



**FAMILY SERVICE TORONTO**

**Request for Proposals (Non-Binding)**

**for**

**Electronic Client Record System**

**RFP Reference: FST-ECRS-20210107**

Section 1 - INTRODUCTION.....	1
1.1 General .....	1
1.2 Contact Person .....	1
1.3 Proponent Representatives.....	2
Section 2 - THE RFP DOCUMENTS.....	2
2.1 Request for Proposals Documents.....	2
2.2 Distribution of Documents to Proponents.....	3
2.3 Proponent Investigations.....	3
Section 3 - THE RFP PROCESS .....	4
3.1 RFP Process Timetable .....	4
3.2 Requests for Information.....	4
3.3 Notices .....	5
3.4 Addenda/Changes to the RFP Documents .....	5
3.5 General Proponents Meeting(s) .....	6
3.6 Prohibited Contacts.....	6
3.7 Ineligible Persons.....	7
3.8 Media Releases, Public Disclosures and Public Announcements.....	8
3.9 Restrictions on Communications between Proponents – No Collusion.....	8
3.10 Disclosure of Proposal Information .....	8
3.11 Confidential Information .....	9
3.12 Confidentiality Agreements .....	10
3.13 Copyright and Use of Information in Proposals.....	11
3.14 Governing Law and Attornment.....	11
3.15 Licences and Permits.....	12
3.16 Persons Permitted to Submit Proposals.....	12
3.17 Proponents’ Costs.....	12
3.18 Delay and Costs of Delay.....	13
3.19 Clarification and Verification of Proponent’s Proposal.....	13
3.20 Changes to Proponents .....	13
3.21 Insurance and Workplace Safety during the RFP Process .....	15
Section 4 - PROPOSAL CONTENT AND FORMAT.....	15
4.1 Format and Content of Proposal .....	15
4.2 Proposal Submission Form .....	15
4.3 Comments on the Key Terms of the Final Agreement .....	15

4.4	Conflict of Interest .....	15
Section 5 - PROPOSAL SUBMISSION, WITHDRAWAL AND MODIFICATION .....		18
5.1	Submission of Proposals.....	18
5.2	Late Proposals .....	20
5.3	Amendment of Proposals.....	20
5.4	Withdrawal of Proposals .....	20
5.5	One Proposal per Person.....	20
5.6	Maintaining Prices and Proposal Commitments.....	21
Section 6 - PROPOSAL EVALUATION.....		21
6.1	Evaluation of Proposals .....	21
6.2	Interviews, Site Visits, Demonstrations and Presentations .....	22
6.3	References and Past Performance Issues.....	22
Section 7 - DISQUALIFICATION.....		22
7.1	Disqualification.....	22
Section 8 - AGREEMENT NEGOTIATION, FINALIZATION AND DEBRIEFING AND SUCCESSFUL PROPONENT .....		24
8.1	Negotiation and Finalization of the Agreement.....	24
8.2	Notification If Successful or Not .....	25
8.3	Debriefing.....	26
8.4	Dispute Resolution .....	26
Section 9 - LEGAL MATTERS AND RIGHTS OF FST.....		26
9.1	RFP Not a “Bidding Contract” or a Tender .....	26
9.2	Limit on Liability.....	28
Section 10 - DEFINITIONS .....		29
10.1	General .....	29
10.2	RFP Definitions .....	29

**SCHEDULES**

Schedule A – RFP Data Sheet

Schedule B – Proposal Submission Form

Schedule C – Conflict of Interest Declaration

Schedule D – Submission Requirements and Evaluation Criteria

    Schedule D Part 1 – Technical Submission Requirements and Evaluation Criteria

    Schedule D Part 2 – Financial Submission Requirements and Evaluation Criteria

Schedule E – Reference Form

Schedule F – Key Terms of the Final Agreement

## REQUEST FOR PROPOSALS

### SECTION 1 - INTRODUCTION

#### 1.1 General

(1) Family Service Toronto (“**FST**”) is issuing the RFP Documents to retain a vendor/service provider to provide the goods and/or services briefly described in the RFP Data Sheet (the “**Goods and/or Services**”). The RFP number is set out in the RFP Data Sheet (the “**RFP Number**”).

(2) FST intends to award the final agreement that will be entered into pursuant to the RFP Process (the “**Final Agreement**”) through an open, fair and competitive RFP process. The RFP competition will be open either to,

- (a) any Person described in RFP Section 3.16(2)
- (b) if a prequalification has taken place, only those Persons that are prequalified to submit a response to the RFP Process as specified in the RFP Data Sheet (the “**Prequalified Parties**”); or
- (c) only those entities that have been invited to submit a response to this RFP Process as specified in the RFP Data Sheet.

as applicable. In the RFP Documents, Persons that submit documents in response to the RFP Process are referred to as “**Proponents**”. The Person or Persons that FST selects to negotiate an agreement within respect of the Goods and/or Services are referred to as “**Negotiations Proponent(s)**”. The Proponent that FST enters into the Final Agreement with is referred to as the “**Successful Proponent**”. For ease of reference, prospective proponents, whether or not they submit a response to the RFP Process (a “**Proposal**”), are also referred to as “Proponents”.

(3) The process to select the Negotiations Proponent for the purposes of the Goods and/or Services will commence with the issuance of the RFP Documents and will terminate when FST selects a Negotiations Proponent or Negotiations Proponents (the “**RFP Process**”).

(4) Any vendor that intends to submit a Proposal is requested to inform FST by email to the Contact Person no later than the Intent to Bid Deadline set out in the Timetable.

#### 1.2 Contact Person

(1) The Proponents are required to submit all questions and other communications regarding the RFP Documents, the RFP Process and their Proposals in writing to the contact person named in the RFP Data Sheet (the “**Contact Person**”) using the communication method specified in the RFP Data Sheet. During the RFP Process, Proponents may contact FST only through the Contact Person.

### 1.3 Proponent Representatives

(1) All correspondence from FST to a Proponent will be sent to the person identified by the Proponent to receive information and notices on behalf of the Proponent (the “**Proponent Representative**”). Each Proponent will provide the Contact Person with the name and contact information of the Proponent’s Proponent Representative in writing. Each Proponent is solely responsible to ensure that all contact information of the Proponent Representative is accurate and updated at all times during the RFP Process. Proponents may update or revise their Proponent Representatives’ information by notifying the Contact Person, in writing.

## SECTION 2 - THE RFP DOCUMENTS

### 2.1 Request for Proposals Documents

- (1) The Request for Proposals documents (the “**RFP Documents**”) are:
- (a) the Request for Proposals (the “**RFP**”)
  - (b) Schedule A – RFP Data Sheet
  - (c) Schedule B – Proposal Submission Form
  - (d) Schedule C – Conflict of Interest Declaration
  - (e) Schedule D – Submission Requirements and Evaluation Criteria, including,
    - (i) Schedule D Part 1 – Technical Submission Requirements and Evaluation Criteria
    - (ii) Schedule D Part 2 – Financial Submission Requirements and Evaluation Criteria
  - (f) Schedule E – Reference Form
  - (g) Schedule F – Key Terms of the Final Agreement (including all related schedules, appendices and attachments thereto) (the “**Key Terms of the Final Agreement**”); and
  - (h) Addenda to the RFP Documents, if any.

(2) The Proponents are instructed to read the RFP Documents as a whole. The Schedules and Addenda, if any, constitute an integral part of this RFP and are incorporated by reference.

(3) FST may also provide Proponents with background information (the “**Background Information**”). Whether or not Background Information will be provided to Proponents is noted in the RFP Data Sheet. Documents containing Background Information are not RFP Documents and do not amend the RFP Documents. Background Information is provided only for the convenience of Proponents.

## **2.2 Distribution of Documents to Proponents**

(1) Except as provided in RFP Section 2.2(2), FST will circulate this RFP and all other RFP Documents, including Addenda, as well as any Notices using the method specified in the RFP Data Sheet. FST will circulate responses to RFIs using the method specified for RFI responses in the RFP Data Sheet. If FST chooses to notify Proponent Representatives that documents have been circulated or posted, as applicable, such notification is a courtesy only and Proponents are solely responsible to ensure that they have reviewed all documents in accordance with RFP Section 2.2(3) and, in particular, have reviewed all documents circulated or posted immediately prior to submitting Proposals.

(2) If a Proponent requires the RFP Documents in paper copy, the Proponent may submit a request to the Contact Person, along with a reason for why the Proponent requires the RFP Documents in paper copy. Following consideration of the Proponent's request, FST may, in its sole discretion, choose to circulate RFP Documents in paper copy to the Proponent who made the request.

(3) FST may add, delete or amend documents circulated pursuant to RFP Section 2.2(1) at any time. Each Proponent is solely responsible to ensure that it:

- (a) notifies the Contact Person if the Proponent is having difficulty viewing the RFP Documents, Addenda, Notices or responses to RFIs
- (b) has the appropriate software which allows the Proponent to access and download RFP Documents, Notices, Addenda and responses to RFIs; and
- (c) checks frequently for the addition, deletion or amendment of RFP Documents, Notices, Addenda and responses to RFIs and, at all times during the RFP Process, keeps itself informed of and takes into account the most current RFP Documents, Notices, Addenda and responses to RFIs.

## **2.3 Proponent Investigations**

(1) Each Proponent is solely responsible, at its own cost and expense, to carry out its own independent research and due diligence and to perform any other investigations, including seeking independent advice, considered necessary by the Proponent to satisfy itself as to all existing conditions affecting the Goods and/or Services. The Proponent's obligations set out in this RFP Section 2.3 apply irrespective of any information contained in the RFP Documents or in responses to RFIs.

(2) FST does not represent or warrant the accuracy or completeness of any information that is set out in the RFP Documents or of any other background or reference information or documents prepared by FST or by third parties and which may be made available to Proponents by or through FST. Proponents will make such independent assessments as they consider necessary to verify and confirm the

accuracy and completeness of all such information as any use of or reliance by Proponents on any and all such information will be at the Proponents' sole risk and without recourse against FST.

### **SECTION 3 - THE RFP PROCESS**

#### **3.1 RFP Process Timetable**

(1) The deadline for the submission of Proposals (the "**Submission Deadline**") and the general timetable for the RFP Process (the "**Timetable**") are set out in the RFP Data Sheet.

(2) FST may, without liability, cost or penalty and in its sole discretion amend the Timetable,

- (a) for matters that are to take place on or before the Submission Deadline, at any time prior to the Submission Deadline; and
- (b) for matters that are to take place after the Submission Deadline, at any time during the RFP Process.

(3) If FST extends the Submission Deadline, all requirements applicable to Proponents will thereafter be subject to the extended deadline.

#### **3.2 Requests for Information**

(1) In addition to the requirement set out in RFP Section 1.2, the following rules will apply to Proponents when submitting questions or requests for clarifications or information ("**RFIs**") to FST during the RFP Process:

- (a) Proponents are required to submit all RFIs to the Contact Person using the method specified in the RFP Data Sheet, and in accordance with the deadlines set out in the Timetable
- (b) Proponents are permitted to submit RFIs categorized as follows:
  - (i) RFIs that are of general application and that would apply to other Proponents ("**General RFIs**"); and
  - (ii) RFIs that the Proponent considers to be commercially sensitive or confidential to that particular Proponent ("**Commercially Confidential RFIs**")
- (c) If FST disagrees with the Proponent's categorization of an RFI as a Commercially Confidential RFI, FST will give the Proponent an opportunity to either categorize the RFI as a General RFI or to withdraw the RFI
- (d) If FST determines, in its sole discretion, that a Commercially Confidential RFI, even if it is withdrawn by a Proponent, is of general application or would provide a significant clarification of the

RFP Documents or RFP Process to Proponents, FST may issue a clarification to Proponents that deals with the same subject matter as the withdrawn Commercially Confidential RFI; and

- (e) If FST agrees with the Proponent's categorization of a Commercially Confidential RFI, then FST will provide a response to that RFI to only the Proponent that submitted the RFI.

(2) FST will respond to RFIs in accordance with the schedule set out in the Timetable. FST may, in its sole discretion, distribute responses to RFIs of a minor or administrative nature to only the Proponent who submitted the minor or administrative RFI.

(3) Responses to RFIs prepared and circulated by FST are not RFP Documents and do not amend the RFP Documents. If, in FST's sole discretion, responses to RFIs require an amendment to the RFP Documents, such amendment will be prepared and circulated by Addendum in accordance with RFP Section 3.4. Only a response to an RFI that has been incorporated into or issued as an Addendum will modify or amend the RFP Documents and, otherwise, responses to RFIs will have no force or effect whatsoever and will not be relied upon by any Proponent.

(4) It is the Proponent's obligation to seek clarification from FST of any matter it considers to be unclear in accordance with this RFP Section 3.2. FST is not responsible in any way whatsoever for any misunderstanding by the Proponent of the RFP Documents, responses to RFIs, any documents circulated or posted for Proponents or any other type of information provided by or communication made by FST or any third party.

### **3.3 Notices**

(1) FST may, in its sole discretion, issue Notices to Proponents, distributed in accordance with RFP Section 2.2(1), for the purpose of communicating on issues of importance to the RFP Process. Such Notices are not RFP Documents and do not amend the RFP Documents.

### **3.4 Addenda/Changes to the RFP Documents**

(1) FST may, in its sole discretion, amend or supplement the RFP Documents prior to the Submission Deadline. FST will issue changes to the RFP Documents by Addenda distributed in accordance with RFP Section 2.2(1) only. No other statement, whether oral or written, made by FST or FST's Advisors, including, for clarity, the Contact Person, or any other person, will amend the RFP Documents. The approximate final date that FST will issue an Addendum is set out in the Timetable.

(2) The Proponent is solely responsible to ensure that it has received all Addenda issued by FST. Proponents may, in writing, seek confirmation of the number of Addenda issued pursuant to the RFP Documents from the Contact Person.



### 3.5 General Proponents Meeting(s)

(1) FST may, in its sole discretion, convene general Proponents meetings (each, a “**Proponents Meeting**”). Whether or not FST intends to convene Proponents Meeting(s) is set out in the RFP Data Sheet. If FST does convene Proponents Meeting(s), the approximate date(s) of the Proponents Meeting(s) are set out in the Timetable. While attendance at a Proponents Meeting is not mandatory, Proponents are strongly encouraged to attend. A Proponent’s failure to attend a Proponents Meeting is at the Proponent’s sole risk and responsibility. If Proponents are required to execute a confidentiality agreement in accordance with RFP Section 3.12, a Proponent will not be permitted to attend a Proponents Meeting unless it has complied with RFP Section 3.12.

(2) The locations and particulars with respect to Proponents Meetings are set out in the RFP Data Sheet. FST reserves the right, in its sole discretion, to limit the number of Proponent attendees that may attend any Proponents Meeting by setting out any such limitation in the RFP Data Sheet.

(3) Proponents may ask questions and seek clarifications at a Proponents Meeting. Notwithstanding that FST may give spoken answers at a Proponents Meeting, those answers will not be considered final unless issued in writing. Therefore, Proponents are strongly encouraged to submit these questions in accordance with RFP Section 3.2 for response in accordance with RFP Section 3.2.

(4) No statement, consent, waiver, acceptance, approval or anything else said or done in any Proponents Meeting by FST or its Advisors will amend or waive any provision of the RFP Documents, or be binding on FST or be relied upon in any way by Proponents or their Advisors, except when and only to the extent expressly confirmed in an Addendum to the RFP Documents issued in accordance with RFP Section 3.4.

### 3.6 Prohibited Contacts

(1) Proponents and their respective Advisors, employees and representatives are prohibited from engaging in any form of political or other lobbying, of any kind whatsoever, to influence the outcome of the RFP Process.

(2) Without limiting the generality of RFP Section 3.6(1), neither Proponents nor any of their respective Advisors, employees or representatives will contact or attempt to contact, either directly or indirectly, at any time during the RFP Process, any of the following Persons on matters related to the RFP Process, the RFP Documents, or their Proposals:

- (a) any Advisor to FST
- (b) any employee or representative of,
  - (i) FST; or
  - (ii) any other Person listed in the RFP Data Sheet

- (c) any Ineligible Person; or
- (d) any directors, officers, employees, agents, representatives or consultants of any entity listed in RFP Sections 3.6(2)(a), 3.6(2)(b) and 3.6(2)(c).

