FEDERAL PROCUREMENT INSTRUMENT ACCESS AGREEMENT

THIS AGREEMENT made in duplicate as of the ____ day of ________________, 2017 (the “Effective Date”).

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NEW BRUNSWICK, as represented by Service New Brunswick (the “Province”)

- and -

______________________(the “Authorized User”)

(the “Parties”)

RECITALS:

The Province has entered into a National Master User Agreement dated August 29, 2016 (the “Master Agreement”) with the Government of Canada, Department of Public Works and Government Services (“PWGSC”);

Under the Master Agreement, the Province may provide access to Procurement Instruments to Provincial Identified Users;

The Authorized User is a Provincial Identified User and would like to access various Procurement Instruments established by PWGSC from time to time for the provision of goods and services in accordance with the terms of the Procurement Instruments;

DEFINITIONS

1. In this Agreement:

   a. “Call-Up” means an order issued by an Authorized User against a particular Standing Offer or the entering into an agreement for good, services, or both, pursuant to a Supply Arrangement, RFP or other Procurement Instrument. Issuance of a Call-Up to the offeror constitutes acceptance of its offer and results in the creation of a contract between the Authorized User and the offeror for the goods, services, or both, described in the Call-Up;

   b. “Effective Date” is the date this agreement takes effect as indicated in the recitals.

   c. “Master Agreement” has the meaning ascribed to it in the recitals.

   d. “Procurement Instrument” means a procurement tool that is put in place by the Federal Government of Canada with one or more suppliers for the provision of a specific commodity over a specified period of time for needs which are sometimes less well defined at the outset. It can result in, but is not limited to, Standing Offers, Supply Arrangements and RFPs.
e. “Supplier” means a supplier who will provide a specific commodity over a specified period of time to a Provincial Identified User pursuant to a procurement instrument.

f. “person” includes an individual, partnership, association, corporation, trustee, executor, administrator or legal representative;

g. “Provincial Identified User” means any New Brunswick public sector entity, including municipal, academic, institutions, schools and hospitals, to whom the Province can provide access to the procurement instruments pursuant to the Master Agreement. For greater clarity, the Provincial Identified User can include regional, local, district or other forms of municipal government, school boards, publicly-funded academic, health and social service entities, as well as any corporation or entity owned or controlled by one or more of the preceding entities;

h. “PWGSC” has the meaning ascribed to it as set out in the recitals.

i. “RFP” means a request for proposal form of bid solicitation that is used where the selection of a supplier cannot be made solely on the basis of the lowest price. A RFP is used to procure the most cost-effective solution based upon evaluation criteria identified in the RFP;

j. “Standing Offer” means an offer from a potential supplier, in response to a request for standing offer issued by the Federal Government of Canada, to provide goods and/or services at pre-arranged prices, under set terms and conditions, when and if required. It is not a contract until an Authorized User issues a "Call-Up" against it;

k. “Supply Arrangement” means a method of supply used to procure goods and services which includes a set of predetermined conditions that will apply to bid solicitations and resulting contracts and allows an Authorized User to solicit bids from a pool of pre-qualified suppliers for specific requirements. A supply arrangement is not a contract and neither party is legally bound as a result of signing a supply arrangement alone;

TERM

2. This Agreement begins on the Effective Date and shall conclude automatically on the 31st day of May, 2022 (the “Term”). The Parties may by mutual agreement renew this Agreement for up to two (2) further consecutive one (1) year renewal periods on the same terms and conditions, except that any renewal period must be agreed to in writing no less than three (3) months before the end of the Term or any renewal period. The termination of the Master Agreement will automatically terminate this Agreement.

3. This Agreement may be terminated at any time by either party on thirty (30) days prior written notice, for any reason and the Agreement will terminate immediately upon
termination of the Master Agreement. In the event that there is a breach of this Agreement by the Authorized User which breach is not cured within thirty (30) days of issuance of a written notice of the breach from the Province, the Province may, in its sole discretion, immediately terminate this Agreement.

RESPONSIBILITIES OF THE PROVINCE

4. The Province grants to the Authorized User the right to access and review the Procurement Instruments and to order goods and services through Call-Ups on the terms and conditions of the respective Procurement Instruments and this Agreement.

5. Upon written request, the Province will provide the Authorized User with information about the Procurement Instruments, including but not limited to, the terms and conditions applicable on a Call-Up, a description of the goods or services, and pricing information.

RESPONSIBILITIES OF THE AUTHORIZED USER

6. The Authorized User will abide by the terms and conditions of each Procurement Instrument and respective Call-Up upon issuing a Call-Up against a Procurement Instrument.

7. The Authorized User will include in each Call-Up issued to a Supplier pursuant to a Procurement Instrument:
   a. the Procurement Instrument reference number;
   b. a purchase order number, if required;
   c. the specified quantity and description of the goods or services being ordered; and
   d. any other information required pursuant to the Procurement Instrument and this Agreement.

