

SCHEDULE 1 – CONFIDENTIALITY AND PRIVACY AGREEMENTS



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CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

PROJECT TITLE: MERCHANT SERVICES

Reference No.: 1220-030-2023-038

BETWEEN:

CITY OF SURREY
13450 - 104 Avenue,
Surrey, B.C., V3T 1V8

(the "**City**")

OF THE FIRST PART

AND:

(Insert Full Legal Name and Business Address)

(the "**Consultant**")

OF THE SECOND PART

WHEREAS:

- A.** The Consultant and the City acknowledge that the process of the Consultant having access to information will involve the verbal, electronic, written, or other disclosure of information, and documentation to the Consultant. In this Confidentiality and Non-disclosure Agreement ("Confidentiality Agreement") confidential information (the "Confidential Information") means any information regarding potential City land sites, technical data, or know how, including, but not limited to that which relates to services, processes, designs, drawings, diagrams, specifications, business strategies, finances whether communicated orally or in writing, specifications and associated documentation, and any equipment, machinery, or other property all of which owned by the City.
- B.** The Consultant, upon executing this Confidentiality Agreement, has agreed to maintain the Confidential Information as confidential and to the non-disclosure of same, all in accordance with this Confidentiality Agreement.

THEREFORE, IN CONSIDERATION OF THE PREMISES AND OF THE MUTUAL COVENANTS SET FORTH HEREIN, THE PARTIES AGREE AS FOLLOWS:

1. The Consultant shall hold the Confidential Information in strict confidence recognizing that the Confidential Information, or any portion thereof, is comprised of highly sensitive information. The Consultant acknowledges that the disclosure or use of the Confidential Information, or any portion thereof, except as contemplated herein, will cause the City substantial and irreparable harm and injury and the City shall have the right to equitable and injunctive relief to prevent the unauthorized use or disclosure, and to such damages as there are occasioned by such unauthorized use or disclosure, and the Consultant hereby consents to the granting of such equitable and injunctive relief.
2. The Consultant shall not divulge or allow disclosure of the Confidential Information, or any part thereof, to any person or entity for any purpose except as specified by the City, unless expressly authorized in writing to do so by the City, provided however, the Consultant may permit the limited disclosure of the Confidential Information or portion thereof only to those of the Consultant's directors, officers, employees, and sub-consultant who have a clear and *bonafide* need to know the Confidential Information, and provided further that, before the Consultant divulges or discloses any of the Confidential Information to such directors, officers, employees, and sub-consultant, the Consultant shall inform each of the said directors, officers, employees, and sub-consultants of the provisions of this Confidentiality Agreement and shall issue appropriate instructions to them to satisfy the obligations of the Consultant set out in this Confidentiality Agreement and shall, at the request of the City, cause each of the said directors, officers, employees, and sub-consultants to execute a confidentiality agreement in a form satisfactory to the City, in its sole discretion.
3. The Consultant agrees not to use any of the Confidential Information disclosed to it by the City for its own use or for any purpose except to carry out the specific purposes designated by this Confidentiality Agreement.
4. The Consultant shall take all necessary precautions to prevent unauthorized disclosure of the Confidential Information or any portion thereof to any person, or entity in order to prevent it from falling into the public domain or the possession of persons other than those persons authorized hereunder to have any such information, which measures shall include a reasonable degree of care, and not less than that which the Consultant utilizes to protect its own confidential information of a similar nature.
5. The Consultant shall notify the City in writing of any misuse or misappropriation of Confidential Information which may come to its attention.
6. The Consultant shall not mechanically or electronically copy or otherwise reproduce the Confidential Information, or any portion thereof, without the express advance written permission of the City, except for such copies as the Consultant may require pursuant to this Confidentiality Agreement in order to prepare the Report. All copies of the Confidential Information shall, upon reproduction by the Consultant, contain the same the City proprietary and confidential notices and legends that appear on the original

Confidential Information provided by the City unless authorized otherwise by the City. All copies shall be returned to the City upon request. Notwithstanding the foregoing, the Consultant may retain one (1) copy of all Confidential Information in the files of its general counsel for the sole purpose of ascertaining its rights and obligations in the event of a dispute hereunder, provided, however, that such retained Confidential Information shall be held in accordance with the confidentiality requirements of this Confidentiality Agreement.

