



Request for Proposals ("RFP") February 9, 2018 WNV Mosquito Control Plan, Windsor-Essex

1. GENERAL INFORMATION TO PROPONENTS

1.1 RFP SUBJECT MATTER

In planning for 2018, the Board of Health for the Windsor-Essex County Health Unit, (the "Health Unit") is requesting proposals to conduct a mosquito control program in the City of Windsor and County of Essex (the "Project"). PLEASE NOTE: The Project is structured differently than it has been in the past. The Health Unit will now undertake the mosquito surveillance and arrange for lab testing which had previously been done by the successful Proponent.

1.2 QUESTIONS

Questions related to this RFP must be received in writing before 4:30 pm on February 23, 2018 and are to be directed to the coordinator for this RFP and the West Nile Mosquito Control Project, Dr. Wajid Ahmed, Acting Medical Officer of Health, Windsor-Essex County Health Unit, 1005 Ouellette Avenue, Windsor, ON N9A 4J8, e-mail wahmed@wechu.org. When responding, the Health Unit may edit or re-phrase questions. The questions as edited or re-phrased and responses to them will be provided to all Proponents (those who have been sent an RFP or have otherwise notified the Windsor-Essex County Health Unit that they intend to submit a Proposal). The Windsor-Essex County Health Unit will not be bound by, or be responsible for, any explanation or interpretation of the RFP documents other than those prepared in writing. In no event shall Proponents rely on any oral statement by the Windsor-Essex County Health Unit or Windsor and Essex County municipalities, their employees, agents, advisors or consultants.

1.3 DATE AND PLACE FOR SUBMITTING PROPOSALS

Proposals should be addressed to Dr. Wajid Ahmed, Acting Medical Officer of Health, Windsor-Essex County Health Unit, 1005 Ouellette Avenue, Windsor, ON, N9A 4J8 and will be accepted up to and including 4:00 pm (1600 hrs. E.S.T.) local time, March 2, 2018.

1.4 SUBMISSION OF PROPOSALS

The RFP process will follow a single envelope system.

Proposals should consist of: one original; three photo copies; and one electronic copy saved on a USB stick in searchable pdf format.

Fax submissions will not be accepted.

By responding to this RFP, Proponents agree to accept the decision of the Windsor-Essex County Health Unit as final and binding

1.5 ACCURACY OF RFP AND RELATED DOCUMENTS

The Windsor-Essex County Health Unit has provided the herein information as accurately as possible, but assumes no responsibility whatsoever for the completeness or the accuracy of the information presented in this RFP, or otherwise distributed or made available formally or informally during this procurement process.

1.6 DUE DILIGENCE

Proponents are solely responsible for conducting their own independent research, due diligence, and any other work or investigations and for seeking any other advice necessary for the preparation of their Proposals.

1.7 VALIDITY

Proposals shall remain valid and open for acceptance by the Windsor-Essex County Health Unit for a period of ninety (90) days following the due date for receipt of Proposals.

1.8 CONTRACT

Upon evaluation of the Proposals submitted in response to this RFP, the Health Unit intends to enter into a contract in the form of Exhibit B (the "Contract") with the Proponent whose Proposal is determined to be the most advantageous to the Windsor-Essex County Health Unit and participating Windsor and Essex County municipalities.

The proposed period of work under the contract is from on or about May 1, 2018 to on or about October 31, 2018.

In the sole discretion of the Health Unit, the Health Unit shall have the options to extend the Contract for up to two (2) additional seasons on the same terms and conditions.

Note, it will not be open for a Proponent that is awarded a Contract to negotiate new terms to the Contract. Proponents that have questions or concerns with respect to the Contract should raise them in accordance with section 1.2 of this RFP prior to submitting a Proposal.

In the event that a Proponent who is awarded a Contract (see Exhibit B) fails to fulfill the conditions of the Contract or otherwise refuses to enter into or commence performance by the time required or otherwise defaults on any of its obligations under the Contract, Health Unit reserves the right, in its sole

discretion, to make an award to another Proponent; not to accept any other Proposal; to cancel the RFP; or to issue a new RFP and/or direct contract. In any case, the Health Unit reserves the right to hold the defaulting Proponent liable for all losses, damages, or costs suffered or incurred by the Health Unit as a direct or indirect result of the Proponent's default including but not limited to, any increase in the price over the amount quoted by the defaulting Proponent.

2. MOSQUITO CONTROL PLAN TERMS OF REFERENCE

The Health Unit conducted a comprehensive surveillance program from 2003 through 2017 that included human, mosquito, and larval surveillance. West Nile Virus (WNV) was found in the mosquito population throughout the surveillance years. According to Public Health Ontario (PHO), in 2013 Windsor-Essex County had the 4th highest rate (per 100,000 population) of confirmed and probable human cases of WNV in Ontario. Given the virus continues to be found in the mosquito population, the Medical Officer of Health is of the opinion that a comprehensive surveillance program is necessary to decrease the risk of West Nile Virus to persons in the Health Unit area of Windsor-Essex County, and hence a mosquito control program in Windsor-Essex for the foreseeable future.

Windsor-Essex County has a surface area of approximately 186,186 hectares. Estimated standing water based on 2006 activity is 9 hectares. It is estimated that there are some 38,000 catch basins in Windsor-Essex. It is estimated that the amount of standing water in Windsor-Essex is split in the approximate percentages shown below:

• Amherstburg	9.9%
• Kingsville	11.5%
• Leamington	0.6%
• Tecumseh	1.1%
• Essex	12.4%
• Lakeshore	19.4%
• LaSalle	15.8%
• Windsor	29.3%

These percentages are for estimating purposes only. Both standing water applications and catch basin applications will be paid for on an as-treated basis, including post-application surveillance. The successful Proponent will therefore be required to keep records of and bill separately for these activities.

3. PROPONENT SELECTION PROCEDURE

In terms of selection procedures, it shall be a mandatory requirement that Proponents demonstrate a minimum of five (5) years experience performing contracts of a similar type and size to the Contract contemplated by this RFP. Proponents who fail to do this will be disqualified. Otherwise, the criteria that will be used in the evaluation and related weighting will be as follows:

• Corporate Qualifications	10%
• Project Team	10%
• Understanding of the Project	10%
• Project Work Plan	20%
• Price	50%
<hr/>	
	100%

4. HEALTH UNIT RIGHTS AND OPTIONS

The Health Unit reserves, holds, and may exercise, in its sole discretion, the following rights with regard to this RFP and the procurement process. By submitting a Proposal, the Proponent acknowledges and consents to the following:

