

TECHNOLOGY MAINTENANCE AND SUPPORT SERVICES AGREEMENT

THIS TECHNOLOGY MAINTENANCE AND SUPPORT SERVICES AGREEMENT is made the 1st day of April, 2023

BY & BETWEEN:

ZOULING TECHNOLOGIES INC., a corporation incorporated under the laws of the Province of Ontario, and with its principal office located at 276 Furnival Road, Rodney, Ontario N0L 2C0

(hereinafter the “**Service Provider**”)

OF THE FIRST PART

AND:

MUNICIPALITY OF WEST ELGIN, a municipal corporation incorporated under the laws of Province of Ontario, and with its principal office located at 22413 Hoskins Line, Rodney, Ontario N0L 2C0

(hereinafter the “**Client**”)

OF THE SECOND PART

RECITALS

WHEREAS, the Service Provider is in the business of providing computer hardware and software maintenance and support services, including networking;

AND WHEREAS, the Client, a municipal corporation exercising the powers described in sections 8 and 9 of the *Municipal Act, 2001*, S.O. 2001, c. 25, wishes to contract for the computer hardware, software, and networking maintenance and support services of the Service Provider as part of its ongoing operations;

AND WHEREAS, the parties have agreed on the terms and conditions governing the provision of computer hardware, software, and networking maintenance and support services by the Service Provider to the Client;

NOW THEREFORE, in consideration of the terms and conditions described below and the sum of \$1.00 paid by each party to the other party, the receipt and sufficiency of which is hereby acknowledged, the Service Provider and the Client agree as follows:

1.0 INTERPRETATION

1.1 *Definitions*

In this agreement, unless otherwise stated the following terms shall have the meaning prescribed for each:

“Agreement” means the terms and conditions described herein, and the Schedules incorporated by reference and also includes all subsequent amendments and Change Orders in writing and executed by authorized officials of the Parties;

“Business Day” means any day other than Saturday or Sunday or a statutory holiday so recognized by the province of Ontario;

“Change Order” means the document executed by the Parties confirming their agreement to undertake a change to the Support Services or related matters pursuant to a Change Order Request;

“Change Order Request” means the procedure described in this Agreement for the Parties to consider changes to the Support Services or related matters under this Agreement;

“Client Data” means all information of whatever nature and type and in all formats of the Client and in respect of which the Client has a proprietary interest and is deemed to be Proprietary and Confidential Information of the Client, including (without limitation) information regarding other persons that is collected and maintained by the Client in exercising its powers under the *Municipal Act, 2001*, and other legislation;

“Client Hardware” means the computer equipment of the Client, including (without limitation) all peripherals, attachments, lines and cabling and applicable documentation and all equipment relating to networking, for which the Service Provider is performing Support Services under this Agreement;

“Client Software” means the computer software of the Client, including applicable documentation, for which the Service Provider is providing Support Services under this Agreement;

“Parties” means the Client and the Service Provider, and “Party” means one of them as the context provides;

“Proprietary and Confidential Information” means any confidential or proprietary information, data, materials, and other information of either Party, whether or not marked or otherwise identified as proprietary or confidential;

“Schedules” means the schedules to this Agreement described in Article 2.0;

“Service Provider Data” means all information, of whatever nature and type and in all formats of the Service Provider used to provide the Support Services, and in respect of which the Service

Provider has a proprietary interest. Service Provider Data is deemed to be Proprietary and Confidential Information of the Service Provider;

“Service Provider Software” means those computer programs owned or licensed by the Service Provider, in object code or source code and including microcode not embedded in a circuit element and applicable documentation and media, used by the Service Provider in performing the Support Services;

“Support Services” means the provision by the Service Provider of the computer hardware, software, and networking maintenance and support services to the Client Hardware and Client Software as described in this Agreement; and

“Support Services Standards” means the agreed-to target performance standards of the Service Provider in delivering the Support Services under this Agreement, as they may be changed from time to time by Change Order.

1.2 *Assignment*

This Agreement will be binding on and enure to the benefit of the Parties and their respective successors and permitted assigns. The Service Provider may not assign this Agreement to any other party without the prior written consent of the Client.

1.3 *Currency*

Unless otherwise stated in this Agreement, all dollar amounts shall be Canadian dollars.

1.4 *Accounting Terms*

Unless otherwise stated in this Agreement, all accounting terms shall be interpreted in accordance with Canadian GAAP.

1.5 *Sections, Headings and Contra Proferentum*

The division of this Agreement into Articles, Sections and Paragraphs and the insertion of headings are for convenience of reference only and shall not affect the interpretation or construction of this Agreement. Unless otherwise indicated, any reference in this Agreement to an Article, Section, Paragraph or Schedule refers to the specified Article, Section or Paragraph or Schedule to this Agreement. Each Party acknowledges that it has reviewed and participated in determining the terms and conditions of this Agreement and agree that any rule of construction or doctrine of interpretation, including *contra proferentum*, construing or interpreting any ambiguity against the drafting party shall not apply.

