

The term “Contractor” refers to the successful proponent with whom CMHC enters into an agreement.



CMHC FILE No. [NUMBER]

THIS AGREEMENT (“Agreement”) is executed

BETWEEN:

**CANADA MORTGAGE AND HOUSING CORPORATION**

700 Montreal Road, Ottawa, Ontario K1A 0P7

(Hereinafter called "CMHC")

- and -

**FULL LEGAL NAME OF CONTRACTOR**

[ADDRESS]

(Hereinafter called the "Contractor")

(Each individually a “Party” and collectively the “Parties”)

**RECITALS**

WHEREAS the Contractor is in the business of marketing and offering (*description of the services*) the “Services”, CMHC wishes to procure the Services from the Contractor pursuant to the Contractor’s selection following procurement process number RFx (*include number*), and the Contractor is willing to perform such Services under the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set out herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**ARTICLE 1. DEFINITIONS**

**Section 1.01 Definitions**

**Applicable Law** means all applicable provisions of constitutions, laws, statutes, ordinances, rules, treaties, regulations, permits, licenses, approvals, interpretations and orders of courts or governmental authorities in Canada and all orders and decrees of all courts and arbitrators.

**Change in Control** means where such control is acquired, directly or indirectly, in a single transaction or series of related transactions, or all or substantially all of the assets of the Contractor are acquired by any entity, or the Contractor is merged with or into another entity to form a new entity.

**Claim(s)** means all demands, actions, suits or other proceedings of any nature and kind.

**CMHC Information** means any and all information or data of a confidential nature in any format that is made available, directly or indirectly, to the Contractor, or which the Contractor or Contractor Personnel acquire in the course of its performance of the Service. CMHC Information also includes but is not limited to all personal information that is in the care or control of CMHC, or is managed, accessed, collected, used, disclosed, retained, received, created, or disposed of in relation to the provision of the Services, whether or not it is marked as confidential.

**CMHC Property** means as defined in Section 8.12.

**Conflict of Interest** means any matter, circumstance, interest, or activity affecting the Contractor or Contractor Personnel, which may impair or appear to impair, the ability of the Contractor or Contractor Personnel to perform the work diligently and independently.

**Contractor Personnel** means the Contractor's and its subcontractor's principals, directors, suppliers, employees, agents and/or subcontractors, or any person engaged by the Contractor to perform the Services.

**Deliverables** means deliverables as defined under SCHEDULE A.

**Derivative Works** means any work developed by CMHC or on CMHC's behalf based on the Works.

**Intellectual Property (or "IP")** means copyright works, trademarks, industrial designs, design rights, inventions (whether patentable or not), unpublished patent applications, inventive ideas, discoveries, innovations, developments, or improvements thereto, or any other work relating to any of the foregoing, whether registered or non-registered, whether or not reduced to written form or practice.

**Losses** means any and all losses, damages, liabilities, deficiencies, Claims, demands, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, fees and the cost of enforcing any right to indemnification hereunder, and the cost of pursuing any insurance providers.

**Permitted Subcontractor** means any subcontractor or affiliate of the Contractor which has been approved by CMHC at its sole discretion in writing to provide any service to CMHC on the Contractor's behalf under this agreement.

**Personal Information** means information about an identifiable individual or other information that is subject to Canadian privacy Laws.

**Pre-existing IP** means, for each Party, intellectual property that is owned, or licensed or sublicensed by such Party, prior to or independent of this Agreement.

**Third-Party Claim** means any Claim made or brought by any person who is not a party to this Agreement.

**Term** means the Initial Term and any Extension Term collectively.

**Works** means all Intellectual Property and all documents, work product and other materials that are delivered to CMHC under this Agreement or prepared by or on behalf of the Contractor in the course of performing the Services.

## **ARTICLE 2. SERVICES**

### **Section 2.01 Description of Services**

The Contractor covenants and agrees to provide [*Description of the Services*] described in SCHEDULE A.

## **ARTICLE 3. REPRESENTATIONS AND WARRANTIES**

### **Section 3.01 Contractor's Representations and Warranties**

The Contractor represents and warrants that at all times during the term of the Agreement:

- (a) It is validly incorporated (or formed), it continues to be in valid existence and, if applicable, good standing in the jurisdiction of its incorporation or formation in.
- (b) It maintains all necessary registrations, licenses and consents and complies with all relevant laws applicable to the provision of the Services.

- (c) It complies with the rules, regulations, and policies of CMHC, including security procedures, or such other policies as CMHC may provide, as amended from time to time.
- (d) It shall provide the Services in a timely, workmanlike and professional manner, to the satisfaction of the CMHC, and in accordance with industry standards applicable to the Contractor's field including the latest editions of the following:

Enter name and version number of standards  
Enter name and version number of standards  
Enter name and version number of standards

The warranties set forth in this Section are cumulative and in addition to any other warranty provided by law or equity.

**ARTICLE 4. TERM AND TERMINATION**

**Section 4.01 Term**

The term of the Agreement shall be for a period of Five (5) years commencing on (*enter date*), the "Effective Date" and ending on (*enter date*) the "Initial Term".

**Section 4.02 Renewal**

This Agreement may be extended in writing, for an additional Two (2) Two (2) year renewal terms, each a Renewal Term, not to exceed a cumulative total of Nine (9) years including the Initial Term. The Initial Term and any Renewal Term herewith, shall be collectively referred to as the "Term".

**Section 4.03 Termination**

**Section 4.04 No fault termination**

Notwithstanding Section 4.01 and Section 4.02 above, CMHC may terminate the Agreement for any reason, without penalty, charge, or liability, by giving thirty (30) days written notice at any time during the Term.

**Section 4.05 Termination for Cause with Notice**

CMHC may immediately terminate this Agreement without penalty charge or liability by giving five (5) calendar days' written notice to the Contractor, for any of the following reasons:

- (a) The Contractor commits a material breach of its duties under this Agreement, numerous breaches of its duties under this Agreement that collectively constitute a material breach, unless the Contractor cures such breach to the satisfaction of CMHC in CMHC's sole and absolute discretion and indemnifies CMHC for any resulting damage or loss within five (5) calendar days of receipt of written notice of breach.
- (b) There is a Change in Control, unless the Contractor demonstrates to the satisfaction of CMHC, that such event will not adversely affect its ability to perform the Services under this Agreement; or
- (c) The Contractor becomes bankrupt or insolvent, or a receiving order is made against the Contractor, or any assignment is made for the benefit of the creditors, or if an order is made or a resolution passed for the winding up of the Contractor.

**Section 4.06 Termination for Cause without Notice**

CMHC may immediately terminate this Agreement without penalty or charge without notice to the Contractor, for any of the following reasons:

- (a) CMHC has reason to believe that the Contractor has committed gross misconduct, fraud or other unlawful acts, a breach of its Representations and Warrantees under Article 3, or terms related

to Conflict of Interest under Article 6, Confidentiality and Privacy under Article 7, Information Assets and Intellectual Property under Article 8, under this Agreement.

(b) CMHC does not have sufficient appropriations from Parliament to fulfill its payment obligations.

**Section 4.07 CMHC’s Obligations upon Termination**

In the event that a notice of termination is given, and subject to the deduction of any Claim which CMHC may have against the Contractor arising out of the Agreement or its termination, CMHC will make payment for the value of all Services performed to the date of the notice, as determined in accordance with the rate(s) specified in the Agreement. CMHC shall make payment within thirty (30) calendar days as of the later of (i) the date of the notice; or (ii) receipt of an invoice submitted by the Contractor. Upon such payment, it shall have no further obligation or liability of any kind to the Contractor. Notwithstanding the above, in the case of lack of appropriations described in Section 4.03Section 4.06(b), CMHC shall have no liability for breach of its payment obligations.