- The Health Unit may require Proponents to send representatives to a meeting of one or more participating Windsor and Essex County municipalities for interviews and presentations.
- The Health Unit reserves the right to prepare and issue such amendments and/or addenda to the RFP that may supplement, amend or otherwise modify this RFP. Further the Health Unit reserves the right to postpone or change the date for receipt of Proposals or any other deadlines and dates specified in this RFP upon notice to Proponents, and a Proponent, by submitting a Proposal, agrees to be bound by any modifications made by the Health Unit.
- The Health Unit reserves the right to request additional information and to seek clarifications or additional evidence from any or each of the Proponents in order to fully understand the nature of the submissions and evaluate and rank the Proposals.
- The Health Unit may but shall not be obligated to verify any information included in Proposals. The Health Unit shall be entitled to reject any statement or claim if, in the judgment of the Health Unit, the statement or claim is unwarranted or questionable. Further the Health Unit shall be entitled in its sole discretion to disqualify a Proponent or take such other action it deems appropriate if in the opinion of the Health Unit the unwarranted or questionable statement is material or represents intentional misrepresentation by the Proponent.
- The Health Unit reserves the right to waive any technicalities or irregularities in the Proposals.
- This RFP does not obligate the Health Unit to enter a contract with any Proponent. The Health Unit reserves the right to accept or reject, for any reason, at its sole discretion, any and all Proposals and components thereof to eliminate any and all Proponents from further consideration; and to abandon this procurement process at the Health Unit's convenience at any time. Without limiting the generality of the foregoing the Health Unit reserves the right to disqualify any Proponent which in the opinion of the Health Unit for whatever reason presents an unacceptable performance risk.
- The Health Unit reserves the right to negotiate different or additional terms to those included in the RFP, the Contract (see Exhibit B), or received in any Proposal. Further the Health Unit reserves the right to discontinue negotiations with any Proponent.
- The Proponent shall bear all costs and expenses associated with the preparation and submission of its Proposal. This includes but is not limited to: site visits and inspections, all information gathering processes, interviews, preparing responses to questions or requests for clarification from the Health Unit, preparation of questions for the Health Unit, and any contract discussions and negotiations.
- All Proposals become the property of the Health Unit and participating Windsor and Essex County municipalities, and will not be returned.
- All activities related to the RFP shall be subject to the applicable laws.
- Neither the Health Unit nor participating Windsor and Essex County municipalities, their staff, representatives, nor any of their consultants or agents will be liable for any claims or damages resulting from solicitation, collection, review or evaluation of Proposals.

5. CONFIDENTIALITY

All correspondence, documentation and information provided by the Health Unit and participating Windsor and Essex County municipalities to any Proponent in connection with, or arising out of this RFP or the acceptance of any Proposal:

- remains the property of the Health Unit and participating Windsor and Essex County municipalities;
- must be treated as confidential; and
- must not be used for any purpose other than for submitting a Proposal in response to this RFP, and for fulfillment of any related subsequent contract.

Proponents are advised to identify in their Proposal any trade secrets or financial, commercial, scientific, or technical information, the disclosure of which could reasonably cause any of the impacts itemized in subsection 10(1) of the Ontario *Municipal Freedom of Information and Protection of Privacy Act*.

All correspondence, documentation and information provided to the Health Unit may be reproduced for the purposes of evaluating the Proponent's submissions to this RFP.

Proponents acknowledge that the collection, use and disclosure of Proposal information is subject to applicable freedom of information law, including the Ontario *Municipal Freedom of Information and Protection of Privacy Act*.

6. DISQUALIFICATION

6.1 PROPOSAL SUBMISSION DEADLINE

Proposals that are received after the proposal submission deadline will be disqualified and will not be considered. Proponents are solely responsible for ensuring that Proposals are delivered as required. Delays caused by any delivery service, including Canada Post, will not be grounds for an extension of the Proposal Submission deadline. Faxed or electronic transmissions, or other forms of unsealed proposals will not be considered.

6.2 FAILURE TO MEET OTHER MANDATORY REQUIREMENTS

Proposals that fail to meet any mandatory requirements as set out in this RFP will be disqualified and will not be considered. For greater clarity, Proposals that fail to meet any non-mandatory requirements will not be disqualified and will be considered but scoring may be affected.

6.3 COLLUSION

Should the Proponent give or offer any gratuity to or attempt to bribe any employee of the Health Unit or participating Windsor and Essex County municipalities, or to commit fraud, the Health Unit shall be at liberty to disqualify the Proponent's Proposal or if a Contract has been awarded terminate the Contract forthwith.

The Proponent shall ensure that no member of a municipal Council and no officer or employee of the Health Unit and participating Windsor and Essex County municipalities is, will be, or has become interested, directly or indirectly, as a contracting party, partner, stockholder, surety or otherwise howsoever in the performance of the Contract or in the supplies, work or business in connection with the said Contract, or in any portion of the profits thereof, or in any monies to be derived there from. For the purposes of this provision stockholders shall not include a person who holds publicly trade shares of the Proponent.

7. PROPOSAL REQUIREMENTS

The Proposal, as a mandatory requirement, must include a Proposal Submission Form which should follow the format of Exhibit A to this RFP and as a mandatory requirement must be signed by a signing officer of the Proponent or by another individual with the authority to commit the Proponent to the performance of the Contract (see Exhibit B). Proposals with unsigned Proposal Submission Forms will be disqualified.

EXHIBIT A – PROPOSAL SUBMISSION FORM

The Proponents should complete the below information. Appendices for certain technical information such as drawings, corporate material, team resumes, and project sheets may be used.

1. NAME AND CONTACT INFORMATION

NAME:

[Insert Proponent's full legal name. With corporate names reference should be had to the articles of incorporation. If the Proponent is a partnership or the Proposal is a Joint Proposal the full legal name of each partner or participant, as the case may be, should be inserted.]

Address:	Street:	City:	Province:
	Country:	Postal Code:	
Tel.:		Fax:	
E-mail:		Web Address:	
Contact re this Proposal:			

2. EXECUTIVE SUMMARY

Please set out an executive summary briefly describing the key aspects of the Proposal.

Add additional lines if necessary↑

3. CORPORATE QUALIFICATIONS

Proponents should indicate relevant experience on projects of similar type and scope. Project descriptions should include a summary of Proponent's scope of work, contract values and project references (including contact names and phone numbers). Note, it is a mandatory requirement that Proponents must demonstrate a minimum of five (5) years experience performing contracts of a similar type and size to the Contract contemplated by this RFP. Proponents who fail to do this will be disqualified.

PROJECT EXPERIENCE

Description of Contract	Company	Reference Contact incl. tel.	\$ Value	Year

Add additional spaces if necessary↑

The Proponent should outline the qualifications, licensing, certifications and insurance of the Proponent including with respect to equipment, WSIB, and Health and Safety protocols:

Add additional lines if necessary↑

4. PROJECT TEAM

Proponents should submit an organization chart describing the name, responsibility, function, and reporting structure for all key members of the project team. Project team descriptions should include the education, qualifications, licensing, certifications and experience of team members, and the percentage time commitment to this project for identified team members (insert or attach the chart).

5. UNDERSTANDING OF THE PROJECT

Proponents should demonstrate their understanding of the key issues associated with the Project and describe the Proponent's general approach to fulfilling Project requirements. The Project program must be justified using best information available. Proponents should clearly justify the work they consider required. All steps in the Project program including mapping, surveillance, and application of larvicide to catch basins and/or standing water should be identified separately. The necessity for, and the conditions that would require applications to both catch basins and standing water should also be clearly identified.

Add additional lines if necessary↑

6. PROJECT WORK PLAN

Proposals should clearly outline the approach to be taken so as to provide a full appreciation of the proposed work including a detailed schedule indicating anticipated timelines for each of the below activities and demonstrating that successful on-time completion of the different Project activities will be achieved. The beginning date of application will be dependent on the successful Proponent's assessment of risk. Proponents should therefore indicate in their proposal the proposed timing of the activities. The general timeframe of the work should be from May, 2018 to on or about October 31, 2018 for the larvicide application. It is realized that applications are dependent on surveillance activities and meteorological conditions. For this reason, the Proposal should be priced accordingly as indicated in section 7.

