



The Corporation of the Town of The Blue Mountains

Information Technology, Confidentiality, Non-Disclosure and Data Security Agreement

This Agreement entered into and effective this ____ day of _____, 2018, between the Town of The Blue Mountains (Town) and _____ (Provider) hereinafter collectively referred to as the “Parties” or singularly referred to as the “Party”.

Whereas the Town and the Provider enter into the provision of services by the Town for _____.

And Whereas the Town is willing to disclose to the Provider, upon terms and conditions hereinafter set forth, Confidential Information in order that meaningful discussions and collaborations may take place with regard to the matter for which the Provider has been engaged by the Town and so that the Provider can carry out the work required by the Town in its engagement of the Provider;

Now, therefore, in consideration of the foregoing premises that are incorporated as part of this Agreement and the mutual covenants hereinafter set forth, the Provider agrees as follows:

1. Definition of Confidential Information

- 1.1. All information disclosed by the Town in oral, written, graphic, photographic, recorded, prototype, sample or in any other form that is related to the Information Technology, Geographic Information Systems (GIS) and Supervisory Control and Data Acquisition (SCADA) systems for Town of The Blue Mountains or any information written, graphic, photographic, recorded, prototype, sample or in any other form that is generated by the Provider for the purpose of doing business with The Town shall be considered Confidential Information. Any information considered Private Information by the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA), any personal health information as defined by the *Personal Health Information Protection Act* (PHIPA), and by the *Personal Information Protection and Electronic Documents Act* (PIPEDA) is also considered Confidential Information.

2. Disclosure of Confidential Information

- 2.1. The Town may disclose to the Provider Confidential Information enabling the two Parties to engage in meaningful discussion and/or collaboration. The Provider agrees to accept and hold such Confidential Information in accordance with the provisions of this Agreement.

- 2.2. The Provider shall communicate the Town's Confidential Information only to such of its officers, employees and representatives as have a clear need to know in order to accomplish the purposes for which such Confidential Information has been disclosed to the Provider and shall obtain written assurances from such officers, employees and representatives to maintain the confidentiality thereof.

3. Disclosure to Third Parties

- 3.1. From and after the date of this Agreement, the Provider agrees neither to disclose to any third party nor permit any third party to have access to any or all of the Confidential Information disclosed by the Town, without the prior written consent of the Town, nor to use any of the Confidential Information for any purpose other than as consented to in writing by the Town. However, the aforesaid obligations shall not apply to information which the Provider can clearly demonstrate falls within any one of the following categories:
 - a) Information that is now generally known to the public through no fault of the Provider;
 - b) Information obtained after the date of this Agreement hereof from a third party lawfully in possession of and with no limitation upon disclosure of that information, and having the right to disclose the same; or
 - c) Information that is required to be divulged pursuant to process of any judicial or governmental body of competent jurisdiction, provided notice of receipt of such notice is provided to the other party.

4. Protection of Confidential Information

- 4.1. The Provider will agree to use their best efforts to prevent disclosure of Confidential Information to any third party for an indefinite period of time from the date of this Agreement. The Provider is to use best practice security measures at all times to prevent information from being compromised. All policies and procedures relating to data and information security are to be readily available to the Town from the Provider.
- 4.2. The Provider shall protect the Town's Confidential Information in accordance with applicable privacy legislation.
- 4.3. The Provider acknowledges that disclosure of the Confidential Information would be highly detrimental to the interests and obligations of the Town and that in the event of a breach by the Provider of its obligations to the Town as regarding the Confidential Information, the damages suffered by the Town may be difficult or impossible to determine and that the remedies of the Town at law may be inadequate. Accordingly, in addition to any monetary damages, the Town shall be

entitled to specific performance of the breaching party's obligations hereunder regarding the Confidential Information, and to seek an injunction to prevent any reasonably apprehended breach or continuing breach of such obligations.

