

CITY OF NANAIMO - WEB CUSTOMER SERVICE TERMS

THE FOLLOWING SERVICE TERMS ARE THE TERMS OF EACH CITY OF NANAIMO WEB CUSTOMER INFORMATION SERVICES AGREEMENT BETWEEN THE CITY OF NANAIMO AND USERS OF THE WEB CUSTOMER SERVICE PROVIDED BY THE CITY OF NANAIMO. CUSTOMER'S COMPLIANCE WITH THE FOLLOWING TERMS IS A CONDITION OF USE OF WEB CUSTOMER SERVICES.

1.0 DEFINITIONS AND INTERPRETATION

1.1 Definitions – In this document

- a) "Authorized Recipient" means an individual named as such under the WCSA;
- b) "Authorized Uses" means the purposes or uses, set out in Customer's application, for which access to Personal Information is permitted, and for which it may be used, under the WCSA;
- c) "Customer" means the customer named in an application for Web Customer service and with whom City of Nanaimo has entered into an WCSA;
- d) "City of Nanaimo" means City of Nanaimo, a municipality;
- e) "FIPPA" means the Freedom of Information and Protection of Privacy Act, as amended from time to time;
- f) "WCSA" means the information services agreement between City of Nanaimo and Customer which is formed on the terms set out in this document by City of Nanaimo's acceptance of Customer's application as signified by City of Nanaimo's signing of Customer's application;
- g) "Personal Information" means information received by Customer from City of Nanaimo about an identifiable individual (including the individual's name and address, finances, creditworthiness or assets, employment or employment history, or tax liability); and
- h) "Record" means information recorded in any medium (including a paper copy, electronic form, machine-readable record, computer disk, digital record, photograph, video tape or magnetic tape).

1.2 Interpretation –Reference in this document to:

- a) A "section" or "appendix" is a reference to a section of, or appendix to this document;
- b) City of Nanaimo or to Customer is a reference to their respective officials, officers, directors, employees, agents and contractors; and
- c) the singular includes the plural and vice versa.

2.0 NATURE OF THIS DOCUMENT

This document sets out the terms of every WCSA, by which Customer agrees to be bound contractually as provided in Customer's application for Web Customer service.

3.0 FEES AND TAXES PAYABLE BY CUSTOMER

Customer agrees to pay all fees and charges levied by City of Nanaimo, and incurred by Customer, in provision of services by City of Nanaimo to Customer in accordance with the rates established from time to time by City of Nanaimo and notified to Customer, including by posting by City of Nanaimo on the City of Nanaimo Website. Customer agrees that City of Nanaimo is entitled to change the fees from time to time by notifying Customer of the change, with the change being effective as specified in the notice. Customer must, as a precondition to receiving any service from City of Nanaimo under the WCSA, deposit with City of Nanaimo the amount of money stipulated as a deposit by City of Nanaimo. City of Nanaimo may, at its discretion, discontinue the delivery of service when the balance on deposit is at or near zero. City of Nanaimo is entitled from time to time to change the deposit amount that must be maintained by Customer with City of Nanaimo. Customer agrees that it must pay applicable taxes (including GST) in addition to the fees and Customer agrees to pay all other taxes that may become payable by law on fees in future. Interest is not payable on any deposit amount held by City of Nanaimo.

4.0 NATURE OF SERVICES

Customer acknowledges and agrees that:

- a) the services generally available from time to time through City of Nanaimo Web Customer may not all be made available to Customer, in City of Nanaimo's sole discretion;
- b) services generally available through City of Nanaimo Web Customer may change from time to time, and;
- c) that City of Nanaimo does not represent, warrant or promise that any or all services from time to time available to Customer or anyone else will at all times be available or be available at any given time.

Without affecting the generality of the foregoing, Customer acknowledges and agrees that:

- d) services to Customer may, without prior notice, at any given time not be available to Customer because of technical failure (whether due to failure of City of Nanaimo's computer or other equipment, failure of telecommunications facilities of any party, or any other cause or source whatsoever);
- e) the sole risk and responsibility for any loss, damage or liability associated with service not being available to Customer at any given time is solely that of the Customer;

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- f) City of Nanaimo has not represented or warranted, and does not represent or warrant, that:
- I. any information (including Personal Information) disclosed or communicated to Customer is or will be useful, correct, accurate or complete and Customer assumes all risk of, and liability associated with, any information being not useful, incorrect, inaccurate or incomplete;
 - II. that information (including Personal Information) will be received by Customer within a reasonable time after Customer's request;
 - III. information will be received by Customer uncorrupted or free of viruses or other defects; or
 - IV. communications between Customer and City of Nanaimo (including information sent to City of Nanaimo) will not be intercepted or interfered with by others; and
- g) Customer releases City of Nanaimo from, and waives, any liability, losses (including economic losses), damages, costs, causes of action, claims and proceedings (including legal costs and also costs in connection with any proceeding under the FIPPA) that may be suffered or incurred by Customer and anyone else, in any way connected with anything described in this Section 4.0, with the intent of this section being to place the risk of loss connected with the WCSA on Customer and not City of Nanaimo.