7. The Confidential Information received by the Consultant and all formatting of the Confidential Information, including any alterations to the Confidential Information, shall remain the exclusive property of the City, and shall be delivered to the City by the Consultant forthwith upon demand by the City, with the exception of one (1) copy, consistent with Section 6 herein.
8. The Consultant acknowledges that the City is a public body subject to the *Freedom of Information and Protection of Privacy Act* (“FIPPA”) and as such the Confidential Information is protected pursuant to the provisions of FIPPA. The Consultant further acknowledges that the collection, use, storage, access, and disposal of the Confidential Information shall be performed in compliance with the requirements of FIPPA. Information which is sent to the City by the Consultant in performance of this Confidentiality Agreement is subject to FIPPA and may be disclosed as required by FIPPA. The Consultant shall allow the City to disclose any of the information in accordance with FIPPA, and where it is alleged that disclosure of the information, or portion thereof, may cause harm to the Consultant, the Consultant shall provide details of such harm in accordance with section 21 of FIPPA.
9. The Consultant acknowledges and agrees that nothing in this Confidentiality Agreement does or is intended to grant any rights to the Consultant under any patent, copyright, or other proprietary right, either directly or indirectly, nor shall this Confidentiality Agreement grant any rights in or to the Confidential Information.
10. Disclosure of the Confidential Information to the Consultant the terms of this Confidentiality Agreement shall not constitute public disclosure of the Confidential Information for the purposes of section 28.2 of the *Patent Act*, R.S.C. 1985, c. p-4.
11. This Confidentiality Agreement shall be binding upon and for the benefit of the undersigned parties, their successors, and assigns and the Consultant hereby acknowledges that the obligations imposed on the Consultant hereunder shall survive the termination of the Consultant’s dealings or engagement with the City.
12. The Consultant represents that is not now a party to, and shall not enter into any agreement or assignment in conflict with this Confidentiality Agreement.
13. This Confidentiality Agreement shall be governed and construed in accordance with the laws of the Province of British Columbia and the Consultant and the City irrevocably attorns to the exclusive jurisdiction of the courts of the Province of British Columbia to adjudicate any dispute arising out of this Agreement.

14. No provision of this Confidentiality Agreement shall be deemed to be waived by the City and no breach of this Confidentiality Agreement shall be deemed to be excused by the City unless such waiver or consent excusing such breach is in writing and duly executed by the City.

This Confidentiality Agreement is accepted and agreed to on this _____ day of _____, 2023.

I/We have the authority to bind the Consultant.

_____	_____
(Signature of Authorized Signatory)	(Signature of Authorized Signatory)
_____	_____
(Print Name and Position of Authorized Signatory)	(Print Name and Position of Authorized Signatory)

Business Email Address: _____

Business Telephone: _____

Business Facsimile: _____

PRIVACY PROTECTION AGREEMENT

Definitions

1. In this Schedule:
 - (a) “**access**” means disclosure by the provision of access;
 - (b) “**Act**” means the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165, including any regulation made under it, as may be amended or replaced from time to time;
 - (c) “**Agreement**” means the agreement between the City and the Contractor to which this Schedule is attached;
 - (d) “**business day**” means any day that is not a Saturday, Sunday or statutory holiday;
 - (e) “**City**” means the City of Surrey;
 - (f) “**contact information**” means information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual;
 - (g) “**Contractor**” means the person retained to perform the services under the Agreement;
 - (h) “**personal information**” means recorded information about an identifiable individual, other than contact information, collected or created by the Contractor as a result of the Agreement or any previous agreement between the City and the Contractor dealing with the same subject matter as the Agreement;
 - (i) “**privacy course**” means the City’s online privacy and information sharing training course or another course approved by the City; and
 - (j) “**third party request for disclosure**” means a subpoena, warrant, order, demand or request from an authority inside or outside of Canada for the unauthorized disclosure of personal information to which the Act applies;
 - (k) “**service provider**” means a person retained under a contract to perform services for a public body; and
 - (l) “**Third Party Hosting Provider**” means a third party that provides a platform or hosting service through which the Contractor delivers the services under the Agreement and to whom personal information is not accessible and as such, for the purposes of this Schedule, is not considered a subcontractor.

Purpose

2. The purpose of this Schedule is to:

- (a) enable the City to comply with the City's statutory obligations under the Act with respect to personal information; and
- (b) ensure that, as a service provider, the Contractor is aware of and complies with the Contractor's statutory obligations under the Act with respect to personal information.

Acknowledgements

- 3. The Contractor acknowledges and agrees that:
 - (a) it is a service provider and, as such, the requirements and restrictions established by Part 3 of the Act apply to the Contractor in respect of personal information;
 - (b) unless the Agreement otherwise specifies, all personal information in the custody of the Contractor is and remains under the control of the City; and
 - (c) unless the Agreement otherwise specifies or the City otherwise directs in writing, the Contractor may only collect, use, disclose or store personal information that relates directly to and is necessary for the performance of the Contractor's obligations, or the exercise of the Contractor's rights, under the Agreement.