(3) If a Proponent or any of its respective Advisors, employees or representatives, in the opinion of FST, contravenes RFP Section 3.6(1) or RFP Section 3.6(2), FST may, in its sole discretion,

- (a) take any action in accordance with RFP Section 7.1; or
- (b) impose conditions on the Proponent's continued participation in the RFP Process that FST considers, in its sole discretion, to be appropriate.

For clarity, FST is not obliged to take the actions set out in this RFP Section 3.6(3).

- (4) The Proponent and its respective Advisors will,
  - (a) no later than the date set out in the Timetable, disclose all information in respect of Goods and/or Services which the Proponent or its respective Advisors have generated or have available to them as a result of work carried out by the Proponent or its respective Advisors, for FST in respect of, or in anticipation of, the Goods and/or Services; and
  - (b) at the request of FST, provide a director's or officer's certificate confirming that the requirements of RFP Section 3.6(4)(a) have been complied with by the Proponent.

For clarity, FST may, in its sole discretion, circulate the information provided pursuant to RFP Section 3.6(4)(a) to other Proponents and their respective Advisors. If any Proponent becomes aware of relevant information of the type set out in RFP Section 3.6(4)(a) that has not been made available to all Proponents, that Proponent will disclose such information promptly to the Contact Person.

### **3.7 Ineligible Persons**

(1) As a result of their involvement with respect to the Goods and/or Services, the Persons named as "Ineligible Persons" in the RFP Data Sheet (collectively, "**Ineligible Persons**") and their respective Advisors engaged in respect of the Goods and/or Services and, subject to RFP Section 3.7(2), any Person Controlled by, that Controls or that is under common Control with the Ineligible Persons (each an "**Ineligible Person's Affiliate**") are not eligible to participate as a Proponent or Advisor to a Proponent. FST may amend the Ineligible Persons list in the RFP Data Sheet from time to time during the RFP Process.

(2) An Ineligible Person's Affiliate may be eligible to participate as a Proponent or an Advisor to a Proponent only after it has obtained written consent from

FST permitting it to participate as a Proponent or an Advisor to a Proponent. FST will, in its sole discretion, make a determination as to whether FST considers there to be a perceived, potential or actual Conflict of Interest and whether the impact of such perceived, potential or actual Conflict of Interest can be appropriately managed, mitigated or minimized.

### **3.8 Media Releases, Public Disclosures and Public Announcements**

(1) Proponents are prohibited from, and will ensure that their Advisors are prohibited from, issuing or disseminating any media release, public announcement or public disclosure (whether for publication in the press, on the radio, television, internet or any other medium) that relates to the RFP Process, the RFP Documents or the Goods and/or Services or any matters related thereto, without the prior written consent of FST, which consent may be withheld in FST's sole discretion.

(2) Neither the Proponents nor any of their respective Advisors, will make any public comment, respond to questions in a public forum, or carry out any activities to either criticize another Proponent or Proposal or to publicly promote or advertise their own qualifications, interest in or participation in the RFP Process without FST's prior written consent, which consent may be withheld in FST's sole discretion.

(3) For the purpose of greater clarity, RFP Section 3.8(2) does not prohibit disclosures necessary to permit the Proponent to discuss the Goods and/or Services with prospective subcontractors but such disclosure is permitted only to the extent necessary to solicit those subcontractors' participation with respect to the Goods and/or Services.

### **3.9 Restrictions on Communications between Proponents – No Collusion**

(1) Neither a Proponent nor its respective Advisors or representatives will discuss or communicate, directly or indirectly, with any other Proponent (or such Proponent's respective Advisors or representatives), any information whatsoever regarding the preparation of its own Proposal or the Proposal of any other Proponent in a fashion that would contravene Governing Law. Proponents are required to prepare and submit Proposals independently and without any connection, knowledge, comparison of information or arrangement, direct or indirect, with any other Proponent.

### **3.10 Disclosure of Proposal Information**

(1) Proponents are advised that FST may be required to disclose the RFP Documents and a part or parts of any Proposal in order to comply with FST's policies or Governing Law.

(2) FST will use commercially reasonable efforts to safeguard the confidentiality of any information identified by the Proponent as confidential but will not be liable in any way whatsoever to any Proponent if such information is disclosed based on an order or decision of the Information and Privacy Commissioner, or otherwise as required under Governing Law. Proponents are strongly advised to consult their own

legal Advisors as to the appropriate way in which confidential or proprietary business information should be marked as such in their Proposals.

(3) Notwithstanding RFP Section 3.10(2), FST may disclose the name and address of the Successful Proponent and the value and term of the contract, including any pricing information provided by a Proponent in its Proposal.

(4) Proponents are advised that FST will not hold a public opening of Proposals.

### 3.11 Confidential Information

(1) For the purpose of the RFP Process, “**Confidential Information**” means all material, data, information or any item in any form, whether oral or written, including in electronic or hard-copy format, supplied by, obtained from or otherwise provided by FST or FST’s Advisors, in connection with the RFP Process, the RFP Documents or the Goods and/or Services, whether supplied, obtained from or provided before or after the RFP Process.

(2) The Proponent agrees that all Confidential Information:

- (a) will remain the sole property of FST and the Proponent will treat it as confidential
- (b) will not be used by the Proponent for any purpose other than developing and submitting a Proposal in response to the RFP Process or the performance of any subsequent agreement relating to the Goods and/or Services with FST
- (c) will not be disclosed by the Proponent to any Person who is not involved in the Proponent’s preparation of its Proposal or the performance of any subsequent agreement relating to the Goods and/or Services with FST, without prior written consent of FST, in its sole discretion
- (d) will not be used in any way detrimental to FST; and
- (e) if requested by FST, all Confidential Information will be destroyed by the Proponents no later than 10 Business Days after that request.

(3) Each Proponent will be responsible for any breach of the provisions of this RFP Section 3.11 by any Person to whom it discloses the Confidential Information including, for clarity, the Proponent’s Advisors. Each Proponent will indemnify FST and each of its Advisors and related entities and each of their respective directors, officers, consultants, employees, agents and representatives and save each of them fully harmless from and against any and all loss, cost, damage, expense, fine, suit, claim, penalty, demand, action, obligation and liability of any kind or nature (including, without limitation, professional fees on a full indemnity basis) suffered or incurred by any of

them arising as a result of or in connection with any breach of any of the provisions of this RFP Section 3.11 by the Proponent or by any Person to whom the Proponent has disclosed the Confidential Information. Each Proponent agrees that FST acts as trustee for each of its Advisors and related entities and each of their respective directors, officers, consultants, employees, agents and representatives with respect to all rights contemplated hereunder arising in favour of an Advisor, a related entity or any of their respective directors, officers, consultants, employees, agents or representatives and that FST has agreed to accept such trust and hold and enforce such rights on behalf of each such Advisor or related entity and each of their respective directors, officers, consultants, employees, agents and representatives.

(4) Each Proponent acknowledges and agrees that a breach of the provisions of this RFP Section 3.11 would cause FST, its Advisors, and its related entities to suffer loss that could not be adequately compensated by damages, and that FST and its Advisors and related entities may, in addition to any other remedy or relief, enforce any of the provisions of this RFP Section 3.11 upon application to a court of competent jurisdiction without proof of actual damage to FST, its Advisors, or its related entities.

(5) Notwithstanding anything else to the contrary in the RFP Documents, the provisions of this RFP Section 3.11 will survive any cancellation of the RFP Process and the conclusion of the RFP Process and, for greater clarity, will be legally binding on all Proponents, whether or not a Proponent submits a Proposal.

(6) The confidentiality obligations of the Proponent will not apply to any information which falls within the following exceptions:

- (a) information that is lawfully in the public domain at the time of first disclosure to the Proponent, or which, after disclosure to the Proponent, becomes part of the public domain other than by a breach of the Proponent's confidentiality obligations or by any act or fault of the Proponent
- (b) information which was in the Proponent's possession prior to its disclosure to the Proponent by FST, and provided that it was not acquired by the Proponent under an obligation of confidence; or
- (c) information which was lawfully obtained by the Proponent from a third party without restriction of disclosure, provided such third party was at the time of disclosure under no obligation of secrecy with respect to such information.

### **3.12 Confidentiality Agreements**

(1) If specified in the RFP Data Sheet, the Proponent will cause each of its representatives and Advisors who are in receipt of Confidential Information, to execute and deliver to FST a confidentiality agreement in a form prescribed by and with terms and conditions acceptable to FST, in its sole discretion, by the deadline set out in the Timetable. Proponents are advised that they will not be provided with responses to RFIs unless and until they comply with this RFP Section 3.12.

### 3.13 Copyright and Use of Information in Proposals

(1) Proponents will not use or incorporate into their Proposals any concepts, products or processes which are subject to copyright, patents, trademarks or other intellectual property rights of third parties unless Proponents have, or will procure through licensing without cost to FST, the right to use and employ such concepts, products and processes in and for the Goods and/or Services.

(2) All requirements, designs, documents, plans and information supplied by FST to the Proponents in connection with the RFP Process are and will remain the property of FST. Upon request of FST, all such designs, documents, plans and information (and any copies thereof in any format or medium created by or on behalf of the Proponent) must be destroyed.

(3) The Proponent will grant to FST a non-exclusive, perpetual, irrevocable, world-wide, fully paid and royalty free licence (fully assignable without the consent of the Proponent and with the right to sub-licence without the consent of the Proponent) to use the Proposal Information for the purposes of evaluation of Proposals and the negotiation and execution of any Final Agreement (the **"Proposal Information Licence"**). Under no circumstances will the Proponent, except the counterparty to FST in the Final Agreement in relation to the Goods and/or Services, be liable to FST or to any other Person for any damages, losses, costs, expenses, claims or actions whatsoever arising directly or indirectly from the use of the Proposal Information pursuant to the Proposal Information Licence.

(4) For the purpose of this RFP Section 3.13, **"Proposal Information"** includes all information contained in a Proposal or which is disclosed by or through a Proponent to FST during the evaluation of Proposals or during the process of executing any Final Agreement; and any and all ideas, concepts, products, alternatives, processes, recommendations and suggestions developed by or through a Proponent and revealed to or discovered by FST, including any and all those which may be connected in any way to the preparation, submission, review or negotiation of any Proposal or the Final Agreement.

(5) Proponents will ensure that all intellectual property rights associated with any and all of the Proposal Information (including copyright and moral rights but excluding patent rights) provide for and give FST the rights set out in this RFP Section 3.13. It is expressly understood and agreed that any actual or purported restriction in the future on the ability of FST to use any of the Proposal Information as contemplated in this RFP Section 3.13, or anything else obtained by or through Proponents, will be unenforceable as against FST and each of their respective Advisors, and that the provisions of this RFP Section 3.13 will take precedence and govern.

### 3.14 Governing Law and Attornment

(1) The RFP Documents and any Final Agreement will be governed and construed in accordance with Governing Law.

(2) The Proponent agrees that,

- (a) any action or proceeding relating to the RFP Process will be brought in any court of competent jurisdiction in the Province of Ontario and for that purpose each Proponent and FST irrevocably and unconditionally attorns and submits to the jurisdiction of that Ontario court
- (b) it irrevocably waives any right to and will not oppose any Ontario action or proceeding relating to the RFP Process on any jurisdictional basis, including *forum non conveniens*; and
- (c) it will not oppose the enforcement against it, in any other jurisdiction, of any judgment or order duly obtained from an Ontario court as contemplated by this RFP Section 3.14(2).

### 3.15 Licences and Permits

(1) If a Proponent is required by Governing Law to hold or obtain a licence, permit, consent or authorization to carry on an activity contemplated in its Proposal, neither acceptance of the Proposal nor execution of the Final Agreement will be considered to be approval by FST of carrying on such activity without the requisite licence, permit, consent or authorization.

### 3.16 Persons Permitted to Submit Proposals

(1) If a prequalification process has preceded the RFP Process, subject to RFP Section 3.20, only the Prequalified Parties are eligible to participate in the RFP Process. The prequalification documents submitted by each Prequalified Party in the prequalification process that preceded the RFP Process are referred to as a Prequalified Party's "**Prequalification Submission**".

(2) If a prequalification process has not preceded the RFP Process, a Proposal may be submitted by:

- (a) a single Person as the Proponent
- (b) a collection of Persons as the Proponent (a "**Joint Venture Proponent**" and each Person being a "**Joint Venture Participant**"); or
- (c) a prime contractor and subcontractors.

(3) Where a Proposal is submitted by a prime contractor and subcontractors, the prime contractor shall submit a Proposal on its own behalf and on behalf of its subcontractors and the prime contractor shall be responsible for ensuring its subcontractors perform their obligations under the Final Agreement.

### 3.17 Proponents' Costs

(1) The Proponent will bear all costs and expenses incurred by the Proponent relating to any aspect of its participation in the RFP Process.

(2) In no event will FST be liable to pay any costs or expenses or to reimburse or compensate a Proponent under any circumstances, regardless of the conduct or outcome of the RFP Process.

### **3.18 Delay and Costs of Delay**

(1) The Proponent will not hold FST liable for any error or omission in any part of the RFP Documents or for any delay, or costs associated with delays, in the RFP Process.

### **3.19 Clarification and Verification of Proponent's Proposal**

(1) FST may,

- (a) require the Proponent to verify or clarify the contents of its Proposal or any statement made by the Proponent
- (b) require the Proponent to submit supplementary documentation clarifying or verifying any matters contained in its Proposal; and
- (c) seek a Proponent's acknowledgement of an interpretation by FST of the Proponent's Proposal.

(2) FST is not obliged to seek clarification or verification of any aspect of a Proposal or any statement by a Proponent, including any ambiguity in a Proposal or in a statement made by a Proponent.

(3) Any written information received by FST from a Proponent pursuant to a request for clarification or verification from FST as part of the RFP Process may, in FST's discretion, be considered as an integral part of the Proposal.

### **3.20 Changes to Proponents**

(1) If a prequalification process has preceded the RFP Process, during the RFP Process, a Proponent will not permit a Prequalified Proponent Change to the Proponent or any Identified Proponent Party without the prior written consent of FST. For the purpose of this RFP Section 3.20(1), a change of Control will exclude a change in ownership of any shares or units of ownership that are listed on a recognized stock exchange.

(2) If, prior to the Submission Deadline, there is a Prequalified Proponent Change, the Proponent will request the consent of FST by notifying the Contact Person in writing as soon as possible and, in any event, no later than seven days prior to the Submission Deadline. That notification will clearly identify the Prequalified Proponent Change and provide details regarding the impact of the Prequalified Proponent Change on the Proponent or Identified Proponent Party, as applicable. In addition, if the Prequalified Proponent Change involves the proposed substitution of an Identified Proponent Party, the Proponent will include sufficient documentation to demonstrate that the proposed substitute would have met or exceeded any applicable criteria applied during the prequalification process that preceded the RFP Process.



(3) In response to a notification in accordance with RFP Section 3.20(2), FST may, in its sole discretion, provide the Proponent with instructions as to the type of information required by FST to consider the Prequalified Proponent Change as well as the deadlines for submission of information that the Proponent must meet in order to have its request considered by FST. The Proponent will provide any further documentation as may be reasonably requested by FST to assess the impact of the Prequalified Proponent Change on the Proponent and any Identified Proponent Party, including, in the case of a proposed substitution, the acceptability of the proposed substitute. If FST, in its sole discretion, considers the Prequalified Proponent Change to be acceptable, FST may consent to the Prequalified Proponent Change. FST consent to the Prequalified Proponent Change, however, may be subject to such terms and conditions as FST may require. In the case of a proposed substitution of an Identified Proponent Party, if a Prequalified Proponent Change is not acceptable to FST, the Proponent may propose an alternate substitute for review by FST in the same manner as the first proposed substitute. FST may, in its sole discretion, accept a Prequalified Proponent Change, subject to such terms and conditions as FST, in its sole discretion, may require, disallow any Prequalified Proponent Change and may disqualify a Proponent from further consideration in the RFP Process.