5.0 INDEMNITY

Customer must indemnify and hold City of Nanaimo harmless from and against any liability, losses (including economic losses), damages, costs (including legal costs and also other costs incurred in connection with any proceeding under FIPPA), causes of action, claims and proceedings suffered or incurred by City of Nanaimo, or suffered or incurred or brought by any customer, client or other third party to whom Customer is contractually bound or to whom Customer has any legal duty, that are in any way connected with or arise directly or indirectly out of Customer's performance or breach of the WCSA, receipt by Customer of services, or Customer's use, disclosure, retention, storage, disclosure or destruction of information (including Personal Information), including because of the incompleteness or in accuracy of any such information. Customer agrees that this indemnity extends to any matter described in this section in any way connected with or arising directly out of use by any party of Web Customer services using Customer's account.

6.0 NO REPRESENTATIONS OR WARRANTIES

Customer agrees that there are no express or implied representations, warranties or promises of any kind (including as to merchantability or fitness for a particular purpose) with regard to any services provided by City of Nanaimo under the WCSA or as to any information (including Personal Information) provided to Customer under the WCSA and that all representations, warranties and promises of any kind, express or implied, are hereby expressly excluded by City of Nanaimo.

7.0 CUSTOMER EQUIPMENT

Customer is solely responsible for ensuring that Customer's computer and other related equipment from time to time meets the minimum requirements necessary to receive services from City of Nanaimo and Customer acknowledges and agrees, for clarity, that changes in City of Nanaimo Web Customer technical specifications may mean that Customer's computer and other related equipment ceases to be sufficient or adequate to enjoy those services, with Customer agreeing that the risk, cost and responsibility of that happening is solely that of Customer.

8.0 REPRESENTATIVES' DUTIES

Customer appoints the individual named in Customer's application as Customer's representative as the individual responsible for the WCSA and Customer's compliance with it. Customer must cause that individual to perform this responsibility. City of Nanaimo appoints the individual named above as City of Nanaimo representative as the individual responsible for the WCSA on behalf of City of Nanaimo. City of Nanaimo must cause that individual to perform this responsibility.

9.0 AUTHORIZED RECIPIENTS

Customer appoints the individuals named in Customer's application as Authorized Recipients as the only individuals authorized under the WCSA to receive and use Personal Information from City of Nanaimo.

10.0 COMPLIANCE WITH WCSA

Customer must comply with the WCSA at all times and Customer must cause its officers, directors, employees, agents and contractors to comply with the WCSA at all times. Customer must ensure that only Authorized Recipients have access to, and use, Personal Information. Customer agrees that Authorized Recipients may have access to, and use, Personal Information for one or more of the Authorized Uses and for no other purpose or use.

11.0 OTHER DISCLOSURE

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Despite section 10.0 Customer and its Authorized Recipients may disclose Personal Information only to:

- a) Authorized Recipients
- b) the individual the Personal Information is about upon satisfactory proof of that individual's identity.
- c) on demand to City of Nanaimo or the Information and Privacy Commissioner for British Columbia acting under FIPPA for the purposes of any audit, investigation, or review; or
- d) on demand, to external auditors or investigators appointed by City of Nanaimo.

Customer must not disclose Personal Information to anyone else.

12.0 SECURITY MEASURES

Customer must:

- a) ensure that Personal Information is kept secure from unauthorized use, disclosure or destruction, including by providing physically and technologically secure storage for Personal Information in all forms in which it is stored by Customer;
- b) must create and implement policies and procedures necessary to ensure that Personal Information is secure from unauthorized use, disclosure or destruction, including in order to ensure that no one other than an Authorized Recipient is able to gain access to or use Personal Information; and
- c) agrees that City of Nanaimo is entitled from time to time to notify Customer of rules prepared by City of Nanaimo or stipulated by law (including under FIPPA) regarding the use, disclosure, storage retention or destruction of Personal Information and that Customer must at once comply with those rules.

13.0 AUDIT TRAILS

Without affecting the generality of section 12.0, Customer must create and maintain records which record all requests to City of Nanaimo by Authorized Recipients for Personal Information and which record all uses and disclosure of Personal Information, including by stating the name of the Authorized Recipient and the date on which the Personal Information was received, used or disclosed, as applicable and must retain such Records at the business address set out in Customer's application for Web Customer service for at least three years after the date on which the Personal Information was received from City of Nanaimo.