1.6 *Gender and Number*

Unless the context otherwise requires, words importing the singular include the plural and

vice versa, and words importing one gender include the other gender.

1.7 *Time of the Essence*

Time shall be of the essence of this Agreement and of every part hereof and no extension or variation to this Agreement shall operate as a waiver of this provision.

1.8 *Applicable Law*

This Agreement shall be construed, interpreted and enforced in accordance with the laws of the province of Ontario and the applicable federal laws of Canada, without reference to any principles of conflicts of laws. Each Party irrevocably and unconditionally attorns to the exclusive jurisdiction of the competent courts of Ontario.

1.9 *Enurement*

This Agreement shall enure to the benefit of, binding on, and enforceable by the Parties and where the context so permits, their respective heirs, executors, representatives and successors.

1.10 *Amendment*

This Agreement may only be changed by a document in writing signed by both Parties.

1.11 *Waiver*

No waiver of any provision of this Agreement, including waiver of a breach of this Agreement, shall constitute a waiver of any other provision or breach of this Agreement unless expressly provided otherwise. No waiver shall be binding unless executed in writing.

1.12 *Further Assurances*

The Parties shall with reasonable diligence do all things and provide all reasonable assurances as may be required to implement the provisions of this Agreement, and each Party shall provide such further documents or instruments required by the other Party as may be reasonably necessary or desirable to give effect to this Agreement and to carry out its provisions.

1.13 *Invalidity*

Any provision in this Agreement which is held to be illegal or unenforceable shall be ineffective to the extent of such illegality or unenforceability without invalidating the remaining provisions of this Agreement.

1.14 *Entire Agreement*

This Agreement, including the Schedules incorporated by reference and the written requirements and representations of the related Request for Proposal and Proposal, constitutes the entire agreement between the Parties with respect to its subject matter and supersedes all prior or other agreements, understandings, negotiations and discussions, written or oral, between the Parties. There are no conditions, covenants, agreements, representations, warranties or other provisions, express or implied, collateral, statutory or otherwise, except as herein provided.

1.15 *Objective*

In accordance with the Request for Proposal and Proposal, the Parties acknowledge that the central objective of this Agreement is for the Client to retain a qualified I.T. services provider to provide the Support Services, including for internal municipal I.T. projects, either to the Client individually or to the Client and its municipal partners acting jointly.

In the event of any inconsistency or conflict between the provisions of Request for Proposal and this Agreement or Proposal and this Agreement, the provisions of this Agreement shall prevail.

2.0 SCHEDULES

2.1 The Schedules appended to and forming part of this Agreement are described in subsection 2.2. In the event of any inconsistency or conflict between the provisions of a schedule and the terms and conditions of this Agreement, the provisions of the schedule shall prevail.

2.2 The Schedules to this Agreement are as follows:

Schedule A: Client Hardware and Software
Schedule B: Support Services
Schedule C: Support Services Standards
Schedule D: Compensation & Payment
Schedule E: Change Order Process

2.3 The Schedules may be changed from time to time by agreement of the Parties by Change Order.

3.0 APPOINTMENT AND ACCEPTANCE

3.1 The Client appoints the Service Provider, and the Service Provider accepts the appointment on a non-exclusive basis, to perform the Support Services described in **Schedule B** for the Client Hardware and Client Software described in **Schedule A**. The Parties agree that the Support Services, as well as the Client Hardware and Client Software, may be changed from time to time during the term of this Agreement in accordance with the Change Order Process

described in **Schedule E**.

4.0 TERM

- 4.1** This Agreement shall be in effect for a period of twenty-four (24) months from the date first mentioned above on page 1 of this Agreement. This Agreement may be extended or renewed by agreement of the Parties in writing at least sixty (60) days prior to the end of the term. The Service Provider will remind the Client by written notice of the end of term and option for extension or renewal at least one hundred and twenty (120) days prior to the end of the term.

5.0 COMPENSATION AND PAYMENT

- 5.1** As consideration for the Support Services provided under this Agreement, the Client shall pay the Service Provider in accordance with **Schedule D** attached, which compensation is subject to change in accordance with the Change Order Process.
- 5.2** All payments shall be made in Canadian currency. On past due charges and late payments, the Service Provider may impose a late payment charge equal to the lesser of 1.0 percent (1%) per month or the maximum rate permitted by law.
- 5.3** Service Provider, without any further actions or requirements on its part and until all outstanding payments have been made in full by the Client, reserves the right to deny or suspend the Support Services or any other related activity under this Agreement. Termination or denial as a result of failure to pay will: (a) not relieve the Client from the payment of all accrued charges for the Support Services provided, plus interest and all collection fees; (b) be solely attributable to the Client with no liability or responsibility of any loss or damage arising or accruing from such denial or suspension of the Support Services.
- 5.4** The Client shall be responsible for all sales and consumption taxes (including any HST) imposed or levied in respect of the charges paid or payable to the Service Provider, other than any tax on the income of the Service Provider.