(4) In the case of a Prequalified Proponent Change made by the Proponent without consent by FST or a Prequalified Proponent Change after the Submission Deadline, FST may, in its sole discretion, disqualify the Proponent and terminate the Proponent's continued involvement in the RFP Process or allow the Proponent to continue under such terms and conditions as FST, in its sole discretion, may require.

(5) Irrespective of whether a prequalification process has preceded the RFP Process, if, on or after the Submission Deadline and prior to execution of the Final Agreement, there is a Post-Submission Proponent Change, then the Proponent will promptly notify FST in writing to the Contact Person. In response to a notification in accordance with this RFP Section 3.20(5), FST may, in its sole discretion, provide the Proponent with instructions as to the type of information required by FST to consider the Post-Submission Proponent Change as well as the deadlines for submission of information that the Proponent must meet in order to have its request considered by FST. The Proponent will provide any further documentation as may be reasonably requested by FST to assess the impact of the Post-Submission Proponent Change on the Proponent, including in the case of a proposed substitution of a Joint Venture Participant, the acceptability of the proposed substitute. In the case of a proposed substitution, if a Post-Submission Proponent Change is not acceptable to FST, the Proponent may propose an alternate substitute for review by FST in the same manner as the first proposed substitute. FST may, in its sole discretion, refuse to accept a Post-Submission Proponent Change that occurs or is requested by the Proponent after the Submission Deadline and may, in its sole discretion, disqualify the Proponent from continuing in the RFP Process.

(6) If, at any time prior to the execution of the Final Agreement, and notwithstanding any other provision in the RFP Documents, there is a change of Control of a Proponent (the "**Acquiree**") by one of the other Proponents (the "**Acquirer**"):

- (a) the Acquiree will be immediately disqualified from further participation in this RFP Process; and
- (b) FST may, in its sole discretion, allow the Acquirer to continue in the RFP Process, however, FST's consent to continue may be subject to such terms and conditions as FST may require.

### **3.21 Insurance and Workplace Safety during the RFP Process**

(1) If, during the RFP Process, a Proponent attends a site visit or meeting contemplated in the RFP Documents, such Proponent represents and warrants that it has obtained and maintained sufficient insurance and has fulfilled any requirements with respect to workplace safety as required by Governing Law in order to attend such site visits and/or meetings.

## **SECTION 4 - PROPOSAL CONTENT AND FORMAT**

### **4.1 Format and Content of Proposal**

(1) Proponents should prepare their Proposals in accordance with and in the content and format requirements set out in the RFP Data Sheet.

(2) If applicable, the maximum length of the Proposal is set out in the RFP Data Sheet. FST may, in its sole discretion, not evaluate any pages of a Proposal in excess of the page limit set out in the RFP Data Sheet, which may adversely affect the scoring of the Proposal by FST.

(3) Proponents are cautioned to review the provisions of the Key Terms of the Final Agreement with respect to pricing and compensation and will take all provisions into account when completing the Price Form.

### **4.2 Proposal Submission Form**

(1) Each Proponent will complete and execute the Proposal Submission Form attached as Schedule B – Proposal Submission Form.

(2) Each Proponent will complete and submit any additional forms attached as appendices to Schedule B – Proposal Submission Form.

### **4.3 Comments on the Key Terms of the Final Agreement**

(1) If specified in the RFP Data Sheet, the Proponent may be invited to provide comments on the Key Terms of the Final Agreement, including any suggested changes. FST may, in its discretion, and if specified in the RFP Data Sheet, evaluate the Proponent's comments and suggested changes and FST may specify certain terms and conditions that are not negotiable.

### **4.4 Conflict of Interest**

(1) If a Proponent or any of their respective Advisors, prior to or following submission of the Proponent's Proposal, discovers any Conflict of Interest as defined in

RFP Section 4.4(7), the Proponent shall promptly disclose the Conflict of Interest to FST in a written statement to the Contact Person. Proponents are advised to review FST's Code of Conduct and Conflict of Interest Policy (Policy Number 1.10) to ensure that all Proponents and all of their respective Advisors have complied with these policies. For clarity, Proponents have an ongoing obligation to comply with this RFP Section 4.4 in addition to complying with FST's Code of Conduct and Conflict of Interest Policy (Policy Number 1.10).

(2) Proponents and each of their Advisors shall disclose, in the Conflict of Interest Declaration, all Conflicts of Interest. For clarity, the Proponent and each of their Advisors shall make such disclosures in the Conflict of Interest Declaration and whether or not a Conflict of Interest has been disclosed to FST prior to the submission of Proposals.

(3) At the request of FST, the Proponent shall provide FST with the Proponent's proposed means to mitigate and minimize to the greatest extent practicable any Conflict of Interest. The Proponent shall submit any additional information to FST that FST considers necessary to properly assess the Conflict of Interest

(4) Each Proponent and each of their Advisors shall avoid any Conflict of Interest in relation to the Project.

(5) In addition to all contractual or other rights or rights at law or in equity or legislation that may be available to FST, FST may, in its sole discretion,

- (a) disqualify a Proponent that fails to disclose a Conflict of Interest of the Proponent or any Advisor
- (b) require the removal and replacement of any Advisor that has a Conflict of Interest that FST, in its sole discretion, determines cannot be managed, mitigated, minimized, or otherwise resolved
- (c) disqualify any Proponent that fails to comply with any requirements prescribed by FST pursuant to RFP Section 4.4(6) to mitigate, manage or minimize a Conflict of Interest; and
- (d) disqualify a Proponent if that Proponent or any Advisor have a Conflict of Interest that, in FST's sole discretion, cannot be mitigated, managed, minimized or otherwise resolved.

(6) Without limiting RFP Section 4.4(5), FST may, in its sole discretion, waive any and all Conflicts of Interest of Proponents or any of their respective Advisors. A waiver may be upon such terms and conditions as FST, in its sole discretion, requires to satisfy itself that the Conflict of Interest has been appropriately managed, mitigated and minimized, including requiring the Proponent to put into place such policies, procedures, measures and other safeguards as may be required by and be acceptable to FST, in its sole discretion, to manage, mitigate and minimize the impact of such Conflict of Interest.

(7) For the purposes of this RFP Process, “**Conflict of Interest**” includes any perceived, potential, or actual situation or circumstance where, in relation to the Project, a Proponent or any of its Advisor have commitments, relationships, financial interests, knowledge or involvement in litigation that conflicts, may conflict, or may be perceived to conflict, with FST’s obligation to conduct an objective, unbiased, and impartial procurement, and includes circumstances where the Proponent or any of its Advisors:

- (a) have contractual or other obligations with FST that may or may be seen to be compromised or impaired as a result of their participation in the RFP Process or the Project
- (b) are, or employ, a former employee of FST that has relevant knowledge of the Project
- (c) have acted in an advisory or professional capacity regarding the Project to:
  - (i) FST, or
  - (ii) another Proponent
- (d) have a relationship with an employee or former employee of FST that works on, or has worked on, FST’s Project team, or with an Ineligible Person, that is:
  - (i) a personal relationship in the form of a spouse, child, brother, sister, parent, mother or father-in-law, son or daughter-in-law, or with another individual person who shares their home; or
  - (ii) a financial relationship
- (e) have a financial interest in more than one Proposal
- (f) have knowledge of confidential information (other than Confidential Information disclosed by FST in the normal course of the RFP Process) of strategic and/or material relevance to the RFP Process or to the Project that is not available to other Proponents and that may or may be seen to give the Proponent an unfair competitive advantage; or
- (g) have advance notice of a matter relating to the Project that is so significant it gives the Proponent materially more time to investigate, plan, or prepare a response to the RFP Process that may or may be seen to give the Proponent an unfair competitive advantage.

(8) The final determination of whether a Conflict of Interest exists shall be made by FST, in its sole discretion.

## SECTION 5 - PROPOSAL SUBMISSION, WITHDRAWAL AND MODIFICATION

### 5.1 Submission of Proposals

(1) Each Proponent is required to submit its Proposal in electronic copies before the Submission Deadline and in accordance with the requirements set out in this RFP Section 5.1.

(2) With respect to the submission of Proposals, Proponents are advised as follows:

- (a) each Proponent must submit, electronically through e-mail to the Contact Person at the e-mail address specified on the RFP Data Sheet, an electronic copy of the complete Proposal on or before the Submission Deadline
- (b) FST will not accept responsibility for the delivery of any Proposal that is delivered other than by electronic submission through e-mail, and will not accept, acknowledge, or return hard copy or facsimile Proposals
- (c) each Proponent's Proposal should be comprised of the following:
  - (i) a document or zip folder containing the following forms:
    - (A) a completed Proposal Submission Form
    - (B) a completed Conflict of Interest Declaration (prepared in accordance with the requirements set out in Schedule C – Conflict of Interest Declaration); and
    - (C) reference forms as may be required in accordance with RFP Section 6.3
  - (ii) a separate document or zip folder containing a completed technical submission (prepared in accordance with the requirements set out in Schedule D Part 1 – Technical Submission Requirements and Evaluation Criteria) (the **“Technical Submission”**)
  - (iii) a separate document or zip folder containing a completed financial submission (prepared in accordance with the requirements set out in Schedule D Part 2 – Financial Submission Requirements and Evaluation Criteria) (the **“Financial Submission”**)
- (d) Proposals must include the RFP Number in the subject line of the e-mail and must include the following information in the covering email:

- (i) the name and address of FST and the name of the Contact Person
  - (ii) the Proponent's full legal name and return address; and
  - (iii) the name of the Goods and/or Services to which the Proposal applies.
- (e) Proponents should allow sufficient time to e-mail their Proposals. If a Proposal contains many large documents or if the Proponent is not running on high-speed internet, the Proponent may require additional time in order to complete the submission and should budget time for submission of the Proposal accordingly.
- (f) The largest e-mail size that can be submitted by a Proponent is 10 MB, although there is no limit to the number of files that can be submitted. If any individual file size or the e-mail size is over 10 MB, the Proponent is advised to divide its Proposal portions into multiple e-mails in accordance with the following rules:
- (i) the Proponent will maintain the separation between the Technical Submission and the Financial Submission, and will ensure that no individual file contains a portion of both the Technical Submission and the Financial Submission
  - (ii) the Proponent will clearly and legibly identify each file as a part of the forms, the Technical Submission or the Financial Submission
  - (iii) the Proponent will clearly and legibly label each file in a sequential manner such that FST is able to re-construct each of the Technical Submission and the Financial Submission (for example, "Technical Submission, Part 1", "Technical Submission, Part 2"); and
  - (iv) the Proponent will ensure that any division of the Proposal into multiple files or e-mails is done in a logical manner such that clearly identifiable sections of the Proposal are contained in the same e-mail, file or group of files.

(3) For the purpose of this RFP Process, the determination of whether the Proposal that is submitted by e-mail is submitted on or before the Submission Deadline will be based on the electronic time and date stamp that appears in the inbox of the Contact Person without consideration as to the time and date it was sent by the Proponent.

(4) It is the sole responsibility of the Proponent to ensure that its Proposal is received by FST on or before the Submission Deadline.

(5) A Proposal that is not submitted in accordance with the requirements of this RFP Section 5 may be rejected by FST and FST will not be under any obligation to notify the Proponent that the Proposal was not submitted in accordance with the requirements of this RFP Section 5. A Proponent has not successfully submitted a Proposal if it has not successfully submitted a Technical Submission and a Financial Submission on or before the Submission Deadline.

## **5.2 Late Proposals**

(1) FST may, in its sole discretion, accept or reject Proposals that are submitted after the Submission Deadline.

## **5.3 Amendment of Proposals**

(1) Proponents may amend their Proposals after submission but only if the Proposal is amended and resubmitted on or before the Submission Deadline in accordance with the following:

- (a) the Proponent will withdraw its original Proposal by notifying the Contact Person through e-mail; and
- (b) the Proponent will submit a revised replacement Proposal in accordance with the RFP Documents and no later than the Submission Deadline.

## **5.4 Withdrawal of Proposals**

(1) A Proponent may withdraw its Proposal at any time during the RFP Process by giving written notice that is signed by an authorized representative of the Proponent to the Contact Person.

## **5.5 One Proposal per Person**

(1) Except as set out in the RFP Data Sheet and with FST's prior written consent,

- (a) a Person will submit or participate in only one Proposal
- (b) no Person will be a subcontractor of a Proponent while submitting a Proposal individually or as part of a joint venture in the same RFP Process; and
- (c) no Person will be a subcontractor of a Proponent in respect of more than one Proposal.

(2) If a Person submits or participates in more than one Proposal in contravention of RFP Section 5.5(1) FST may, in its sole discretion, disqualify any or all of the Proposals submitted by that Person or in which that Person is a participant.

## 5.6 Maintaining Prices and Proposal Commitments

(1) Notwithstanding the absence of a bidding contract as set out in RFP Section 9.1 and notwithstanding the right of the Proponent to withdraw its Proposal in accordance with RFP Section 5.3(1), FST expects that all commitments made in all Proposals that remain in the RFP Process, including all prices contained in a Proposal, will be maintained by the Proponent for a period of six months after the Submission Deadline, unless otherwise specified in the RFP Data Sheet. If a Proponent fails to maintain its Proposal commitments or its prices for six months after the Submission Deadline, FST may, in its sole discretion and irrespective of the score or ranking of that Proponent, refuse to enter into negotiations, or may discontinue negotiations, with that Proponent.

## SECTION 6 - PROPOSAL EVALUATION

### 6.1 Evaluation of Proposals

(1) The Proponents' Proposals will be reviewed and evaluated by FST on the basis of the evaluation criteria set out in the RFP Data Sheet and Schedule D – Submission Requirements and Evaluation Criteria (the “**Evaluation Criteria**”), including any “pass/fail” requirements.

(2) FST may require that Proponents receive a pre-established minimum passing score before being eligible to be considered further in the RFP Process (including being eligible for an interview). If FST intends to require a minimum passing score in the RFP Process, the required minimum passing score and any related requirements are set out in the RFP Data Sheet and Schedule D – Submission Requirements and Evaluation Criteria. Failure to achieve a minimum passing score may prevent a Proponent from being eligible to be considered further in the RFP Process.

(3) For the purpose of the evaluation process, the weightings and scoring set out in the RFP Data Sheet will apply. The score for each Proposal will be tallied and finalized and a “**Final Proposal Score**” shall be established. FST shall rank only those Proponents that have received a “pass” in respect of all “pass/fail” requirements and that have achieved any pre-established minimum passing score and shall base the ranking on the Final Proposal Score.

(4) The Proponents acknowledge that Proposals submitted in response to the RFP Process may not be directly comparable to one another. As a result, notwithstanding the general Evaluation Criteria set out in the RFP Data Sheet, FST intends to exercise a broad range of discretion in evaluating Proponents.

(5) In the event of a tie in the Final Proposal Score between two Proponents, FST may, in its sole discretion, give the higher ranking to the Proponent with the higher score in its Technical Submission within its Proposal.



## **6.2 Interviews, Site Visits, Demonstrations and Presentations**

(1) FST may, in its sole discretion, conduct interviews, demonstrations, site visits or presentations if set out in the RFP Data Sheet.

(2) The evaluation of any interviews, demonstrations, site visits or presentations will be conducted in accordance with the process set out in the RFP Data Sheet.

(3) FST may conduct interviews, demonstrations, site visits or presentations with some or all Proponents as set out in the RFP Data Sheet.

## **6.3 References and Past Performance Issues**

(1) If specified in the RFP Data Sheet, Proponents will provide reference information using the form attached as Schedule E to the RFP (the “**Reference Form**”) that is to be completed by each of the Proponent’s references. Unless otherwise set out in the RFP Data Sheet, all references are to be with respect to goods and/or services that are similar to the Goods and/or Services and that were provided to similar institutions to FST in accordance with the instructions set out in the RFP Data Sheet. Unless otherwise set out in the RFP Data Sheet, the Proponent is asked to provide a minimum of three references.