**Section 4.08 Contractor’s Obligations upon Termination**

Upon termination of this Agreement or upon delivery of notice of intent to terminate this Agreement, the Contractor shall promptly, and at latest five (5) business days following termination of this Agreement, review all work in progress and report the status of all work in progress to CMHC. The Contractor shall upon CMHC’s written request, complete or arrange for the completion of any and all work in process at the time of termination.

**Section 4.09 Termination Assistance**

Commencing six (6) months prior to expiration of the Term or on such earlier date as CMHC may request, the Contractor shall provide CMHC with reasonable termination assistance to allow the Services to continue without interruption or adverse effect and to facilitate the orderly transfer of the Services to CMHC or its designee. Assistance to transition from the Services beyond the reasonable scope shall be charged Choose an item. Any amount payable under this section will not cause CMHC to exceed the Total Financial Liability amount set out in Section 5.01 unless otherwise agreed by CMHC in writing.

**ARTICLE 5. PRICE AND PAYMENT**

**Section 5.01 Pricing**

In consideration of the performance of the Services, CMHC agrees to pay the Contractor an amount based on the Contractor's rates attached as SCHEDULE B – Pricing and Basis of Payment - of this Agreement. CMHC’s total financial obligations for the Services provided under the terms and conditions of this Agreement shall not exceed (*insert amount*) dollars CAD inclusive of taxes, assessment, duties, levies, and expenses for Services provided during the Initial Term of the Agreement, the “Total Financial Liability”. No other taxes, assessments, duties, or other levies shall be payable to the Contractor unless specifically agreed in writing by the Contractor and CMHC.

**Section 5.02 Most Favoured Nation Clause**

If the Contractor charges any buyer a lower price for similar Services under similar quantity and delivery conditions, the Contractor shall immediately apply the lower price to the Services under this Agreement. If the Contractor fails to meet the lower price, CMHC may, at its option, terminate this Agreement without liability pursuant to this Agreement’s termination provisions.

**Section 5.03 Invoicing**

(a) The Contractor shall submit detailed invoices to CMHC for every phase and/or milestone completed during the Term, describing the Services provided during the period covered by the invoice and in accordance with the Purchase Order (PO).

- (b) Notwithstanding article Section 5.01 above, GST/HST or Provincial sales taxes, as applicable, shall be collected by the Contractor on all consideration payable under this agreement including fees, disbursements and any other charges and shown as a separate item on each invoice, showing the Contractor's GST/HST/QST or other provincial tax numbers, as applicable. The Contractor shall duly remit to the Canada Revenue Agency or the appropriate provincial taxing authorities all taxes payable on the Services.
- (c) CMHC will issue a Purchase Order (PO) for every purchase under this Agreement. All invoices must refer to the PO number and this Agreement and shall be sent electronically to [accountspayable@cmhc-schl.gc.ca](mailto:accountspayable@cmhc-schl.gc.ca).
- (d) The Contractor cannot invoice prior to performance of the Service or as outlined in B of this Agreement.

#### **Section 5.04 Verification of performance**

Before advancing any amount to the Contractor, CMHC reserves the right to determine, in its sole and absolute discretion, whether the Services were performed in accordance with the terms and conditions of the Agreement. In the event that the Services do not meet the standards set out in the Agreement, CMHC may take such action as reasonably necessary to require the Contractor to correct its default, including, without limitation, the following:

- (a) directing the Contractor to redo the work that was not completed in accordance with the Agreement.
- (b) withholding payment.
- (c) setting off any expenses incurred by CMHC in remedying the default of Contractor against payment for payment due to the Contractor; and/ or
- (d) terminating the Agreement for default.

#### **Section 5.05 Method of Payment**

All payments due under the Agreement will be made by means of Electronic Funds Transfer ("EFT"). The Contractor shall provide CMHC with all information set out in Section 5.08 to allow EFT to be effected and keeping the information up to date. In the event that either party is unable to make or accept payments by EFT, the Contractor agrees to accept payment by cheque or another mutually agreeable method of payment.

#### **Section 5.06 Timing of Payment**

The Contractor shall allow CMHC thirty (30) calendar days from delivery of invoice for payment without interest charges, except for any amounts disputed by CMHC in good faith.

#### **Section 5.07 Disbursements and Travel Costs**

The Contractor is not entitled to seek reimbursement from CMHC for any extra or separate travel expenses whatsoever under this Agreement that have not been pre-approved and authorized, and that are in excess of the Total Financial Liability amount set out in Section 5.01 unless otherwise agreed by CMHC in writing. Travel costs are to be estimated based on eligible travel costs which will be incurred directly by the Contractor to perform the Work, that are reasonable and comparable to costs allowed under CMHC Travel Policy. CMHC Travel Policy available upon request, if travel costs are applicable to the Agreement.

#### **Section 5.08 Direct Deposit and Income Tax Reporting Requirement**

Under the *Income Tax Act*, CMHC must report payments made to Contractors to the Government of Canada by issuing T1204 supplementary slip. The Contractor shall provide CMHC the necessary information to complete any forms to comply with its obligation under the *Income Tax Act* or any law, including the Contractor's business number, in order to allow CMHC to make payment by EFT and to complete the T1204 supplementary slip. In the event that the Contractor is an individual and does not

have a Business Number issued by the CRA, the Contractor must provide their Social Insurance Number.

The Contractor shall complete a Vendor Information Form in order to set up payment by EFT prior to commencement of the Term. Throughout the Term, the Contractor shall ensure that the information provided remains accurate and up to date. The Contractor assumes full responsibility for any errors in payments or tax reporting that arise because the information supplied is inaccurate or out of date. In addition, the Contractor is requested to provide contact information to allow for payment by EFT including a void cheque.

#### **Section 5.09 Withholding Taxes**

Any payments made to the Contractor by CMHC pursuant to Section 5.01 in respect of Services rendered in Canada will be subject to a 15% withholding tax as required pursuant to Regulation 105 of the Income Tax Act. If any such withholding taxes are required to be withheld from any amounts payable to the Contractor, CMHC shall make such withholdings and duly and promptly remit the amount withheld to the Canada Revenue Agency. The Contractor must identify the value of Services provided in Canada within its invoice. Otherwise, CMHC will withhold taxes on the full consideration amount.

CMHC shall have no liability or responsibility for withholding or remitting any taxes or payments, including but not limited to employment insurance remittances, Canada Pension Plan contributions or employer health tax, or worker's compensation insurance premiums for Contractor and Contractor Personnel. The Contractor is responsible for these withholding, remitting and registration obligations, and shall indemnify CMHC from and against any order, penalty, interest, taxes or contributions that may be assessed against CMHC due to the failure or delay of the Contractor to make any such withholdings, remittances or registration, or to file any information required by any law.

#### **Section 5.10 Payment Dispute**

In the event of a payment dispute, CMHC shall deliver a written statement to the Contractor listing all disputed items and providing an explanation of each disputed item. Amounts not so disputed are deemed accepted and must be paid, notwithstanding disputes on other items, within the period set forth in this Section. The parties shall seek to resolve all such disputes expeditiously and in good faith. The Contractor shall continue performing its obligations under this Agreement notwithstanding any such dispute.

### **ARTICLE 6. CONFLICT OF INTEREST**

#### **Section 6.01 Avoid and Eliminate Conflict of Interest**

The Contractor and Contractor Personnel shall avoid any real, potential, or apparent Conflict of Interest during the Term and shall declare any Conflict of Interest to CMHC immediately upon becoming aware of the Conflict of Interest. The Contractor shall, take steps to eliminate any real, potential, or apparent Conflict of Interest, to the satisfaction of CMHC. In the event that a Conflict of Interest cannot be resolved to the satisfaction of CMHC, CMHC shall have the right to immediately terminate the Agreement.

#### **Section 6.02 Compliance with Conflict-of-Interest Act**

Any public office holder or former public office holder must be in compliance with the provisions of the *Conflict-of-Interest Act*.