14.0 RETENTION OF PERSONAL INFORMATION

Customer must not copy Personal Information except to the extent absolutely necessary for its Authorized Use. After Personal Information has

been used, Customer must destroy all copies of the Personal Information, in whatever form it is recorded, except that Customer may retain one paper copy of the Personal Information if, and only to the extent that, it is necessary to do so for Customer to be able to establish in any proceeding that Customer has acted lawfully, with reasonable care, or with due diligence, in respect of any matter.

15.0 CUSTOMER AUDITS

Customer agrees that if directed to do so by City of Nanaimo, Customer must, at Customer's expense, retain an independent external auditor reasonably satisfactory to City of Nanaimo to audit and review, and report within 60 days after City of Nanaimo's direction under this section to perform the audit, Customer's compliance with sections 9.0 through 14.0 and Customer must provide a copy, at no charge, of the auditor's report to City of Nanaimo within 7 days after receiving the results or report. Customer must give the auditor access to Customer's place of business and to Personal information. Despite the rest of this section, no auditor has any right to have access to, audit or review any files or Records that are subject to solicitor-client privilege, which contain confidential business information or which are subject to confidentiality provisions of any federal or provincial enactment.

16.0 TERMINATION BY CUSTOMER

Customer is entitled to terminate the WCSA by giving 10 days' notice to City of Nanaimo. City of Nanaimo must within a reasonable time after the termination becomes effective return any remaining deposit balance held by City of Nanaimo under section 3.0.

17.0 TERMINATION BY CITY OF NANAIMO

If Customer breaches any term of the WCSA, City of Nanaimo is entitled to terminate the WCSA by giving notice of termination to Customer, which is effective immediately. Despite the rest of this section, City of Nanaimo is entitled to terminate the WCSA without cause by giving 10 days notice of termination to Customer. Despite the rest of this section, if the Information and Privacy Commissioner for British Columbia recommends, or orders, that City of Nanaimo cease disclosing Personal Information under WCSAs such as this one, City of Nanaimo will be entitled to terminate all or part of the WCSA by giving notice of termination, which is effective immediately. City of Nanaimo must within a reasonable time after termination by City of Nanaimo becomes effective return any remaining deposit balance held by City of Nanaimo under section 3.0. If City of Nanaimo terminates the WCSA because of Customer's breach, City of Nanaimo is entitled to retain any remaining deposit amount to the extent

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necessary to indemnify or compensate City of Nanaimo for any cost, loss or damage suffered or incurred by City of Nanaimo because of the breach.

18.0 SURVIVING TERMS

Customer agrees that if the WCSA is terminated under either section 16.0 or 17.0, Customer's obligations under section 4.0 through 6.0 and 9.0 through 14.0 survive termination and continue to bind Customer.

19.0 CHANGE IN REPRESENTATIVES OR RECIPIENTS

If Customer's representative or an Authorized Recipient ceases employment with Customer, or otherwise ceases to be the representative or a recipient, Customer must at once appoint another individual and must at once notify City of Nanaimo of the departure of the existing representative and the new appointment. This section also applies to any change in the City of Nanaimo representative.

20.0 ACCESS TO INFORMATION

City of Nanaimo and Customer agree that nothing in the WCSA gives City of Nanaimo any control over the creation, use, disclosure, retention or destruction of any Record and that none of Customer's Records are in the custody or under the control of City of Nanaimo for the purpose of the FIPPA.

21.0 NOTICE

Any notice that is required or may be given under the WCSA must be in writing delivered or faxed to the address or facsimile number set out above. Notice may also be given by e-mail sent to the appropriate e-mail address set out above, but notice by e-mail is valid only if the sender of the notice retains and produces a paper copy of the Internet server confirmation of successful

sending of the e-mail and the sender also delivers or faxes a confirming notice in accordance with the rest of this section within two days after the e-mail notice was given. Notices may also be given by City of Nanaimo, but not by Customer, by City of Nanaimo posting the notice on City of Nanaimo's Internet Website, with the Website address being as set out in Customer's application. A party must give notice to the other at once of any address, facsimile, e-mail address or Website change.

22.0 WAIVER

An alleged waiver of any breach of the WCSA is effective only if it is a written waiver and a written waiver is effective only in respect of the breach to which it expressly relates.

23.0 SEVERANCE

If any portion of this document is held by a court to be illegal, void or uncertain, that part is to be severed from the WCSA, the rest of which remains in force and binds Customer and City of Nanaimo as if the severed portion had not formed part of the WCSA.

24.0 ENTIRE AGREEMENT

This document contains the entire WCSA between City of Nanaimo and Customer concerning its subject and there are no representations, warranties, agreements, promises or covenants other than those expressly set out in the WCSA.

25.0 NO ASSIGNMENT

Customer is prohibited from assigning or subcontracting any of its rights or obligations in or under the WCSA and any purported assignment or subcontracting is void and immediately terminates the WCSA