8. The Authorized User:
   a. is solely responsible for all payments and other obligations to the Supplier incurred through issuing a Call-Up against the Procurement Instrument;
   b. will not permit any person who is not an authorized employee responsible for the Authorized User’s procurement activities to have access to Procurement Instrument information provided pursuant to this Agreement;
   c. will use the established processes set out in the relevant Supply Arrangement, RFP, Procurement Instrument, or contract when procuring goods or services from same;
d. will designate an individual to represent the Authorized User in matters related to this Agreement;

e. will not renegotiate any part of the Procurement Instrument with the Supplier, unless renegotiation by the Authorized User is specifically contemplated in the Procurement Instrument; and

f. will not use the Procurement Instrument information as a bargaining tool with the Supplier for the purposes of entering into a separate agreement for the same or similar goods or services.

9. The Authorized User will not disclose any confidential information received under a Procurement Instrument to any person without the prior written consent of PWGSC and the Province, unless the disclosure is authorized in the Procurement Instrument or required by law.

10. The Authorized User acknowledges that any personal information about an individual arising from the performance of this Agreement or under a Procurement Instrument is subject to privacy legislation, including the Right to Information and Protection of Privacy Act (New Brunswick). The Authorized User will maintain the confidentiality of personal information and adhere to any applicable privacy legislation and any agreements entered into regarding the handling of personal information. The Authorized User acknowledges that all information relating to this Agreement that is in the custody or control of the Province is subject to the Right to Information and Protection of Privacy Act (New Brunswick), under which the Province may be required to disclose certain information.

11. The Authorized User acknowledges, agrees and confirms that:

a. The Authorized User is a Provincial Identified User authorized to use the Procurement Instrument, as identified in the Procurement Instrument;

b. each Call-Up issued under a Procurement Instrument is intended to form a separate binding contract between the Supplier and the Authorized User for the goods or services described in the Call-Up, and the Authorized User is bound under the terms of such agreement or instrument;

c. neither PWGSC nor the Province is a party to any agreement between the Authorized User and a Supplier that is formed upon the issuance of a Call-Up by the Authorized User;

d. the Authorized User is solely responsible for determining whether the issuance of a Call-Up under a particular Procurement Instrument is in accordance with applicable laws,
trade agreement and policy obligations, including without limitation any law, policy or agreement applicable to the procurement of goods or services, and the Province makes no representation or warranty that the issuance of any Call-Up by the Authorized User under a Procurement Instrument will meet any requirements to which the Authorized User is subject under any law, policy or agreement; and

e. the Procurement Instruments and the contractual terms and conditions applicable on Call-Up have been established in the interests of, and on terms and conditions appropriate to, the Government of Canada or the Province of New Brunswick, or both, as applicable. The Province makes no warranties or representations of any kind with respect to the appropriateness or suitability of any goods or services drawn-down by the Authorized User, and expressly disclaims any warranties or representations as to the appropriateness or suitability of the terms and conditions of the Procurement Instrument or of any Call-Up for the Authorized User.

**LIABILITY AND INDEMNIFICATION**

12. In no event will the Province be liable to the Authorized User or to any third party for any damages or losses of any kind in connection with this Agreement, any Procurement Instrument, any Call-Up or any goods or services drawn-down, including without limitation direct, special, indirect, consequential, punitive, exemplary damages, damages for lost profits or lost savings.

13. The Authorized User will indemnify, defend and save harmless the Province and its employees and agents from any losses, claims, damages, actions, causes of action, costs and expenses that it or any of its employees or agents may sustain, incur, suffer or be put to at any time, either before or after this Agreement ends, which are based upon, arise out of or occur, directly or indirectly, by reason of any act or omission by the Authorized User or by any of its agents, employees, officers, directors, or subcontractors in respect of any Procurement Instrument or any goods or services obtained under a Procurement Instrument.

**GENERAL**

14. No partnership, joint venture, agency or other legal relationship is created or deemed to be created by this Agreement or any actions of the Parties hereunder.

15. This Agreement constitutes the entire agreement and understanding between the Parties, and supersedes all prior negotiations, communications and other agreements, whether written or oral, relating to the subject matter of this Agreement.

16. Each of the Parties will, upon the reasonable request of the other, make, do, execute or cause to be made, done or executed all further documents, instruments and assurances for performance of the terms and conditions of this Agreement.
17. If any term or provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, it will be deemed to be severed from this Agreement, and the remaining terms and conditions will nevertheless remain in full force and effect.

18. This Agreement will enure to the benefit of and be binding upon the Province and its assigns and upon the Authorized User, its successors and permitted assigns.

19. The Authorized User will not assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the Province.

20. A waiver of any term of this Agreement or of any breach by the Authorized User of this Agreement is effective only if it is in writing and signed by the Province and is not a waiver of any other term or any other breach.

21. This Agreement and any other documents and any other addendums in relation thereto may be executed in one or more counterparts, each of which shall be deemed an original, but all of which taken together constitute one and the same instrument.

22. This Agreement will be governed by and interpreted in accordance with the laws of New Brunswick and the laws of Canada applicable therein.

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PARTIES TO SIGN ON THE FOLLOWING PAGE
IN WITNESS WHEREOF this Agreement has been duly executed as of the date first above written.

) HER MAJESTY THE QUEEN IN RIGHT OF THE
) PROVINCE OF NEW BRUNSWICK, AS
) REPRESENTED BY SERVICE NEW BRUNSWICK
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