(2) FST may, in its sole discretion, confirm the Proponent’s experience and ability to provide the Goods and/or Services by contacting the Proponent’s references. However, FST is under no obligation to contact references submitted by any Proponent and may determine, in its sole discretion, how and whether the responses of references will be taken into account in the evaluation process.

(3) If FST has reliable information with respect to a Proponent’s poor performance in providing goods and/or services, including to FST, FST may take such past poor performance into account in its evaluation of the Proponent and the Proponent’s Proposal.

## **SECTION 7 - DISQUALIFICATION**

### **7.1 Disqualification**

(1) FST may, in its sole discretion, disqualify a Proposal or cancel its decision to identify a Proponent as a Negotiations Proponent or a Successful Proponent, at any time prior to the execution of the Final Agreement by FST, if,

- (a) the Proponent fails to cooperate in any attempt by FST to clarify or verify any information provided by the Proponent
- (b) the Proponent is not, in FST’s sole discretion, financially creditworthy
- (c) the Proponent does not, in FST’s sole discretion, satisfy FST’s security requirements

- (d) the Proponent contravenes RFP Sections 3.6 or 5.5(1);
- (e) the Proponent fails to comply with Governing Law
- (f) the Proposal contains false or misleading information, or the Proponent provides false or misleading information in its interview (if an interview is conducted)
- (g) a Prequalified Proponent Change has occurred that has not been accepted by FST in accordance with RFP Section 3.20(3)
- (h) a Post-Submission Proponent Change has occurred that has not been accepted by FST in accordance with RFP Section 3.20(5)
- (i) the Proponent is the Acquiree in a change of Control
- (j) the Proponent fails to disclose any information (including in any declaration or form attached to the Proposal in connection with the RFP Documents) that would materially adversely affect FST's evaluation of the Proposal
- (k) FST becomes aware of a Conflict of Interest and,
  - (i) the Proponent failed to disclose such Conflict of Interest
  - (ii) the Proponent fails to remove or replace the person or entity giving rise to the Conflict of Interest in accordance with RFP Section 4.4(5)(b)
  - (iii) the Proponent fails to comply with any requirements prescribed by FST pursuant to RFP Section 4.4(6)
  - (iv) in FST's sole discretion, the Conflict of Interest cannot be mitigated, managed, minimized, or otherwise resolved; or
  - (v) the Proponent does not receive a waiver from FST in accordance with RFP Section 4.4(6)
- (l) in the 12 months prior to the Submission Deadline, FST became aware that the Proponent failed to disclose an actual Conflict of Interest in any past or current procurement issued by FST, unless the Proponent has demonstrated to the satisfaction of FST that the Proponent has implemented measures to prevent future false or omitted disclosure of actual Conflicts of Interest
- (m) there is evidence that the Proponent or any of its respective employees, agents, consultants, contractors, service providers or representatives directly or indirectly colluded with one or more other Proponents or any of their respective employees, agents, consultants, contractors, service providers or representatives in the

preparation or submission of Proposals or otherwise contravened RFP Section 3.9

- (n) the Proponent has breached any agreement with FST (whether or not FST exercises any right to terminate such agreement) or has breached FST's policies listed in the RFP Data Sheet
- (o) the Proponent has been convicted of an offence in connection with any services rendered to FST
- (p) the Proponent has breached an agreement for goods and/or services similar to the ones requested under the RFP Process with an entity other than FST
- (q) the Proponent was convicted of a criminal offence within the three years immediately prior to the Submission Deadline
- (r) a Proponent is, at the time of issuance of the RFP Documents or any time during the RFP Process, engaged in ongoing litigation against FST
- (s) there are any convictions related to inappropriate bidding practices or unethical behaviour by a Proponent or any of their Affiliates in relation to a public or broader public sector tender or procurement in any Canadian jurisdiction; or
- (t) a Proponent engages in any activity which, at the sole discretion of FST, is contrary to the public interest or is harmful to the integrity or reputation of FST.

## **SECTION 8 - AGREEMENT NEGOTIATION, FINALIZATION AND DEBRIEFING AND SUCCESSFUL PROPONENT**

### **8.1 Negotiation and Finalization of the Agreement**

(1) FST may, in its sole discretion, enter into negotiations with one or more Negotiations Proponent(s) for the purpose of finalizing the Final Agreement. FST will notify the Negotiations Proponent(s) that it has been selected to enter into negotiations with FST. FST may, at any time:

- (a) identify the highest ranked Proponent and either negotiate with such Proponent or accept such Proponent's Proposal as submitted
- (b) enter into separate and distinct but contemporaneous negotiations with the First Negotiations Proponents and Second Negotiations Proponents and identify a Preferred Proponent as a result of those negotiations; or
- (c) identify the two highest ranking Proponents as the first negotiations proponent (the "**First Negotiations Proponent**") (highest ranked)

and the second negotiations proponent (the "**Second Negotiations Proponent**") (second highest ranked) and enter into negotiations with the First Negotiations Proponent and, failing successful negotiations, enter into negotiations with the Second Negotiations Proponent and identify the Proponent with whom the City conclude successful negotiations as the Preferred Proponent.

(2) After notification pursuant to RFP Section 8.1(1) FST will make arrangements to commence negotiations. FST reserves the right to specify time limits for the conclusion of successful negotiations. Both FST and the Negotiations Proponent may withdraw from negotiations at any time. The Key Terms of the Final Agreement will be the basis for negotiations and ultimately, subject to negotiations, the Final Agreement between a Successful Proponent and FST.

(3) Subject to RFP Section 9.1, FST will determine whether to enter into Final Agreements with one or more Proponents based on the best overall value, capabilities, and availability of the Proponents. FST may, in its sole discretion, retain more than one Proponent to provide the Goods and/or Services.

(4) Notwithstanding any other provision contained in the RFP Documents or a Proponent's Proposal, selection of a Proposal does not oblige FST to enter into an agreement with the Successful Proponent. The purpose of the RFP Process is solely to choose a negotiating partner or negotiation partners. The selection of a Negotiations Proponent or a Successful Proponent will simply initiate the process of negotiations which may lead to the Final Agreement with FST to provide the Goods and/or Services if FST and the Successful Proponent can successfully negotiate a Final Agreement.

(5) The Successful Proponent acknowledges and agrees that the entering into of an agreement by FST is conditional on and subject to FST obtaining any necessary authorizations and approvals required in connection with the Goods and/or Services, including, for certainty, the approval of any relevant government authority and the completion of background checks and security screenings of employees of the Successful Proponent, at the Successful Proponent's cost.

(6) The Successful Proponent acknowledges and agrees that the entering into of an agreement by FST is conditional on the Successful Proponent's completion of a Vulnerable Sector Screening performed by the Toronto Police Service on all key individuals of the Successful Proponent.

(7) Notwithstanding anything else to the contrary in the RFP Documents, if FST, in its sole discretion, is of the opinion that a Proponent has submitted a price that is too low to be sustainable and to ensure the delivery of the Goods and/or Services, FST may decline to select that Proponent to be a Negotiations Proponent.

## **8.2 Notification If Successful or Not**

(1) FST will post a Notice that identifies the Successful Proponent. Proponents acknowledge that this notification may disclose the pricing information submitted by the Successful Proponent.

### 8.3 Debriefing

(1) Unsuccessful Proponents may request a debriefing after the posting of the Notice pursuant to RFP Section 8.2(1) by contacting the Contact Person in writing. All Proponent requests should be in writing to the Contact Person no later than 60 calendar days following the posting of such notification. FST will determine the format, timing and contents of the debriefing session. Generally, debriefings shall include a discussion regarding the unsuccessful Proponent's Proposal, why it was unsuccessful, and the relative advantages of the Successful Proponent's Proposal. The debriefing is not for the purpose of challenging the procurement process.

### 8.4 Dispute Resolution

(1) With respect to any disputes that may arise in connection with this RFP Process, Proponents should submit a written description of the dispute for consideration to Chris Brillinger, Executive Director at 355 Church Street, Toronto, ON M5B 0B2 within 10 Business Days of the event giving rise to the dispute. Any written description of the dispute that is received later than 10 Business Days following the event that gave rise to the dispute will not be considered and the Proponent will be notified in writing.

- (2) The written description of the dispute shall include the following:
- (a) the name and address of the Proponent
  - (b) the specific identification of the provision and/or procurement procedure that is alleged to have been breached
  - (c) the specific description of each act alleged to have breached the procurement process
  - (d) a precise statement of the relevant facts
  - (e) an identification of the issues to be resolved
  - (f) the Proponent's arguments and supporting documentation; and
  - (g) the Proponent's requested remedy.

(3) Chris Brillinger, Executive Director, will respond, in writing, to the Proponent within 10 Business Days of receiving the written description of the dispute. The final decision on the issue will be made by Chris Brillinger, Executive Director, and shall be considered final and conclusive.

## SECTION 9 - LEGAL MATTERS AND RIGHTS OF FST

### 9.1 RFP Not a "Bidding Contract" or a Tender

(1) Notwithstanding any other provision of the RFP Documents, the RFP Documents are not a tender and are not an offer to enter into either a bidding contract (often referred to as "**Contract A**") or a contract to provide the Goods and/or Services (often referred to as "**Contract B**"). Except as provided in RFP Sections 3.11 and 9.2,

neither the RFP Documents nor the submission of a Proposal by a Proponent will create any legal or contractual rights or obligations whatsoever on any of the Proponent or FST. Except as provided in RFP Sections 3.11 and 9.2, no legal relationship or obligation of any kind whatsoever will be created between the Proponent or FST until the successful negotiation and execution of a written Final Agreement.

(2) Without limiting the generality of RFP Section 9.1(1) the following principles apply to the RFP Process:

- (a) FST may, in its sole discretion, change or discontinue the RFP Process at any time whatsoever
- (b) FST may, in its sole discretion, decline to evaluate any Proposal that, in its sole discretion, is incomplete, obscure or does not contain sufficient information to carry out a reasonable evaluation
- (c) FST may, in its sole discretion, enter into negotiations with any Proponent, Person or Persons with respect to the Goods and/or Services that are the subject of the RFP Documents
- (d) while a Proponent will likely be evaluated more favourably if its Proposal is in the format set out in Schedule D – Submission Requirements and Evaluation Criteria and meets the requirements of this RFP, a Proponent is not obligated (but is strongly encouraged) to comply with Schedule D – Submission Requirements and Evaluation Criteria in order to have its Proposal evaluated by FST. For clarity, this principle applies whether or not the expressions “must” or “will” are used to describe what is required of the Proponents
- (e) there are no mandatory requirements for a Proponent or a Proposal in the RFP Process
- (f) in connection with negotiations contemplated in the RFP Documents, FST may, in its sole discretion, request any supplementary information whatsoever from a Proponent after the Submission Deadline, including information that the Proponent could or should have submitted prior to the Submission Deadline (provided however, that FST is not obliged in any way whatsoever to request supplementary information from a Proponent)
- (g) while the pricing information provided is subject to the non-binding nature of the RFP Process, such information will be assessed during the evaluation of Proposals and accordingly, misleading or incomplete information, including withdrawn or altered pricing during contract negotiations, could adversely impact any such evaluation or negotiations and result in the cessation of negotiations with that Proponent; and

- (h) FST may, in its sole discretion and at any time during the RFP Process,
  - (i) reject any or all of the Proposals
  - (ii) accept any Proposal, including a Proposal that is not submitted in accordance with the requirements set out in RFP Section 5.1;
  - (iii) if only one Proposal is received, either elect to accept or reject it or to enter into negotiations with the applicable Proponent
  - (iv) elect not to proceed with the RFP Process
  - (v) alter the Timetable
  - (vi) change the RFP Process or any other aspect of the RFP Documents; and
  - (vii) cancel the RFP Process and subsequently conduct another competitive process for the same goods and/or services that are the subject matter of the RFP Documents or subsequently enter into negotiations with any Person or Persons with respect to the goods and/or services that are the subject matter of the RFP Documents.

(3) For clarity, RFP Section 9.1(1) is not intended to limit the rights of FST or the Proponents to conduct themselves in accordance with the common law governing direct commercial negotiations in effect in accordance with Governing Law.

## **9.2 Limit on Liability**

(1) Notwithstanding that in accordance with RFP Section 9.1(1) the RFP Documents are not a tender and are not intended to create Contract A, the Proponent and all other entities participating in the RFP Process agree that if FST is found to be liable, in any way whatsoever, for any act or omission of any of them in respect of the RFP Process, the total liability of FST to any Proponent or any other entity participating in the RFP Process, and the aggregate amount of damages recoverable against FST for any matter relating to or arising from any act or omission by any one or more of them, whether based upon an action or claim in contract, warranty, equity, negligence, intended conduct or otherwise, including any action or claim arising from the acts or omissions, negligent or otherwise, of FST will be no greater than the Proponent's cost of preparing its Proposal or the liability cap amount set out in the RFP Data Sheet, whichever is less.

## SECTION 10 - DEFINITIONS

### 10.1 General

(1) In the RFP Documents, the singular is deemed to include the plural and the plural is deemed to include the singular, except where the context otherwise requires.

(2) All references in the RFP Documents to “discretion” or “sole discretion” means in the sole and absolute discretion of the party exercising the discretion.

### 10.2 RFP Definitions

Whenever used in the RFP Documents,

- (1) **“Acquiree”** is defined in RFP Section 3.20(6).
- (2) **“Acquirer”** is defined in RFP Section 3.20(6).
- (3) **“Addendum”** means a written addendum to the RFP Documents issued by FST as set out in RFP Section 3.4.
- (4) **“Advisor”** means any Person retained to provide professional advice to FST or a Proponent, as applicable.
- (5) **“Affiliate”** means an “affiliate” as that term is used in the *Business Corporations Act* (Ontario) and any successor legislation thereto.
- (6) **“Background Information”** is defined in RFP Section 2.1(3).
- (7) **“Business Day”** means any day other than Saturday, Sunday, a statutory holiday in the Province of Ontario or any day on which banks are not open for business in the city of Toronto, Ontario.
- (8) **“Code of Conduct and Conflict of Interest Policy (Policy Number 1.10)”** means FST’s policy regarding code of conduct and conflicts of interest, numbered policy 1.10, and last revised February 21, 2018.
- (9) **“Commercially Confidential RFIs”** is defined in RFP Section 3.2(1)(b)(ii).
- (10) **“Confidential Information”** is defined in RFP Section 3.11(1).
- (11) **“Conflict of Interest”** is defined in RFP Section 4.4(7).
- (12) **“Conflict of Interest Declaration”** means the conflict of interest declaration attached as Schedule C – Conflict of Interest Declaration to this RFP.
- (13) **“Contact Person”** means the contact person listed in the RFP Data Sheet in respect of RFP Sections 1.2(1) and 3.2(1).
- (14) **“Contract A”** is defined in RFP Section 9.1(1).



(15) “**Contract B**” is defined in RFP Section 9.1(1).

(16) “**Control**” means, with respect to any Person at any time, (i) holding, whether directly or indirectly, as owner or other beneficiary (other than solely as the beneficiary of an unrealized security interest) securities or ownership interests of that Person carrying votes or ownership interests sufficient to elect or appoint 50 percent or more of the individuals who are responsible for the supervision or management of that Person, or (ii) the exercise of de facto control of that Person, whether direct or indirect and whether through the ownership of securities or ownership interests or by contract, trust or otherwise.

(17) “**Evaluation Criteria**” is defined in RFP Section 6.1(1).

(18) “**First Negotiations Proponent**” is defined in RFP Section 8.1(1)(c).

(19) “**Final Agreement**” is defined in RFP Section 1.1(2).

(20) “**Final Proposal Score**” is defined in RFP Section 6.1(3).

(21) “**Financial Submission**” is defined in RFP Section 5.1(2)(c)(iii).

(22) “**FST**” is defined in RFP Section 1.1(1).

(23) “**General RFIs**” is defined in RFP Section 3.2(1)(b)(i).

(24) “**Goods and/or Services**” is defined in RFP Section 1.1(1).

(25) “**Governing Law**” means the laws of Ontario and the applicable laws of Canada.