Collection of Personal Information

- 4. Unless the Agreement otherwise specifies or the City otherwise directs in writing, the Contractor may only collect or create personal information that relates directly to and is necessary for the performance of the Contractor's obligations, or the exercise of the Contractor's rights, under the Agreement.
- 5. Unless the Agreement otherwise specifies or the City otherwise directs in writing, the Contractor must collect personal information directly from the individual the information is about unless:
 - (a) the City provides personal information to the Contractor;
 - (b) the Agreement otherwise specifies; or
 - (c) the City otherwise directs in writing.
- 6. Unless the Agreement otherwise specifies or the City otherwise directs in writing, where the Contractor collects personal information directly from the individual the information is about, the Contractor must tell that individual:
 - (a) the purpose for collecting it;
 - (b) the legal authority for collecting it; and
 - (c) the contact information of the individual designated by the City to answer questions about the Contractor's collection of personal information.

Privacy Training

7. The Contractor must ensure that each individual who will provide services under the Agreement that involve the access, collection or creation of personal information will complete, at the Contractor's expense, the privacy course prior to that individual providing those services.
8. The requirement in section 7 will only apply to individuals who have not previously completed the privacy course.

Accuracy of Personal Information

9. The Contractor must make every reasonable effort to ensure the accuracy and completeness of any personal information to be used by the Contractor or the City to make a decision that directly affects the individual the information is about.

Requests for Access to Information

10. If the Contractor receives a request for access to personal information from a person other than the City, the Contractor must promptly advise the person to make the request to the City unless the Agreement expressly requires the Contractor to provide such access. If the City has advised the Contractor of the name or title and contact information of an official of the City to whom such requests are to be made, the Contractor must also promptly provide that official's name or title and contact information to the person making the request.

Correction of Personal Information

11. Within 5 business days of receiving a written direction from the City to correct or annotate any personal information, the Contractor must annotate or correct the information in accordance with the direction.
12. When issuing a written direction under section 11, the City must advise the Contractor of the date the correction request was received by the City in order that the Contractor may comply with section 13.
13. Within 5 business days of correcting or annotating any personal information under section 11, the Contractor must provide the corrected or annotated information to any party to whom, within one year prior to the date the correction request was received by the City, the Contractor disclosed the information being corrected or annotated.
14. If the Contractor receives a request for correction of personal information from a person other than the City, the Contractor must promptly advise the person to make the request to the City and, if the City has advised the Contractor of the name or title and contact information of an official of the City to whom such requests are to be made, the Contractor must also promptly provide that official's name or title and contact information to the person making the request.

Protection of Personal Information

15. Without limiting any other provision of the Agreement, the Contractor must protect personal information by making reasonable security arrangements against such risks as

unauthorized access, collection, use, disclosure or disposal, including without limitation by ensuring that the integrity of the personal information is preserved. Without limiting the general nature of the foregoing sentence, the Contractor will ensure that all personal information is securely segregated from any information under the control of the Contractor or third parties to prevent unintended mixing of personal information with other information or access to personal information by unauthorized persons and to enable personal information to be identified and separated from the information of the Contractor or third parties.

Storage of and Access to Personal Information

16. The Contractor must comply with the requirements under the Act concerning storage of personal information outside of Canada, including, if required by the City, by supporting the City with completion of such assessments as may be required by law.
17. The Contractor must not change the location where personal information is stored without receiving prior authorization of the City in writing.
18. Without limiting any other provision of the Agreement, the Contractor will implement and maintain an access log documenting all access to personal information, including a list of all persons that access any personal information. The Contractor will provide a copy of the access log to the City upon request.
19. The Contractor will not authorize or assist a Third Party Hosting Provider to access any personal information without the prior written approval of the City.

Retention of Personal Information

20. Unless the Agreement otherwise specifies, the Contractor must retain personal information until directed by the City in writing to dispose of it or deliver it as specified in the direction.

Use of Personal Information

21. Unless the City otherwise directs in writing, the Contractor may only use personal information if that use is for the performance of the Contractor's obligations, or the exercise of the Contractor's rights, under the Agreement. For clarity, unless the Agreement otherwise specifies or the City otherwise directs in writing, the Contractor must not anonymize, aggregate or otherwise alter or modify personal information, including by converting personal information into non-personal information, or analyze personal information (whether by manual or automated means) for any purpose, including for the purpose of developing insights, conclusions or other information from personal information.

Metadata

22. Where the Contractor has or generates metadata as a result of services provided to the City, where that metadata is personal information, the Contractor will:
 - (a) not use it or disclose it to any other party except where the Agreement otherwise specifies; and

- (b) remove or destroy individual identifiers, if practicable.