**ARTICLE 7. CONFIDENTIALITY****Section 7.01 Confidentiality and Non-Disclosure of CMHC Information**

- (a) The Contractor understands the sensitive nature of the CMHC Information and agrees to treat all CMHC Information as proprietary, confidential, and sensitive during the Term and following termination of the Agreement, unless otherwise specifically agreed to in writing by CMHC.
- (b) The Contractor further agrees to restrict access to CMHC Information to those persons who have a need to know this information in order to perform the Services and who are bound by an obligation of confidentiality that is at least as strict as that contained in this Agreement provided such persons meet the appropriate security screening as per Government of Canada security screening classification prior to CMHC granting any such access. Where the Services are sensitive in nature, at the request of CMHC, the Contractor shall provide an Oath of Secrecy for each of its Contractor Personnel.
- (c) In the event that the Contractor experiences a breach of confidentiality with respect to the CMHC Information, the Contractor will immediately notify CMHC and co-operate with CMHC to the extent required to remedy the breach.
- (d) The Contractor acknowledges and understands that CMHC considers all CMHC Information to be under its custody and control at all times, and that all information in the care and control of CMHC is subject to federal laws on privacy and access to information.
- (e) The Contractor shall, at all times, ensure to transmit information between the Contractor and CMHC through secure means of transmission.
- (f) In addition, when CMHC Information is stored, the Contractor will, at all times, use reasonable administrative, physical and technological security measures to ensure that the information remains confidential where applicable, and that the information is not lost or otherwise accessed without authority, as further described in SCHEDULE C ("Privacy and Security Requirements") attached hereto. The Contractor will also implement information management and governance tools and controls, as further described in SCHEDULE C. The requirements of SCHEDULE C will be binding on any third party to whom the Contractor outsources any of its IT or information management functions or who is managing such functions on behalf of the Contractor. In addition to the requirements set forth in SCHEDULE C, the Contractor shall, to the extent the information contains Personal Information, comply with applicable Canadian privacy laws.
- (g) The Contractor shall conduct regular security assessments to ensure safeguards are working effectively.
- (h) The Contractor shall execute any further actions to enhance the security controls as may be reasonably required by CMHC.
- (i) The Contractor shall ensure all CMHC Information is encrypted while in transit and at rest at a minimum 128-bit encryption throughout the Term.
- (j) Any CMHC Information provided to the Contractor in the performance of the Services shall be either (i) returned, uncopied to CMHC; or (ii) destroyed by the Contractor immediately following the termination of this Agreement, upon the request of CMHC. For documents not returned to CMHC, the Contractor shall proceed to the destruction of such documents in accordance with CMHC's reasonable instructions and provide specific proof under oath of their destruction. Where personal health information is concerned, such information shall not be transferred to CMHC, instead the Contractor shall proceed to destroy the information in accordance with (ii) of this section, unless CMHC advises otherwise, by prior written instruction. Notwithstanding the foregoing, the Contractor shall be permitted to maintain copies of such documentation as it reasonably requires in accordance with records retention or other regulatory requirements, provided that such retained documentation shall at all times remain subject to the other provisions of this Agreement.
- (k) Without limiting the generality of the foregoing, the Contractor shall not and shall ensure that any Contractor Personnel or any other entity engaged to perform any portion of the Services

does not release, share, or otherwise divulge CMHC Information to any other entity including subsidiaries, branch officers, partners of the Contractor or subcontractors without the prior written consent of CMHC.

- (l) The Contractor may disclose CMHC Information where required to do so pursuant to a lawful requirement or for the purposes of complying with a subpoena, warrant or other legal compulsion lawfully made by a court or other competent authority. When the Contractor discovers that it may potentially be required to disclose CMHC Information for the reasons described in the immediately foregoing sentence, the Contractor shall: (i) notify CMHC promptly so that CMHC has the opportunity to seek a protective order or other appropriate remedy; (ii) provide information and other assistance in order for CMHC to take appropriate legal action against disclosure; and (iii) ensure that disclosure is strictly limited to the information lawfully requested.
- (m) CMHC requires the Contractor Personnel and its facilities to be security cleared with Government of Canada Reliability at the start date of this Agreement. Contractor Personnel may be required to undergo criminal records check or hold a valid personnel security screening at the level required in writing by CMHC prior to commencement of any Services and must provide the results of the check to CMHC's corporate security department. CMHC reserves the right to disallow any person to carry out work under the Agreement based on the results of the criminal records check/security clearance. Each of the Contractor's proposed staff, who do not hold a valid clearance, will be required to complete a "Security Clearance Form" (67934) upon request from CMHC.
- (n) This Agreement does not provide automatic security clearance and or access to CMHC's property to the Contractor or Contractor Personnel. Security clearance and /or access to the property will be granted, at CMHC's request and in accordance with CMHC's security requirements for the purpose of fulfilling its obligations as per the terms of this Agreement. CMHC reserves the right to refuse or revoke security clearance and / or access to property at any time.

## **Section 7.02 Data Residency**

### **CMHC Information to remain in Canada**

The Contractor agrees that the CMHC Information shall always remain and be accessed from/within Canada and by individuals who have obtained the appropriate security screening as per Government of Canada security screening classification and expressly agrees to logically segregate CMHC Information in electronic format and physically segregate physical documents. Without limiting the generality of the foregoing, the Contractor shall not relocate the equipment, databases or documents containing any data (including any redundant or back-up environments) anywhere outside of Canada

## **Section 7.03 Privacy**

### **(1) The Contractor's Personal Information Obligations**

The Contractor acknowledges and agrees that all Personal Information collected or accessible to the Contractor in the course of providing the Services, including CMHC Personal Information constitutes Confidential Information of CMHC to which the provisions of Section 7.01 apply, except to the extent such provisions are inconsistent with this section, which prevails with respect to CMHC Personal Information. In addition to the foregoing obligations, the Contractor will:

- (a) Handle all CMHC Personal Information in accordance with Canadian and provincial privacy laws to which the Contractor is subject;
- (b) Perform its obligations under this Agreement in a manner that will facilitate CMHC's compliance with Canadian privacy laws.
- (c) if requested by CMHC, within five Business Days from the date upon which the request was made by CMHC, to the extent the Contractor has possession or control of CMHC Personal Information,



either: (i) update, correct or delete CMHC Personal Information or modify the individual's choices with respect to the permitted use by CMHC of such CMHC Personal Information; or (ii) provide access to CMHC or to its other service providers to enable it to perform the activities described in clause (i) itself.

- (d) if the Contractor receives a request for access to CMHC Personal Information that is under the possession or control of the Contractor immediately refer such request to CMHC, and respond to any such request only by making reference to such referral; and, if CMHC is required by any Canadian privacy laws to provide CMHC Personal Information to an individual that is in the Contractor's possession or control, at CMHC's request, provide such CMHC Personal Information to CMHC on or before the deadlines for such provision required to enable CMHC to comply with any deadlines applicable under such Canadian privacy laws to the provision of such CMHC Personal Information, provided that CMHC has given the Contractor sufficient notice to meet such deadlines.
- (e) if not legally prohibited (or has received a request from a law enforcement official to refrain) from doing so, notify CMHC of any subpoena, warrant, order, demand, requirement or request (including any national security letter) made by a governmental or regulatory authority for the disclosure of CMHC Personal Information, and, to the maximum extent permitted by Applicable Law, reasonably cooperate with CMHC in its efforts to oppose, seek judicial relief of and appeal any such subpoena, warrant, order, demand, requirement or request.
- (f) immediately notify CMHC if the Contractor receives notice from any governmental or regulatory authority alleging that CMHC or the Contractor has failed to comply with Canadian privacy laws in connection with the performance of this Agreement, or if the Contractor otherwise becomes aware and reasonably believes that the Contractor or CMHC may have failed or may in the future fail to comply with Canadian privacy laws in connection with the performance of this Agreement.
- (g) at CMHC's direction, cooperate and comply with any requests or instructions issued by any privacy or data protection authority, including any governmental or regulatory authority applicable to CMHC or CMHC Personal Information.
- (h) provide reasonable assistance to CMHC in responding to and addressing any complaint relating to the handling of CMHC Personal Information in the course of the performance of the Services; and
- (i) upon CMHC's written request, provide CMHC with an updated list of all Contractor Personnel that have handled CMHC Personal Information.