(26) “**Identified Proponent Party**” means any of the Persons identified in the Proponent’s Prequalification Submission, including for clarity, proposed subcontractors, key individuals or Joint Venture Participants.

(27) “**includes**” and “**including**” means “includes without limitation” and “including without limitation” respectively.

(28) “**Ineligible Person’s Affiliate**” is defined in RFP Section 3.7(1).

(29) “**Ineligible Persons**” is defined in RFP Section 3.7(1).

(30) “**Joint Venture Participant**” is defined in RFP Section 3.16(2)(b).

(31) “**Joint Venture Proponent**” is defined in RFP Section 3.16(2)(b).

(32) “**Key Terms of the Final Agreement**” is defined in RFP Section 2.1(1)(g).

(33) “**Negotiations Proponent(s)**” is defined in RFP Section 1.1(2).

(34) “**Notice**” means a written notice issued by FST as set out in RFP Section

3.3.

(35) **“Person”** means any individual, partnership, limited partnership, joint venture, syndicate, sole proprietorship, company, corporation or body corporate with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, regulatory body or agency, government or governmental agency authority or entity however designated or constituted.

(36) **“Post-Submission Proponent Change”** means:

- (a) an actual or proposed change of Control of the Proponent
- (b) a change in circumstances that may materially adversely affect a Proponent in a way which could impair the Proponent’s ability to perform its respective obligations under or in connection with the Final Agreement; or
- (c) the withdrawal of any Joint Venture Participant from a Joint Venture Proponent and the proposed substitution of such Person.

(37) **“Prequalification Submission”** is defined in RFP Section 3.16(1).

(38) **“Prequalified Parties”** is defined in RFP Section 1.1(2)(b).

(39) **“Prequalified Proponent Change”** means:

- (a) an actual or proposed change of Control of the Proponent or any Identified Proponent Party
- (b) a change in circumstances that may materially adversely affect a Proponent or an Identified Proponent Party in a way which could impair the Proponent’s or the Identified Proponent Party’s ability to perform their respective obligations under or in connection with the Final Agreement
- (c) the withdrawal of any of the Identified Proponent Parties and the proposed substitution of such person or entity; or
- (d) the proposed addition of any person or entity as an Identified Proponent Party.

(40) **“Price Form”** means the form provided in Schedule D Part 2 to this RFP.

(41) **“Proponent Representative”** is defined in RFP Section 1.3(1).

(42) **“Proponents”** is defined in RFP Section 1.1(2).

(43) **“Proponents Meeting”** is defined in RFP Section 3.5(1).

(44) **“Proposal”** is defined in RFP Section 1.1(2).

(45) **“Proposal Information”** is defined in RFP Section 3.13(4).

- (46) **“Proposal Information Licence”** is defined in RFP Section 3.13(3).
- (47) **“Proposal Submission Form”** means the Proposal Submission Form attached as Schedule B to this RFP.
- (48) **“Reference Form”** is defined in RFP Section 6.3(1).
- (49) **“RFIs”** is defined in RFP Section 3.2(1).
- (50) **“RFP”** is defined in RFP Section 2.1(1)(a).
- (51) **“RFP Data Sheet”** means Schedule A to this RFP.
- (52) **“RFP Documents”** is defined in RFP Section 2.1(1).
- (53) **“RFP Number”** is defined in RFP Section 1.1(1).
- (54) **“RFP Process”** is defined in RFP Section 1.1(3).
- (55) **“Second Negotiations Proponent”** is defined in RFP Section 8.1(1)(c).
- (56) **“Submission Deadline”** is defined in RFP Section 3.1(1).
- (57) **“Successful Proponent”** is defined in RFP Section 1.1(2).
- (58) **“Technical Submission”** is defined in RFP Section 5.1(2)(c)(ii); and
- (59) **“Timetable”** is defined in RFP Section 3.1(1).

**RFP DATA SHEET  
SCHEDULE A TO THE RFP**

<b>RFP SECTION REFERENCE AND DESCRIPTION</b>	<b>ITEM</b>
RFP Section 1.1(1) –Description of Goods and/or Services	<p><b>Description of Goods and/or Services:</b></p> <p>FST is seeking to procure an electronic client record system (“ECRS”) to assist in securely reporting, retrieving, and managing client records. The ECRS must be adaptable, user-friendly, and meet evolving business needs. Additionally, the new ECRS must facilitate the migration of old data, and smooth access to data unable to be migrated. The requirements of the ECRS include, but are not limited to, the following:</p> <ul style="list-style-type: none"><li>(a) the ability to store and track client data including contact information, case notes, appointment scheduling and history, billing, tracking staff time use, and other required functionalities</li><li>(b) the ability to capture both individual client and group services</li><li>(c) facilitating efficient off the shelf standardized and customized reporting for research, quality improvement and accountability purposes, including data extraction</li><li>(d) ensuring all data remains in Canada and that all ensuring all privacy requirements are met</li><li>(e) development and availability of training materials, for end users, front line workers, back office, administration, quality assurance and all reporting and research functions</li><li>(f) availability of support (help desk) for initial implementation</li><li>(g) ongoing support for agreed-upon duration</li><li>(h) supports daily operations overall and to provide leadership with the information needed for informed decision-making</li><li>(i) support efficient and secure access, based on roles/responsibilities</li><li>(j) is adaptable for new requirements, whether they originate internally or externally</li></ul>

RFP SECTION REFERENCE AND DESCRIPTION	ITEM
	<p>(k) incorporates plan to ensure access to required 'old data': data migration and/or a plan to enter required 'old data' in the new system</p> <p>(l) facilitates smooth access to existing data for the period that is legally required for record retention if not all data is migrated; and</p> <p>(m) implementation of the system in three different FST business units, combined including approximately 16 different services:</p> <ul style="list-style-type: none"> <li>a. Changing Lives/Family Violence</li> <li>b. Building Inclusive Communities, Options and Person Directed Planning; and</li> <li>c. Social Policy.</li> </ul>
RFP Section 1.1(1) – RFP Number	The RFP Number is FST-ECRS-202110107.
RFP Section 1.1(2) – Proponents	The RFP Process is open to all parties submitting a Proposal in accordance with the RFP Documents.
RFP Section 1.2(1) and 3.2(1) – Contact Person and Requests for Information	<p>The name of the Contact Person is Matthew Ha, Project Manager</p> <p>The Contact Person may be contacted via email at: <a href="mailto:RFP@familyservicetoronto.org">RFP@familyservicetoronto.org</a></p>
RFP Section 2.1(3) – Background Information	Background Information will be provided to the proponents through the Background Information Document included with this RFP.
RFP Section 2.2(1) – Distribution of Documents to Proponents	<p>The RFP Documents will be distributed through FST's website: <a href="https://familyservicetoronto.org/about-us/finances/request-for-proposal/">https://familyservicetoronto.org/about-us/finances/request for proposal/</a> or by contacting the Contact Person.</p> <p>Responses to RFIs, Notices, and Addenda will be distributed by email from the Contact Person to all Persons that have expressed an intent to bid in accordance with RFP Section 1.1(4).</p>

RFP SECTION REFERENCE AND DESCRIPTION	ITEM	
RFP Section 3.1(1) – Timetable	<b>TIMETABLE</b>	
	Issuance of RFP Documents	January 7, 2021
	Intent to Bid Deadline	January 18, 2021
	Deadline to submit confidentiality agreement	Not Applicable
	Registration Deadline for Proponents Meeting	Not Applicable
	Proponents Meeting	Not Applicable
	Deadline for Proponents' disclosure with respect to RFP Section 3.6(4)(a)	January 18, 2021
	Deadline to submit comments on the Key Terms of the Agreement	January 21, 2021
	Deadline for Proponents to submit RFIs	January 21, 2021 16:00 ET
	Deadline for posting RFI responses	January 29, 2021
	Deadline for issuance of Addenda	February 1, 2021
	Deadline for Submission of Proposals (Submission Deadline)	February 16, 2021 16:00 ET
	Preparation of shortlist	Week of March 8, 2021
	Anticipated date range for Proponents demonstrations	March 22-26, 2021
	Anticipated Negotiation Proponent selection	March 29, 2021
Anticipated Contract execution date	Late April 2021	

<b>RFP SECTION REFERENCE AND DESCRIPTION</b>	<b>ITEM</b>
RFP Section 3.2(1) – Requests for Information	Proponents are required to submit all RFIs by email to the Contact Person.
RFP Sections 3.5(1) and 3.5(2) – General Proponents Meeting	FST will not be conducting a Proponents Meeting.
RFP Section 3.6(2)(b)(ii) – Prohibited Contacts	Not Applicable.
RFP Section 3.7(1) – Ineligible Persons	<b>Ineligible Persons:</b> Blake, Cassels & Graydon LLP Gevity Inc.
RFP Section 3.12 – Confidentiality Agreement	Proponents are not required to execute a confidentiality agreement.
RFP Sections 4.1(1) and 4.1(2) – Format and Content of Proposal	Proponent shall format their Proposals in Excel Format or in PDF Format as applicable on 8.5X11 page size and 11 pt. Arial font, and abide by any page limits set out in the Technical Submission Requirements.

<b>RFP SECTION REFERENCE AND DESCRIPTION</b>	<b>ITEM</b>
RFP Section 4.3(1) – Comments on the Key Terms of the Final Agreement	Proponents are permitted to provide comments on the Key Terms of the Final Agreement identifying any terms that are not acceptable to the Proponent or not compatible with the Proponent’s solution. Proponents are requested to submit such comments by the deadline set out in the Timetable for FST’s consider. For clarity, FST will not be evaluating the comments submitted by Proponents. FST reserves the right to negotiate any element of the Key Terms of the Final Agreement with the Negotiation Proponent(s).
RFP Section 4.4(1) and 7.1(1)(n) – FST Policies	Code of Conduct and Conflict of Interest Policy (Policy Number 1.10)
RFP Section 5.1(2)(a) – E-mail Address for Submission	Proponents must submit electronic copies of their Proposals to the Contact Person at the following e-mail address: <a href="mailto:RFP@familyservicetoronto.org">RFP@familyservicetoronto.org</a>
RFP Section 5.5(1) – One Proposal Per Person	There are no exceptions to RFP Section 5.5(1).
RFP Section 5.6(1) – Maintaining Prices and Proposal Commitments	Not Applicable.



RFP SECTION REFERENCE AND DESCRIPTION	ITEM																
RFP Section 6.1(1) – Evaluation of Proposals	<p>The weightings to be applied to calculate the initial Proposal score (the “<b>Initial Proposal Score</b>”) are as follows:</p> <table border="1" data-bbox="537 443 1414 999"> <thead> <tr> <th data-bbox="544 443 1203 510">EVALUATION CATEGORIES</th> <th data-bbox="1203 443 1408 510">WEIGHTING</th> </tr> </thead> <tbody> <tr> <td data-bbox="544 510 1203 577"><b>Technical Submission</b></td> <td data-bbox="1203 510 1408 577"></td> </tr> <tr> <td data-bbox="544 577 1203 644">1. Project Understanding and Approach</td> <td data-bbox="1203 577 1408 644">15%</td> </tr> <tr> <td data-bbox="544 644 1203 711">2. Corporate Overview and Experience</td> <td data-bbox="1203 644 1408 711">15%</td> </tr> <tr> <td data-bbox="544 711 1203 779">3. Case Management Requirements</td> <td data-bbox="1203 711 1408 779">40%</td> </tr> <tr> <td data-bbox="544 779 1203 846"><b>References</b></td> <td data-bbox="1203 779 1408 846">Pass/Fail</td> </tr> <tr> <td data-bbox="544 846 1203 913"><b>Financial Submission</b></td> <td data-bbox="1203 846 1408 913">30%</td> </tr> <tr> <td data-bbox="544 913 1203 999"><b>Total (Initial Proposal Score)</b></td> <td data-bbox="1203 913 1408 999">100%</td> </tr> </tbody> </table> <p>See the row corresponding to RFP Section 6.2(1) and 6.2(2) in this RFP Data Sheet for further information on the evaluation process and the calculation of the Final Proposal Score.</p>	EVALUATION CATEGORIES	WEIGHTING	<b>Technical Submission</b>		1. Project Understanding and Approach	15%	2. Corporate Overview and Experience	15%	3. Case Management Requirements	40%	<b>References</b>	Pass/Fail	<b>Financial Submission</b>	30%	<b>Total (Initial Proposal Score)</b>	100%
EVALUATION CATEGORIES	WEIGHTING																
<b>Technical Submission</b>																	
1. Project Understanding and Approach	15%																
2. Corporate Overview and Experience	15%																
3. Case Management Requirements	40%																
<b>References</b>	Pass/Fail																
<b>Financial Submission</b>	30%																
<b>Total (Initial Proposal Score)</b>	100%																
RFP Section 6.1(2) – Minimum Passing Score	There is no minimum passing score applicable to this RFP Process.																

RFP Section 6.2(1) and 6.2(2) – Interviews, Site Visits, Demonstrations and Presentations

Following evaluation of the Technical Submission and the Financial Submission, including scoring of all categories, the top three ranked Proponents based on the Initial Proposal Score who have achieved a “pass” in respect of any pass/fail criteria and who have achieved any specified minimum passing score will be invited to make an oral presentation and demonstration of their Proposal. Proponents are to showcase their software “As Is”, highlighting features and functions applicable to FST’s requirements. FST will provide Proponents invited to make an oral presentation and demonstration with more detailed guidance regarding the content of such presentation and demonstration.

The anticipated timeframe for such presentations is set out in the Timetable. Scheduling of these presentations will be arranged by the Contact Person. Failure to comply with the scheduling procedure may result in disqualification.

FST will score the oral presentation and demonstration and this score shall be added to the Proposal score to determine the Final Proposal Score for the Proponents that successfully complete the oral presentation and demonstration. The Final Proposal Score will be calculated as follows:

<b>EVALUATION CATEGORIES</b>	<b>WEIGHTING</b>
<b>Financial Submission</b>	30%
<b>Presentation</b>	70%
<b>Total (Final Proposal Score)</b>	100%

For clarity, Proponents that are not invited to make an oral presentation and demonstration will not receive a Final Proposal Score. Proponents should also note that the score for the Technical Submission will not be factored into the Final Proposal Score.

Presentations will be evaluated based on the following evaluation criteria:

- system’s ease of use
- system’s functionality
- reporting capabilities
- dashboards provided with system; and
- user’s ability to build forms and reports.

<b>RFP SECTION REFERENCE AND DESCRIPTION</b>	<b>ITEM</b>
RFP Section 6.3(1) – References and Past Performance Issues	Proponents are required to submit a minimum of three client references to substantiate their submissions using the form set out in Schedule E. References must be in respect to goods and/or services provided within the last five years, and at least one reference must be in respect of a current client as of the Submission Deadline. References will be evaluated on a pass/fail basis.
RFP Section 9.2(1) – Limit on Liability	The Limit on Liability cap is \$5,000.

**PROPOSAL SUBMISSION FORM  
SCHEDULE B TO THE RFP**

**TO:** Family Service Toronto, 355 Church St, Toronto, ON M5B 0B2

**RE:** Electronic Client Record System (FST-ECRS-20210107)

**1. Proponent Information**

(a) Proponent's registered legal business name and any other name under which it carries on business:

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(b) Proponent's address, telephone and facsimile numbers:

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(c) Name, address, telephone, e-mail and facsimile numbers of the contact person(s) for the Proponent:

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(d) Name of the person who is primarily responsible for the Proposal:

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(e) Whether the Proponent is an individual, a sole proprietorship, a corporation, a partnership, a joint venture, an incorporated consortium or a consortium that is a partnership or other legally recognized entity:

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(f) Name(s) of the proprietor, where the Proponent is a sole proprietor; each of the directors and officers where the Proponent is a corporation; each of the partners where the Proponent is a partnership; and applicable combinations of these when the Proponent is a joint venture, whichever applies:

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**2. Regulatory Matters**

We confirm as follows:

- (a) With respect to the *Excise Tax Act*, we are either:
  - (i) a Harmonized Sales Tax (“**HST**”) registrant for purposes of the *Excise Tax Act* and our HST registration number is \_\_\_\_\_; or
  - (ii) not a HST registrant for the purposes of the *Excise Tax Act*.