The Proponent shall perform any mapping necessary to complete the 2018 program.

The successful Proponent will provide, at the end of the 2018 program, a complete report detailing the larviciding activities.

Mosquito Control Plan, Windsor - Essex
Activities:
Application to Ministry of Environment and receipt of permits
Pre-Larviciding Assessment
Catchbasin Larviciding and Larviciding schedule for evaluation and monitoring
Standing Water Larviciding and Larviciding schedule for evaluation and monitoring
Reporting

Add additional spaces if necessary↑

7. PRICE

ACTIVITY	Unit Cost \$ Canadian	Estimated Quantity	Proposal Cost (Unit cost x Estimated Quantity) \$ Canadian
1. Pre-Larviciding Assessment: including all vehicles, personnel, and equipment required. This item to also include necessary applications to the Ministry of Environment and any other approvals required for a larviciding program.		Lump Sum	
2. Application of larvicide to catch basins including all labour, equipment and materials. <u>At least four applications should be considered in the plan.</u>	\$_____ Per unit of 100 catch basins	38,000 Catch basins (i.e. 380 units)	2a. Cost per 1 application = 2b. Cost of 4 applications =
3. Application of larvicide to standing water including all labour, equipment and materials. <u>At least four applications should be considered in the plan.</u>	\$_____ per unit of 1/10 of hectare	9 Hectares (i.e. 90 units)	3a. Cost per 1 application = 3b. Cost per 4 applications =
4. Any further activities required to perform the work, not included in the above line items (specify):		Lump Sum	
Total cost of Proposal, based on the estimated quantities above:			
Note: Estimated quantities and totals are for the purposes of clarifying the scope of the work and for comparison of pricing of Proposals. Unit prices in items 2 and 3 above will be used for actual payment of work performed. Work performed must be reported by municipality, since payment will be made through the Health Unit, by each municipality based on actual work performed			

Notes:

- Amounts are in Canadian dollars.
- Amounts apply for the term of the Contract and any extension terms.
- Taxes are included and are not extra.
- Amounts include the cost of the application of the product as well as the cost of the product itself. The product application shall be based on current accepted agents, which include methoprene for the application of catch basins and BTI for the application of standing water. Further amounts include all other labour, parts, materials, equipment, tools, transportation and any other incidentals required to perform the work.
- To evaluate pricing, the total of the following will be added and then such totals compared: 1 + 2 + 3 + 4.

8. PROPOSAL CERTIFICATION

I, _____ certify that:
[insert individual name]

1. I am the _____ (insert title) of the Proponent and as such have personal knowledge of the matters hereinafter set out or have made due inquiry and verily believe the matters hereinafter provided.
2. The Proponent has reviewed the RFP and understands its full meaning and intent.
3. If an award is made to the Proponent, the Proponent proposes to involve the following subcontracting arrangements (indicate “none” if none or provide details):

Add additional lines if necessary↑
4. The Proponent possesses all of the experience, qualifications and resources required in order to undertake the work contemplated by the RFP and fulfil the obligations under the Contract (see Exhibit B).
5. By submitting a Proposal, the Proponent agrees that the Proponent shall be subject to the RFP and if an award is made to the Proponent, the Proponent shall be bound by the terms of the Contract (see Exhibit B).
6. The Proponent has not participated in any collusion or bid rigging in connection with this RFP or in making its Proposal and in all respects the Proponent’s Proposal is fair.
7. All information provided in connection with the Proponents Proposal is complete, true and accurate.

Signature

I have authority to bind the Proponent

Date: _____

EXHIBIT B – CONTRACT

CONTRACT

THIS CONTRACT IS DATED THE AWARD DATE

B E T W E E N:

THE BOARD OF HEALTH FOR WINDSOR-ESSEX COUNTY HEALTH UNIT
(the "Health Unit")

- and -

(the "Supplier")

[Insert Supplier's full legal name. With corporate names, reference should be had to the articles of incorporation. If the Supplier is a partnership or the Award was made on a Joint Proposal, the full legal name of each partner or participant, as the case may be, should be inserted.]

WHEREAS:

- A. The Health Unit issued a request for proposal ("RFP") entitled WNV Mosquito Control Plan, Windsor-Essex for conducting a mosquito control project in 2018, with optional extensions to 2019 and 2020 and the Supplier submitted a proposal (the "Proposal") in response to the RFP.
- B. The Supplier has been selected for an award of Contract by the Health Unit pursuant to the RFP.
- C. This Contract documents the terms and conditions of the award.

NOW THEREFORE FOR GOOD AND VALUABLE CONSIDERATION THE PARTIES AGREE AS FOLLOWS:

CONDITIONS

- 1. This Contract is conditional on the Supplier submitting to the Health Unit the following items within one (1) week of the award date:
 - (a) A Workplace Safety and Insurance Board clearance certificate, statement of good standing or explanation if not applicable to the Supplier.
 - (b) A certificate of insurance providing full details of the Supplier's insurance coverage in accordance with the requirements set out in this Contract.
- 2. In the event that the Supplier fails to fulfil the conditions itemized herein, the Health Unit shall be entitled to terminate this Contract as per section 37 of this Contract.

SERVICES

3. The Supplier shall undertake the services (the “Services”) as set out in the RFP and the Supplier’s related Proposal in response thereto, commencing on or about May 1, 2018.
4. Nothing in the Supplier’s Proposal shall constitute an excuse or justification for any non-performance of the terms of this Contract. The Supplier is liable to complete all Services and all other Contract obligations.
5. The Supplier shall use current methods, shall skilfully and competently perform the Services and shall employ only skilled and competent staff that will be under the supervision of a senior member on staff of the Supplier.
6. The Supplier shall notify the appropriate municipal contact prior to beginning Services in any municipality.
7. The Supplier shall perform the Services and its other obligations under this Contract in accordance with all applicable legal requirements including all federal, provincial, municipal and other laws and regulations which are in any way applicable or related. Without limiting the generality of the foregoing:
 - (a) The Supplier shall obtain any permits, licences, and certificates and pay any fees required for the performance of the Services.
 - (b) The Supplier shall provide any notices required in connection with the performance of the Services.
 - (c) The Supplier shall arrange for any required inspections in connection with the Services.
8. The Supplier shall perform the Services in a safe manner and in accordance with all laws as required by section 7 of this Contract and in accordance with all safety standards and best practices which are from time to time applicable or relevant.
9. The Supplier shall, subject to the other terms of this Contract, perform the Services in a manner that is respectful of Health Unit and participating municipality personnel. In the event of a personal complaint by personnel of the Health Unit and/or a participating municipality which is in any way connected to or involving the Supplier, the Supplier shall co-operate as necessary to reasonably resolve the complaint, including participating in such complaint resolution processes as directed by the Health Unit.
10. All work related product and all intellectual property including all legal and equitable rights developed or produced by the Supplier or in any way arising in connection with the Services, shall immediately upon coming into existence be owned by and vest in the Health Unit. The Supplier waives and shall ensure that the Supplier’s employees and other agents waive, in favour of the Health Unit, all moral rights in respect of the work product. The Health Unit hereby grants a non-exclusive license to the Supplier to use the intellectual property in future work undertaken by the Supplier.
11. The Supplier shall act in the best interests of the Health Unit and participating municipalities and not do or omit to do anything which may adversely impact the Health Unit and/or participating municipalities, including the Supplier shall not do or omit to do anything that could reasonably result in an actual, potential, or perceived conflict of interest. Whether or not any situation or

circumstance constitutes an actual, potential or perceived conflict of interest and any resolution in respect of the same shall be solely determined by the Health Unit acting in its sole discretion.