6.0 SUPPORT SERVICES STANDARDS

- 6.1** The Service Provider shall perform the Support Services in accordance with the Support Services Standards described in **Schedule C**, as said standards may be changed from time to time in accordance with the Change Order Process.
- 6.2** The Service Provider will have full control over working time, methods, and decision making in relation to provision of the Support Services in accordance with this Agreement. The Service Provider will work autonomously and not at the direction of the Client. However, the Service Provider will be responsive to the reasonable needs and concerns of the Client.

7.0 SERVICE PROVIDER RESPONSIBILITIES

7.1 The Service Provider shall:

- (a) Perform the Support Services conscientiously and lawfully, in accordance with the provisions of this Agreement, including the provisions of the Support Services Schedule and the Support Services Standards Schedule;
- (b) Perform the Support Services in a good and professional manner using qualified and competent Support Services personnel, and in compliance with the Support Services Standards Schedule;
- (c) Complete and submit all reports and other information in accordance with the requirements of the Support Services Standards Schedule;
- (d) Comply with all access and security procedures of the Client of which it has been informed in writing; provided only that if there is any change to such procedures after the date of this Agreement, and for which compliance by the Service Provider causes delay, an increase in costs or other material change to the Support Services or other Service Provider obligations under this Agreement, the Support Services Schedule and Support Services Standards Schedule, as applicable, will be modified accordingly by Change Order;
- (e) Access, receive, use, retain and disclose Client Proprietary and Confidential Information only for the performance of the Support Services, in a secure and confidential manner and in accordance with any reasonable restrictions or other requirements of the Client; and
- (f) Perform the Support Services in a manner consistent with the Client's role as a municipal corporation with responsibilities to protect personal information and other data and information relating to private individuals, and in accordance with all Client requirements and directions based on the Client's statutory responsibilities.

8.0 CLIENT RESPONSIBILITIES

8.1 To enable and support the Service Provider in the provision of the Support Services the Client shall, without limitation:

- (a) Perform those tasks assigned to the Client conscientiously, lawfully, in a timely manner, and in accordance with the provisions of the Support Services Schedule and this Agreement;
- (b) Perform those tasks assigned to the Client in a good and professional manner using qualified and competent personnel;
- (c) Grant the Service Provider access to the Client Hardware, Client Software and operations necessary for the Service Provider to provide the Support Services;

- (d) Comply with all reasonable Service Provider procedures and requirements in the performance of the Support Services, including the reproduction of suspected errors or malfunctions and the provision of all error corrections and maintenance releases;
- (e) Access, receive, use, retain and disclose any Service Provider Proprietary and Confidential Information only for Support Services purposes, in a secure and confidential manner and in accordance with any restrictions or other requirements of the Service Provider;
- (f) Undertake any enhancements to or other changes to Client Hardware and Client Software during the term of this Agreement only in collaboration with the Service Provider. In the event that any such change prevents or otherwise hinders the performance of the Support Services, or any other obligation of the Service Provider under this Agreement, including any performance commitment under the Support Services Standards Schedule, the Service Provider shall not be liable or otherwise responsible for the same and the Client shall be liable for any additional costs incurred by the Service Provider as a consequence thereof; and
- (g) Pay the Service Provider for the Support Services in accordance with the Compensation and Payment provision of this Agreement.

9.0 INDEPENDENT CONTRACTOR

- 9.1** The Parties expressly covenant and agree that the legal relationship between the Parties is that of principal and independent contractor. The Service Provider performs the Support Services as an independent contractor and all personnel utilized by the Service Provider shall be employees, contractors or agents of the Service Provider.

10.0 CHANGE CONTROL

- 10.1** The Change Order procedure set out in Schedule E (Change Order Process) may be initiated by either Party desiring to implement the following changes to the Support Services:
- (a) Additions to, deletions from, or other modifications to the Support Services in the Support Services Schedule;
 - (b) Additions to, deletions from, or other modifications to the performance commitments of the Service Provider set out in the Support Services Standards Schedule; and
 - (c) Any modification, alteration, adjustment, addition, upgrade, attachment, enhancement, or other change to the Client hardware or Client Software that will, or is likely to have, a material impact on the delivery of Support Services by the Service Provider.
- 10.2** Any changes to this Agreement, other than those set out in subsection 10.1, shall be undertaken solely by means of a written amendment to this Agreement.

11.0 REPRESENTATIONS AND WARRANTIES

- 11.1** The Service Provider makes the following representations and warranties to the Client

acknowledging that the Client is relying on each such representation and warranty in connection with the provision of Support Services under this Agreement, and with the further acknowledgment that the Client would not have entered into this Agreement without any of the representations and warranties of the Service Provider.