## **(2) Privacy and/or Security Breach**

Upon becoming aware of the occurrence of any security breach or privacy breach, the Contractor shall, at a minimum, and subject to Applicable Law:

- (a) immediately, but in any event not later than two (2) business days from the date the Contractor becomes aware of the occurrence of such security breach or privacy breach, notify CMHC by telephone and in writing:
- (b) take all steps necessary to enforce against any person that is or may be engaging in such unauthorized handling or exercise all rights that the Contractor has to require such person to comply with any obligation of confidence to the Contractor and to cease such unauthorized activities.
- (c) do all things, execute all documents, and give all assistance reasonably required by CMHC to enable CMHC to enforce against any person that is or may be engaging in such unauthorized handling, or exercise any rights that CMHC must require such person to comply with any obligation of confidence to CMHC and to cease such unauthorized activities; and
- (d) if the security breach involves CMHC Personal Information, then, if requested by CMHC, reasonably cooperate with, and assist CMHC in CMHC's communication with the media, any affected persons (by press release, telephone, letter, call centre, website or any other method of

communication) and any governmental or regulatory authorities to explain the occurrence of the security breach and the remedial efforts being undertaken. The content and method of any such communications will be determined by CMHC and the Contractor, to the extent such content refers to the Contractor, acting reasonably.

- (e) Additionally, the Contractor shall assist CMHC in mitigating any potential damage and take such commercial steps as are directed by CMHC to assist in the investigation, mitigation, and remediation of each such security breach.
- (f) As soon as reasonably practicable after any such security breach, the Contractor shall conduct a root cause analysis and, upon request, will share the results of its analysis and its remediation plan with CMHC. The Contractor shall provide updated information to CMHC should additional details be discovered regarding the cause, nature, consequences, or extent of the security breach.

#### **Section 7.04 Requests under the Access to Information Act**

The Parties will comply with the provisions of the Access to Information Act, including in connection with a request under the Access to Information Act by a third party for access to information (“Access to Information Act Request”).

If an Access to Information Act Request is made to the Contractor (rather than to CMHC) for access to any CMHC Information, the Contractor shall: (a) not communicate with or respond to the person making the *Access to Information Act* Request, except as directed by CMHC in writing; (b) promptly, but in any event, within seven calendar days (or such other period of time as may be agreed by the Parties) of the receipt of such *Access to Information Act* Request, forward that *Access to Information Act* Request to CMHC; and (c) without detracting from CMHC’s responsibilities and The Contractor’s rights under the *Access to Information Act*, reasonably cooperate with CMHC as necessary to enable CMHC to respond to each *Access to Information Act* Request or otherwise comply with the *Access to Information Act*.

CMHC will make commercially reasonable efforts to notify the Contractor of a request under any *Access to Information Act* Request that involves confidential commercially sensitive information of the Contractor.

### **ARTICLE 8. INFORMATION ASSETS AND INTELLECTUAL PROPERTY**

#### **Section 8.01 Ownership**

All Works or Derivative Work shall be owned exclusively by CMHC.

#### **Section 8.02 Assignment**

The Contractor hereby irrevocably and perpetually/ [Insert term of license] assigns and shall cause its Contractor Personnel to irrevocably and perpetually/ [Insert term of license] assign to CMHC, in each case without additional consideration, all right, title and interest throughout the world in and to the Works, in whole or in part.

#### **Section 8.03 Waiver of Moral Rights**

The Contractor shall waive and cause Contractor Personnel to irrevocably waive, to the extent permitted by Applicable Law, any moral rights that the Contractor or Contractor Personnel may have with respect to the Works now or in the future in any jurisdiction.

#### **Section 8.04 Further Actions**

Upon CMHC’s request, the Contractor shall, and shall cause Contractor Personnel to, promptly take such further actions, including execution and delivery of all instruments of conveyance, as may be

necessary or desirable to assist CMHC to prosecute, register, perfect or record its rights in or to any Deliverables, and to acknowledge CMHC's right to its Intellectual Property including its Pre-existing IP.

**Section 8.05 Pre-Existing IP Rights**

Each Party shall remain, the sole and exclusive owners of all right, title and interest in its Pre-existing IP. The Contractor hereby grants CMHC a license to any Pre-existing IP to the extent incorporated in, combined with or otherwise necessary for the use of the Intellectual Property for any and all purposes. Subject to this paragraph, nothing in this Agreement shall affect the ownership of any Pre-existing IP rights in any tools, methodologies, databases, and materials used to produce the Works.

**Section 8.06 No Disposition without Consent**

The Contractor shall not divulge, release, copy, modify or publish the Works without the prior written consent of CMHC.

**Section 8.07 No Additional Rights in Works**

The Contractor shall have no right in the Works except as may be granted in writing by CMHC.

**Section 8.08 Ownership**

All Works produced under this Agreement shall be the exclusive property of the Contractor.

**Section 8.09 License**

Without restricting the scope of any license or other right that CMHC may otherwise hold, the Contractor hereby grants to CMHC an exclusive, perpetual, irrevocable, transferable, sublicensable, royalty-free license to use all or part of the Works, in whole or in part, produced under the Agreement world-wide, with the right to modify the information or materials for any purpose related to the current or future operations of CMHC. The license so granted shall survive the termination of the Agreement.

**Section 8.10 No other acquisition of rights**

The Contractor will acquire no rights to any CMHC Property other than the rights expressly granted in herein or any license rights expressly granted in any Services Order.

**Section 8.11 Pre-existing IP Rights**

Nothing in this section is intended to affect either Party's rights in the Pre-existing IP.

**Section 8.12 CMHC Property**

As between CMHC and the Contractor, CMHC is and will be the exclusive owner of all of the following and all Intellectual Property Rights therein (collectively, the "CMHC Property"):

- (a) all CMHC Information.
- (b) all tangible and intangible copies of information provided by CMHC pursuant to this Agreement or otherwise in connection with the Services, including all such records, and any tangible or intangible copies thereof made by the Contractor in the performance of the Services.
- (c) all hardware, software, systems, documentation, content, trade-marks, Confidential Information or other information or intellectual property (including business rules and business processes) that is or has been procured, created or developed by CMHC (whether alone or jointly with one or more persons, including other Contractors, but excluding the Contractor or its subcontractors, and whether such activities occurred prior to or after the Effective Date, and independent of or in connection with the Deliverables or the Services) or created or developed for, or licensed to, CMHC by another Person;
- (d) all Works authored or produced by the Contractor Click or tap here to enter text.;
- (e) all reports or summaries relating to the Service; and

(f) any and all modifications to any of the foregoing.

**Section 8.13 Third Party Intellectual Property**

In the event the Contractor intends to incorporate Intellectual Property belonging to a third party, or derivatives thereof, into the Works, the Contractor represents and warrants that it has secured all necessary rights and waivers of moral rights to grant CMHC the right to copy, publish, modify, create derivatives of, the third-party information, to grant any licenses described herein and to carry on any other activities described or contemplated in this Agreement.

**Section 8.14 Corporate Identification and Branding**

It is agreed that the Contractor shall make no use whatsoever of CMHC's name, logo or other official marks without the express written consent of CMHC.

