acknowledges that CMHC makes no representations or warranties as to the accuracy or completeness of the Confidential Information or the suitability of the Confidential Information for any purpose. CMHC shall have no liability to Proponent or any third party resulting from the use or disclosure of the Confidential Information by Proponent.

4.3 **Corporate Identification.** The Proponent agrees that it will not at any time use the name, trademark or logo of CMHC for any reason without the prior written consent of CMHC.

4.4 **Amendment.** Except as otherwise provided herein, this Agreement shall not be amended or modified, nor shall any waiver of any right hereunder be effective, unless set forth in a document executed by both parties.

4.5 **Access to Information Legislation.** The Proponent expressly acknowledges that as a federal crown corporation, CMHC is subject to access to information legislation. Nothing herein is intended to restrict the application of access to information legislation.

4.6 **Entire Agreement.** This Agreement constitutes the entire agreement with respect to the subject matter hereof and supersedes any other agreement or discussion, oral or written. This Agreement shall inure to the benefit of and be binding upon the parties and their respective permitted successors and assigns.

4.7 **Severability.** If any part of this Agreement shall be held to be illegal, invalid or unenforceable by a court of competent jurisdiction, the remaining terms shall remain in full force and effect.

4.8 **Governing Law.** This Agreement shall be construed, governed and interpreted by the laws of Canada, excluding any conflict of laws rules.

4.9 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. Counterparts may be executed either in original or faxed form and the parties adopt any signatures received by a receiving fax machine as original signatures of the parties.

4.10 **Continuing Obligations.** The Confidential Information provided to the Proponent shall retain its confidential nature and the requirements of use and confidentiality shall survive the RFP process (regardless of whether the Proponent provides a submission and if it does so, regardless of whether the Proponent is selected), termination of this Agreement and the return of any Confidential Information.

4.11 **Assignment.** This Agreement may not be assigned or transferred in whole or in part by the Proponent without CMHC's prior written consent.

IN WITNESS WHEREOF this Agreement has been executed on the date first written above by the parties hereto under the hands of their duly authorized signing officers.

[THE PROPONENT]

CANADA MORTGAGE AND HOUSING CORPORATION

Signature: _____
Name:
Title:

Signature: _____
Name:
Title:

Signature: _____
Name:
Title:

Signature: _____
Name:
Title:

I/we have authority to bind the corporation.

I/we have authority to bind the corporation.