12. The Supplier acknowledges that the Services are subject to funding from the government of Ontario and participating municipalities and are not guaranteed. Further, the Supplier acknowledges that mosquito borne diseases are subject to different variables, including among other things climate change, which could impact the levels or types of mosquito borne diseases making a change in the Services desirable. For funding reasons or any other reasons that the Health Unit determines are appropriate, the Health Unit shall be entitled to make changes to the Services in accordance with the following:
 - (a) The Health Unit shall provide notice to the Supplier of any such contemplated changes and effective timing.
 - (b) Within forty-eight (48) hours of receipt of the notice referred to in subsection 12(a) of this Contract, the Supplier shall provide notice of any pricing increases or decreases that will result from the changes contemplated and indicating any issues that the contemplated timing may present. The Supplier shall be required to use its best efforts to accommodate the Health Unit's contemplated timing and shall only be entitled to charge the Health Unit additional amounts if the Supplier can demonstrate that such changes result in increased costs to the Supplier. Price increases and decreases shall be based upon the original price structure for the Services.
 - (c) If the Health Unit wishes to proceed with the contemplated changes after receiving the Supplier's responding notice referred to in subsection 12(b) of this Contract, then the Health Unit shall issue a change directive to the Supplier. If the Health Unit wishes to proceed but disputes the timing issues or price increases or decreases noted in the Supplier's responding notice referred to in subsection 12(b) of this Contract, then the Health Unit shall indicate in the change directive that it will be submitting the matter to arbitration in accordance with the following:
 - (i) The dispute shall be determined by a single arbitrator in Windsor, Ontario. If the parties cannot agree upon an arbitrator within ten (10) days from the receipt of the change directive, then an arbitrator shall be appointed by a Judge of the Ontario Court (General Division) upon application of any of the parties.
 - (ii) Arbitration shall proceed in accordance with the provisions of the *Arbitrations Act* (Ontario). The decision arrived at by the arbitrator shall be final and binding and no appeal shall lie therefrom.

Pending arbitration, the parties shall implement the change directive and reconcile any differences in accordance with any arbitration order once such order is made. The Supplier shall not undertake any changes to the Services if it has not received a change directive from the Health Unit.
13. The Supplier shall not make any changes to the Services without the prior written approval of the Health Unit.
14. If the Supplier discovers anything in connection with the Services or otherwise about the Contract that is incomplete, contains internal inconsistencies, does not align with legal requirements or site conditions or otherwise appear not to have been contemplated, the Supplier shall immediately advise the Health Unit verbally and in accordance with the notification provisions of this Contract.

15. Circumstances which arise which are not contemplated by this Contract and which involve a change to the Services, shall be addressed as per Contract section 12, except that the Supplier shall not be entitled to charge the Health Unit any additional amounts if the Supplier knew or ought reasonably to have known about the circumstances prior to closing of the RFP and failed to report the same to the Health Unit.
16. If progress on the Services is behind schedule or likely to become behind schedule, the Supplier shall immediately notify the Health Unit of the same and subject to any direction from the Health Unit, shall take such steps as are necessary to recover the schedule. The Supplier shall have no right against the Health Unit for damages, costs, expenses or loss of profits due to delay.
17. In the event the Supplier's completion or progress on the Services does not conform to the requirements of this Contract, including damage not contemplated by this Contract, the Supplier shall take such remedial action as may be directed by the Health Unit within such time frames as directed by the Health Unit. Nothing in this provision shall be construed as in any way waiving or limiting any other rights or remedies that the Health Unit may have. For example, the Health Unit may choose alternate means to effect remedial action, which in the Health Unit's discretion may or may not include the Supplier.

PERSONNEL AND SUBCONTRACTORS

18. All personnel involved in the performance of the Services and fulfillment of the Supplier's other obligations pursuant to this Contract shall be under the control and direction of the Supplier and shall not be employees or agents of the Health Unit.
19. The Supplier shall ensure that all personnel involved in the performance of Services or fulfillment of the Supplier's other obligations pursuant to this Contract are duly qualified and competent.
20. The Supplier shall ensure that any and all personnel shall, when requested by any Health Unit and /or participating municipality representative, identify her or himself and show identification issued by the Supplier verifying at a minimum: the name of the Supplier; the Services involved; the name and photograph of such personnel and the date of issuance of the identification document.
21. The Health Unit shall, at any and all times and in its sole discretion, be entitled to object to any specific Supplier personnel in which case the Supplier shall ensure that such personnel are not involved in the performance of Services.
22. The Supplier shall not enter into any subcontracting arrangements in the performance of the Services, other than as pre-approved in writing by the Health Unit.

INVOICING AND PAYMENT

23. Supplier invoices for the Services shall be subject to the following:
 - (a) The amounts invoiced shall be in accordance with the Supplier's Proposal and this Contract and shall be after the related Services are completed and not in advance.
 - (b) The Supplier shall submit invoices to the Health Unit within seven (7) days of the last day of the month for Services completed from the 1st to the last day of that month.

- (c) Invoices shall include the following information:
 - (i) Date of Invoice.
 - (ii) A statement as to the point in the Project Plan with which the invoiced Services relate.
 - (iii) Service activities including who, what, when and where, and the related cost breakdown (as per RFP pricing). It is to be noted that funding is in part from participating municipalities and a breakdown will be required, sufficient for the Health Unit's internal billing purposes.
 - (iv) Applicable taxes shown separately.
 - (v) Any other information requested by the Health Unit from time to time.
 - (d) Provided that the Health Unit has received sufficient funding from the Provincial government and participating municipalities on account of the subject matter of this Contract, the Health Unit shall pay invoices within forty-five (45) days of receipt of the same, providing there is no dispute regarding the invoice or question about the performance of the Services or the Supplier's other obligations under this Contract.
24. The Health Unit shall not be required to make and the Supplier shall not be entitled to receive any payments from the Health Unit except as expressly set out in this Contract. It is emphasized that estimated quantities and totals set out in the RFP Proposal Submission Form were for the purposes of clarifying the scope of the work and for comparison of pricing of Proposals and that unit prices set out in the RFP Proposal Submission Form will be used for payment of actual work performed which, depending on meteorological and other factors that impact mosquito production, could be less or more than the estimates.
25. In the event that the Supplier disputes the amount of payment made by the Health Unit in respect of any invoice submitted, the Supplier shall provide written notice to the Health Unit of such dispute within sixty (60) days after payment becomes due and/or refusal to pay by the Health Unit. In the event the Supplier fails to provide such written notice the Supplier shall not be entitled to pursue its claim and the Health Unit shall be deemed to have satisfied any and all obligations that it may have in respect of the invoice to which the dispute relates.
26. The Supplier shall forthwith, upon becoming aware of any overpayment by the Health Unit, return such overpayment to the Health Unit.
27. The Health Unit shall be entitled to set off any amounts owing from the Health Unit to the Supplier against any amounts from time to time owing from the Supplier to the Health Unit.
28. No payment by the Health Unit for invoices rendered by the Supplier shall constitute acceptance of any portion of the Services which is not in accordance with the terms and conditions of this Contract, nor shall any such payments be construed as acceptance by the Health Unit of deficiencies.