**ARTICLE 9. AUDIT**

The Contractor shall keep complete and accurate records and statements relating to this Agreement and the delivery of the Services ("Records") during the Term and for a period of two (2) years following the end of the Term or such shorter period as permitted by Applicable Law. The Contractor shall at all reasonable times, in the event of an audit, permit inspection of such records and statements by CMHC's internal or external auditors. The Contractor shall provide CMHC and/or its auditors with sufficient original documents in order to conduct the audit and allow CMHC to inspect and make copies of such records and interview Contractor Personnel in connection with the provision of the Services at its own expense. An audit may be conducted without prior notice, however, CMHC agrees to cooperate with the Contractor in the course of conducting any audit in order to avoid disruption in day-to-day operations.

**ARTICLE 10. CONTINGENCY PLANNING**

**Section 10.01 Business Continuity Planning**

The Contractor shall have in place a business continuity plan and disaster recovery plan and will cause any affiliates or Permitted Subcontractors performing in the delivery of Services under this agreement to likewise maintain business continuity plans, disaster recovery plans. The Contractor shall be required, upon CMHC's request, to supply a copy of its business continuity policies and complete a CMHC Business Continuity Management Attestation Form (NG AND BASIS OF PAYMENT

SCHEDULE C - PRIVACY AND SECURITY REQUIREMENTS

SCHEDULE D) prior to the execution of the Agreement and thereafter within 30 calendar days of CMHC's request/ on a yearly basis.

The Contractor shall cover all costs associated with performance of their contingency plans.

**ARTICLE 11. INDEMNIFICATION**

**Section 11.01 Indemnification**

The Contractor agrees to indemnify, defend and hold harmless CMHC and its directors, officers, employees, and agents (each an "Indemnified Party") from and against all Claims and Losses. The indemnification applies whether such Claims are suffered or brought in the name of CMHC or in the name of the Contractor or Contractor Personnel. The Contractor, as the case may be, shall have the right to assume control of its own defense at any time, provided that it assumes the costs of its defense, however the Contractor shall not enter into a settlement without the applicable Indemnified Party's consent. This clause shall survive the termination of the Agreement.

Exceptions. Notwithstanding anything to the contrary in this Agreement, the Contractor is not obligated to indemnify or hold harmless CMHC against any Claim if such Claim or the corresponding Losses arise out of or result from CMHC's:

(a) gross negligence or willful misconduct; [or]

(b) bad faith failure to materially comply with any of its material obligations set forth in this Agreement.

#### **Section 11.02 Indemnification Procedure**

If either Party receives notice of the assertion or commencement of any Third-Party Claim, the Parties shall give the other reasonably prompt written notice thereof, but in any event not later than thirty (30) calendar days after receipt of notice of such Third-Party Claim. Such notice shall (i) describe the Third-Party Claim in reasonable detail, (ii) include copies of all material written evidence thereof and (iii) indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Party.

The failure to give such prompt written notice shall not, however, relieve the Party required to indemnify under Section 11.01 of its indemnification obligations.

#### **Section 11.03 Participation in Defense**

The Indemnified Party shall have the right to participate in the defense with counsel selected by it subject to the Indemnifying Party's right to control the defense. The fees and disbursements of such counsel shall be at the expense of the Indemnified Party, provided that, if in the reasonable opinion of counsel to the Indemnified Party, (A) there are legal defenses available to an Indemnified Party that are different from, or additional to, those available to the Indemnifying Party; or (B) there exists a Conflict of Interest between the Indemnifying Party and the Indemnified Party that cannot be waived, the Indemnifying Party shall be liable for the reasonable fees and expenses of counsel to the Indemnified Party in each jurisdiction for which the Indemnified Party determines counsel is required.

#### **Section 11.04 Cooperation**

CMHC and the Contractor shall co-operate with each other in all reasonable respects related to this agreement and in connection with the defense of any Third-Party Claim.

### **ARTICLE 12. LIMITATION OF LIABILITY**

#### **Section 12.01 No Limitation of Liability**

Nothing in this Agreement shall exclude or limit the Contractor's liability under this Agreement.

#### **Section 12.02 No Consequential Damages**

In no event shall CMHC be liable for any indirect, special, incidental, consequential or punitive damages or for any lost profits arising out of or relating to any Services provided by the Contractor or its affiliates. This provision applies to the fullest extent permitted by law.

### **ARTICLE 13. INSURANCE OBLIGATIONS**

Note: Contact Corporate Insurance for your specific scope to determine appropriate coverages.

#### **Section 13.01 Insurance Requirements**

The Contractor shall procure, supply, and maintain, at its own expense, the designated insurance, or cause to be procured and maintained such insurance in force for the duration of this Agreement. On the Effective Date, all insurance coverage(s) of the Contractor shall be issued by financially sound and responsible regulated insurance companies and shall have an A.M. Best Company, Inc. rating of "A-"

or better (or such other debt rating agencies and/or rating as approved at the sole discretion of CMHC).

### **Section 13.02 Commercial General Liability Insurance**

Commercial General Liability insurance with an insurer licensed to do business in Canada with a limit of not less than five million dollars (\$5,000,000) inclusive for personal injury, bodily injury (including death) and property damage for any one occurrence or series of occurrences arising from one cause. The policy shall provide coverage for, but not be limited to, all premises and operations of the Contractor, liability for products and completed operations, broad form coverage, contractor's liability, non-owned automobile, employer's liability, contractual liability, and liability specifically assumed under this Agreement. Canada Mortgage and Housing Corporation shall be added to the policy as an additional insured and the policy shall contain cross liability, and severability of interest clauses.

### **Section 13.03 Professional Errors & Omissions Liability**

Professional Errors & Omissions Liability insurance with an insurer licensed to do business in Canada with a limit of not less than five million dollars (\$5,000,000) per claim, providing coverage for, but not limited to, economic loss due to actual or alleged acts, errors or omissions or wrongful acts committed by the Contractor, its agents, or employees in the performance of services. The Contractor shall ensure that the policy is renewed continuously for a minimum period of three (3) years following the expiration or early termination of this Agreement.

### **Section 13.04 Computer Security and Privacy Liability (Also known as Cyber Liability)**

Computer Security and Privacy Liability with an insurer licensed to do business in Canada with a limit of not less than ten million dollars (\$10,000,000) per claim and aggregate, covering actual or alleged acts, errors or omissions committed by the Contractor, its agents, or employees. The policy shall also extend to include the intentional, fraudulent, or criminal acts of the Contractor, its agents or employees. The policy shall expressly provide, but not be limited to, coverage for the following perils:

- (a) unauthorized use/access of a computer system.
- (b) defense of any regulatory action involving a breach of privacy or transmission of malicious code.
- (c) failure to protect Confidential Information (personal and commercial information) from disclosure; and
- (d) notification costs, whether or not required by statute.

The policy shall be renewed continuously for a minimum period of three (3) years following expiration or early termination of this Agreement.

The Contractor shall be responsible for all claims expenses and loss payments within the policy deductible or self-insurance retention. Such insurance shall be subject to the terms and conditions and exclusions that are usual and customary for this type of insurance.

If this insurance is provided on a claims-made basis, the Contractor shall maintain continuous insurance coverage during the term of this Agreement and in addition to the coverage requirements above, such policy shall provide that:

Policy retroactive date coincides with or precedes the insureds' initial services under the Agreement and shall continue until the termination of the Agreement (including subsequent policies purchased as renewals or replacements);

- (a) Policy allows for reporting of circumstances or incidents that might give rise to future claims; and
- (b) Not less than a three (3) year extended reporting period with respect to events which occurred but were not reported during the term of the policy or ongoing coverage is maintained.

**Section 13.05 Workers Compensation**

Worker’s compensation coverage for all employees engaged in the Services in accordance with the statutory requirement of the province, territory, or state in which the Services are being performed.