- (a) The Service Provider represents and warrants to the Client that it is duly incorporated and has the legal authority to enter into this Agreement, provide the Support Services and undertake all other obligations and responsibilities of the Service Provider described hereunder;
- (b) The Service Provider represents and warrants to the Client that this Agreement has been duly authorized by all necessary corporate action by the Service Provider and is a valid and binding obligation of the Service Provider, enforceable against it in accordance with its terms, subject, as to enforcement, to bankruptcy, insolvency and other legislation affecting creditors' rights generally;
- (c) The Service Provider represents and warrants to the Client that the execution and performance of this Agreement does not and will not cause any default or other contravention of any other agreement or instrument to which the Service Provider is a party;
- (d) The Service Provider represents and warrants to the Client that there are no actions, suits or other proceedings against the Service Provider, or to the Service Provider's knowledge threatened or pending against the Service Provider, or any of its assets, that in the reasonable opinion of the Service Provider may have a material adverse effect on its financial condition or business;
- (e) The Service Provider represents and warrants to the Client that the Service Provider shall comply with all applicable laws, statutes, ordinances, by-laws and regulations (collectively, "legislation") of all applicable governmental authorities.

11.2 The Client makes the following representations and warranties to the Service Provider acknowledging that the Service Provider is relying on each such representation and warranty in connection with the provision of Support Services under this Agreement, and with the further acknowledgment that the Service Provider would not have entered into this Agreement without any of the representations and warranties of the Client.

- (a) The Client represents and warrants to the Service Provider that the Client is duly incorporated and has the legal authority to enter into this Agreement, and undertake all obligations and responsibilities of the Client described hereunder;
- (b) The Client represents and warrants to the Service Provider that this Agreement has been duly authorized by all necessary corporate action by the Client and is a valid and binding obligation of the Client, enforceable against it in accordance with its terms, subject, as to enforcement, to bankruptcy, insolvency and other legislation affecting

creditors' rights generally;

- (c) The Client represents and warrants to the Service Provider that the execution and performance of this Agreement does not and will not cause any default or other contravention of any other agreement or instrument to which the Client is a party;
- (d) The Client represents and warrants to the Service Provider that there are no actions, suits or other proceedings against the Client, or to the Client's knowledge threatened or pending against the Client, or any of its assets, that in the reasonable opinion of the Client may have a material adverse effect on its financial condition or business;
- (e) The Client represents and warrants to the Service Provider that the Client shall perform, or cause to be performed, the obligations and responsibilities of the Client under this Agreement honestly, in good faith, exercising reasonable skill, care and diligence, using personnel having a level of competence commensurate with the requirements, in accordance with the terms and conditions of this Agreement; and
- (f) The Client represents and warrants to the Service Provider that the Client shall comply with all applicable laws, statutes, ordinances, by-laws and regulations (collectively, "legislation") of all applicable governmental authorities.

11.3 EXCEPT AS EXPRESSLY STATED IN THIS ARTICLE 11.0, ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE ARE HEREBY EXCLUDED. THE PARTIES DISCLAIM ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. LIABILITY OF ONE PARTY TO THE OTHER PARTY IS SOLELY THAT PROVIDED FOR ELSEWHERE IN THIS AGREEMENT.

12.0 RELATIONSHIP MANAGEMENT

12.1 The Parties acknowledge that cooperation is essential to the successful delivery of the Support Services and compliance with all other requirements of this Agreement. The Parties agree to each appoint a person the primary representative of the Party for the administration and other matters relative to the provision of Support Services, and use mutually agreed processes and forms to report progress and to identify, track and resolve problems. Unless otherwise provided for in the Support Services Schedule, the standard processes and forms of the Service Provider will be utilized. Each Party may rely on the authority of the other Party's representative provided that neither person shall have the authority to amend or modify this Agreement.

13.0 CONFIDENTIALITY OF CLIENT DATA

13.1 The Service Provider acknowledges that Client Data is Proprietary and Confidential Information of the Client, and is sensitive in nature as the information of a public organization and municipal government, and must be protected from unauthorized use or disclosure. The Service

Provider shall use all reasonable means to keep Client Data to which it has access confidential. The Service Provider shall not access, use or disclose Client Data, other than to provide the Support Services.

13.2 More specifically, in fulfilment of its obligation to maintain the confidentiality of Client Data, the Service Provider shall:

- (a) Implement written policies, standards, and procedures reflective of the Service Provider's obligations in regard to confidentiality;
- (b) Restrict access to Client Data to Service Provider personnel, including agents and subcontractor personnel who require access to perform the Support Services; and
- (c) Ensure that Service Provider personnel, including agents and subcontractor personnel, requiring access to Client Data have received any required security clearance and agreed, in writing, to abide by the confidentiality requirements of the Service Provider in the treatment of Client Data.

13.3 Notwithstanding the above, the Service Provider shall not be responsible or otherwise liable for any wrongful access to, use or disclosure of Client Data:

- (a) Caused by any act or omission of the Client;
- (b) already in the public domain due past publication on a public medium such as a newspaper of record or media outlet; or
- (c) Required by law to be disclosed. The Service Provider shall give the Client prompt notification of such requirement for disclosure and permit the Client to undertake any appeal procedures to maintain the confidentiality of Client Data.