***[Note: Proponents to strike the provision not applicable to them.]***

**3. Proposal**

With respect to the above noted RFP, we confirm as follows:

- (a) capitalized terms used in clauses (b) through (t) below will have the meanings given thereto in the RFP Documents
- (b) except to the extent that we have sought and received written approval in accordance with RFP Section 3.20, there have been no changes to the Proponent
- (c) there have been no changes in circumstance that could have a material adverse effect on the Proponent in a way that could impair our ability to perform the obligations under the Key Terms of the Final Agreement
- (d) except for those actions, suits or proceedings as disclosed in our Prequalification Submission, if any, there are no actions, suits or proceedings pending that could have a material adverse effect on our ability to provide the Goods and/or Services or, to the best of our knowledge after reasonable inquiry, threatened against us and we are not aware of any ground on which such an action, suit or proceeding might be commenced, except for the following:
  - (i) actions, suits, or proceedings, if applicable:

***[Note to Proponents: Add additional lines if necessary.]***

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_
- 3. \_\_\_\_\_

- (e) we have not and, to the best of our knowledge, our Advisors have not engaged in any form of political or other lobbying, of any kind whatsoever, to influence the outcome of this RFP Process in contravention of RFP Section 3.6

- (f) we have and, to the best of our knowledge, our Advisors have complied fully with RFP Section 3.9. We confirm that:
  - (i) we have not discussed or communicated, directly or indirectly, with any other Proponent, any information whatsoever regarding the preparation of our Proposal or the Proposal of the other Proponents in a way that would contravene applicable law; and
  - (ii) we have prepared and submitted our Proposal independently and without connection, knowledge, comparison of information or arrangement, direct or indirect, with any other Proponent.
- (g) we have and, to the best of our knowledge, our Advisors have complied fully with RFP Sections 3.8, 3.11 and 3.13 and the provisions of any confidentiality agreement entered into in connection with the RFP Process
- (h) at the time of submitting our Proposal, we are in full compliance with all tax statutes administered by the Ministry of Finance for Ontario and that, in particular, all returns required to be filed under all provincial tax statutes have been paid or satisfactory arrangements for their payment have been made and maintained
- (i) our Proposal is based on and relies solely upon our own examinations, knowledge, information, judgement, and investigations and not upon any statement, representation, investigation or information made or provided by FST whether provided in the method specified in the RFP for Notices and other communication or in any other way whatsoever
- (j) we have obtained tax advice from our own Advisors and experts, including obtaining any advance interpretations or rulings that we consider appropriate or necessary in relation to the Goods and/or Services
- (k) we have examined the RFP Documents and confirm that we have received all pages of the RFP Documents
- (l) we have made any necessary inquiries with respect to Addenda issued by FST and have ensured that we have received and examined all Addenda to the RFP Documents
- (m) our Proposal is based on the terms and conditions of the RFP Documents
- (n) we acknowledge and accept the obligations set out in RFP Section 3.11
- (o) we acknowledge and accept the limit of liability set out in RFP Section 9.2

- (p) we acknowledge that, except as explicitly provided in RFP Section 3.11 and RFP Section 9.2, the submission of this Proposal creates no legal or contractual obligations or rights on FST or the Proponent, all as set out in RFP Section 9.1
- (q) the prices contained in our Financial Submission are based on the terms and conditions of the RFP Documents
- (r) we understand that any negotiations with FST with respect to the Goods and/or Services will assume that we will hold our prices submitted pursuant RFP Schedule D Part 2 – Financial Submission and that, in the event we do not hold our prices, FST may, in its sole discretion, cease negotiations with us with respect to the Goods and/or Services
- (s) having made all necessary inquiries of our insurers in respect of the insurance requirements set out in the Key Terms of the Final Agreement, we confirm that we are able to meet the insurance obligations as set out in the Key Terms of the Final Agreement and that our prices include the costs associated with such insurance obligations
- (t) we agree to provide any required information and cooperate with FST with respect to the conduct of background checks and security screening of employees at our own expense; and
- (u) we have conducted ourselves with integrity and propriety and we have not engaged in any inappropriate bidding practices or unethical behaviour in the course of the RFP Process.

**4. Conflict of Interest, Confidential Information and Inappropriate Bidding Practices**

**Conflict of Interest**

- (a) We confirm that we do not have any perceived, potential or actual Conflict of Interest or any other type of unfair advantage in submitting our Proposal or performing or observing the contractual obligations set out in the Key Terms of the Final Agreement, except as disclosed in the Conflict of Interest Declaration included in our Proposal.

**Confidential Information**

- (b) We confirm that we have not had access to FST confidential information, other than the RFP Documents themselves, with respect to this RFP Process, except as disclosed as follows:

In addition to the RFP Documents, we have access to the following confidential information relating to the RFP Process.

1. \_\_\_\_\_
2. \_\_\_\_\_

3. \_\_\_\_\_

**[Proponent to add more rows if necessary.]**

**Inappropriate Bidding Practices**

(c) The following is a description of all charges or investigations by a public body related to inappropriate bidding practices or unethical behavior by the Proponent or any of its Affiliates in relation to a public or broader public sector tender or procurement in any Canadian jurisdiction:

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

**[Proponent to add more rows if necessary.]**

This Proposal Submission Form has not been modified in any manner, except to complete the required information.

\_\_\_\_\_  
Signed by person or persons authorised to  
bind the Proponent

\_\_\_\_\_  
Print Name and Title of Person Signing



**CONFLICT OF INTEREST DECLARATION  
SCHEDULE C TO THE RFP**

**To: Family Service Toronto (“FST”)**

**Re: Request for Proposals RFP No. FST-ECRS-20210107 (the “RFP”)**

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All capitalized terms used in this Conflict of Interest Declaration have the meaning set out in the RFP.

The undersigned Proponent hereby declares that, to the best of its knowledge, having made all necessary inquiries and investigations to permit the Proponent to make this Conflict of Interest Declaration and except as disclosed, accurately and completely, in Attachment 1 hereto:

1. No Proponent or Person who has had or who will have significant involvement in the preparation and/or oversight of the preparation of our Proposal (together, the **“Proponent Conflict Declaration Parties”**) has any relationships with employees (both current or former) of FST or individuals or firms who have been involved on FST’s behalf in this RFP Process or the design, planning or implementation of the Goods and/or Services that could constitute a perceived, potential or actual Conflict of Interest or unfair advantage, or could otherwise affect or impair or appear to affect or impair the integrity of this RFP Process
2. There is no perceived, potential or actual Conflict of Interest, collusion or any other type of unfair advantage in any of the Proponent Conflict Declaration Parties’ participation in this RFP Process
3. No Proponent Conflict Declaration Party has any knowledge of or the ability to avail themselves of Confidential information, other than Confidential Information which may have been disclosed by FST to the Proponent Conflict Declaration Party in the normal course of this RFP Process, that is or was relevant to the Goods and/or Services or this RFP Process
4. None of the Proponent Conflict Declaration Parties, or any Affiliate of any of them has been charged in the last five years for any criminal offence involving fraud, fraudulent misrepresentation, bribery, collusion, anti-corruption, conspiracy, breach of competition laws, destruction of records or professional misconduct
5. None of the Proponent or any of its Affiliates has sought protection under any bankruptcy or insolvency laws during the past five years
6. None of the Proponent or any of its Affiliates has been the subject of a final determination that it has breached any applicable law relating to worker health and safety and/or protection of the environment within the past five years
7. This Conflict of Interest Declaration has not been modified in any manner, except to complete the required information.

Dated \_\_\_\_\_, 2021.

**[INSERT NAME OF PROPONENT]**

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Name of Authorized Signatory:

Title:

I have authority to bind the  
Proponent.

**EXCEPTIONS  
ATTACHMENT 1 TO SCHEDULE C**

***[Note: The Proponent must complete this Attachment 1 to Schedule C, setting out accurately and completely, any exceptions to the statements made in the Declaration. If there are no such exceptions, the Proponent must insert the word “NIL” in this Attachment 1 to Schedule C.***

***If there are exceptions set out in this Attachment 1 to Schedule C, the Proponent should submit to FST, as a separate document, the Proponent’s suggested measures for addressing each such conflict or potential conflict. FST will review such suggested measures and determine whether, in FST’s opinion, such measures satisfactorily address the conflict or potential conflict. If the conflict or potential conflict cannot be addressed to the satisfaction of FST, FST may, in its sole and absolute discretion, disqualify the Proponent.]***

**TECHNICAL SUBMISSION REQUIREMENTS AND EVALUATION CRITERIA  
SCHEDULE D PART 1 TO THE RFP**

**A. TECHNICAL SUBMISSION – GENERAL**

- (1) The Proponent is advised to prepare its Technical Submission such that the Technical Submission demonstrates both the Proponent's understanding of the scope of the Goods and/or Services and the Proponent's ability to provide the Goods and/or Services in accordance with the Key Terms of the Final Agreement.
- (2) In preparing its Technical Submission, the Proponent is encouraged to cite relevant lessons learned by the Proponent with respect to its past experiences.
- (3) The maximum permitted pages for each component of the Technical Submission, indicated in the title to each Technical Submission component below, is exclusive of maps, drawings, sketches, renderings, specifications, calculations and images which the Proponent may be required to or choose to include with such component.
- (4) Each Proponent will prepare and submit a Technical Submission consisting of the following components:
  1. Project Understanding Approach
  2. Corporate Overview and Experience
  3. Case Management Requirements
- (5) Proponents shall not include any pricing information in their Technical Submissions.

**B. TECHNICAL SUBMISSION REQUIREMENTS AND EVALUATION CRITERIA**

Submission Requirements	Max Pages	Evaluation Criteria	Max Points
<p><b>1. Project Understanding and Approach</b></p>			
<p><b>1.1 The Proponent shall submit the following:</b></p> <p>(a) Provide a description of your client management software consisting of the following:</p> <ul style="list-style-type: none"> <li>(i) a one-page executive summary in non-technical terms of your client management software, identifying any unique or distinctive features of the software and what differentiates your company from your competitors; and</li> <li>(ii) an overview of your client management software system (Proponents may attach any relevant marketing materials and data sheets).</li> </ul> <p>(b) Describe your organization’s proposed approach to achieve the Project Objectives and Deliverables described within the RFP, including the following:</p> <ul style="list-style-type: none"> <li>(i) provide a project plan with proposed activities, timelines and resources to achieve the Project Objectives and Deliverables described within the RFP (including scheduled start and completion dates); and</li> <li>(ii) identify proposed staff and their role in the delivery of the Goods and/or Services. Roles should include at a minimum a Business Lead, Technical Lead and Implementation Lead. For each individual:</li> </ul>	<p>5</p>	<p>The Proponent’s response will be evaluated based on the extent to which it:</p> <ul style="list-style-type: none"> <li>• provides a clear description of a client management software that can meet the requirements and objectives of the Electronic Client Record System and clearly expresses the Proponent’s knowledge and understanding of the work, effort and desired outcome for the Electronic Client Record System</li> <li>• sets out a feasible approach and plan to deliver the Electronic Client Record System on the desired timeframe with knowledgeable and experienced staff</li> <li>• demonstrates an understanding of key risks and viable mitigation strategies;</li> </ul>	<p>100</p>

<p>A. provide details of their relevant experience; and</p> <p>B. identify if any component of this project will involve third party resources or sub-contractors. State the name and location of the company, and the length and nature of the relationship with the Proponent.</p> <p><b><i>[Note to Proponents: Proposed project staff set out in the Technical Submission that are acceptable to FST may not be substituted without written agreement from FST.]</i></b></p> <p>(c) Provide a description of any risks that need to be managed, and proposed mitigation strategies.</p> <p>(d) Describe how product technical support will be handled, pre- and post-implementation, including support availability (days and hours), methods of support contact (email/ telephone/ real-time online, etc.), average support call back time, average problem resolution time.</p> <p>(e) Describe the hosting model proposed, including the type of cloud deployment model (public, private, community, hybrid) and details of the data centres (location, ownership, capabilities, environmental monitoring).</p>		<ul style="list-style-type: none"><li>• sets out a reasonable approach to providing FST with technical support in a timely manner; and</li><li>• describes a hosting model that ensures all data remains in Canada and that can adequately support the software and FST’s business needs.</li></ul>	
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Submission Requirements	Max Pages	Evaluation Criteria	Max Points
<b>2. Corporate Overview and Experience</b>			
<p><b>2.1 The Proponent shall submit the following:</b></p> <p>(a) Provide a brief company description, history, location of headquarters and offices, number of employees, and financial status. Please indicate any planned mergers or acquisitions. Provide evidence of your company’s financial stability and projected longevity.</p> <p>(b) Provide a description of your client base in North America, and particularly in Canada, including with reference to other community-based clients similar to FST that are successfully using your solution.</p> <p>(c) Describe your organization’s experience providing the following:</p> <p>(i) configuration and implementation services to client companies that align with the objectives of implementing your case management tool (include a description of the different client companies, number of users, and brief description of the initiative)</p> <p>(ii) completing a gap-fit analysis on pre-defined requirements (include an explanation of how options on non-fit requirements are identified and resolved with clients); and</p> <p>(iii) aiding clients through the future state analysis, process improvements, identification of key areas of change, and strategies to support a positive change for stakeholders, minimizing resistance.</p>	<p>5</p>	<p>The Proponent’s response will be evaluated based on the extent to which it:</p> <ul style="list-style-type: none"> <li>• demonstrates the Proponent has operated a business providing client management software and support for at least five years</li> <li>• demonstrates the Proponent’s reputation for delivering proposed services and popularity of product offerings in Canadian contexts, including among non-profit community-service agencies</li> <li>• demonstrates company’s financial and operational viability and ability to deliver on its contractual; commitments, in terms of timely service supply and warranty fulfilment, without interruption, cessation, or diminution in quality levels</li> </ul>	<p>100</p>

<p>(d) Describe your organization's experience providing training and support to users and explain your training methods and include any additional user groups or forums through which you provide alternative training or support.</p>		<ul style="list-style-type: none"><li>• demonstrates extensive experience with case management tools, gap fit analysis, future state analysis, process improvements and stakeholder management strategies; and</li><li>• demonstrates a reasonable approach to and extensive experience providing training on software use.</li></ul>	
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Submission Requirements	Max Pages	Evaluation Criteria	Max Points										
<p><b>3. Case Management Requirements</b></p>													
<p><b>3.1 The Proponent shall submit the following:</b></p> <p>(a) A completed ECRS Requirements document, set out as Attachment 1 to this RFP Schedule D, in excel format, in accordance with the following instructions:</p> <p>With reference to the Proponent’s proposed software, for each row in Attachment 1, the Proponent should indicate whether the specified functional or technical feature is:</p> <ul style="list-style-type: none"> <li>(i) A = Yes, available out of the box</li> <li>(ii) B = Yes, will be supported in the next release of the software that will be available by or before September 1, 2021</li> <li>(iii) C = Yes, but at an extra cost not included in the Proponent’s Overall Price</li> <li>(iv) D = Not supported</li> </ul> <p><b><i>[Note to Proponents: The functionality outlined in Attachment 1 defines the minimum technical needs for the solution. FST expects to make minimal modifications to the selected package. The intent of this strategy is to minimize vendor costs, expedite implementation, and ensure that FST will be able to remain on the application upgrade path offered by the vendor.]</i></b></p> <p>Proponents are permitted to provide comments or additional information but should note that this information</p>	<p>N/A</p>	<p>Scoring of the completed Attachment 1 will be calculated in accordance with the following formula:</p> <table border="1" data-bbox="1367 548 1787 821"> <thead> <tr> <th><u>Response</u></th> <th><u>Points</u></th> </tr> </thead> <tbody> <tr> <td>A</td> <td>5</td> </tr> <tr> <td>B</td> <td>4</td> </tr> <tr> <td>C</td> <td>1</td> </tr> <tr> <td>D</td> <td>0</td> </tr> </tbody> </table> <p>The Proponent will receive a final score out of a possible 4,260 points (if the response of “A” is given to all rows) for this Section 3 of the Technical Submission.</p>	<u>Response</u>	<u>Points</u>	A	5	B	4	C	1	D	0	<p>4,260</p>
<u>Response</u>	<u>Points</u>												
A	5												
B	4												
C	1												
D	0												