- 4.4. The Provider shall employ at all times administrative and technical security measures to the Town's standards on access and password procedures for Provider's personnel, encryption of Town Confidential Information while in transit and at rest, continuous monitoring of the security posture of the Information, maintenance of auditable logs including: user access logs, physical outage logs, and application logs, encryption, isolation of the Town's Confidential Information, business continuity procedures, and provision of an encrypted method of remote authentication and authorization.
- 4.5. The Provider shall immediately notify the Town of any security breach (including any internal unauthorized use or disclosure), investigate the security breach, and take measures to remediate such breach at the Vendors cost as directed by the Town.

5. Right to Audit

- 5.1. The Town retains the right to audit the Provider to ensure that proper measures are being applied to protect any and all confidential information. Auditing may be performed by Town IT Staff or by a Third Party, as chosen by the Town in its sole discretion.
- 5.2. A Privacy Impact Assessment ("PIA") shall be required if the Provider will have access to personal information as defined by MFIPPA and personal health information as defined by PHIPA, the Town shall have right to terminate the engagement of the Provider without any liability or penalty if the Provider fails the PIA, and the failure cannot be mitigated, within a time specified by the Town, by measures acceptable to the Town.

6. Return of Confidential Information

- 6.1. The Town may, at any time, request the return of all Confidential Information (including notes generated by the Provider on Confidential Information given orally) and all copies thereof, received from or on behalf of the Town, and the Provider agrees to promptly comply with such requests. The Provider agrees that, subsequent to a request for return of Confidential Information or notification of termination of business discussions and/or collaboration, Confidential Information provided orally will continue to be kept confidential by the Provider and the provisions of this Agreement shall continue with respect to all Confidential Information until any of items 3.1 a), b) and c) become applicable. If the information is unable to be returned then information must be destroyed and a certificate of destruction must be issued.

7. Use of Confidential Information

- 7.1. The Provider shall not use the Confidential Information provided by the Town for any purpose except for carrying out the work for which the Town has engaged the Provider.
- 7.2. The Provider shall not disclose or otherwise duplicate the Town's Confidential Information without the Town's written approval or knowingly allow any one else to copy or otherwise duplicate any of the Town's Confidential Information under its control.

8. Ownership of Information

- 8.1. The Town shall at all time retain sole ownership, right and title in the Town's Confidential Information

9. Product of this Agreement

- 9.1. Any new information or knowledge generated from the discussions to be carried out as a result of this Agreement may not be divulged to others in verbal or written or any other form without the express written consent of the Town.

10. Governing Laws

- 10.1. This Agreement shall be governed and construed in accordance with all applicable laws and by-laws of the Town, Province of Ontario and any applicable Canadian federal laws.

11. Length of Agreement

- 11.1. This agreement shall be in full force upon its execution by the Parties and shall be and effect indefinitely. For greater clarity and certainty, the obligations herein with respect to Confidential Information continue indefinitely and beyond the time limit of the specific engagement for which the Town engaged the Provider.

12. Limitation of Agreement

- 12.1. This Agreement shall in no way be construed as the granting or conferring of a license or otherwise to either Party by the other directly or indirectly under any patent or patent application previously owned by the disclosing Party. Furthermore, nothing in this Agreement shall be interpreted so as to oblige either Party to enter into any further agreements.

13. Amendments

13.1. This Agreement cannot be altered or otherwise amended except pursuant to an instrument in writing signed by each of the Parties hereto.

14. Assignment

14.1. This assignment shall not be assigned by either party and any purported assignment not permitted under this agreement shall be void.

15. Entire Agreement

15.1. This Agreement constitutes the entire agreement between the parties with respect to the non-disclosure of Confidential Information, save and except for any provisions with respect to non-disclosure of Confidential Information that may be contained in any agreement related to the engagement of the Provider by the Town and shall not be altered, modified or amended except by a written agreement executed by the Town.

Provider Corporation Name

Signature (I have authority to bind the Corporation)

Name

Title

Date

The Corporation of The Town of The Blue Mountains

Ruth Prince, Director of Finance and IT Services

Date