RECORDS AND MONITORING

29. The Supplier shall keep written records of:
- (a) Any and all legal compliance activities that arise in connection with the Services, including with respect to the Ontario Workplace Safety and Insurance Board.

- (b) Details of the experience, qualifications and training of personnel involved in the performance of Services or fulfillment of the Supplier's other obligations pursuant to this Contract.
 - (c) Any actual or near accident or injury to any person or property while performing Services.
 - (d) All expenses incurred in the performance of the Services.
 - (e) All invoices issued to the Health Unit.
 - (f) All payments received on account of invoices issued to the Health Unit.
30. All records required to be kept by the Supplier shall be maintained by the Supplier and not disposed of during the currency of this Contract and for at least seven (7) years after any expiry or other termination of this Contract.
31. During the period in which they are required to be kept, the Supplier shall provide to the Health Unit any records requested within two (2) days of any such request by the Health Unit. Further, the Health Unit and its authorized representatives, at all reasonable times during regular business hours and without notice, may conduct a financial or operational audit, investigation or other form of review of the Supplier to confirm the Supplier's fulfilment of its obligations under this Contract, and for these purposes, the Health Unit and/or its authorized representatives, may inspect and copy any records in the possession or under the control of the Supplier which relate to the obligations of the Supplier under this Contract. The Supplier's obligations under this section will survive any termination of this Contract.
32. The Health Unit shall be entitled but not obligated to monitor, assess and evaluate the Supplier's performance of this Contract as the Health Unit deems appropriate and the Supplier shall cooperate in all such efforts.

TERM, EXTENSION, SUSPENSION AND TERMINATION

33. The term of this Contract shall, subject to extension, suspension or early termination, commence as of the date of the award and will terminate when the Services for the 2018 season are completed which is anticipated to be on or about October 31, 2018.
34. The Health Unit shall have two (2) options to extend this Contract on the same terms and conditions for the 2019 and 2020 seasons. The options are exercisable by the Health Unit on written notice to the Supplier any time prior to termination of the Contract.
35. The Health Unit may at any time and from time to time in its sole discretion, and subject to such directions the Health Unit deems appropriate, stop and suspend the Services for a specified or unspecified time by notice to the Supplier in which case the Supplier shall immediately stop the Services in accordance with any directions made by the Health Unit and the Supplier shall, if not in default of its obligations pursuant to this Contract, thereupon be entitled to payment for Services performed together with such expenses and disbursements allowed under this Contract to the date of suspension.
36. If the Supplier defaults or is, in the opinion of the Health Unit, likely to default in the

performance of any or all of the Services, even if the default is minor or immaterial, the Health Unit, without notice to the Supplier, may but shall not be obligated to carry out all or any part of the Services either directly or indirectly and through such means as the Health Unit sees fit. Such taking of the Services or any part thereof from the Supplier's hands shall not operate to relieve or discharge the Supplier from any of its obligations pursuant to this Contract. Further in such event, the Health Unit shall be entitled to indemnification as per sections 40-42 41 of this Contract and to set off as per section 27 of this Contract without prejudice to any other rights or remedies that the Health Unit may have.

37. The Health Unit shall have the following options to terminate this Contract or any portion thereof without liability, damage or cost to or further obligation of the Health Unit except as otherwise specified:

- (a) immediately on giving notice to the Supplier in the event that:
 - (i) any one or more aspects of the Supplier's Proposal are determined by the Health Unit to be inaccurate or false or determined by the Health Unit that the Supplier has engaged in unfair or inappropriate conduct as described in RFP section 6.3;
 - (ii) the Supplier is in default of a material obligation under this Contract, including a failure to meet the conditions of this Contract or maintain insurance;
 - (iii) the Supplier is in repeated default (three (3) or more times) in the performance of any of its obligations (whether the same or different obligations) under this Contract which obligations are not alone considered material;
 - (iv) the Supplier becomes bankrupt, insolvent, or a receiving order is made against the Supplier; and/or
 - (v) the Supplier, a director of the Supplier and/or any key personnel of the Supplier are convicted of a *Criminal Code* offence,

in which event the Health Unit shall be entitled to indemnification as per sections 40-42 and set off as per section 27 of this Contract.

- (b) Further in the following circumstances:
 - (i) on at least fourteen (14) days notice in writing to the Supplier for any reason or no reason whatsoever; and
 - (ii) immediately on giving notice to the Supplier if the Supplier is operating as a sole proprietor and dies or becomes incapacitated or if the key operating officer of a corporate Supplier dies or becomes incapacitated before the Services have been completed,

in which event the Supplier shall, if not in default of its obligations pursuant to this Contract, thereupon be entitled to payment for Services performed together with such expenses and disbursements allowed under this Contract to the date of termination.

38. Upon suspension or termination of this Contract:

- (a) The Supplier shall cooperate and do all things necessary to avoid disruption and to facilitate a smooth transition to such other person as will be continuing with performance of the Services.
- (b) The Health Unit shall be given and have the right to take possession of and use any completed or partially completed drawings, documents, software, equipment and other information prepared or to be supplied by the Supplier. Any intellectual property, including all legal, equitable and moral rights developed or produced by the Supplier or in any way arising in connection with the Services, shall be owned by and vest in the

Health Unit. The Supplier shall be entitled to retain a copy of all drawings and documents for record keeping purposes only at its own expense.

39. Notwithstanding any other provision the indemnity obligations in this Contract and any other provisions under this Contract which by their terms or nature survive termination, shall survive termination of this Contract and continue in full force and effect.

INDEMNIFICATION

40. The Supplier shall indemnify and save harmless the Health Unit, its directors, officers, employees, agents, and the heirs and assigns of the aforementioned persons or bodies and participating Windsor and Essex County municipalities from and against all claims, actions, losses, expenses, costs or damages of every nature and kind whatsoever which the Health Unit and participating Windsor and Essex County municipalities, their directors, employees, officers or agents and assigns of the aforementioned persons or bodies may suffer as a result of:
- (a) any negligent acts or omissions of the Supplier, its employees, officers, agents and/or subcontractors in the performance of this Contract;
 - (b) any inaccuracy in any information given by Supplier in connection with its Proposal or otherwise made by the Supplier to the Health Unit;
 - (c) default, breach or violation of the terms of this Contract by the Supplier or those for whom the Supplier is responsible, including employees, agents and subcontractors; and
 - (d) suspension or early termination of the Contract for cause.
41. In connection with and as part of the indemnity granted in section 40 of this Contract, the Supplier shall advance to such person(s) indemnified within seven (7) days of a request or requests from time to time by such person(s) such amounts as are reasonably necessary for such person(s) to defend her/him/itself/themselves against any threatened or pending suit, claim, action or other proceeding (including any appeal therefrom) whether civil, criminal, administrative or investigative in nature or to satisfy any liabilities, losses, costs, sums, damages, expenses and/or obligations.
42. Notwithstanding any indemnity obligation of the Supplier, the Health Unit shall be entitled to control any defence of itself.

INSURANCE

43. The Supplier is required to maintain the following general commercial liability insurance coverage in effect for the term of the Contract:
- To a limit of not less than five million dollars (\$5,000,000.00) per incident or occurrence.
 - Naming the Health Unit and participating Windsor and Essex County municipalities specifically as additional insured's with respect to the operations of the named insured under the policy of insurance Services.
 - Containing clauses waiving subrogation against the additional insured, and providing for cross liability as between the additional insured and for the severability of their interests.
 - Including completed operations coverage.
 - Including owner's protective coverage.