**Section 13.06 Other Conditions**

If there are material changes in the scope of the Services provided under this Agreement, CMHC may request changes to the minimum insurance coverages set out above. All required insurance policies shall extend to North America with suits brought back to Canada. All insurance policies required to be maintained by the Contractor pursuant to this insurance clause shall be primary with respect to this Agreement and any valid and collectible insurance of CMHC shall be excess of the Contractor’s insurance and shall not contribute to it. All Certificate of Insurance shall mention that insurers will provide CMHC with at least thirty (30) days’ written notice prior to cancellation of any insurance referred to under this insurance clause. In addition, the Contractor shall provide written notice to CMHC forthwith upon learning that an insurer described in this insurance clause intends to cancel or intends to make or has made a material change to, any insurance referred to in this insurance clause. A Certificate of Insurance meeting the above requirements shall be delivered to CMHC upon execution of this Agreement and for each renewal thereafter.

Without in any way restricting CMHC’s discretion to grant or withhold its consent to a request to subcontract pursuant to this Agreement or any other contract, the Contractor agrees that it shall contractually obligate any subcontractor or independent contractor retained in connection with this Agreement and any other contract to maintain insurance against such risks and in such amounts that having regard to such subcontractor’s or independent contractor’s involvement in the provision of the Services could reasonably be expected to be carried by persons acting prudently and in a similar business to that of such subcontractor or independent contractor. It shall be the sole responsibility of the Contractor to decide whether or not any other insurance coverage, in addition to the insurance requirements stipulated herein, is necessary for its own protection or to fulfill its obligation under the Agreement.

**ARTICLE 14. DISPUTE RESOLUTION**

**Section 14.01 Dispute Resolution**

If any dispute arises between the Parties relating to the application, interpretation, implementation, or validity of this agreement that cannot be resolved by mutual agreement, the Parties agree that they will make efforts to resolve the latter internally before resorting to litigation.

**Section 14.02 Negotiations**

A party shall send written notice to the other party of any Dispute ("Dispute Notice"). The parties shall first attempt in good faith to resolve any Dispute set forth in the Dispute Notice by negotiation and consultation between themselves, including without limitation not fewer than three (3) negotiation sessions. In the event that such Dispute is not resolved on an informal basis within thirty (30) Business Days after one party delivers the Dispute Notice to the other party, either party may, by written notice to the other party ("Escalation to Executive Notice"), refer such Dispute to the executives of each party set forth below (or to such other person of equivalent or superior position designated by such party in a written notice to the other party, "Executive(s)").

Executive of CMHC:

- (a) Canada Mortgage and Housing Corporation
- (b) Executive of Contractor:

For purposes of clarification, the Party sending the Dispute Notice and the Escalation to Executive Notice shall send such notices in compliance with this Agreement’s notice provisions below, provided

that the party sending an Escalation to Executive Notice shall also send a copy of such notice to the Executives designated above.

**Section 14.03 Litigation as a Final Resort**

Litigation or Arbitration as a Final Resort. If the Parties cannot resolve for any reason, including, but not limited to, the failure of either Party to agree to enter into mediation or agree to any settlement proposed by the mediator, any Dispute within thirty (30) business days after the Escalation to Mediation Date, either Party may file suit in a court of competent jurisdiction in accordance with the provisions of it governing laws.

**ARTICLE 15. GENERAL TERMS**

**Section 15.01 Notice**

All notices or other communication issued under this Agreement shall be in writing and shall be forwarded via mail, courier, or e-mail:

To CMHC at the following address:

- (a) Canada Mortgage and Housing Corporation
- (b) To the Contractor at the following address:

Notices sent in accordance with this Section will be deemed effectively given: (a) when received, if delivered by hand, with signed confirmation of receipt; (b) when received, if sent by a nationally recognized overnight courier, signature required; (c) when sent, if by facsimile or email in each case, with confirmation of transmission if sent on a day in which CMHC is open for business (“Business Day”) between 9 a.m. and 5 p.m. EST, and on the next Business Day if sent after the addressee’s normal business hours; and (d) on the fifth 5<sup>th</sup> day after the date mailed by certified or registered mail by the Canada Post Corporation.

**Section 15.02 Further assurances**

Each Party shall execute, deliver, furnish such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions this Agreement and give effect to the transactions contemplated therein.

**Section 15.03 Survival**

Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Article 3 Representations and Warranties, Article 7 CONFIDENTIALITY, Article 8 INFORMATION ASSETS AND INTELLECTUAL PROPERTY, Article 11 Indemnification, Article 12 Limitation of Liability, Article 13 Insurance Obligations, Article 15 General Terms, or any provision which by its nature is intended to survive the termination of this agreement.

**Section 15.04 Severability**

If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

**Section 15.05 Equitable Remedies**

The Parties agree that irreparable damage would occur if any provision of this Agreement was not performed in accordance with the Terms hereof and that the parties are entitled to equitable relief, including injunctive relief or specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity.



#### **Section 15.06 Remedies for non-compliance**

If the Contractor fails to comply with a direction or decision of CMHC properly given under the terms of the Agreement, CMHC may take such actions and incur such costs that are reasonably required to implement its direction, including, without limitation, the engagement of another person or entity to perform the Services and withholding of payment due to the Contractor for Services rendered, which moneys may be set off by CMHC against any expenses that it may incur in remedying a default or failures as described above.

#### **Section 15.07 Cumulative remedies**

The rights and remedies under this Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise.

#### **Section 15.08 Waiver**

Failure by either party to assert any of its rights under the Agreement shall not be construed as a waiver thereof.

#### **Section 15.09 Assignment**

This Agreement shall not be assigned in whole or in part by the Contractor without the prior written consent of CMHC. No purported assignment of this Agreement shall relieve the Contractor from any obligation under this Agreement or impose any liability upon CMHC.

If specific individuals are identified in the Agreement to perform the Services or any part thereof, those individuals shall provide the Services unless they are unable to do so for reasons beyond Contractor's reasonable control.

If Contractor is unable to provide any specific individual identified in the Agreement, it shall, as soon as possible, give notice to CMHC of the reason rendering it is unable to do so and submit the name, qualifications, and experience of a proposed replacement for CMHC's review and approval.

Contractor shall not, in any event, allow performance of the Services by unauthorized replacement persons. CMHC may order that any individual identified in the Agreement to perform the Services or any part thereof or, if applicable, a replacement, stop performing the Services. In such a case, the Contractor shall immediately comply with the order and submit the name, qualifications, and experience of a proposed replacement for CMHC's review and approval. The fact that CMHC does not order that any individual stop performing the Services does not relieve the Contractor from its responsibility to meet the requirements of the Agreement.

#### **Section 15.10 Successors and assigns**

This Agreement shall be binding upon the Parties, their heirs, executors, administrators, successors, and assigns.

#### **Section 15.11 Changes to the Agreement**

NOTE: No amendments, including Change Orders may be made to any agreement without consultation with Procurement.

##### **(a) Amendments**

This Agreement may only be amended or modified in a writing that specifically states that it amends this Agreement and is signed by an authorized representative of each party.

##### **(b) Change Orders**

Change Orders. CMHC may at any time, by written instructions and/or drawings issued to the Contractor (each a "Change Order"), order changes to the Services. The Contractor shall within Five

(5) business days of receipt of a Change Order submit to CMHC a firm cost proposal for the Change Order. If CMHC accepts such cost proposal, the Contractor shall proceed with the changed Services subject to the cost proposal and the Terms and conditions of this Agreement. The Contractor acknowledges that a Change Order may or may not entitle the Contractor to an adjustment in the Contractor's compensation or the performance deadlines under this Agreement.

#### **Section 15.12 Independence of the Parties**

It is understood by the Parties that the Contractor shall act as an independent contractor for the purposes of this Agreement. Contractor and its Contractor Personnel are not engaged as employees of CMHC. The Contractor agrees to so advise its Contractor Personnel. Without limiting the generality of the foregoing, the Contractor shall retain complete control of and accountability for its Contractor Personnel.