Disclosure of Personal Information

- 23. Unless the City otherwise directs in writing, the Contractor may only disclose personal information to any person other than the City if the disclosure is for the performance of the Contractor's obligations, or the exercise of the Contractor's rights, under the Agreement.
- 24. If in relation to personal information, the Contractor:
 - (a) receives a third party request for disclosure;
 - (b) receives a request to disclose, produce or provide access that the Contractor knows or has reason to suspect is for the purpose of responding to a third party request for disclosure; or
 - (c) has reason to suspect that an unauthorized disclosure of personal information has occurred in response to a third party request for disclosure,subject to section 25, the Contractor must immediately notify the City.
- 25. If the Contractor receives a third-party request described in section 24(a) or (b) but is unable to notify the City as required by section 24, the Contractor must instead:
 - (a) use its best efforts to direct the party making the third party request for disclosure to the City;
 - (b) provide the City with reasonable assistance to contest the third party request for disclosure; and
 - (c) take reasonable steps to challenge the third party request for disclosure, including by presenting evidence with respect to:
 - (i) the control of personal information by the City as a public body under the Act;
 - (ii) the application of the Act to the Contractor as a service provider to the City;
 - (iii) the conflict between the Act and the third party request for disclosure; and
 - (iv) the potential for the Contractor to be liable for an offence under the Act as a result of complying with the third party request for disclosure.

Notice of Unauthorized Disclosure

- 26. In addition to any obligation the Contractor may have to provide the notification contemplated by section 30.5 of the Act, if the Contractor knows that there has been an unauthorized disclosure of personal information, the Contractor must immediately notify the City.
- 27. If for any reason the Contractor does not comply, or anticipates that it will be unable to comply, with a provision in this Schedule in any respect, the Contractor must promptly notify the City 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.

Inspection of Personal Information

28. In addition to any other rights of inspection the City may have under the Agreement or under statute, the City may, at any reasonable time and on reasonable notice to the Contractor, enter on the Contractor's premises to inspect any personal information in the possession of the Contractor or any of the Contractor's information management policies or practices relevant to its management of personal information or its compliance with this Schedule and the Contractor must permit, and provide reasonable assistance to, any such inspection.

Compliance with the Act and Directions

29. The Contractor must in relation to personal information comply with:
- (a) the requirements of the Act applicable to the Contractor as a service provider, including any regulation made under the Act and the terms of this Schedule; and
 - (b) any direction given by the City under this Schedule.
30. The Contractor acknowledges that it is familiar with the requirements of the Act governing personal information that are applicable to it as a service provider.
31. The Contractor will provide the City with such information as may be reasonably requested by the City to assist the City in confirming the Contractor's compliance with this Schedule.

Notice of Non-Compliance

32. If for any reason the Contractor does not comply or anticipates that it will be unable to comply in any respect, with any provision in this Schedule, the Contractor must promptly notify the City 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.

Termination of Agreement

33. In addition to any other rights of termination which the City may have under the Agreement or otherwise at law, the City may, subject to any provisions in the Agreement establishing mandatory cure periods for defaults by the Contractor, terminate the Agreement by giving written notice of such termination to the Contractor, upon any failure of the Contractor to comply with this Schedule in a material respect.

Interpretation

34. In this Schedule, references to sections by number are to sections of this Schedule unless otherwise specified in this Schedule.
35. Any reference to "Contractor" in this Schedule includes any subcontractor or agent retained by the Contractor to perform obligations under the Agreement and the

Contractor must ensure that any such subcontractors and agents comply with the requirements of the Act applicable to them.

36. This Schedule will supersede and replace any Privacy Protection Schedule attached to any previous agreement between the City and the Contractor dealing with the same subject matter as the Agreement.
37. The obligations of the Contractor in this Schedule will survive the termination of the Agreement.
38. If a provision of the Agreement (including any direction given by the City under this Schedule) conflicts with a requirement of the Act, including any regulation made under the Act, the conflicting provision of the Agreement (or direction) will be inoperative to the extent of the conflict.
39. The Contractor must comply with the provisions of this Schedule despite any conflicting provision of the Agreement or the law of any jurisdiction outside Canada.
40. Nothing in this Schedule requires the Contractor to contravene the law of any jurisdiction outside Canada unless such contravention is required to comply with the Act.

This Privacy Agreement is accepted and agreed to on this _____ day of _____, 2023.

I/We have the authority to bind the Consultant.

_____ (Signature of Authorized Signatory)	_____ (Signature of Authorized Signatory)
_____ (Print Name and Position of Authorized Signatory)	_____ (Print Name and Position of Authorized Signatory)

Business Email Address: _____

Business Telephone: _____

Business Facsimile: _____