- Including contractual coverage.
- Including non-owned automobile coverage.
- Having a deductible amount of not greater than twenty-five thousand dollars (\$25,000.00) per accident or occurrence. The Supplier is responsible for any loss or losses within the deductible limit.

Being primary coverage pursuant to which the insurer is acting as first loss insurer against the risk covered and not excess to any other insurance available to the additional named insured.

In addition to general liability insurance, the Supplier must carry a minimum of two million dollars (\$2,000,000.00) in third party liability insurance on the vehicles used in the performance of the Services, and shall be primary coverage pursuant to which the insurance available to the additional named insured.

The liability policies shall be endorsed to comply with the insurance requirements set out in the Pesticides Act, R.S.O. 1990, c. P.11 and the regulations promulgated thereunder. Such insurance shall be with a company licensed to carry on business in the Province of Ontario and its form and content shall be satisfactory to the Health Unit and participating Windsor and Essex County municipalities.

The policies or certificates of insurance filed with the Health Unit shall provide that the Health Unit and participating Windsor and Essex County municipalities be furnished with thirty (30) days prior written notice of any cancellation or material change in the policies which would affect the risks under the Contract.

44. In the event that a person is injured and/or events occur through or connected with the Supplier's performance of the Services or fulfillment of the Supplier's other obligations under this Contract, which could form the basis of a claim, the Supplier shall forthwith deliver notice of the same to the Health Unit. Without limiting the generality of the foregoing, the Supplier shall forward to the Health Unit any incident reports that the Supplier is required to keep pursuant to this Contract immediately following the incident which is the subject matter of the report.

PRIVACY AND CONFIDENTIALITY

45. The Supplier shall comply with the provisions contained in the Privacy and Proprietary Information Protection Agreement attached as Schedule A.
46. For the purposes contemplated by this Contract, the Supplier consents to the collection, use and disclosure by the Health Unit of all information contemplated by this Contract. To the extent such information constitutes personal information of individuals, the Supplier shall provide notice to and obtain the requisite consents of such individuals.
47. The Supplier acknowledges that the collection, use and disclosure of information contemplated by this Contract is subject to applicable privacy and access to information legislation, including MFIPPA.
48. In the completion of the Services and fulfillment of the Supplier's other obligations under this Contract, it is possible that the Supplier may obtain access to certain Health Unit proprietary and confidential information, including information about the Health Unit operations, processes, methods, practices, know-how, statistics, financial information,

education materials, plans and/or forecasts. The Supplier acknowledges that such information is confidential information and undertakes to treat confidentially all such information and not to disclose it to any third party or to use it for any purpose, either during the currency of this Contract or thereafter, except as may be necessary in the performance of the Work and fulfillment of the Supplier's other obligations under this Contract or unless otherwise required by law.

49. In the event that the Supplier is required by law to disclose to a third party any Health Unit confidential information, the Supplier shall provide prior written notice of any such disclosure to the Health Unit.
50. The Supplier shall not make any communications to any third parties about the Health Unit, the Services and/or this Contract, whether or not such communications involve confidential information, without the prior written consent to the Health Unit.

MISCELLANEOUS

51. Communications.

- (a) Unless otherwise expressly provided, all notices, requests, demands or other communications required or permitted to be given by one party to another shall be given in writing by personal delivery, by mailing the same by prepaid mail, or sent by facsimile or email as follows:

To Health Unit: If by personal delivery to:
1005 Ouellette Avenue
Windsor, ON, N9A 4J8
Attention: Dr. Wajid Ahmed, Acting Medical Officer of Health

If by prepaid mail to:
1005 Ouellette Avenue
Windsor, ON, N9A 4J8
Attention: Dr. Wajid Ahmed, Acting Medical Officer of Health

If by facsimile or email to:
Facsimile: (519) 258-6003
Email: wahmed@wechu.org

To the Supplier:

To the Supplier's address as set out in the Supplier's Proposal.

Attention: to the attention of the contact person as set out in the Proposal.

Facsimile: to the attention of the contact person as set out in the Supplier's Proposal.

Email: to the attention of the contact person as set out in the Supplier's Proposal.

or at such other address as may be given by any one of them to the other in writing as aforesaid from time to time, and such notices, requests, demands, acceptances and other communications shall be deemed to have been given and received as follows:

- (i) if made by personal delivery, when delivered;
- (ii) if sent by prepaid mail, on the fourth (4th) business day following the date of mailing;
- (iii) if transmitted by facsimile, twenty-four (24) hours after the time of sending; or
- (iv) if transmitted by email, twenty-four (24) hours after the time of sending.

In the event of disruption of normal postal service, notice may be made by delivery, facsimile or email only. The Supplier is put on notice that it is not entitled to rely on communications with respect to this Contract made any other way than as indicated above.

- (b) The Supplier shall respond to all Health Unit communications within twenty-four (24) hours. Responses shall include such content as may reasonably be requested by the Health Unit.
52. Nothing in the Supplier's Proposal shall constitute an excuse or justification for any non-performance of the terms of this Contract. The Supplier is liable to perform all Services and other Contract obligations.
53. A waiver of any default, breach or non-compliance under this Contract is not effective unless in writing and signed by the party to be bound by the waiver. No waiver shall be inferred from or implied by any failure to act or delay in acting by a party in respect of any default, breach or non-observance or by anything done or omitted to be done by the other party. The waiver by a party of any default, breach or non-compliance under this Contract shall not operate as a waiver of that party's rights under this Contract in respect of any continuing or subsequent default, breach or non-observance (whether of the same or any other nature).
54. The Supplier may not assign or transfer, whether absolutely, by way of security or otherwise, all or any part of the Supplier's rights or obligations under this Contract without the prior written consent of the Health Unit. Any amalgamation or change of control of the Supplier shall be deemed to be an assignment. This Contract shall enure to the benefit of, and be binding on the parties and their respective successors and permitted assigns.
55. Notwithstanding any other provision, any particular entitlement, right or remedy of the Health Unit provided for in this Contract does not preclude the Health Unit from any other entitlement, right or remedy available at law or otherwise and further, no right or remedy is exclusive or dependent on any other entitlement, right or remedy and the Health Unit may exercise any one or more of its entitlements, rights or remedies independently or in combination, such rights, entitlements or remedies being cumulative and not alternative.
56. The parties acknowledge that the Supplier is an independent contractor and nothing in this Contract shall create an employer-employee, principal-agent or partnership relationship.
57. This Contract shall be construed and interpreted in accordance with the laws of the Province of Ontario, Canada.

58. This Contract may be executed in any number of counterparts, each of which will be deemed an original, but all of which together constitute one and the same instrument.
59. Counterparts may be executed either in original, faxed or scanned form and the parties shall adopt any signatures received by a facsimile or scan as original signatures of the parties.

Dated at Windsor, Ontario, this _____ day of _____, 2018.

BOARD OF HEALTH FOR THE WINDSOR-ESSEX COUNTY HEALTH UNIT

PER: _____
I have authority to bind the corporation.

SUPPLIER: _____
Insert Supplier full legal name with corporate names reference should be had to the articles of incorporation. If the Supplier is a partnership or the Award was made on a Joint Proposal the full legal name of each partner or participant as the case may be should be inserted.

PER: _____

PER: _____
I/We have authority to bind the corporation.