#### **Section 15.13 Contractor's Authority**

The Contractor agrees that it has no authority to give any guarantee or warranty whatsoever expressed or implied on behalf of CMHC and that it is in no way the legal representative or agent of CMHC and that it has no right or authority to create any obligation on behalf of CMHC or to bind CMHC in any way.

#### **Section 15.14 No Public Announcements.**

No party to this Agreement shall make any public announcements in respect of this Agreement or the transactions contemplated hereby or otherwise communicate with any news media without the prior written consent of the other party

#### **Section 15.15 Subcontractors**

The Contractor must obtain CMHC's written consent, which may be given or withheld in CMHC's sole discretion, prior to entering into agreements with or otherwise engaging any person or entity, including all subcontractors and affiliates of the Contractor, other than the Contractor's employees, to provide any Services to CMHC.

The Contractor shall remain fully responsible for the performance of each Contractor Personnel including any Permitted Subcontractor and for their compliance with all of the terms and conditions of this Agreement as if they were the Contractor's own employees.

Nothing contained in this Agreement shall create any contractual relationship between CMHC and any Contractor Personnel.

The Contractor shall require Contractor Personnel to be bound in writing by the Security and Confidentiality provisions of this Agreement, and, upon CMHC's written request, to enter into a non-disclosure or Intellectual Property assignment or license agreement in a form that is reasonably satisfactory to CMHC before sharing any information with relation to the Services.

The Contractor shall ensure that all Contractor Personnel or anyone acting for or on behalf of the Contractor, are properly licensed, certified, or accredited as required by Applicable Law and are suitably skilled, experienced, and qualified to perform the Services.

#### **Section 15.16 Time is of the essence**

The Contractor acknowledges that time is of the essence with respect to the Contractor's obligations hereunder and that prompt and timely performance of all such obligations, including all performance dates, timetables, project milestones and other requirements in this Agreement is strictly required.

### **Section 15.17 Exclusivity**

CMHC preserves the right in its sole and absolute discretion to perform itself or acquire Services from any other providers that are similar to or identical to the Services, and CMHC shall not be liable to the Contractor in any way for exercising this right.

### **Section 15.18 No Third-Party Beneficiaries**

This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or will confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

### **Section 15.19 Choice of Law and Forum**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada as applicable. The Parties attorn to the jurisdiction of either the Federal Court or the courts of the Province of Ontario as appropriate. The Contractor shall give all notices and obtain all licenses, permits and authorizations required to perform the Services. The Contractor shall comply with all the laws applicable to the Services or the performance of this Agreement.

### **Section 15.20 Counterparts**

This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement, if the party sending the facsimile, email or other means of electronic transmission has received express confirmation that the recipient party received the Agreement (not merely an electronic facsimile confirmation or automatic email reply).

### **Section 15.21 Force Majeure**

In the event that a Party is prevented from fulfilling its obligations under the terms of this Agreement by a force majeure or act of God (an event or effect that cannot be reasonably anticipated or controlled), the impacted Party shall notify the other Party in writing as soon as reasonably possible. The written notice shall be sent by registered mail or email and shall outline the circumstances that constitute a force majeure or an act of God, which may include, but are not limited to, war, serious public disturbances, epidemic, impediments arising from orders or prohibitions of public authority, actions of public enemies, strikes, lockouts and other labour disputes, riots, flooding, hurricane, fire, explosion or any other natural disasters over which the Party has no reasonable control. The Contractor's economic hardship or changes in market conditions are not force majeure events. The Contractor shall use all diligent efforts to end the failure or delay of its performance, ensure that the effects of any force majeure event are minimized and resume performance under this Agreement.

Where CMHC concludes, in its sole discretion, that the Contractor will not be able to fulfill its obligations under this Agreement, CMHC may terminate this agreement and, or secure the services of other Contractors to perform the Services without further compensation, penalty or obligation to the Contractor.

### **Section 15.22 Headings**

The clause headings used herein are inserted only as a matter of convenience and for reference and shall not affect the construction or interpretation of the Agreement.

**Section 15.23 Language**

CMHC as a federal crown corporation is governed by the Official Languages Act and as such must provide services to the public in both official languages, English and French. Therefore, if the Contractor, acting on behalf of CMHC, is required to communicate with, or provide services or products to CMHC clients or the public, it must do so in the official language chosen by the person receiving the communication, service, or product in a timely and equivalent manner. The Contractor must also be capable of providing services in both official languages to CMHC employees in a timely and equivalent manner. All complaints received by the Service Provider pursuant to the *Official Languages Act R.S.C., 1985, c. 31* shall be forwarded to CMHC within one (1) business day of receipt. CMHC shall have the right to monitor the Services provided by the Service Provider in both official languages.

**Section 15.24 Order of Precedence**

The documents comprising the Agreement are complementary and what is called for in any one shall be binding as if called for by all. The Agreement documents shall be interpreted as a whole, and the intent of the whole shall govern. In the event of a conflict between them, the Agreement documents shall have followed order of precedence the order of precedence is: (a) this Agreement as amended from time to time; (b) Any schedules, work orders, to this Agreement that are duly executed by both parties, as amended from time to time, to the extent of the inconsistency between the terms.

**SECTION 15.25 Entire Agreement**

This Agreement, including any documents incorporated herein by reference, constitutes the sole and entire agreement of the parties, and supersedes all prior or contemporaneous understandings, written or oral. These Terms prevail over any terms and conditions contained in any other documentation and expressly exclude any of the Contractor's general terms and conditions or any other document issued by the Contractor in connection with this Agreement, not incorporated herein. In case of conflicts between the Contractor's documents and CMHC's documents, CMHC's shall govern.

**IN WITNESS WHEREOF:**

This Agreement has been executed by duly authorized officers of the Parties as follows:

**NAME OF CONTRACTOR**

**CANADA MORTGAGE AND HOUSING CORPORATION**

\_\_\_\_\_  
  
\_\_\_\_\_

\_\_\_\_\_  
  
\_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

I have the authority to bind the Contractor.

SCHEDULE A

THE SERVICES (SCOPE OF WORK)

DESCRIPTION OF THE SERVICES including key elements to be provided, Definition of “Deliverables”, Project Milestones, Timing Requirements, Completion Standards, Service Level Agreements, Etc.

SCHEDULE B – PRICING AND BASIS OF PAYMENT

SCHEDULE C - PRIVACY AND SECURITY REQUIREMENTS

SCHEDULE D - BUSINESS CONTINUITY MANAGEMENT ATTESTATION FORM (See APPENDIX F of RFP)

## SCHEDULE C PRIVACY AND SECURITY REQUIREMENTS

**“Affiliate”** means any legal entity controlling, controlled by, or under common control with a Party to this Agreement. Control shall exist through direct ownership of more than fifty percent (50%) of the nominal value of the issued equity share capital or of more than fifty percent (50%) of the shares entitling the holders to vote for the election of directors or persons performing similar functions or to rights by any other means to elect or appoint directors or persons who collectively may exercise such control or through indirect ownership of all of the issued equity share capital.

**“Authorized Person”** means officers, employees and contractors of the Contractor who have a need to know to the Information.

**“Contractor Personnel”** means all personnel who provide Services to CMHC that: (i) are employed by the Contractor; or (ii) are employed by an Affiliate of the Contractor.

**“Data Custodian”** means Contractor or Contractor subcontractor who is granted access to CMHC Information and assumes the responsibilities set out in Exhibit 1 to this SCHEDULE C of this Agreement

**“Identified Person”** means an Authorized Person whose current work-related responsibilities require access to the CMHC Information.

**“Logical Access Controls”** means the process of enforcing proper identification, authentication, and accountability with respect to access to a computer system, based on the latest information technology (IT) security guidance. These include:

- (a) individual user accounts;
- (b) complex passwords eight (8) characters minimum, lower and upper case, numbers, special characters);
- (c) access-based on role (privileged vs. non-privileged); and
- (d) auditing.