14.0 CONFIDENTIALITY OF SERVICE PROVIDER DATA

14.1 The Client acknowledges that Service Provider Data is Proprietary and Confidential Information of the Service Provider and must be protected from unauthorized use or disclosure. The Client shall use all reasonable means to keep Service Provider Data to which it has access confidential. The Client shall not access, use or disclose Service Provider Data, other than as required for the provision of Support Services by the Service Provider.

14.2 More specifically, in fulfilment of its obligation to maintain the confidentiality of Service Provider Data, the Client shall:

- (a) Implement written policies, standards, and procedures reflective of the Client's obligations in regard to confidentiality;
- (b) Restrict access to Service Provider Data to Client personnel, including agents and subcontractor personnel, who require access in the performance of the Support Services; and
- (c) Ensure that Client personnel, including agents and subcontractor personnel, requiring access to Service Provider Data have received any required security clearance and

agreed, in writing, to abide by the confidentiality requirements of the Client in the treatment of Service Provider Data.

14.3 Notwithstanding the above, the Client shall not be responsible or otherwise liable for any wrongful access to, use or disclosure of Service Provider Data:

- (a) Caused, in whole or in part, by any act or omission of the Service Provider;
- (b) Determined to be in the public domain; or
- (c) Required by law to be disclosed, including (without limitation) the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56. The Client shall give the Service Provider prompt notification of such requirement for disclosure, and permit the Service Provider to undertake any legally available appeal procedures to maintain the confidentiality of Service Provider Data.

15.0 LIABILITY

15.1 The liability of the Service Provider to the Client or any third party whatsoever, for any breach of this Agreement, regardless of the basis of the claim and whether such damage was foreseeable, including, without limitation, any claim in tort (including negligence) or of fundamental breach of contract, or otherwise (including any loss or damage caused due to hacking), shall be direct damages only. In no event shall the Service Provider be liable for indirect, incidental, special or consequential damages, or exemplary, aggravated or punitive damages, or damages for loss profits or revenues of the Client or any loss of use relating to the Support Services or any breach of this Agreement, even if it has been informed of the possibility thereof. For greater certainty, nothing in this section alters or increases the indemnities provided for in section 17.0 of this Agreement.

16.0 TERMINATION

16.1 *Termination for Cause*

- (a) In the event that either Party commits a breach of one or more of its material duties or obligations under this Agreement (“Material Breach”), which Material Breach shall not have been cured within fifteen (15) Business Days from notice in writing advising of said Material Breach (“Cure Period”), the Party not in breach may terminate this Agreement, forthwith, for cause, by giving written notice to the Party in Material Breach.
- (b) Without limiting the generality of the foregoing, each of the following specific events shall be deemed to be a Material Breach by the Service Provider granting the Client the right to terminate this Agreement pursuant to subsection 16.1(a):
 - (i) The Service Provider is adjudged bankrupt, commits or threatens to commit an act of bankruptcy, makes a general assignment for the benefit of its creditors, becomes insolvent, or otherwise commences action for its winding up, reorganization, liquidation, or dissolution under any applicable law; or
 - (ii) The Service Provider is in breach of the Confidentiality of Client Data

- provision of this Agreement.
- (iii) Service Provider fails to respond in reasonably timely manner to service requests from the Client.
- (c) Without limiting the generality of the foregoing, each of the following specific events shall be deemed to be a Material Breach by the Client granting the Service Provider the right to terminate this Agreement pursuant to subsection 16.1(a):
- (i) Client is adjudged bankrupt, commits or threatens to commit an act of bankruptcy, makes a general assignment for the benefit of its creditors, becomes insolvent, or otherwise commences action for its winding up, reorganization, liquidation, or dissolution under any applicable law;
 - (ii) Client is in breach of the Confidentiality of Service Provider Data of this Agreement; or
 - (iii) Client fails, without valid cause, to pay any amount owing to the Service Provider under this Agreement following written notice by the Service Provider to that effect under subsection 16.1(a), and failure to make payment before expiration of the Cure Period.
- (d) Upon termination of this Agreement for Material Breach all responsibilities and liabilities of the Parties to each other shall cease on the specified date of termination, except only for damages that may be assessed against the Party in Material Breach.

16.2 Termination without Cause

The Service Provider may terminate this Agreement without any cause or reason but only by providing the Client with thirty (30) Business Days written notice.

17.0 INDEMNITIES

17.1 Service Provider Indemnification

- (a) The Service Provider shall indemnify, defend, and hold harmless the Client and its servants, agents, successors, and assigns from any and all losses arising from or in connection with any claims of infringement made against the Client for any patent, copyright, trade-mark, service mark, trade name, or other proprietary rights in regard to Service Provider Software, Service Provider Data, or any other products or materials provided by the Service Provider in the performance of Support Services, or otherwise under this Agreement.
- (b) The Service Provider shall indemnify, defend, and hold harmless the Client, its servants, agents, successors and assigns from and against any and all losses arising from or in connection with claims made by third parties against the Client arising out of any acts or omissions of the Service Provider in the performance of Support Services or the observance of its obligations under this Agreement.