<p>will not be taken into account in the evaluation of this Section 3.1.</p> <p><b><i>[Note to Proponents: The Negotiations Proponents will be requested to fill out Attachment 2 to this RFP Schedule D prior to the commencement of negotiations with FST.]</i></b></p>			
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**FINANCIAL SUBMISSION REQUIREMENTS AND EVALUATION CRITERIA  
SCHEDULE D PART 2 TO THE RFP**

**A. FINANCIAL SUBMISSION REQUIREMENTS AND EVALUATION CRITERIA**

Submission Requirements	Maximum Pages	Evaluation Criteria	Maximum Points
<b>1. PRICING</b>			
<b>1.1 Price</b>			
<p>The Proponent shall submit the following:</p> <p>(a) the total all-in price for one-time implementation of the Services, inclusive of all software, interface development, implementation services, and training from contract start to go live (the “<b>Implementation Price</b>”); and</p> <p>(b) the total all-in annual price for all annual costs associated with the Services (including fees for licenses, maintenance, support, use and access) (the “<b>Annual Price</b>”).</p> <p>Proponents should make the following assumptions in preparing their prices:</p> <ul style="list-style-type: none"> <li>• all prices should be exclusive of taxes</li> <li>• the Annual Price must be valid for 5 years</li> <li>• 60 full time and 65 part time users</li> <li>• 5,200 current clients with detailed demographics and intervention notes, 1,550 new clients per year and 1,500 discontinued users per year throughout term</li> <li>• 1,500 current non-registered persons with minimal person-identifying information; and</li> </ul>	<p align="center">N/A</p>	<p>FST will calculate the “<b>Overall Price</b>” or “<b>OP</b>” as follows:</p> <p><b>OP</b> = (Implementation Price) + (Annual Price X 5)</p> <p>The lowest Overall Price (“<b>LOP</b>”) will receive the maximum points available. Each Proponent’s score will be calculated according to the following formula:</p> <p>Proponent score = <math>\frac{\text{LOP} \times \text{maximum points}}{\text{OP}}</math></p>	<p align="center">100</p>

<b>Submission Requirements</b>	<b>Maximum Pages</b>	<b>Evaluation Criteria</b>	<b>Maximum Points</b>
<ul style="list-style-type: none"><li>• 3 separate FST programs (Building Inclusive Communities, Changing Lives/Family Violence, Social Action) with 16 “services” embedded within these.</li></ul> <p>Proponents should ensure that their prices include all costs, insurances, fees, expenses, liabilities, obligations, risk and other things necessary for the performance of the Services.</p> <p>Proponents should specify whether the Annual Price is proposed to be subject to any annual inflationary increase adjustment, and if so, specify the amount and basis of calculation.</p> <p>Proponents should indicate whether any component of the Implementation Price or Annual Price is not fixed and is variable (for example, according to usage or some other metric) and if so the manner in which the variable component of such prices are calculated.</p>			

**ATTACHMENT 1**  
**ELECTRONIC CLIENT RECORD SYSTEM REQUIREMENTS**

See attached.

**ATTACHMENT 2**  
**HOSTING REQUIREMENTS**

***[Note to Proponents: This will be filled out by the Negotiations Proponent(s) prior to the commencement of negotiations with FST and is not required to be submitted as part of the Proposal.]***

See attached.

**REFERENCE FORM  
SCHEDULE E TO THE RFP**

***[Note to Proponents: You are required to have your referee fill out the form below and submit the form with your Proposal.]***

<b>Referee Company Name:</b>	
<b>Company Address:</b>	
<b>Contact Name:</b>	
<b>Contact Telephone Number:</b>	
<b>Contact Email:</b>	
<b>Date Work Undertaken by Proponent:</b>	
<b>Nature of Assignment (details of product and services supplied, timeframe, etc.):</b>	
<b>Question #1:</b>	<b>How did the vendor and the system perform versus your expectations?</b>
<b>Answer #1:</b>	
<b>Question #2:</b>	<b>How responsive was the vendor to issues? Please provide examples.</b>
<b>Answer #2:</b>	
<b>Question #3:</b>	<b>Describe the deployment process and identify any challenges that arose. How did the vendor address these challenges?</b>

<b>Answer #3:</b>	
<b>Question #3:</b>	<b>Describe the deployment process and identify any challenges that arose. How did the vendor address these challenges?</b>
<b>Answer #3:</b>	
<b>Question #4:</b>	<b>Would you recommend this vendor?</b>
<b>Answer #4:</b>	



## **Key Terms of the Final Agreement SCHEDULE F TO THE RFP**

Family Service Toronto (“**FST**”) expects that the following provisions, at a minimum, will be part of the agreement (the “**Agreement**”), if any, with the successful proponent (the “**Vendor**”). These provisions are subject to such changes as are required to reflect the solution being provided by the Vendor and are necessary to:

- (i) incorporate into the Agreement the Vendor’s proposal submitted in response to the RFP, Supply of an Electronic Client Record System Request for Proposals (Non-Binding) for Electronic Client Record System RFP Reference: FST-ECRS-20210107, issued by FST (the “**RFP**”), as amended (the “**Proposal**”), or such portions thereof as FST deems appropriate; or
- (ii) provide FST with equivalent rights including licenses and ownerships and comparable protections to those provided in the provisions set out in these key terms.

### **REPRESENTATIONS AND WARRANTIES**

1. Representations and Warranties and Covenants of the Vendor. The Vendor will provide representations and warranties and covenants in favour of FST which will address the following matters:
  - (a) Vendor has the legal capacity, necessary rights, licenses, consents and approvals to execute and perform the Agreement
  - (b) Vendor’s execution, delivery, and performance of the Agreement will not violate any judgment, order or decree or be a default under any agreement by which it or any of its assets are bound
  - (c) Vendor has all necessary rights (including intellectual property rights) to grant FST the right to use the Electronic Client Record System (the “**ECR Software Solution**”)
  - (d) FST’s purchase or licence and use of the ECR Software Solution do not conflict with, infringe upon or violate any law or the rights of any third party
  - (e) There are no existing or threatened legal proceedings against the Vendor in respect of the development, manufacture, licensing, configuration, use, operation, support or maintenance of the ECR Software Solution
  - (f) The ECR Software Solution is free of all disabling and malicious codes
  - (g) The ECR Software Solution does not include any freeware, shareware, open-source software or similar software or products which will have any adverse impact on FST systems or software or intellectual property rights

- (h) Any implementation and configuration services and deliverables, and the ECR Software Solution, will be delivered, meet and perform in accordance with the applicable product specifications and the requirements specified in the Agreement
- (i) The Vendor will complete the work and provide the services set out in any statements of work forming part of the Agreement
- (j) The Vendor will remedy any errors, defects, deficiencies or non-compliances in the operation of the ECR Software Solution as part of the services to be provided by the Vendor under the Agreement
- (k) During the term, the ECR Software Solution will consistently achieve and maintain a high level of operating reliability and will meet or exceed the service levels in effect at such time that are to be achieved or exceeded by the ECR Software Solution and related services
- (l) The Vendor personnel used to perform the Vendor's obligations and services will have the necessary skills, qualifications, expertise, experience and training to perform such obligations and services to be provided by the Vendor
- (m) The Vendor will conduct its business and perform its obligations and services in a professional manner consistent with the highest industry standards and will refrain from engaging in any unfair or deceptive trade practice, or unethical business practice
- (n) The Vendor has established and complied, in all material respects, with a written information security program which includes physical, organizational and technological security safeguards, controls and measures to protect the confidentiality, integrity and security of the computer systems owned, leased, licensed or otherwise used to deliver the ECR Software Solution and related services, and all data stored or contained therein or transmitted thereby, from any unauthorized use, access, interruption or modification by third parties
- (o) Any hardware and equipment provided as part of or in connection with the ECR Software Solution will meet all regulatory requirements (including Canadian Standards Association approval) and will be free from defects in materials, workmanship and design, will be in good operating condition and will perform in accordance with the applicable documentation and requirements specified in the Agreement during the specified warranty period; and thereafter will be fully supported and maintained by the Vendor for the term of the Agreement; should replacement parts for any component of the ECR Software Solution be necessary, these parts will be new or equivalent to new in performance, reliability, and operation, and once installed, will become FST's property

- (p) The Vendor will obtain, for the benefit of FST, all warranties and guarantees of manufacturers and suppliers in respect of all components of the ECR Software Solution provided or made available by the Vendor and all installation, configuration, implementation, support and maintenance work. The Vendor will transfer all rights and interest in any warranty or guarantee that extends beyond the warranty period for the ECR Software Solution to FST. The Vendor will provide to FST written notice of the terms and conditions of all warranties and guarantees of manufacturers and suppliers
- (q) The Proposal is accurate and complete in all material respects and the ECR Software Solution will be suitable for FST and will substantially satisfy FST's requirements, as documented in the RFP and the Agreement, in all material respects; and
- (r) All documentation for the ECR Software Solution provided or made available by the Vendor will be complete and accurate in all material respects and contain such information as will enable FST's personnel to utilize it for its intended purpose.

## **OWNERSHIP**

- 2. Ownership of Data. All data and information submitted by or on behalf of FST through, and generated in connection with the use of, the ECR Software Solution, including all personal information, will belong to FST and FST remains the sole and exclusive owner of such data. FST may retrieve such data from the ECR Software Solution at any time and in any form. The Vendor will not access, use, sell, license, transfer or disclose such data in any form for any purpose (or authorize or permit a third party to perform such acts) other than as required to perform the Vendor's obligations pursuant to the Agreement.
- 3. Ownership of Work Product.
  - (a) FST is and will be the exclusive owner of all work product, content and deliverables (and all intellectual property rights) created or developed specifically for FST in the performance of the services, inclusive of all reports and design and requirements documents ("**Work Product**").
  - (b) The Vendor will assign and transfer (and cause all personnel and subcontractors to assign and transfer) to FST, as and when created, all rights, title and interest, including intellectual property rights, in and to all Work Product, and cause all such persons to waive their respective moral rights in and to such Work Product.
  - (c) The Vendor will sign such documents and do such acts reasonably requested by FST to confirm the assignment of ownership and waiver of moral and similar rights referred to in this Section 3.

## **INDEMNITIES AND LIABILITY**

4. Indemnity from the Vendor to FST:

- (a) The Vendor shall fully indemnify and defend FST and all of its representatives, successors, and assigns (collectively, “**Indemnified Persons**”) from and against any and all damages, fines, losses, liabilities, costs and expenses which may be brought against or which the Indemnified Persons may incur that is resulting or arising from or in any way connected to:
- (i) a failure of the Vendor and persons it is responsible for to comply with applicable laws, FST policies or to pay taxes for which it responsible to pay
  - (ii) personal or bodily injury (including death) to any persons howsoever occasioned by the Vendor and persons it is responsible for under the Agreement
  - (iii) damage to property (real or personal, tangible or intangible) howsoever occasioned by the Vendor and persons it is responsible for under the Agreement
  - (iv) the negligence, willful misconduct or fraud or other criminal act of the Vendor and persons it is responsible for under the Agreement
  - (v) any breach of the confidentiality and security obligations by the Vendor and persons it is responsible for under the Agreement
  - (vi) any third-party claims arising as a consequence of the breach, violation or non-performance of the Agreement by the Vendor and persons it is responsible for under the Agreement
  - (vii) claims by the Vendor’s employees and other representatives including subcontractors
  - (viii) such other matters as may be specified in the Agreement.
- (b) Indemnification obligations will survive any termination or expiration of the Agreement.

5. Intellectual Property Indemnity

- (a) The Vendor shall defend, at its expense, any action brought against FST or the other Indemnified Persons based on a claim that the ECR Software Solution or other Vendor supplied services or intellectual property (“**Infringing IP**”), or any authorized use of such by FST, infringes any third party’s intellectual property rights (“**Infringement Claim**”) and fully indemnify the Indemnified Persons from and against any and all resulting damages, fines, losses, liabilities, costs and expenses.

- (b) In addition, in the event of an Infringement Claim, the Vendor will, at its expense and option, with prior written notice to FST, do one of the following:
  - (i) modify the applicable part of the Infringing IP to make it non-infringing
  - (ii) procure for FST the right to continue to use the Infringing IP; or
  - (iii) substitute for the applicable part of the Infringing IP other components having a capability equivalent to the replaced part of the Infringing IP.
- 6. Limitations. FST will consider reasonable Vendor proposed limitation of liability or exclusions of damages terms but such may be subject to exceptions.

### **CONFIDENTIAL INFORMATION AND DATA**

- 7. Confidential Information. The Agreement will include customary terms and conditions concerning the protection and use of confidential information during and after the term of the Agreement, and which include that the Vendor will:
  - (a) hold and protect FST confidential information in strict confidence using no less than reasonable care and in accordance with such other security standards as are specified in the Agreement to protect FST confidential information
  - (b) use and disclose FST confidential information only as permitted under the Agreement; and
  - (c) notify FST of any breaches of confidentiality, furnish full details of the breach, take all reasonable steps to mitigate and prevent any recurrence and cooperate with FST in any relevant investigations and litigation.
- 8. Consent. The Vendor acknowledges that breaches concerning confidential information obligations would cause FST irreparable harm and consents to the full extent that it is able to do so to any equitable relief granted by any court of competent jurisdiction without proof of actual damage; and
- 9. Survival. FST's rights and Vendor's obligations concerning confidential information will survive the termination or expiration of the Agreement.
- 10. Data Locations. FST data will only be stored and processed at locations in Canada specified in the Agreement and such locations may not be changed without FST's prior written consent.
- 11. Data Protection. The Vendor will be responsible for delivering the ECR Software Solution and related services in a manner that permits FST to comply with any obligations applying to it under data protection laws. The Vendor will not knowingly

do anything or permit anything to be done which might lead to a breach by FST of such laws.

12. Data Segregation. The ECR Software Solution and related services shall be provided by the Vendor such that all FST data is segregated from Vendor data and the data of its other customers.
13. Security. The Vendor will adhere to security standards and implement and comply with the security safeguards, including physical, technical and organizational measures, specified in the Agreement to ensure a sufficient level of protection to any FST data in the care or custody of the Vendor.
14. Breach Notification. In the event of a security incident or breach related to the ECR Software Solution / FST data, the Vendor will as more particularly described in and required under the Agreement:
  - (a) notify FST immediately (and in any event within 24 hours)
  - (b) cooperate and assist FST in the management of any consequences arising from it
  - (c) take any reasonable steps necessary to mitigate any harm resulting from it
  - (d) take appropriate steps to prevent its recurrence and notify FST of those steps
  - (e) notify FST in advance of making, and provide FST with a copy of, any media release regarding the security incident; and
  - (f) promptly provide regular updates and information as it becomes available concerning the incident, including such updates and information as are reasonably required to satisfy regulatory reporting requirements.

## **SUBCONTRACTORS**

15. Subcontractors. The Vendor shall not engage, retain or utilize any subcontractor with respect to the supply, installation, configuration and ongoing support of the ECR Software Solution without the prior written approval of FST. Any permitted subcontracting must be pursuant to a written agreement with the subcontractor that is materially consistent with the terms of the Agreement. The Vendor shall be responsible and liable for the performance and acts of all permitted subcontractors.

## **TERM AND EXTENSION OF TERM**

16. Initial Term. The contract will be for an initial term of three (3) years.
17. Renewal Rights. FST shall retain the right to exercise two (2) extension options beyond the initial term on the same terms and conditions. Each extension will be for a one (1) year period unless otherwise agreed. FST may consider changes to

the pricing for extension periods that will not exceed the Consumer Price Index – Ontario.