If Supplier is a:
corporation
sole proprietorship
partnership/joint proposal

Individual who Should Sign
authorized signing officer
the proprietor
each of the partners/participants

**SCHEDULE A – PRIVACY AND PROPRIETARY
INFORMATION PROTECTION AGREEMENT**

PRIVACY AND PROPRIETARY INFORMATION PROTECTION AGREEMENT

Dated: _____
(MONTH) (DAY) (YEAR)

BETWEEN:

WINDSOR-ESSEX COUNTY HEALTH UNIT, an Ontario corporation without share capital incorporated under the Ontario *Health Protection and Promotion Act* ("Health Unit")

-and-

_____, ("Supplier"),

[Insert Supplier full legal name. With corporate names reference should be had to the articles of incorporation. If the Supplier is a partnership or the a joint venture the full legal name of each partner or joint venture, as the case may be, should be inserted.]

WHEREAS:

- A. The Health Unit has or may from time to time contract with the Supplier.
- B. In connection with such contracts the Health Unit may have Disclosed or may in the future Disclose to the Supplier certain In-Scope Privacy Law Information and/or Proprietary Information.
- C. In connection with such Disclosure the Health Unit wishes to: comply with its statutory obligations under MFIPPA and PHIPA; ensure that the Supplier is aware of and complies with its statutory obligations under MFIPPA and PHIPA; and protect the Health Unit's Proprietary Information, all as per the provisions of this Agreement.

NOW THEREFORE in consideration of the Health Unit providing Disclosure of In-Scope Privacy Law Information and/or Proprietary Information to the Supplier THE PARTIES AGREE AS FOLLOWS:

1.0 DEFINITIONS AND INTERPRETATION

- 1.1 **Definitions.** In this Agreement, unless otherwise defined or indicated or the context requires otherwise:
 - (a) "Agreement" means this agreement.
 - (b) "Applicable Privacy Law" includes MFIPPA and PHIPA.
 - (c) "Disclose" means to grant access to release or make information available.
 - (d) "In-Scope Privacy Law Information" means all "personal health information" as defined by PHIPA; and all "personal information" as defined by MFIPPA.
 - (e) "MFIPPA" means *Municipal Freedom of Information and Protection of Privacy Act*.
 - (f) "PHIPA" means *Personal Health Information Protection Act*.
 - (g) "Proprietary Information" means any Health Unit information (whether in written, electronic, verbal or other form) which the Health Unit Discloses to the Supplier including any information relating to the Health Unit's financial and business affairs, operations,

processes, plans or intentions, know-how and/or information systems unless such information was known to the Supplier prior to such Disclosure and the same can be demonstrated by the Supplier with clear convincing evidence or if such information is now or later becomes part of the public knowledge without violation of this Agreement.

- (h) **“Supplier Representatives”** means a person engaged to represent the Supplier including Supplier employees.

1.2 Interpretation. Interpretation of this Agreement shall be subject to the following:

- (a) **Number.** Unless the context requires otherwise, words importing the singular include the plural and vice versa.
- (b) **Gender.** Unless the context requires otherwise, words importing gender include all genders.
- (c) **Include, Etc.** Whenever the words “include”, “includes” or “including” (or similar terms) are used they are deemed to be followed by the words “without limitation”.
- (d) **Statute References.** Any reference to any statute or any section thereof shall, unless otherwise expressly stated, be deemed to be a reference to such statute or section as amended, restated or re-enacted from time to time.
- (e) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

2.0 TERM

- 2.1 **Term.** This Agreement shall commence as of the date of this Agreement and shall continue in force at all times, at any time and from time to time that the Supplier has any In-Scope Privacy Law Information and/or Proprietary Information within its possession or control whether or not such possession or control was obtained prior to the date of this Agreement, unless otherwise stated in this Agreement.

3.0 COLLECTION

- 3.1 **Collect Only as Permitted by Applicable Privacy Law.** Notwithstanding any other provision in this Agreement or any other agreement that the Supplier has with the Health Unit, the Supplier shall only collect In-Scope Privacy Law Information to which this Agreement applies in accordance with Applicable Privacy Law.
- 3.2 **Collect Only as Necessary.** The Supplier shall only collect such In-Scope Privacy Law Information to which this Agreement applies as is necessary for the performance of the Supplier’s obligations under such agreements as it may have with the Health Unit.
- 3.3 **Communication of Authority, Purpose and Contact.** When collecting In-Scope Privacy Law Information to which this Agreement applies directly from the individual the information is about, the Supplier shall inform the individual of the following:
 - (a) the legal authority for collection;
 - (b) the purpose of collection; and

- (c) the title, business address and business telephone number of the person designated by the Health Unit to answer questions about the Supplier's collection.

4.0 ACCESS

- 4.1 **Assist Health Unit with Access Requests.** The Supplier shall assist the Health Unit as reasonably necessary to facilitate the Health Unit's compliance with any access requests that it receives pursuant to Applicable Privacy Law.
- 4.2 **Access Requests Made to Supplier.** If the Supplier receives an access request for In-Scope Privacy Law Information to which this Agreement applies, the Supplier shall promptly notify the Health Unit of such request.

5.0 USE

- 5.1 **Use Only as Permitted by Applicable Privacy Law.** Notwithstanding any other provision in this Agreement or any other agreement that the Supplier has with the Health Unit, the Supplier shall only use In-Scope Privacy Law Information to which this Agreement applies in accordance with Applicable Privacy Law.
- 5.2 **Use Only as Necessary.** The Supplier shall only use In-Scope Privacy Law Information to which this Agreement applies as is necessary for the performance of the Supplier's obligations under such agreements as it may have with the Health Unit and for no other purpose.
- 5.3 **Ensure Accuracy.** The Supplier shall take reasonable steps to ensure that the In-Scope Privacy Law Information used by it is as accurate, complete and up-to-date as is necessary for the purposes for which it uses such information.

6.0 DISCLOSURE

- 6.1 **Disclosure Only as Permitted by Applicable Privacy Law.** Notwithstanding any other provision in this Agreement or any other agreement that the Supplier has with the Health Unit, the Supplier shall only Disclose In-Scope Privacy Law Information to which this Agreement applies in accordance with Applicable Privacy Law.
- 6.2 **Disclose Only as Necessary.** The Supplier shall only Disclose In-Scope Privacy Law Information to which this Agreement applies as is necessary for the performance of the Supplier's obligations under such agreements as it may have with the Health Unit and for no other purpose.
- 6.3 **Ensure Accuracy.** In connection with any Disclosure of In-Scope Privacy Law Information the Supplier shall take reasonable steps to ensure that the information is as accurate, complete and up-to-date as is necessary for the purposes of the Disclosure that are known to the Supplier at the time of the Disclosure; or clearly set out for the recipient of the Disclosure the limitations, if any, on the accuracy, completeness or up-to-date character of the information.

7.0 RETENTION AND DISPOSAL

- 7.1 **Retention in Accordance with Applicable Privacy Law.** Notwithstanding any other provision in this

Agreement or any other agreement that the Supplier has with the Health Unit, the Supplier shall retain In-Scope Privacy Law Information to which this Agreement applies in accordance with Applicable Privacy Law.