17.2 Client Indemnification

- (a) The Client shall indemnify, defend, and hold harmless the Service Provider, its servants, agents, successors and assigns from and against any and all losses arising from or in connection claims of infringement made against the Service Provider for any patent, copyright, trade-mark, service mark, trade name, or other proprietary rights in regard to Client Hardware, Client Software, Client Data, or any other products or materials of the Client used in performance of the Support Services, or otherwise under this Agreement.
- (b) The Client shall indemnify, defend, and hold harmless the Service Provider, its servants, agents, successors and assigns from and against any and all losses arising from or in connection with claims made by third parties against the Service Provider arising out of any acts or omissions of the Client in the performance of the Support Services or the observance of its obligations under this Agreement.

17.3 Exclusive Remedy

The indemnities described in this section 17.0 are the exclusive indemnities provided by each Party to the other under this Agreement. The indemnities shall not apply unless the Party against whom the claims are made provides the indemnifying Party with prompt written notice of such claim, grants the indemnifying Party authority to defend or settle the claim and provides all reasonable assistance to the indemnifying Party in defending or settling the claim.

18.0 INSURANCE

18.1 The Service Provider shall obtain and maintain the following insurance coverage during the term of this Agreement, naming the Client as an additional insured, with limits not less than those prescribed:

- (i) Professional liability and cybersecurity insurance with limits of not less than Two Million Canadian Dollars (\$2,000,000.00);
- (ii) Automotive or motor vehicle liability insurance with limits of not less than Two Million Canadian Dollars (\$2,000,000.00); and
- (iii) Comprehensive General Liability Insurance with limits of not less than Five Million Canadian Dollars (\$5,000,000.00).

18.2 The Service Provider shall provide proof of insurance following execution of this Agreement and also at the reasonable request of the Client during the term of the agreement.

19.0 GENERAL

19.1 Notices

All notices to be given under this Agreement shall be in writing and either hand delivered or sent by registered mail to the address and contact official of the other Party set out below. If by registered mail, any such notice shall be deemed to have been received on the fifth (5th) Business Day after mailing, and if hand delivered, on the date of delivery. Notice may also be provided by means of electronic mail and if delivered by electronic mail, it should be deemed received on the first (1st) Business Day the electronic mail arrives in the recipient's electronic mail in-box, provided only that the Party sending the message has not received any automatic reply indicating that the notice has not been delivered to the recipient.

Client address and contact official:

Magda Badura, mbadura@westelgin.net, 519.785.0560 ext. 221
22413 Hoskins Line, Rodney, Ontario N0L 2C0

Service Provider address and contact official:

Dan Balint, dan@zouling.ca, 226.688.7839
276 Furnival Road, Rodney, Ontario N0L2C0

Either Party may change its address or contact official by written notice to the other Party given in the manner set out above.

19.2 Force Majeure

Neither Party will be responsible or liable in any way for failure or delay in performing its obligations under this Agreement during any period in which such performance is prevented or hindered by conditions beyond its reasonable control ("force majeure"). During such period each Party's obligations, to the extent that they are affected by the event of force majeure, will be suspended and commensurately extended until such time as performance is no longer prevented or hindered; provided that if such period extends for more than forty (40) Business Days, either Party may thereafter terminate this Agreement without any obligation or liability to the other Party for the same.

19.3 Advertising

Neither Party shall, without the prior express written consent of the other Party in each instance, which consent will not be unreasonably withheld, carry out or arrange for any press release, advertisement or promotion of any kind or nature whatsoever, whether in writing or orally, which involves the use of, or contains any reference to any trade or service mark, trade or service name, or logo of the other Party.

19.4 *Survival*

Those provisions of this Agreement which, by their terms, are intended to survive, or which must survive in order to give effect to continuing obligations of the Parties, shall survive the termination of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

ZOULING TECHNOLOGIES INC.

By:

Name: Daniel Balint

Title: President

MUNICIPALITY OF WEST ELGIN

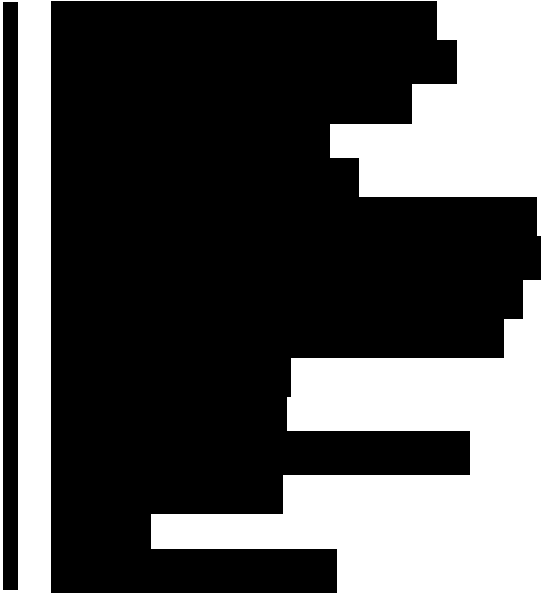
By:

Name (Print or type):

Title:

SCHEDULE A
Client Hardware and Software

Hardware:



Information redacted under Section 11(a) of
Municipal Freedom of Information and
Protection of Privacy Act.