**“Portable Storage Devices (PSDs)”** means devices that are portable and contain storage or memory into which users can store information, including, but not limited to, laptops, CD-ROMs, flash memory sticks, backup media and removable hard disks.

**“Protected B”** means a security level assigned to information or assets that, if compromised, could cause serious injury to an individual, organization or government.

**“System”** means a single IT-related device, a component of such a device or a group of IT-related devices that may be used to receive, store, process or transmit information. This includes, but is not limited to, personal computers, servers, laptops, tablets, smart phones, virtual computers and cloud based virtual systems.

**“Visitor”** means an individual, other than an Authorized Person, who has been invited into the secure area by an Authorized Person, as permitted by Contractor’s access policies.

### **Privacy and Security Requirements**

The Parties are required to protect the CMHC Information in accordance with applicable direction and guidelines from the Treasury Board of Canada (“TBS”), or their equivalent in the case of the Contractor, with respect to the protection of “Protected B” data, including guidance from CSE (ITSG-33) which aligns with the ISO 27001 framework. Further as a federal government institution, the Contractor acknowledges that CMHC is subject to the Access to Information Act (Canada) and the Privacy Act (Canada) and therefore the Contractor agrees to submit to whatever measures are necessary to ensure that CMHC can comply with these laws and their related regulations, policies, and directives (“ATIP Legislation”).

As such, the Contractor agrees: (i) to protect any Personal Information that it may access from CMHC Information provided through this Agreement in a manner that is compatible with provisions of ATIP Legislation; and (ii) will ensure that it has in place appropriate privacy protection measures to safeguard all CMHC Information that it has access to under this Agreement. More specifically, Contractor shall, as required by the provisions of Article 7 of this Agreement, comply with the security requirements described below at all times:

(1) **Physical Access:**

- (a) CMHC Information will be accessed within a secure location that allows unescorted access only to Authorized Persons. All Visitors to the secure location will always be escorted by an Authorized Person. The secure location can be within a series of buildings, one entire building, an entire floor within a building, or a single room. Once the perimeter of the secure location is defined, these requirements apply to all areas within the perimeter. Where a series of buildings is involved, a secure perimeter will be defined for each building. CMHC may approve other secure environments that provide a similar level of protection to CMHC Information.

Access to CMHC Information is limited to Identified Persons. The duties of the Data Custodian, as stated in Exhibit 1 to this SCHEDULE C, include maintaining an auditable trail on access to CMHC Information by Identified Persons. Under no circumstances may Visitors be permitted to access CMHC Information.

(2) **IT Storage and Transmission:**

- (a) The Contractor shall ensure that CMHC Information remain in Canada and expressly agrees to logically segregate CMHC Information that is in electronic form and physically segregate CMHC Information in physical form. All Systems with access to CMHC Information will employ Logical Access Controls at the device and network level and will have functional and current antivirus software.
- (b) The Contractor shall ensure that CMHC Information is stored in a data center located in Canada. Only the Contractor Personnel located in one of the approved locations in Exhibit 2 to Schedule C (*insert if applicable*) to the Agreement shall access CMHC Information to the extent permitted by Exhibit 2 to Schedule C and in accordance with the controls set forth in such Exhibit 2 to Schedule C. The Contractor shall prevent access to CMHC Information by any Contractor Personnel and/or subcontractor personnel: (i) where such persons are located in countries other than those locations listed in Exhibit 2 to Schedule C (*insert if applicable*) to the Agreement and/or (ii) where such access goes beyond the scope and requirements of Exhibit 2 to Schedule C.
- (c) Where CMHC Information is held on PSDs, complex passwords with encryption will be used. The encryption level will meet the latest communications security establishment standards for Protected B" information which aligns with the ISO 27001 framework. This applies equally to
- (d) Servers storing and transmitting unencrypted data, where used, will be located in a secure, controlled-access area, preferably in the same area where CMHC Information is accessed. If located in a separate area, controls will be in place to ensure that only Identified Persons can access the server. Unless CMHC Information is encrypted continuously while outside the secure area, a conduit will be used for all cabling and all cross-connect areas will be physically secured.
- (e) Network firewall rules will be in place such that no System processing CMHC Information can communicate at the network layer with any system that can be accessed by non-Identified Persons.
- (a) Network firewall rules will also be in place such that no System processing CMHC Information can be accessed at the network layer by a System outside of the secure area. CMHC Information may be stored on and transmitted over networks not meeting these requirements, provided that it is encrypted, except when at rest and in use by an Identified Person. Alternatively, CMHC Information may be stored on a stand-alone computer in a secure area with no external

connections, or on a closed network within the secure area. When the network transmits information that leaves a secure area (for example, when a series of buildings house employees within a single organization), the CMHC Information will be encrypted whenever it is outside the secure area.

(3) **Physical Storage:**

- (b) When not in use, PSDs containing CMHC Information will be stored in secure containers. This applies equally to backups of CMHC Information.
- (c) CMHC Information will not be removed from the secure area (as described in point 1 above) in any format (e.g., printouts, PSDs, etc.), and in accordance with this SCHEDULE X. When not in use, printed documents containing CMHC Information will always be stored in secure containers.

(4) **Information Copying and Retention & Record Management:**

- (a) Copies and extracts of CMHC Information may only be made for the purposes of carrying out the permitted purposes as covered by this Agreement. When no longer needed, any such copies or extracts will be destroyed in a secure manner as required under this Agreement).
- (b) Paper documents containing CMHC Information will be destroyed (shredded) in a secure manner before disposal. All electronic storage media used in the processing of CMHC Information, including all back-up, PSDs, photocopiers and other electronic media where CMHC Information has been electronically stored, will be sanitized or destroyed, in accordance with the latest communications security establishment standards for "Protected B" information when disposing of such media, or when return or destruction of CMHC Information is required pursuant to this Agreement.
- (c) The Contractor's Data Custodian agrees to establish and maintain an inventory of all data files received from CMHC, as stated in Exhibit 1 to SCHEDULE C .



**EXHIBIT 1 TO SCHEDULE C  
RESPONSIBILITIES OF THE DATA CUSTODIAN**

The Data Custodian, designated by the Contractor will implement the following requirements:

- (1) Prepare a document for the use of the Contractor's employees and contractors engaged by the Contractor, outlining the terms and conditions governing the use of CMHC Confidential Information, as well as the procedures to send, receive, handle and store CMHC Confidential Information (hereinafter the "Confidentiality Document"). The Confidentiality Document will include the following terms and conditions of this Agreement:
  - a. Confidentiality of CMHC's Confidential Information, as specified in the Agreement.
  - b. Use of CMHC's Confidential Information, as specified in the Agreement.
  - c. Access to CMHC's Confidential Information, as specified in the Agreement; and
  - d. Security Requirements, as specified in the Agreement
- (2) Prior to granting access, the Data Custodian will ensure that every employee and every contractor engaged by the Contractor who accesses CMHC Information has agreed in writing to comply with confidentiality terms no less strict than this Agreement.
- (3) Acknowledge receipt of each data file received from CMHC pursuant to this Agreement, and maintain a register of all such files, containing the following information:
  - a. Date received.
  - b. File name and reference period.
  - c. Employee of Contractor who received the file.
  - d. Employee of CMHC who sent the file.
  - e. Employee of Contractor responsible for safekeeping of the file; and
  - f. Date the file was destroyed or returned to CMHC (if applicable).
- (4) Maintain a register of all Identified Persons who have been granted access to the data files received from CMHC by the Contractor, containing the following information:
  - a. File name and reference period.
  - b. Name of employee or/and contractors engaged by the Contractor to whom access is given.
  - c. Justification for access.
  - d. Name of delegated manager who authorized access and date of authorization; and
  - e. Start and end dates of period for which access is authorized.