- 7.2 **Return at Any Time.** The Supplier shall return to the Health Unit any and all In-Scope Privacy Law Information to which this Agreement applies immediately upon any request in that regard by the Health Unit.
- 7.3 **Prior Health Unit Consent for Destruction.** The Supplier shall not destroy any In-Scope Privacy Law Information to which this Agreement applies without the prior written consent of the Health Unit.
- 7.4 **Confirmation of Destruction.** The Supplier shall confirm in writing with the Health Unit if and when any In-Scope Privacy Law Information to which this Agreement applies has been destroyed (reconstruction of the records is not reasonably foreseeable in the circumstances).

8.0 SAFEGUARDS

- 8.1 **As Required by Applicable Privacy Law.** Notwithstanding any other provision in this Agreement or any other agreement that the Supplier has with the Health Unit, the Supplier shall take steps that are reasonable in the circumstances to ensure that all In-Scope Privacy Law Information to which this Agreement applies is protected against theft, loss and unauthorized use or Disclosure and ensure that the records containing the information are protected against unauthorized copying, modification or disposal. Without limiting the generality of the foregoing:
- (a) **Physical Measures.**
 - (i) The Supplier shall not store any In-Scope Privacy Law Information in a place outside of its control or in a place outside of Canada or permit access to In-Scope Privacy Law Information from outside Canada.
 - (ii) The Supplier shall prohibit its representatives from moving In-Scope Privacy Law Information to a place outside the Supplier's control.
 - (iii) The Supplier shall ensure that In-Scope Privacy Law Information is not left in open areas (clean desk policy).
 - (iv) The Supplier shall store all In-Scope Privacy Law Information in a manner that guards against unauthorized access.
 - (b) **Organizational Measures.**
 - (i) The Supplier shall limit Disclosure of In-Scope Privacy Law Information to Supplier Representatives on a need to know basis and only as required to carry out their individual duties.
 - (ii) The Supplier shall ensure that all Supplier Representatives having access to In-Scope Privacy Law Information are knowledgeable about Applicable Privacy Law.
 - (iii) The Supplier shall require all Supplier Representatives having access to In-Scope Privacy Law Information to in writing acknowledge and agree to comply with Applicable Privacy Law obligations.
 - (iv) The Supplier shall ensure that its security measures to prevent unauthorized access to In-Scope Privacy Law Information are defined and documented.
 - (c) **Technological Measures.**
 - (i) For In-Scope Privacy Law Information in electronic form the Supplier shall develop and apply secure password and encryption protocols.

9.0 COMPLIANCE MONITORING AND BREACH

- 9.1 **Written Record.** The Supplier shall keep a written record of all collections, uses, retentions, Disclosures and disposals of In-Scope Privacy Law Information to which this Agreement applies, specifying when and by whom the information was collected, used, retained, Disclosed or disposed of, and to whom or where the information was Disclosed or disposed. Upon termination of this Agreement the Supplier shall provide a copy of the record to the Health Unit.
- 9.2 **Correction.** Within five business days of receiving a written direction from the Health Unit to correct any In-Scope Privacy Law Information to which this Agreement applies, the Supplier shall correct the information in accordance with that direction. If the Supplier receives a request for correction of personal information from a person other than the Health Unit, the Supplier shall promptly notify the Health Unit of such request.
- 9.3 **Inspection.** The Health Unit may, at any time and from time to time on reasonable notice to the Supplier, enter on the Supplier's premises to inspect any In-Scope Privacy Law Information to which this Agreement applies in the possession of the Supplier or any of the Supplier's information management policies or practices relevant to its management of the In-Scope Privacy Law Information or its compliance with this Agreement, and the Supplier shall permit and provide reasonable assistance to any such inspection.
- 9.4 **Notification of Breach.** If for any reason the Supplier does not comply, or anticipates that it will be unable to comply, with a provision in this Agreement, the Supplier shall promptly notify the Health Unit of the particulars of the non-compliance or anticipated non-compliance and what steps it proposes to take to address, or prevent recurrence of, the non-compliance or anticipated non-compliance.
- 9.5 **Notification of Unauthorized Disclosure.** The Supplier shall notify the Health Unit at the first reasonable opportunity if In-Scope Privacy Law Information to which this Agreement applies is stolen, lost or accessed by unauthorized persons.
- 9.6 **Containment of Unauthorized Disclosure.** The Supplier shall take every reasonable step to contain any unauthorized Disclosure of In-Scope Privacy Law Information to ensure such Disclosure is as limited as possible including cooperation with the Health Unit as the Health Unit reasonably directs.
- 9.7 **Cooperation in Investigation.** The Supplier shall cooperate with any internal or external audit process or investigation of the Health Unit or Office of the Information and Privacy Commissioner of Ontario. This provision shall survive any termination of this Agreement.
- 9.8 **Cross Termination.** In addition to any rights of termination that the Health Unit may have under any other agreements or otherwise at law, in the event of material breach of this Agreement by the Supplier the Health Unit shall have the option without further obligation or liability of terminating any one or more other agreements that the Health Unit has with the Supplier immediately upon giving notice to the Supplier.

10.0 PROPRIETARY INFORMATION

- 10.1 **Use.** The Supplier shall not make use of any Proprietary Information other than for the specific purposes of any dealings with the Health Unit and shall hold all information in strict confidence and shall not Disclose the same unless the Supplier obtains the Health Unit's prior written consent.
- 10.2 **Supplier Representatives.** The Supplier shall limit access and shall limit Disclosure of Proprietary Information to Supplier Representatives on a need to know basis and only as required to carry out their individual duties. The Supplier shall require all Supplier Representatives having access to

Proprietary Information to in writing acknowledge and agree to keep the same in strict confidence in compliance with the Supplier's obligations under this Agreement.

- 10.3 **Return.** The Supplier shall return to the Health Unit any and all Proprietary Information immediately upon any request in that regard by the Health Unit.

11.0 MISCELLANEOUS

- 11.1 **Communications.** Any notice or other communication required or contemplated under the terms of this Agreement shall be in writing and may be delivered personally, sent by prepaid registered mail or sent by facsimile as follows:

To the Health Unit at:

Windsor-Essex County Health Unit
1005 Ouellette Avenue
Windsor, ON CANADA
N9A 4J8

Attention: Corporate Services Director

Fax: 519-258-6003

or such other address and facsimile as the Health Unit may from time to time in writing direct.

To the Supplier at: Such address and facsimile as is noted in any agreements that the Health Unit may have with the Supplier and if none is so noted at such address and facsimile as is available in any public records or as the Supplier may from time to time direct in writing.

If delivered personally it shall be deemed to be received on the date of delivery; if sent by facsimile it shall be deemed to be received on the date following facsimile; and if sent by pre-paid regular mail it shall be deemed received three days after the date of mailing.

- 11.2 **Assignment and Subcontractors.** The Supplier shall not assign or transfer this Agreement or any of its obligations hereunder or any part hereof without the prior written consent of the Health Unit. Further the Supplier shall not provide Disclosure of any In-Scope Privacy Law Information to which this Agreement applies or any Proprietary Information to a sub-contractor without the prior written consent of the Health Unit. A change of control of the Supplier shall be deemed to be an assignment.
- 11.3 **Agreement.** There are no verbal representations, undertakings or agreements of any kind between the parties except as contained in this Agreement and any other written agreement between the Health Unit and Supplier.
- 11.4 **Amendment.** No modification or amendment to this Agreement may be made unless agreed to by each of the parties in writing.
- 11.5 **Severability.** In the event that any provision of this Agreement shall be invalid, illegal or unenforceable, it shall not affect the validity, legality or enforceability of any other provision of this Agreement.