Software:



Information redacted under
Section 11(a) of Municipal
Freedom of Information and
Protection of Privacy Act.

*Malahide Only

SCHEDULE B

Support Services

- IT Help Desk, Phone, Email, Remote and Onsite Support
- Desktop Management and Support
- Server Management and Support
- Data Backup Management and Support
- Network Management and Support
- Cloud Services Management and Support
- Cyber Security Management and Support
- IT Asset Management
- Procurement and Provisioning Services

- An Information Security Policy that covers the following in detail will need to be reviewed or created for the topics that apply or will apply in the future: Information Security Policy, Acceptable Use Policy, Disciplinary Action, Protect Stored Data, Information Classification, Access to the sensitive cardholder data, Physical Security, Protect Data in Transit, Disposal of Stored Data, Security Awareness and Procedures, Network security, System and Password Policy, Anti-virus policy, Patch Management Policy, Remote Access policy, Vulnerability Management Policy, Configuration standards, Change control Process, Audit and Log review, Secure Application development, Penetration testing methodology, Incident Response Plan, Roles and Responsibilities, Third party access to card holder data, User Access Management, Access Control Policy, Wireless Policy.

SCHEDULE C

Support Services Standards

Response Time

Service Provider will respond, either remotely or in-person, within sixty (60) minutes of a request from the Client, including on evenings and weekends. Requests can be raised by phone or by email. This metric will be reported monthly to indicate any missed response times should they occur.

Service Levels

The two levels of service to be provided as identified are described as follows.

“first level”: Standard “IMAC” (install, move, add and change) Services

These types of planned services will be completed by a mutually determined deadline at the time of each request. All processes will be written and maintained by Service Provider and always accessible to the Client. A change control process shall be formally defined and documented as part of reviewing or creating an Information Security Policy.

“second level”: Advanced Network, Product and Service Support

These types of unplanned services will be completed by a mutually determined deadline at the time of each request unless the urgency is high. Example of a high urgency request is something that is affecting staff productivity or in the form of an outage. In high urgency requests, a workaround will be provided as soon as possible if an immediate fix is not available to minimize downtime.

Asset Auditing

Service Provider will perform a physical and virtual audit of hardware and software to gain an understanding of the Client’s I.T. structure and systems. This audit will take place on a regular basis every six (6) months or as agreed upon with the Client.

Patch Management

A Patch Management Policy will be reviewed or created. This will ensure all workstations, servers, software, system components etc. owned by the Client will have up-to-date system security patches installed to protect the asset from known vulnerabilities.

Data Backup and Disaster Recovery

Service Provider will review or create a data backup and disaster recovery plan for the Client. This plan is to include what is backed up, how often it’s backed up, and where it’s backed up. A testing schedule will be agreed upon and followed.

Technical Advice

Service Provider will provide confidential expert advice to senior municipal staff for municipal budget and project-planning purposes. If necessary, research or advice will be acquired by an external subject matter expert with the approval from the Client.

All passwords used by Service Provider will be shared by way of a Password Manager to the Chief Administrative Officer of the Client.

SCHEDULE D COMPENSATION & PAYMENT

Program Costs

Invoices submitted by Service Provider to the Client are due within thirty (30) calendar days of receipt.

Base Monthly Fees

Server Management will fall under the Patch Management Policy that will be reviewed or created. This is monthly maintenance that will be required on each server.

Data Management will fall under the data backup and disaster recovery plan that will be reviewed or created. This may be a daily audit performed depending on the configuration of backups.

This calculation applies to each server either Physical or Virtual.

A Network Attached Storage Device (NAS) will be classified as a server.

A virtual server's host server will not be classified as a server.

The fixed cost will be **\$75.00 per server each month.**

Based on the infrastructure assessment of the Client, the **monthly estimate** for the Client is **\$2400.00.**

This estimate is subject to change with the addition or decommission of a server.

Server Management includes any updates that are Firmware, Driver, Operating System, or Software related. This also covers any 3rd party updates provided by a software vendor. An example would be Accounting Software if stored on a Server.

Data Backup Management is included in the per server price. The Client is responsible for the cost of the Software Solution and storage used for Data Backups.

This fixed fee includes any software used by Service Provider for Remote Monitoring and Management, ticketing (if the Client chooses to use a ticketing system) and one Password Manager license for the Chief Administration Officer of the Client.

Unforeseen problems that arise from any updates performed are expressly excluded from the scope and above estimate of cost. These will be handled at a normal hours time and material cost at the indicated rates below.

Hourly Service Rates

The following rates apply to the following services provided by Service Provider:

Normal Hours

Monday to Friday except holidays. 0800 to 1800.