## TERMINATION

18. Termination During Implementation. Prior to the ECR Software Solution going live, FST may terminate the Agreement: (a) during the implementation of the ECR Software Solution for FST's convenience; or (b) in the event the implementation of the ECR Software Solution is not accepted by FST in accordance with the requirements of the Agreement. In the event of such termination, FST will be entitled to all Work Product completed to date and in no event will FST be liable for any on-going licensing or service fees, charges, costs or expenses, including any early termination charges.
19. Termination with Notice. At any time after the first 12 months of the term, FST may terminate the Agreement for convenience upon no more than ninety (90) day prior written notice to the Vendor at any time after go-live subject to the payment of a reasonable mutually agreeable early termination charge.
20. Termination upon Event of Default. FST may terminate the Agreement by written notice in any of the following circumstances (each an "**Event of Default**"):
  - (a) the Vendor breaches any provision of the Agreement, and does not remedy such breach upon notice within the specified cure period
  - (b) any of the Vendor's representations and warranties in the Agreement or any statements made to FST by the Vendor are materially false, misleading or inaccurate
  - (c) the Vendor becomes insolvent, bankrupt, ceases to carry on business, is wound up, makes an assignment for the benefit of its creditors, makes a plan of arrangement, or is subject to a similar circumstance
  - (d) the Vendor undergoes a change in the business, operations or capital of the Vendor which would materially affect the ability or capability of the Vendor to perform and discharge its obligations under the Agreement; and
  - (e) such other events of default as may be specified in the Agreement.
21. Effect of Termination.
  - (a) In connection with any termination of the Agreement, the Vendor will provide to FST Termination Assistance Services.
  - (b) In the event that FST terminates the Agreement, whether due to an Event of Default as provided above or otherwise, the following will apply:

- (i) subject to subsection (a), the Vendor will only be paid for any work completed provided prior to the notice of termination and the Vendor will reimburse FST any charges or fees paid by FST to the Vendor in respect of the period from the date of termination to the end of the term
  - (ii) subject to subsection (a), the Vendor will not incur any expenses under the Agreement after the notice of termination and FST will not be responsible for any expenses after the notice of termination
  - (iii) FST may replace the Vendor from the time such termination becomes effective
  - (iv) subject to subsection (a), the Vendor will have no claim against FST except for payment for amounts owing prior to the time that such termination became effective
  - (v) such termination will not relieve the Vendor from liability accrued prior to the time such termination became effective; and
  - (vi) nothing in the Agreement will limit the rights of FST to recover damages from the Vendor in respect of an Event of Default or to exercise any other rights or remedies it may have at law or in equity or otherwise.
22. Return of Confidential Information. Upon the termination or expiration of the Agreement, each party shall return to the other any data or any confidential information of the other party.
23. Survival of Terms. The terms and Vendor's obligations related to confidentiality, audit, indemnification, liability, and termination assistance will survive the Agreement's termination or expiration.

## **TERMINATION ASSISTANCE SERVICES**

24. Termination Assistance Period
- (a) The "**Termination Assistance Period**" means the period of time between the commencing of termination assistance in accordance with s.24(b) and the ending of termination assistance in accordance with s.24(c).
  - (b) Termination assistance will commence on the first to occur of: (i) delivery of a notice of termination for the services; and (ii) delivery of a notice from FST to Vendor setting out the start date of the Termination Assistance Period which notice shall not be delivered earlier than twelve (12) months before the expiration of the term or later than the end of the term.



- (c) Termination assistance will end on the earlier of completion of the Termination Assistance Services or no later than twelve (12) months after the date the term expires or is terminated in accordance with the provisions of the Agreement.

25. Termination Assistance Services

During the Termination Assistance Period the Vendor will provide the following **“Termination Assistance Services”** to assist FST in the orderly wind down of FST’s use of the ECR Software Solution and transition to an alternate service provider:

- (a) continue to provide the services, rights and licenses provided by the Vendor under the Agreement on the same terms and conditions and pricing
- (b) reasonably cooperate in transition planning and the preparation of a transition plan, inclusive of the provision of all information reasonably required by FST in order to plan for and execute a transition, including to:
  - (i) answer inquiries from FST regarding the services before or after the Termination Assistance Period
  - (ii) assist with FST’s procurement process by describing the services that may be the subject of a procurement process or that may be transitioned to a third party
  - (iii) provide copies of all data, information and details concerning the services provided (including in relation to those aspects of the services being provided by third party suppliers or subcontractors and third-party software being utilized)

all as will be more specifically described in the Agreement.

- (c) provide FST (and FST designated third parties) all such other cooperation, assistance and services as are reasonably required by FST (including the return or transfer of FST data in such forms or formats as may be required for FST to continue to use such data).

If specified in the Agreement, or upon the request of FST at any time to do so, the Vendor will assist FST in advance of the commencement of the Termination Assistance Period to develop, keep current, and regularly test a transition assistance plan.

26. Fees. The Vendor shall make reasonable efforts to provide the Termination Assistance Services in the ordinary course of its delivery of the services at no additional charge to FST, using Vendor personnel made available by the Vendor in the ordinary course to provide the services. If such is not possible, assistance will be provided on a time and materials basis at the rates set out in the Agreement,

provided that if the Termination Assistance Services are provided in connection with the termination of the Agreement for a Vendor Event of Default, the Termination Assistance Services shall be provided at no cost to FST.

## **PAYMENT TERMS**

27. Implementation Charges. Any fees chargeable for implementation services required to implement the ECR Software Solution will be payable according to milestones that relate to FST's acceptance of specified deliverables.
28. Invoice. FST shall pay the amount of any invoice submitted in accordance with the provisions of the Agreement within thirty (30) days after the later of: (a) the date of FST's receipt of such invoice; or (b) a milestone payment event specified in the Agreement has been achieved.
29. Deductions. FST may deduct from any payment to the Vendor any disputed amounts or claim made by FST against the Vendor.
30. Taxes. FST will pay applicable taxes imposed under applicable law on the fees charged by the Vendor. The Vendor will be responsible for all taxes based on its income, capital, personnel, subcontractors (if any) and corporate franchise taxes, branch profits tax, and the like, and all applicable transfer, sales, use, excise, service, value added, goods and services or registration taxes or other similar taxes, fees, duties or imposts, based upon or measured by the Vendor's cost in importing, acquiring or providing equipment, materials, supplies or services furnished or used by it.

## **ACCOUNTS AND AUDIT**

31. Keeping and Access to Accounts. The Vendor shall keep all data and records reasonably necessary to demonstrate its performance of, and compliance with, its obligations under the Agreement ("**Records**") and retain all such Records during the term and at least seven (7) years (or longer to the extent Records are retained by the Vendor and FST is obligated to do so under applicable law) following the termination or expiration of the Agreement.
32. Audit.
  - (a) FST (or its external auditors) may, during the term and for seven (7) years following the termination or expiration of the Agreement (or for such longer period as is required under Section 31), audit and inspect the Records.
  - (b) FST (or its external auditors) may, during the term have access to and the right to audit any Vendor facility and the infrastructure used to operate the ECR Software Solution and provide related services and all data relating to the ECR Software Solution in order to verify:

- (i) performance by the Vendor of its obligations under the Agreement, including in regard to physical, organizational and technical security
- (ii) the sufficiency of the internal controls, practices and procedures used by the Vendor relating to the ECR Software Solution and related services
- (iii) compliance with all laws (including privacy laws) applicable to FST relating to the ECR Software Solution and related services; and
- (iv) amounts charged to FST under the Agreement, including all credits, rebates and discounts to which FST is entitled and all supporting documentation, calculations and methodologies related thereto.

The Vendor shall fully cooperate with such audits by providing access to personnel, physical premises, documentation, infrastructure and systems/software (including those that use, process, store or otherwise handle any FST data.)

- (c) The Vendor will perform, or have a third party perform, as applicable, industry standard security and intrusion testing, including attack and penetration testing, no less frequently than once during each calendar year of any systems used to operate the ECR Software Solution and provide related services to FST. FST will have the right to obtain copies of the results of any security and intrusion testing. The Vendor will be obligated to remediate, or cause to be remediated, any identified deficiencies or vulnerabilities promptly.
- (d) The Vendor will appoint (or cause to be appointed by any subcontractors that operate systems or handle data on behalf of Vendor) a certified public auditor firm(s) ("**Auditors**") and cause to be completed by the Auditors at least once in each twelve (12) month period an audit of controls conducted under Canadian Standard on Assurance Engagements (CSAE) 3416 or Statement on Standards for Attestation Engagements (SSAE) No. 18 relating to the operation and delivery of the ECR Software Solution, related services and service locations from which such are provided, and inclusive from which any back-up or disaster recovery services are provided. Upon completion of such audit, the Vendor shall require the Auditors to complete a SOC II Type 2 report(s) and provide FST with one (1) copy of the report(s). Any exceptions noted on the CSAE or equivalent report or other audit reports will be promptly addressed with the development and implementation of a corrective action plan by the Vendor's management.

## **INSURANCE**

33. The Vendor is expected to obtain and maintain during the term of the Agreement and thereafter, as provided below, the following minimum insurance policies, as will be more specifically described and supplemented in the Agreement:

- (a) workers' compensation coverage for all employees in accordance with applicable laws
  - (b) commercial general liability insurance, insuring against bodily injury, death and property damage with policy limits in the amount of **[two (2) million dollars (\$2,000,000)]** per occurrence and **[five (5) million dollars (\$5,000,000)]** in the annual aggregate
  - (c) errors and omissions liability insurance in the amount of not less than **[two (2) million dollars (\$2,000,000)]** for any one claim and **[five (5) million dollars (\$5,000,000)]** in the aggregate per year
  - (d) employer's liability insurance in an amount not less than **[one (1) million dollars (\$1,000,000)]** per occurrence and **[five (5) million dollars (\$5,000,000)]** aggregate, covering bodily injury by accident or disease, including death
  - (e) primary cyber security insurance, which shall mean broad coverage cyber insurance (which provides exposure categories that include network security liability, privacy liability, regulatory liability, privacy breach response services, fines, expenses and costs, cyber extortion, first party data protection loss and first party network business interruption loss) in the minimum amount of **[two (2) million dollars (\$2,000,000)]** per occurrence and **[five (5) million dollars (\$5,000,000)]** in the aggregate
  - (f) commercial automobile liability insurance covering all vehicles that the Vendor owns, hires or leases in an amount not less than **[one (1) million dollars (\$1,000,000)]** (combined single limit for bodily injury and property damage) or as required by statute under applicable laws
  - (g) appropriate property insurance covering property and assets used to provide the services; and
  - (h) any other insurance reasonably recommended by FST's insurance brokers and otherwise to enable the Vendor to comply with applicable laws.
34. Any deductible amounts will be borne by the Vendor.
35. The coverage under the policy will be maintained during the term and for an additional **[two] ([2])** years after the termination or expiration of the Agreement. The Vendor will provide FST **[ninety] ([90])** days' notice of any cancellation or non-renewal.
36. The Vendor should ensure that all policies of insurance will:
- (a) be written with an insurer licensed to do business in Ontario

- (b) contain [**, where available,**] an undertaking by the insurers to notify FST in writing no less than thirty (30) days prior to any termination or cancellation of coverage unless otherwise required by law
  - (c) be non-contributing with and will apply only as primary and not excess to any other insurance or self-insurance available to FST; and
  - (d) contain [**, where available,**] a waiver of any rights of subrogation.
37. The Vendor shall provide FST with proof of insurance at the time of contract execution and thereafter periodically as required by FST under the Agreement.
38. If the Vendor fails to maintain in force any insurance required to be maintained by it hereunder, then FST, without prejudice to any of its other remedies, may obtain such insurance on behalf of and at the cost of the Vendor.
39. Where a portion of any of the work is to be carried out by a subcontractor, the subcontractor shall furnish the same insurance coverage. The subcontractor's commercial general liability policy will name FST as additional insured.
40. Insurance will not limit the liability of the Vendor and will not be deemed a waiver by FST of its right to damages and indemnity from the Vendor for default or under the Agreement or for any loss arising out of or related to the performance or non-performance by the Vendor of its obligations under the Agreement.
41. The Agreement will specify mutually agreed business continuity and disaster recovery terms and conditions.

## **DISPUTE RESOLUTION MECHANISM**

### 42. Dispute Resolution

- (a) Any dispute, controversy, claim or alleged breach arising out of or in connection with the Agreement will be subject to a tiered project management and executive escalation procedure, subject to certain exceptions, including provisions dealing with the termination of the Agreement.
- (b) The parties may agree to settle disputes through non-binding mediation.
- (c) Should any dispute not be resolved within the prescribed periods of time, either party may exercise its rights available at law.
- (d) All negotiations and settlement discussions to resolve a dispute will be treated as compromise and settlement negotiations between the parties will not constitute an admission or waiver of rights, will not be subject to disclosure through discovery or any other process and will not be admissible into evidence in any proceeding.

- (e) Except where clearly prevented by the nature of the dispute, FST and the Vendor agree to continue performing their respective obligations under the Agreement while a dispute is subject to the provisions of this Section.
- (f) The Vendor shall not be permitted to suspend its performance of any services or its obligations under the Agreement.

## **CHANGE MANAGEMENT PROCEDURE**

- 43. General Procedure. The Agreement will include a change management procedure which governs the procedure to request, review and approve changes to the ECR Software Solution, related services and the Agreement.
- 44. Interpretation
  - (a) **“Change Dispute”** means any disagreement or controversy between the parties with respect to the terms and conditions of any change (including a dispute concerning the cost of a change that impacts the Vendor’s fees).
  - (b) **“Mandatory Change”** means a change required by FST as a result of a change in or for compliance with the applicable law.
- 45. Change Request and Change Response
  - (a) The change process will require that the Vendor respond to change requests in a prescribed period of time following receipt of a change request from FST
  - (b) FST shall not be charged for any work performed by the Vendor to review change requests, to prepare change responses or to negotiate or finalize any change orders
  - (c) The Vendor will deal transparently with FST throughout the process of preparing its change response and will consult with FST in establishing the assumptions regarding the scope of the change and FST’s requirements for the change. The Vendor will make available all supporting information and documentation reasonably requested by FST that relates to pricing of a proposed change
  - (d) The Vendor shall not refuse to make any change requested by FST that is related to the ECR Software Solution or related services provided under the Agreement unless such change is: (i) not technically possible to carry out; or (ii) contrary to applicable laws
- 46. Approval of Change Requests
  - (a) The parties shall negotiate in good faith the terms and conditions pursuant to which proposed changes shall be implemented. FST is not required to

agree to any change response prepared by the Vendor and may terminate negotiations with the Vendor in respect of any change response.

- (b) The Vendor shall prepare written change responses in respect of any change request.
- (c) The Vendor shall not implement any change (whether requested by FST or the Vendor) unless a change order has been executed by each party.
- (d) If the parties will enter into a change order in respect of any Mandatory Change, they will implement any such change within the time periods dictated by the governmental or regulatory authority or law which prescribes the change provided that FST provides prompt notice of the requirement for the change to the Vendor.
- (e) Upon the execution by the parties of a change order the Vendor shall implement the change described in the change order in accordance with the terms of the change order and the change order will constitute an amendment to the Agreement.

47. Disagreement Regarding Changes

At any time following the referral of a Change Dispute to the dispute resolution procedures set out in the Agreement, at the request of FST, the Vendor shall begin to make the disputed change pending the resolution of the Change Dispute. Once the Change Dispute is resolved, the parties will execute a change order reflecting the agreed upon resolution.

**GENERAL PROVISIONS**

- 48. Governing Law. The Agreement is governed by and construed in accordance with the laws of the Province of Ontario. The parties submit to the exclusive jurisdiction of the courts of the Province of Ontario for the resolution of any and all disputes relating to the Agreement.
- 49. Assignment. The Vendor shall not assign or transfer, whether by operation of law or otherwise, any or all of its rights or its duties or obligations hereunder without the prior written consent of FST which consent may be unreasonably withheld. Any attempted assignment without such prior consent will be void.
- 50. Compliance with Law. The Vendor will comply with all applicable laws. The Agreement will include provisions which are necessary and required to ensure that FST is able to comply with all applicable laws, including data protection laws.

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