IT Support Services will be provided at the rate of **\$75.00 per hour**. Time will be billed in 15-minute increments. This includes time spent onsite, remote, phone, or email. Support provided for problems that arise while performing planned maintenance after hours, weekends and holidays will be charged as normal hours.

After Hours

Monday to Friday except Holidays. 1800 to 0800.

Except for planned maintenance, IT Support Services will be provided at the rate of **\$75.00 per hour**. Time will be billed in 60-minute increments. This includes time spent onsite, remote, phone, or email.

Weekends and Holidays

Except for planned maintenance, IT Support Services will be provided at the rate of **\$75.00 per hour**. Time will be billed in 120-minute increments. This includes time spent onsite, remote, phone, or email.

Budgetary Planning of Hourly Service Rates

For budgetary planning, the Client should budget an allowance for this section of program costs an amount of **\$27,300.00**, and will be billed on per used basis only. This calculation is under the assumption of **seven (7) hours** of I.T. Consulting **per week**.

Procurement Markup

The percentage of markup from the cost of I.T. hardware of software purchased through Service Provider will vary from 0% to 12% depending on the item.

Before making any purchases, a quote will be obtained from any previous partner or vendor the Client may have. The best price will always be chosen regardless of the vendor. Service Provider will be considered as a vendor in these instances.

If hardware or software is purchased from a previous partner or vendor, the Client will pay such partner or vendor directly.

Service Partners

Computer & Printer Services

Service Provider will bill time spent by IC Computer & Printer Services at the same rates detailed above. Service Provider will dispatch IC Computer & Printer Services when necessary and will be responsible for their compensation.

CompuVision

CompuVision will be utilized only in planned scenarios. These include advanced project, network, and service support. The Service Provider will obtain and Client will approve the quote from and pay for any services or goods provided by CompuVision.

Other Fees

Travel expenses will be charged at **\$0.53 per kilometer** driven for onsite support. Hourly service rates will not be billed during travel.

SCHEDULE E
Change Order Process

1.0 CHANGE ORDER REQUEST

- 1.1** Either Party may submit a Change Order Request to the other Party at any time in the form appended as Annex 1 to this Schedule E. The Change Order Request shall be signed by the Service Provider or Client contact person, as applicable. The Change Order Request shall contain sufficient information concerning the requested change, including any impact on Support Services, prescribed Support Services standards, and Service Provider compensation, for the recipient Party to undertake an informed assessment and decision in regard to the request.
- 1.2** The Party in receipt of the Change Order Request shall use all reasonable commercial efforts to respond to the Change Order Request within the requested time period. A response shall be in writing and may include a request for additional information, for modifications to the Change Order Request, or the decision to reject or accept the requested change.
- 1.3** An accepted Change Order Request shall act as a direction to the Parties to complete and sign a formal Change Order implementing the Change Order Request.
- 1.4** The Parties shall not implement the proposed change until a Change Order is fully executed. Unless otherwise agreed, neither Party shall be responsible for the costs of the other Party in the preparation or evaluation of a Change Order Request.

2.0 CHANGE ORDER

- 2.1** A Change Order shall not be effective until signed by both Parties. The Change Order shall be in the form set out in Annex 2 to this Schedule E and contain all required technical and financial information for the change including its impact on Support Services, prescribed Support Services standards and Service Provider compensation.
- 2.2** A completed and executed Change Order shall constitute a binding change to this Agreement. Unless otherwise agreed, neither Party shall be responsible for the costs of the other Party in the preparation of a Change Order.
- 2.3** The Service Provider shall maintain a formal record of all Change Orders, numbered sequentially.

ANNEX 1 - CHANGE ORDER REQUEST

CHANGE ORDER REQUEST NUMBER:

To: Service Provider Contact or Client Contact, as applicable

From: Service Provider Contact or Client Contact, as applicable

Date: Date of Change Order Request

Re: Subject Matter of Change Order Request

1.0 DESCRIPTION OF REQUESTED CHANGE

[Include description of Support Services change, reason(s) for the Change Order Request, any changes to Support Services performance requirements, or Service Provider compensation]

Change Request Submitted by:

Service Provider Contact or Client
Contact, as applicable

Date

ANNEX 2 – CHANGE ORDER

Date: **Change Order Number**

To Service Provider Contact or Client Contact, as applicable

From: Service Provider Contact or Client Contact, as applicable

Re: Change Order Request Number

This Change Order forms part of and is subject to the terms and conditions of the Agreement.

1. Description of Support Services Change

[Describe in detail the new or revised Support Services or other change]

2. Effect on Existing Support Services

[Describe the impact on existing Support Services]

3. Implementation

[Provide details of the implementation of the new or changed Support Services]

4. Compensation Change, if any

[Describe any consequential change in compensation]

5. Additional Information

[Provide any additional information relevant to the change]

Agreed to:

[Insert the complete legal name of the Service Provider]

By:

Name (Print or type):

Title:

[Insert the complete legal name of the Client]

By:

Name (Print or type):

Title: