



## **PROCUREMENT OF SERVICES AGREEMENT**

**THIS AGREEMENT** as of the 30<sup>th</sup> day of September, 2019.

**BETWEEN:**

**SERVICE NEW BRUNSWICK,**

a Crown corporation with head offices at 82 Westmorland St., Fredericton, NB E3B 3L3  
(hereafter called "SNB")

- and -

**Beauceron Security Inc** , a body corporate under the laws of Province of New Brunswick, having offices at 61 Rue Carleton St., Fredericton, N.B.

(hereafter called "the Supplier")

**WHEREAS** SNB released a Request for Proposals (RFP) # 8020052-20 for an Cyber Security Awareness and Training solution or equivalent which was dated June 14, 2019;

**AND WHEREAS** the Supplier responded to the Request for Proposals by a document dated June 27, 2019.

**AND WHEREAS** SNB wishes to purchase professional services from the Supplier related to a Cyber Security Awareness and Training solution and the Supplier has agreed to provide those services in accordance with this agreement.

**NOW THEREFORE** for good and valuable consideration, the receipt and sufficiency of which is acknowledged, and in consideration of the covenants and conditions contained herein, the parties agree as follow:

### **1. DEFINITIONS**

In this Agreement or in any amendments hereto, the following terms shall have the following meanings:

"Agreement" means this Agreement including the Schedules and any amendment hereto in writing signed by all the parties hereto;

"Confidential Information"

- a) means information in any form disclosed directly or indirectly to the Supplier by or on behalf of SNB or gathered by the Supplier from observation of any records, property, or activities of SNB, regardless of whether the Supplier obtained the information before or after the

Term or whether the information is specifically identified or marked as confidential or proprietary; and

- b) includes any analyses, compilations, studies and other documents prepared by or on behalf of SNB which contain or are derived from the information listed in Section 1(a);

“Deliverables” means the products or outcomes of the Services which are stated by the terms of this Agreement to be deliverable to SNB;

“Intellectual Property” means intellectual property and industrial and other proprietary rights, protected or protectable under the laws of Canada including:

- a) all trade names, trademarks, service marks, logos, brand names and other identifiers;
- b) copyrights and moral rights (including rights of attribution and rights of integrity);
- c) all trade secrets, inventions, discoveries, devices, processes, designs, techniques, ideas, know-how and other confidential or proprietary information, whether or not reduced to practice;
- d) all domestic and foreign patents and their registrations, applications, renewals, extensions and continuations; and
- e) all goodwill and all rights and causes of action for infringement, misappropriation, misuse, dilution or unfair trade practices associated with the items listed in (a) – **Error! Reference source not found.**(d) above;

"Person" means an individual, partnership, association, body corporate, trustee, executor, administrator or legal representative;

"Personal Information" means any recorded information about an identifiable individual as defined under the the *Right to Information and Protection of Privacy Act* c. R-10.6 or any successor legislation and for the purposes of this Agreement will include Personal Health Information.

"Personal Health Information" means identifying information about an individual in oral or recorded form if the information as defined under the New Brunswick *Personal Health Information Privacy and Access Act*, c.P-7.05 that

- (a) relates to the individual's physical or mental health, family history or health care history, including genetic information about the individual,
- (b) is the individual's registration information, including the Medicare number of the individual,
- (c) relates to the provision of health care to the individual,
- (d) relates to information about payments or eligibility for health care in respect of the individual, or eligibility for coverage for health care in respect of the individual,
- (e) relates to the donation by the individual of any body part or bodily substance of the individual or is derived from the testing or examination of any body part or bodily substance,
- (f) identifies the individual's substitute decision-maker, or
- (g) identifies an individual's health care provider.

"Privacy Breach" means any incident of unauthorized access, use, disclosure or disposal of Personal Information subject to this Agreement in the custody of, or under the control of SNB, a Department or other agency of the Province of New Brunswick, and/or the Supplier.

"Public Sector Entity(s) or Entity(s)" means an entity or entities listed under Parts I (SNB and Government of New Brunswick Departments and Agencies), II (the School System) and III (the Hospital sector) of the first schedule of the *Public Service and Labour Relations Act* and also includes Crown Corporations and Government Funded Bodies, such as municipalities, academics (universities and community colleges), schools and hospitals.

"Records" mean a record of information, including Personal Information and Confidential Information, captured and maintained in delivering the Services under this Agreement.

"Security Breach" means any act or omission that materially compromises either the security, confidentiality, integrity or availability of Confidential Information, or to the physical, technical, administrative or organizational safeguards put in place by the Supplier that relate to the protection of the security, confidentiality, integrity or availability of Confidential Information.

"Services" means the services and/or products as described in Article 2.

"SNB Accounts Payable" (SNB A/P) means the division of SNB responsible for processing and payment of invoices for SNB and Part I Entities.

"Strategic Procurement" means the division of SNB responsible for public procurement.

"Work" means the Services and the Deliverables.

## **2. SERVICES**

- 2.1 The Supplier agrees, upon request from SNB, to provide SNB with the goods and professional services as set out in Schedule "A" attached hereto.
- 2.2 Nothing in this Agreement gives the Supplier an exclusive right to provide the Services and SNB may enter into agreements with other suppliers for services equivalent to the Supplier's. The Supplier may provide its services to third parties. The Supplier will not enter into any other contract that might prejudice the ability to provide services as set out in Schedule "A".
- 2.3 The Supplier engaged to deliver services on behalf of Service New Brunswick must ensure compliance with the *Official Languages Act* in the delivery of those services. For more information, please refer to the [Official Languages Act](#).
- 2.4 SNB reserves the right to negotiate additional services and enhancements as they relate to the scope of the Services, throughout the term of the contract. An agreed upon Statement of Work will be required.

## **3. TERM**

- 3.1 The parties agree that this Agreement shall commence on 2019-10-01 and expires on 2022-09-30 ("Term") unless terminated earlier in accordance with Articles 12 or 13 of this Agreement.
- 3.2 Provided that the Supplier has complied with all of the terms and conditions of this Agreement, at or before the expiration of the Term hereof, and upon approval by Strategic Procurement, SNB may renew this Agreement for up to three (3) additional one-year periods from 2022-10-01 to 2025-09-30 on the same terms and conditions as are contained herein with the exception of the amount to be paid by SNB which shall be negotiated for the renewal period.
- 3.3 In the event that option years are exercised, the Supplier's fee for service price shall not increase by more than 2% or Canadian Consumer Pricing Index (CPI), whichever is lower.

#### **4. COMPENSATION**

- 4.1 SNB shall pay the Supplier for the Work the amounts as set forth in Schedule "B" attached hereto.
- 4.2 All fees and pricing outlined in Schedule "B" and all payments by SNB are in Canadian currency.

#### **5. INVOICING**

- 5.1 The Supplier shall invoice SNB for Services and other charges incurred with respect to the terms of this Agreement with such backup invoices and material as may be required by SNB. The standard payment term is 30 days. The Supplier will be paid HST (currently 15%).
- 5.2 Invoices shall be emailed in "pdf" or "tiff" format to [invoices@snb.ca](mailto:invoices@snb.ca) or mailed to the following address:  
  
SNB AP – c/o Business Application Services (FTB)  
PO Box 6000,  
Fredericton, NB  
E3B 5H1  
  
SA – Executive Director – Business Application Services  
Carole Sharpe
- 5.3 The invoices will clearly identify:
  - (a) the Supplier's company name, address, supplier number, and HST Registration Number;
  - (b) identity of client, division, branch, unit/department, spending authority;
  - (c) Purchase Order number;
  - (d) unique invoice number;
  - (e) invoice date;
  - (f) total invoice amount;
  - (g) the HST amount shown as a separate item.

- 5.4 SNB may withhold any payment for Services without incurring interest while the Supplier is in breach of this Agreement, or if there is a bona fide dispute as to the amount of an invoice.
- 5.5 Invoices shall only be issued against existing issued Purchase Orders.

## 6. CONFIDENTIALITY

Neither party shall at any time use or disclose any Confidential Information that it receives from the other party pursuant to this Agreement or that relates to the affairs of the other party except as expressly agreed upon under this Agreement or as required by law. Furthermore, the Supplier shall not use at any time (whether during the Term of this Agreement or after its termination or expiry) for its own benefit or purposes or for the benefit or purposes of any other person, firm, corporation, association or other business entity, any business development programs, or plans belonging to or relating to the affairs of SNB, including knowledge relating to customers, clients, or employees of SNB.

6.2 The obligations of the receiving party under Article 6.1 above will not apply to Confidential Information that the receiving party can demonstrate:

- (a) at the time of disclosure is generally available to the public through no breach of this Agreement or other wrongful act by the receiving party,
- (b) has been received by the receiving party from a third party without restriction on disclosure and without breach of any agreement or other wrongful act by the receiving party,
- (c) is independently developed by the receiving party without regard to the material furnished by the other party, or
- (d) is required to be disclosed by law or order of a court of competent jurisdiction, provided that the receiving party shall furnish prompt written notice to the other party of such required disclosure.

### 6.3 Personal Information

In the course of providing the Services, the Supplier, or anyone acting on its behalf, may gain access, knowledge or possession of Personal Information contained in SNB or other government department records. Where this is the case, the Supplier acknowledges that any Personal Information that is contained in the said records is subject to the [Right to Information and Protection of Privacy Act](#) and the [Personal Health Information Privacy and Access Act](#), as amended from time to time. Further the Supplier acknowledges that it is subject to the [Personal Information Protection and Electronic Documents Act, S.C. 2000, c. 5](#), or any successor legislation. The Supplier or anyone acting on its behalf agrees to protect such Personal Information by adhering to the requirements for such protection under the noted legislation which includes, but is not limited to, the following:

- (a) only collect such Personal Information as is necessary for the purposes of delivering the Services under this Agreement;
- (b) only use or disclose the minimum amount of such Personal Information as necessary for the purposes of delivering Services under this Agreement;

- (c) be responsible to protect and maintain the confidentiality of any such Personal Information within its custody or its control acquired in carrying out the Services and undertakings under this Agreement;
- (d) limit access to the information to only those required to carry out the Services under this Agreement;
- (e) maintain reasonable physical, organizational and technological safeguards to ensure the confidentiality, accuracy and integrity of the Personal Information and protect the Personal Information against any loss or theft, as well as unauthorized access, use, disclosure, destruction or copying of any Personal Information and
- (f) Securely destroy such Personal Information upon completion of the Services under this Agreement, and provide proof thereof.

#### 6.4 **Records**

Records are and will continue under this Agreement to be the sole property of SNB and/or any provincial department or agency concerned and SNB will be consulted on any changes to the maintenance of the Records. All Records transferred to the Supplier by SNB or collected, created, maintained, or stored by the Supplier in the performance of the Services will remain under the control of SNB and/or any provincial department or agency concerned.

#### 6.5 **Right to Information**

The Supplier agrees that Records to which the Supplier may become privy, arising from the performance of this Agreement, are or may be subject to federal and provincial privacy legislations, as amended from time to time. The Supplier covenants to maintain the confidentiality of such Records and adhere to any applicable privacy-related legislation in force during the Term of this Agreement. The Supplier acknowledges that the Records in its custody or control is subject to the [Right to Information and Protection of Privacy Act \(S.N.B.2009, c. R-10.6\)](#) and regulations thereunder, as amended from time to time. The Supplier understands and agrees that SNB may be required to disclose certain information pursuant to said legislations, and other New Brunswick statutes giving members of the public the right to request and be provided with any information of a public body of the Province. In such instances, if a request for information is made to SNB and/or any provincial department or agency concerned, the Supplier will assist in responding to the request . As such, if a request for information related to this Agreement or the services being provided is directed at the Supplier, it will forward such request immediately to SNB.

The Supplier acknowledges that individuals or their representatives have the right to request the Province to correct their Personal Information that the Supplier may have either received from the Province or collected or created about an individual. The Supplier will assist the Province in responding to such requests, as required.

The Supplier shall advise SNB, and SNB shall authorize the plans and processes proposed by the Supplier for the destruction of the Records. The Supplier shall also, as soon as possible, and no later than 48 hours, advise SNB of any security

issues which arise with respect to the maintenance, retention or destruction of the Records.

6.6 The Supplier agrees to implement administrative, physical and technical safeguards to protect the Records that are no less rigorous than accepted industry practices (including/specifically the International Organization for Standardization's standards):

- ISO/IEC 27001:2005 – Information Security Management Systems – Requirements,
- ISO-IEC 27002:2005 – Code of Practice for International Security Management,
- ISO-IEC 27018 – Code of Practice for Protection of Personally Identifiable Information (PII) in Public Clouds acting as PII Processors,
- Information Technology Library (ITIL) standards,
- Control Objectives for Information and related Technology (COBIT) standards, or
- other applicable industry standards for information security,

and will ensure that all such safeguards, including the manner in which the Records are collected, accessed, used, stored, processed, disposed of and disclosed, comply with applicable privacy laws, as well as the terms and conditions of this Agreement.

6.7 **Compliance to Government of New Brunswick (GNB) Standards and Policies for IT Security and Cloud Services**

The Supplier will comply with the GNB standards as outlined in Section 6.6 above for IT Security and the Cloud Security Alliance industry standard best practices for applications and storage.

SNB may independently monitor, at its sole cost and expense, if the supplier's Services conform to the Government's Acts, Legislation, Policies and Standards as determined by the Office of the Chief Information Officer and applicable to the security of information. In the event of a material non-conformity to the above, SNB may terminate this Agreement for cause.

The Supplier agrees to provide the appointed auditor of SNB with access to any records or information deemed reasonable, in the opinion of the Supplier, to audit the activities of the Supplier with respect to this Agreement. This information will be made available at any reasonable time for up to two years following the termination date of this Agreement. Any charges related to these audits will be identified in advance and will be agreed upon by both parties.

Upon SNB's written request, the Supplier shall make available to SNB the Statement on Canadian Standard on Assurance Engagements (CSAE) 3416 Type 2 audit report for Reporting on Controls at a Service Organization. In the absence of SOC 2 reports, audit reports relating to ISO/ICE 27001 certification are acceptable. SNB shall treat all such audit reports as the Supplier's Confidential Information under this Agreement. Any exceptions noted on the CSAE report or other audit reports will be promptly addressed with the development and implementation of a corrective action plan by the Supplier's management.

## 6.8 Privacy Breach and Security Breach

- 6.8.1 The Supplier shall report to SNB any Privacy Breach or Security Breach ("the breach") as soon as possible, and no later than 48 hours, upon its discovery (see Notices, Section 16), and:
- a) involve SNB and the Office Chief Information Officer ("OCIO") of the Province of New Brunswick in the investigation of the incident;
  - b) provide all information related to the breach as requested by SNB and the OCIO;
  - c) involve SNB and/or the OCIO and/or the provincial department or agency concerned, to manage the resolution and the response to the breach.

6.8.2 Immediately after becoming aware of the breach, the Supplier shall preserve all information and records related to the breach (including backups) and immediately begin the breach investigation. The Supplier shall, in coordination with SNB, the OCIO, and/or the provincial department or agency concerned, take reasonable steps to mitigate the impact and minimize damages from the breach, and take steps to prevent recurrence of the Privacy or Security Breach. Where it is reasonable in the circumstances to believe that a Privacy Breach creates a risk of significant harm to an individual whose personal information was involved in the Breach, the Supplier shall notify the individual and the OCIO as soon as possible, and no later than 48 hours, of the Privacy Breach.

6.8.3 SNB agrees that: (i) an unsuccessful Privacy or Security Breach attempt will not be subject to this section; and (ii) Supplier's obligation to report or respond to a Privacy or Security Breach under this Section is not and will not be construed as an acknowledgement by the Supplier of any fault or liability with respect to the Privacy or Security Breach. For the purposes of this paragraph an unsuccessful Privacy or Security Breach attempt is one that results in no unauthorized access to Personal Information or to any of the Supplier's equipment or facilities storing Personal Information, and may include, without limitation, pings and other broadcast attacks on firewalls or edge servers, port scans, unsuccessful log-on attempts, denial of service attacks, packet sniffing (or other unauthorized access to traffic data that does not result in access beyond IP addresses or headers) or similar incidents.

### 6.8.4 Privacy Complaints

The Supplier shall ensure procedures are established to manage and investigate privacy complaints in accordance with the RTIPPA that it receives in the course of providing the Services under this Agreement.

## 6.9 Other Privacy Agreement

In the event that the Supplier is subject to the provisions of a Data Use and Confidentiality Agreement or a Non-Disclosure Agreement with SNB, the obligations contained therein shall be deemed incorporated into this Agreement and shall remain in full force and effect notwithstanding that the provisions may be more onerous than those contained herein. For a full list of Privacy obligations, see Schedule "C".

## 6.10 SURVIVAL



The provisions of this article shall continue to bind the Supplier notwithstanding the expiration or termination of this Agreement.

## **7. INDEPENDENT CONTRACTOR**

The Supplier is an independent contractor and no provision of the Agreement that gives SNB a measure of control over the provision of Services or Goods shall be construed so as to cause the Supplier or its personnel to be considered employees of SNB.

For greater certainty, when the Supplier is dealing with a third party as the apparent agent of SNB with SNB's specific knowledge and written consent, the Supplier shall remain an independent Supplier and not an employee or other agent of SNB and shall not conduct itself or represent itself to any person to be acting in a manner inconsistent with this Agreement. The Supplier shall disclose the nature of its relationship to SNB to any and all third parties with whom the Supplier is dealing.

## **8. ASSIGNMENT AND SUBCONTRACTING**

8.1 The rights and liabilities of this Agreement are not assignable by the parties without the prior written consent of the other.

8.2 The Supplier shall not subcontract any part of its obligations under this Agreement without the prior written consent of SNB.

8.3 Consent under Article 8.2 shall not relieve the Supplier from any of its obligations under this Agreement or impose on SNB any liability to the subcontractor.

## **9. LIABILITY AND INDEMNITY**

9.1 Each party (the "indemnifying party") agrees to indemnify and hold harmless the other party (the "indemnified party"), its agents and employees from and against any third party claims for injury to persons (including death) or damage to tangible personal property to the extent caused by its negligence or intentional misconduct during and within the scope of performance of this Agreement, provided the indemnifying party gives to the indemnified party:

- (a) prompt written notice of the claim; and,
- (b) sole control and authority to defend/settle; and,
- (c) cooperation and assistance in the defense and settlement.

9.2 Each party acknowledges that it will be liable and indemnify the other party for any losses, damages, liabilities, deficiencies, actions, judgements, interest, awards, fines, costs or expenses of whatever kind arising from or related to its failure to comply with any of its obligations under the Agreement. Notwithstanding the above and subsection 9.1, the parties expressly acknowledge and agree that they shall not be liable for each other's indirect or consequential damages or for lost profits or revenues under this Agreement, regardless of whether such a liability arises in tort (including negligence), contract, fundamental breach or breach of a fundamental term,

misrepresentation, breach of warranty, breach of fiduciary duty, indemnification or otherwise

- 9.3 The Supplier's and SNB's entire liability for all claims in the aggregate arising from or related to this Agreement shall not exceed the maximum fees payable in accordance with Schedule "B" attached hereto.
- 9.4 No action, regardless of form, arising out of this Agreement may be brought by either party more than two years after the facts giving rise to the cause of action have occurred, regardless of whether those facts by that time are known to, or reasonably ought to have been discovered by such party.

## 10. RETENTION OF RECORDS

- 10.1 The Supplier shall retain data and back up copies of data collected in the performance of the Services in accordance with the requirements set out in the Statement of Work (Schedule A).
- 10.2 During the Term of this Agreement and for seven (7) years following its termination or expiration:
- (a) the Supplier shall maintain proper financial records in accordance with generally accepted accounting principles and in such detail as is, in the opinion of SNB, necessary for the proper accounting of public funds expended under this Agreement; and,
  - (b) the Supplier shall prepare and retain such records of account respecting all Services provided to SNB under this Agreement and all financial commitments and expenses incurred in relation to this Agreement, which records and all contracts, paper correspondence, financial statements, books, accounts, and other similar information of the Supplier relating to such Services, commitments and expenses are to be open to examination and audit by SNB or authorized representatives upon reasonable notice by SNB during regular office hours or otherwise made accessible to SNB .

## 11. DEFAULT

- 11.1 Any of the following events of default or circumstances shall constitute default ("Default") under this Agreement, namely:
- (a) if the Supplier becomes insolvent, makes a general assignment for the benefit of its creditors or a proposal under the *Bankruptcy and Insolvency Act* (Canada), or if a petition is filed against the Supplier under the *Bankruptcy and Insolvency Act* (Canada), or if the Supplier shall be declared bankrupt, or if a liquidator, trustee in bankruptcy, custodian, receiver, receiver and manager, or any other officer with similar powers shall be appointed of or for the Supplier, or if the Supplier shall commit an act of bankruptcy or shall propose a compromise or arrangement under the *Companies' Creditors Arrangement Act* (Canada) or any similar legislation, or institute proceedings to be adjudged bankrupt or insolvent or consent to the institution of such proceedings or

consents to the appointment of a receiver or manager or admit in writing inability to pay debts generally as they become due;

- (b) if any of the property of the Supplier shall be seized or taken in execution or in attachment by a creditor of the Supplier, or if an order for seizure and sale shall issue against any of the property of the Supplier, or
- (c) if the Supplier fails to observe or perform any material term, covenant or obligation contained in this Agreement.

## 12. TERMINATION FOR CONVENIENCE

- 12.1 Either party may terminate this Agreement without cause by provision of **thirty (30) days'** notice, such notice being provided in accordance with the provisions of Article 16.
- 12.2 Where the Agreement has been terminated, other than for cause, SNB shall pay to the Supplier such amounts as are properly attributable to the Services performed or costs or financial commitments incurred prior to the date of termination which cannot otherwise be avoided. Prepaid annual subscriptions are non refundable if terminated for convenience by SNB. If Beauceron terminates for convenience, prepaid annual subscription will be refunded on a prorated basis based on date of termination..
- 12.3 All work authorized by this Agreement prior to the effective date of termination without cause shall be completed by the Supplier as if this Agreement were still in full force.

## 13. TERMINATION FOR CAUSE

- 13.1 Upon any Default by the Supplier as outlined in Article 11, SNB may at its sole discretion, immediately terminate this Agreement by giving written notice to the Supplier of such termination. Termination of this Agreement for Default shall be without prejudice to any right, including any right of indemnity, remedy or relief vested in or to which SNB may be entitled by reason of the Default, breach or non-observance of any term, covenant, or condition of this Agreement on the part of the Supplier to be observed or performed, all of which right, remedy or relief shall survive such termination.
- 13.2 If either party to this Agreement is in breach of any of its obligations under this Agreement, the other party may give notice in writing of the breach to the defaulting party and request the latter to remedy it. If the party in breach fails to remedy the breach within fifteen (15) days after the date of delivery of such written notice, then this Agreement may be terminated immediately by further written notice of termination given by the complaining party.
- 13.3 All Services authorized by this Agreement prior to the effective date of termination shall be completed by the Supplier as if this Agreement were still in full force.
- 13.4 Upon completion of all work pursuant to Article 12.3 or Article 13.3, the Supplier shall immediately turn over to SNB all materials and Confidential Information generated during the performance of the Services under this Agreement, and

further the Supplier shall return all confidential information furnished to the Supplier by SNB pursuant to this Agreement.

If SNB suspects any fraudulent, criminal or illegal activity related to this Agreement, SNB may terminate this Agreement immediately.

#### 13.5 **Costs of Termination for Cause.**

- a) If this Agreement is terminated for cause by SNB under Article 13, the Supplier will be responsible for and will reimburse SNB for all reasonable, documented loss, costs and damages incurred by SNB as a result of or arising from the termination for cause, including any costs incurred by SNB to correct any defects or deficiencies in any of the Services. In addition, the Supplier will be responsible for and reimburse SNB for all reasonable, documented costs incurred by SNB to procure any of the Services from another provider, subject to a monetary limitation of \$210,000.00.
- b) Despite Article 13.5(a), the Supplier will not be liable for any employee salary or benefit costs, travel, legal expenses and similar costs incurred by SNB, any costs of the respondents to a new RFP, or the amounts paid by SNB to a new provider for the Services for the duration of the Term of this Agreement.

### 14. **OBLIGATIONS OF SUPPLIER UPON TERMINATION OR EXPIRY OF AGREEMENT**

All Work authorized by SNB under this Agreement before the effective date of termination:

- a) under Article 12 will be completed by the Supplier as if this Agreement were still in full effect;
- b) under Article 13 will immediately stop on the termination date unless SNB directs that it be completed by the Supplier, in which case the Supplier will complete the authorized Work as if this Agreement were still in full effect until the work is completed.

Upon termination of the Agreement for any reason, whether by expiration of the Term or pursuant to Articles 12 or 13, the Supplier agrees to return all Records, data, information and materials in its possession including data back-ups provided to the Supplier under this Agreement to SNB or to any successor chosen by SNB in order to facilitate the transition. Once receipt is confirmed in writing by SNB, the Supplier will securely destroy these Records (except those records the Supplier is required to keep legally), data, information and materials. SNB agrees that the Supplier will be compensated, up to the date of expiry or termination of this Agreement, in accordance with the terms of Schedule "B" attached hereto.

### 15 **DISPUTE RESOLUTION**

- 15.1 Best Efforts to Resolve Disputes: In the event of any disagreement, failure to agree or other dispute between the Parties arising out of or in connection with this Agreement, including in respect of the interpretation of any provision of this Agreement or whether a Party has breached any of the provisions hereof ("Dispute"), the Parties agree that they will make all reasonable efforts to settle any such Dispute amicably as set out in this Article 15.

- 15.2 Initial Proceedings and Escalation: In the event of any Dispute arising under this Agreement between the Parties including but not limited to:
- a) A dispute regarding monies or amounts owned by either Party to the other;
  - b) A dispute regarding any decision relating to Force Majeure;
  - c) The giving or withholding of any approval; or
  - d) Any other obligation of SNB or the Supplier as set out in the Agreement unless otherwise provided herein.
- 15.3 The Parties shall attempt to resolve the Dispute using the following process:
- a) Either Party (the "Initiator") can submit a notice of Dispute to the other party (the "Responder").
  - b) Within three (3) business Days of a Notice of Dispute, the Supplier's Contract Manager and SNB's Contract Manager shall meet via telephone (the "Contract Manager's Meeting") for the purpose of resolving the Dispute.
  - c) If the Dispute remains unresolved following the Contract Manager's Meeting or the Meeting fails to occur within the prescribed time, the Supplier's Project Director and SNB's Project Director shall meet within five (5) business days via telephone (the "Project Director's Meeting") for the purpose of resolving the Dispute.

Except where clearly prevented by the issue in dispute, both Parties agree to continue performing their respective obligations under this Agreement while the Dispute is being resolved unless and until such obligations are terminated or expire in accordance with the provisions hereof.

## 16. NOTICES

Wherever in this Agreement notice is required or permitted to be given or served by either party to or on the other, the notice shall be in writing and shall be delivered personally to the authorized designate or sent by prepaid, registered mail, or by email or facsimile, and each such notice shall be deemed given on the date of delivery namely three (3) days after mailing in the case of mail and two (2) hours after sending in the case of email or facsimile transmission sent during normal business hours. If notices are sent by email or facsimile transmission outside of normal business hours each such notice shall be deemed given two (2) hours after the commencement of the next normal business day. No notice may be given by mail during a real or apprehended mail strike in Canada. The specified addresses may be changed from time to time by either party by notice as above provided.

<u>To the Supplier</u>	<u>To SNB</u>
Authorized designate of the Supplier	Authorized designates of SNB
David Shipley Attention: Beauceron Security Inc. 61 Rue Carleton Street, Suite 3 Fredericton, NB E3B 3T2  Email: <a href="mailto:david@beauceronsecurity.com">david@beauceronsecurity.com</a>	Attn: Business Owner: Director – SNB Technology Services Business Application Services (Treasury Board) Will Davidson <a href="mailto:Will.davidson@snb.ca">Will.davidson@snb.ca</a> 435 Brookside Drive Suite 30 Fredericton NB E3A 8V4

	<p>Privacy Breach:  Chief Privacy Officer – SNB  PO Box 1998  Fredericton, NB, E3B 5G4  Erin Hardy; <a href="mailto:erin.hardy@snb.ca">erin.hardy@snb.ca</a></p> <p>Chief Privacy Officer – Treasury Board  230 Hilton Rd  Fredericton, NB  E3B 6B2  Joanne Fletcher; <a href="mailto:Joanne.fletcher@gnb.ca">Joanne.fletcher@gnb.ca</a></p>
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**17. GENERAL CONDITIONS**

- 17.1 Entire Agreement and waiver. This Agreement constitutes all of the agreements between the Supplier and SNB pertaining to the subject-matter of it and supersedes all prior agreements, undertakings, negotiations and discussions, whether oral or written, of the parties to it and there are no warranties, representations or other agreements between the parties to it in connection with the subject-matter of it except as specifically set forth or referred to in this agreement. No supplement, modifications, waiver or termination of this Agreement shall be binding unless executed in writing by the party hereto to be bound thereby. No waiver of any other provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions (whether or not similar) nor shall the waiver constitute a continuing waiver unless otherwise expressly provided.
- 17.2 Extended Meanings. In this Agreement, words importing the singular number include the plural and vice versa, words importing the masculine gender include the feminine and neuter genders; and words importing persons include individuals, sole proprietors, corporations, partnerships, trusts and unincorporated associations.
- 17.3 Governing Law. This Agreement will be governed by the laws of New Brunswick and Canada. In any legal proceeding, this Agreement will be treated as having been performed in New Brunswick. Each Party submits to the exclusive jurisdiction of the courts of New Brunswick for all matters arising from this Agreement.
- 17.4 Invalidity of provision. The invalidity or unenforceability of any provision of this Agreement or any covenant in it shall not affect the validity or enforceability of any other provision or covenant in it and the invalid provision or covenant shall be deemed to be severable.
- 17.5 Force Majeure means a delay in the performance of the Services occurring without the fault or negligence of either party, which delay both parties could not have reasonably foreseen, caused by events beyond the control of either party or by such type and kind of events as set forth below, but not limited to those specific events. The types and kinds of events referred to in this Article include the following: acts of God; acts of the public enemy; civil war; insurrections or riots; floods; explosions; earthquakes or serious accidents; unusually severe weather; epidemics or quarantine restrictions; governmental priorities or allocation requirements or orders affecting materials, labour, equipment and facilities; fuel shortages; freight embargoes; strikes or labour troubles causing cessation, slowdown or interruption of work; and other

similar events, or a delay in performance of a subcontract by a subcontractor due to any of the events referred to above which is beyond its control and without its fault or negligence.

In the event of a Force Majeure, the time for completing the delivery of that portion of the Services which have been delayed shall be extended by a period equal to the delay so caused. SNB may terminate this Agreement if the event of Force Majeure exceeds a period of 60 days.

Despite any other provision of this Agreement, if, because of a Force Majeure, either Party (the "Affected Party") is prevented from fulfilling its obligations under this Agreement (the "Affected Obligations"), it will be relieved of the Affected Obligations to the extent, and for the duration, of the Force Majeure if the Affected Party:

- (a) within five (5) business days of becoming aware of the Force Majeure gives written notice to the other Party describing the Affected Obligations and nature and expected duration of the Force Majeure; and
- (b) takes commercially reasonable steps to mitigate the consequences of the Force Majeure and continues to perform the Affected Obligations to the extent possible.

The Affected Party will use commercially reasonable efforts to resume as soon as possible the performance of any obligation affected by a Force Majeure.

#### 17.6 Conflict of Interest.

Unless otherwise agreed in writing in advance by The Chief Executive Officer of SNB:

- (a) Supplier warrants that at the date of this Agreement, no conflict of interest, or any circumstance that might interfere with independent and objective exercise of judgment, exists or is likely to arise in relation to execution of this Agreement or its subject matter. Supplier undertakes to notify SNB, in writing, immediately upon becoming aware of the existence, or possibility, of a conflict of interest and agrees to comply with any reasonable directions of SNB to appropriately manage the conflict of interest, within the time frame stipulated by SNB in writing.
- (b) Where the Supplier acts as a Project Manager for SNB, it shall be prohibited from submitting proposals to Requests for Proposals (RFP's) concerning the same project.
- (c) Where the Supplier acts as a Project Manager for SNB, it shall be prohibited from rendering any goods or Services that are outsourced for the same project.

#### 17.7 Schedules. The attached Schedules "A", "B" and "C" hereto forms a part of this Agreement. In the event of conflict or inconsistency between one or more of the provisions of the documents specified below, the documents will govern in the following order:

- (i) This Agreement;

(ii) Schedules to this Agreement;

17.8 Amendment. No modification of this Agreement is valid unless set out in writing by the parties.

17.9 Language. The parties have required that this Agreement and all documents relating thereto be drawn-up in English. Les parties ont demandé que cette convention ainsi que tous les documents qui s'y rattachent soient rédigés en anglais.

17.10 Warranties. The Supplier warrants and represents to SNB that:

- (a) the Services to be provided under this Agreement will conform in all respects to Schedule "A."
- (b) the Services will be delivered in a proper, efficient and business-like manner.

17.11 Ownership of Work Product/Services. Any work product created under this Agreement shall be owned as follows:

- (a) unless otherwise agreed in writing, all contract materials and any intellectual property arising out of or created as a result of the performance of any obligation under this Agreement, including the delivery of Services and the creation and delivery of deliverables, shall vest in SNB. As between the parties, each party shall remain the exclusive owner of its pre-existing intellectual property and any enhancements, additions, or modifications to its pre-existing intellectual property and any derivatives of its pre-existing intellectual property by whomever made and whenever made ("SNB Materials" or "Supplier Materials," as the case may be).
- (b) if created jointly by SNB and the Supplier, and the participants agree prior to development of the work product, all right, title, and interest (including all rights of copyright) shall be jointly owned by the parties, as tenants in common and such participant(s) shall have the unrestricted right to, and to authorize others to use, produce, reproduce, transfer, convey, publish, license, commercially exploit, develop derivative works based upon, and otherwise deal with all or any part of the work product therein and to enforce such participant's intellectual property rights against third parties, without the consent of the other and without any obligation to the other for profit generated; and
- (c) SNB acknowledges that the Supplier and/or its licensors retain any and all intellectual property rights in and to the pre-existing Supplier intellectual property or third party intellectual property and that the delivery of the Services to SNB shall not constitute an assignment or transfer of any intellectual property rights in such pre-existing intellectual property. The Supplier hereby grants to SNB a fully paid-up, royalty-free, non-exclusive, sub-licensable license to use in perpetuity and solely for SNB's operations any Supplier Materials embedded in a Deliverable provided to SNB under this Agreement.
- (d) SNB hereby grants to the Supplier a fully paid-up, royalty-free, non-exclusive, sub-licensable license to use SNB Materials in the



performance of this Agreement. The Supplier shall be free to use, and allow others to use, for any purpose the residuals arising out of or related to the use of SNB Materials under this Agreement. The term residuals excludes SNB Confidential Information and means information in non-tangible form, that may be retained by persons who have contributed to, worked on, or had access to the Materials, including ideas, concepts, know-how, methodologies, techniques, and other items of general usefulness or utility.

17.12 Electronic Signatures. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement. The counterparts of this Agreement and all ancillary documents may be executed and delivered by facsimile or other electronic signature by any of the parties to any other party and the receiving party may rely on the receipt of such document so executed and delivered by facsimile or other electronic means as if the original had been received.

17.13 Time of the Essence. Time shall be of the essence of this Agreement.

**IN WITNESS WHEREOF** the parties hereto have executed this Agreement as of the day and year first above written.

**Service New Brunswick**

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Name: Tania Davies  
Title: VP Service New Brunswick

**Beauceron Security Inc.**

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Name:  
Title:

## **Schedule “A” Statement of Work**

Beauceron will supply SNB with a Cyber Security Awareness and Training Solution, based on the requirements and guidelines outlined in RFP # 8020052-20 and the Beauceron response.

### **A. Deliverables**

The Cyber Security Awareness and Training Solution, Services and Supplier must:

1. Be provided via Software as a Service (SaaS), (cloud based), hosted in Microsoft’s Azure geo-redundant data centers in Canada (specifically Ontario and Quebec). All data is processed in Canada and all data archives/backups are stored in Canada
2. Record user interaction, training intake and create an auditable (exportable) trail of activity (logging) with an automatic reminder to users to complete assigned materials and tests
3. Not reduce functionality through maintenance, upgrades or changes to Beauceron’s SaaS SLA, ([https://www.Beauceron\\_security.com/tos](https://www.Beauceron_security.com/tos)) (Exhibit A) unless otherwise agreed by both parties
4. Advise SNB no less than 30 days before Beauceron’s SaaS SLA will be modified
5. Provide support (triage, response time and escalation as defined in Beauceron’s RFP response to requirement 3.8) through normal business hours (8:15 AM to 5 PM AST)
6. Maintain Uptime commitment of 99% availability (detailed definition below), and clearly communicate outage periods, whether scheduled or unplanned
7. Monitor and report on Chronic SLA Failure and deliver Service Credits/Remedies as detailed in the Sections – Chronic SLA Failure and Service Credits/Remedies below
8. Deliver maintenance releases, patches and product enhancements on a monthly basis and provide free of charge to customers with active subscriptions, as outlined below in the Section Preventative Maintenance details. Customers will be notified via a change management e-mail list, or via the service status whenever there is a major release that could impact their service availability. Most updates are done outside normal business hours, and customers are notified 30 days, 15 days, and 2 days in advance of any changes that could cause a service disruption
9. Enable SNB to retain control of all supplied, created and collected data within the proposed solution and all Entity and personal data collected and/or created must not be further processed or disclosed except for authorized purposes
10. Encrypt all data at rest, in use and in transit
11. Provide automatically generated and on demand reports through the Beauceron portal, as per details listed in Beauceron’s RFP Section 6 Reporting response.
12. Provide updates and training if required, when new content (updates and/or new, features, approaches, topics or subjects) is pending release or available.
13. Provide a customizable Microsoft Outlook (Office 365) add-in that includes ability for users to report suspicious phishing attempts and explain why they think the item is a phish
14. Leverage modern authentication through Active Directory Federation Services for single sign-on (SSO) authentication

15. Authenticate external users to applications via modern authentication methods such, as but not limited, to SAML and ADFS
16. Provide quarterly sales reports of all purchases associated with this Agreement
17. Vendor shall provide SNB with 90 days notice and will warranty that all services, SLA and availability will be retained or improved before any change to the hosting provider.

## **B. System Availability**

Beauceron shall use commercially reasonable efforts to provide SNB with a Service Level of at least 99% uptime of the Hosted Software on a 24 hours per day, 7 days per week, 365 days per year basis (“Service Level Goal”). The Service Level is determined by subtracting from 100% the percentage of minutes during the month in which the Hosted Software was unavailable or inaccessible to SNB. Service Levels below 99% will trigger a response to SNB and the beginning of an investigation within 1 hour. As deemed appropriate in Beauceron’s sole discretion, Beauceron will provide SNB with a corrective action plan to restore Service Levels to at least 99.9%.

**B.1 Service Level Exclusions.** Beauceron is not liable for any Hosted Software downtime or inaccessibility caused in whole or in part by any of the following:

1. Scheduled Downtime for Preventative Maintenance;
2. SNB’s: (i) use of any hardware, software, or services not provided by Beauceron as part of its Hosted Software; (ii) use of the Hosted Software in a manner inconsistent with Beauceron’s direction, instruction or guidance; (iii) faulty input, instructions, or arguments (such as requests to files that do not exist); (iv) actual or threatened breach of any agreement(s) between Beauceron and SNB, including SNB’s excessive and unauthorized use and/or failure to pay associated fees and costs; or (v) failure, negligent or otherwise, to follow appropriate security practices;
3. Any person gaining access to Beauceron’s data center and/or Hosted Software by means of the SNB’s passwords, equipment, or other means of access without Beauceron’s express written approval; or
4. Factors outside Beauceron’s reasonable control, including, but not limited to: (a) network or device failure external to Microsoft Azure’s data center, at the SNB’s site, or between Microsoft Azure’s data center and SNB’s site; or bugs or defects in infrastructure software (such as operating system software, database software, and content management software).

## **C. Routine System Monitoring**

Beauceron will use monitoring tools to monitor software (applications, operating system, databases, etc.) and hardware (routers, switches, servers, etc.) performance and integrity. These tools must be configured to send prioritized alerts to designated engineers in case of any downtime or failure of any infrastructure or application. The Beauceron System Administrator and/or Technical Manager will also regularly monitor the Beauceron data center for Preventative Maintenance issues, such as the availability of updates, patches, and/or other changes to the operating system of the Hosted Software.

**D. Chronic SLA Failure**

A chronic SLA Failure is defined as 3 or more outages in a calendar month, the occurrence of which is agreed by the parties to justify a remedy or remedies in addition to the award of SLA Credit(s), such as termination of the impacted services. In the event of a Chronic SLA Failure, SNB should have the additional right to terminate the affected service without penalty, following executive escalation as outlined in Article 15 of the main body of this Agreement.

**E. Service Credits/Remedies**

Beauceron will provide the following service credit program:

<b>Monthly Availability</b>	<b>Service Credits</b>
99% –100%	No service credits
95% – 98.9%	Beauceron credits SNB one (1) day of annual service cost
Below 95%	Beauceron credits SNB based on (95% – availability percentage) * one (1) day service cost

Service credit shall be limited to a maximum of one (1) month of cloud service costs in a monthly reporting period.

Quarterly meetings will occur to discuss the Monthly Reports and determine if any penalties should be addressed.

Service credits are accrued for SNB through the life of the contract.

## **F. Preventative Maintenance**

1. "Preventative Maintenance" includes installation of patches, bug fixes, upgrades to the operating system, hardware, and/or firmware upgrades, and any other measures that Beauceron deems necessary to ensure the proper functioning and security of its data center and Hosted Software, in its sole and exclusive discretion.

- Beauceron requires a monthly maintenance window for all their systems. This will be the second Sunday of the Month. Beauceron will inform SNB by Monday before the scheduled maintenance if Beauceron will be taking the maintenance window for that week
- Beauceron releases quarterly application fixes and will coordinate the release with the appointed business owner. All releases will be applied to test system prior to being implemented in production.

2. SNB acknowledges that Beauceron shall have the exclusive right to schedule and implement Preventative Maintenance measures, including those resulting in system and application downtime, rendering the Hosted Software temporarily inaccessible ("Scheduled Downtime").

- Any planned maintenance will be performed in the scheduled monthly maintenance window unless Beauceron determines that Beauceron needs to perform the maintenance early. If Beauceron does need to perform maintenance outside of the maintenance window it will be scheduled with the SNB business owner.

3. Beauceron will make every commercially reasonable effort to perform Preventative Maintenance and Scheduled Downtime so as to minimize any SNB impact.

- Any emergency maintenance will be performed after hours when possible. Beauceron will notify the SNB business owner of any possible issues as soon as Beauceron is aware and will determine together the best time to perform the maintenance.

4. Updates and patches to the operating system and Hosted Software will be tested for performance and stability issues in a secure environment before they are implemented.

5. Beauceron will maintain a log that identifies: (i) the date and time of Preventative Maintenance; (ii) the individual performing the Preventative Maintenance; (iii) the individual who provided access to the data center and Services if other than the individual performing the Preventative Maintenance; (iv) the Preventative Maintenance performed; and (v) any equipment removed or replaced during Preventative Maintenance. Only personnel that have been identified and approved by SNB will have access to the system. All access will be tracked in a log that can be reviewed by SNB on request.

**Schedule "B"**  
**Ordering and Payment**

**1. Services.** Beauceron will receive annual remuneration for Services provided at the appropriate rate based on usage volume as outlined below in Table 1: Fee Rates:

*Table 1: Fee Rates*

Item	# users	Annual Pricing for...		
		Year 1	Year 2	Year 3
<b>Subscription Fee per user annually:</b>				
Cloud Hosted Subscription Fee	1-10,000	\$6.00	\$6.00	\$6.00
Cloud Hosted Subscription Fee	10,001-20,000	\$5.00	\$5.00	\$5.00
Cloud Hosted Subscription Fee	20,001-30,000	\$4.50	\$4.50	\$4.50
Cloud Hosted Subscription Fee	30,001-40,000	\$4.50	\$4.50	\$4.50
Payment limit for three year cost for 14,000 subscriptions-->	\$210,000.00			
Other Options / Enhanced Features				
Consulting Services Per Diem Rate-->	\$ 1,500 per day			
<b>Note:</b> Services included are outlined in RFP response				

**2. Payment Limit.** Despite any other term of this Agreement, the total amount payable by SNB to Beauceron for all fees will not exceed \$ 210,000 CAD (the "Payment Limit"), not inclusive of HST, based on a projection of 14,000 subscriptions. (See Table 2 below).

*Table 2: Projected Annual Fee Disbursements*

Description	Year 1	Year 2	Year 3
Projected Number of Users	14,000	14,000	14,000
Total annual price (per user \$ 5.00)	\$70,000.00	\$70,000.00	\$70,000.00
<b>Total Projected over 3 years</b>			<b>\$210,000.00</b>

Regardless of whether the value of the time spent, and the expenses incurred, by the Supplier in performing the Work is greater than the Payment Limit (as appropriate above), nothing in this Agreement will relieve the Supplier from its obligation to perform all of the Work.

### 3. Volume discount pricing based on total count of annual Subscriptions

Number of Users / Subscriptions	Year 1	Year 2	Year 3
1-10,000	\$6.00	\$6.00	\$6.00
10,001-20,000	\$5.00	\$5.00	\$5.00
20,001 and over	\$4.50	\$4.50	\$4.50

### 4. Pricing availability, contract extension to other provinces, and volume-based pricing

Volume pricing is available to Other Public Sector Entities including all Parts 1-4 , crown corporations and municipalities . The annual contract volume pricing will be based on combined volumes of all participating organizations.

Pricing may also be extended to any other provincial government in Atlantic Canada but will require a separate contract and volume agreement. Provincial governments can not combine volumes outside of their Jurisdiction to achieve lower pricing.

### 5. Payment terms, volume true up and invoicing

- a) Subscriptions will be paid annually in advance
- b) The first invoice will be created on contract signing
- c) Payments for years two and three will be invoiced on annual anniversary date of the Term
- d) Additional users may be enabled within the application at any time during the contract year
- e) SNB may add up to 10% additional users during a year before being invoiced additional fees
- f) Once the number of new users exceeds 10% of the start of the year subscriptions, an interim invoice will be required
- g) SNB reserves the right to reduce the volume of users at the Term anniversary date
- h) Volume discount pricing will be calculated based on the total number of users within this Agreement, at the issuing of each invoice
- i) SNB and the Supplier will arrange quarterly reports of sales volumes and may meet at any other times as required
- j) Both SNB and the Supplier will assign a contract manager who is responsible for the contract management process (subscription / user count & invoicing)
- k) Beauceron will be required to reference the assigned PO number on any billings and send invoices to the contact defined on the purchase order.



**6. Procurement options for additional departments and government agencies.**

Other public sector entities can leverage the volume pricing contained in this agreement. Other public sector entities may also have their own direct contracts with Beauceron or any Beauceron authorized partners in order to leverage the volume pricing in this agreement.

**7. Sample Invoice and Quarterly Sales Reports**

Invoices and Quarterly Sales Reports for all sales associated with this Agreement, should have the following detail, at a minimum:

<b>Date</b>	<b>Department/Agency</b>	<b>Contact Name</b>	<b># of Subscriptions</b>	<b>Rate</b>	<b>Total</b>
2020-01-01	NBCC	John Smith	1000	\$5.00	\$5,000
2020-06-01	NB Electric Agency	Jane Doe	6500	\$4.50	\$29,250
		<b>Total Cost</b>			<b>\$34,350</b>

## Schedule "C" Privacy Obligations

In this Agreement, "personal information" means recorded information about an identifiable individual as defined in the New Brunswick *Right to Information and Protection of Privacy Act* (RTIPPA) and which is collected, created, obtained or maintained by the Vendor for purposes related to the solution provided.

### *The Supplier must*

1. Provide an effective privacy management plan to ensure that personal information is managed and protected in accordance with the New Brunswick *Right to Information and Protection of Privacy Act*, applicable SNB privacy policies and the requirements of Article 6 including policies, practices and procedures related to:
  - 1.1. Privacy Statements
  - 1.2. Collection of personal information
  - 1.3. Use and disclosure of personal information
  - 1.4. Safeguards to protect personal information
  - 1.5. Requests to access and correct personal information
  - 1.6. Privacy complaint management
  - 1.7. Privacy breach management
  - 1.8. Public availability of privacy and information management policies and procedures
2. Designate a senior individual within its organization to be the point of contact for complying with privacy/security obligations
3. Maintain and provide an up-to-date list of all employees, subcontractors, or agents with access to the personal information
4. Require all employees, contractors of the subcontractors, or agents with access to personal information to sign a privacy and confidentiality agreement.
5. Limit collection of personal information to that needed to provide the solution
6. Collect personal information directly from the individual the information is about unless otherwise directed by SNB
7. Notify individuals from whom it collects personal information of: the purpose for collecting it; any statutory authority for the collection; the individual's right of access to and correction of the information
8. Ensure their employees effectively identify themselves to the individuals from whom they are collecting personal information and provide individuals with a means to verify they are working on behalf of SNB and authorized to collect the information
9. Make every reasonable effort to ensure the accuracy and completeness of any personal information to be used by it or SNB in a decision making process that directly affects an individual the information is about
10. Only permit access to personal information by authorized persons and for purposes authorized
11. Only use personal information as needed to provide the solution or for a consistent purpose, unless otherwise directed by SNB

12. Only disclose or transfer personal information as needed to provide the solution, unless otherwise directed by SNB
13. Immediately notify SNB of any request it receives for disclosure of personal information for a purpose not related to providing the solution, or if it becomes aware that disclosure may be required by law, and must not disclose the information unless otherwise directed to do so by SNB
14. Immediately notify SNB in the event of a privacy breach (as defined in RTIPPA) affecting the solution
15. Cooperate with SNB in the investigation of any actual or alleged privacy breach
16. GNB's written approval to subcontract the performance of any part of the services or functions related to the solution
17. Responsibility for the performance of any services provided by a subcontractor
18. Return or transfer of all personal information and records collected, maintained or created pursuant to providing the solution as directed by SNB to SNB or to a third party acting on its behalf upon completion of the contract
19. Continue to meet any obligations to protect personal information in a contract pursuant to this RFP after the completion of the contract.

**Exhibit "A"**  
**Berauceron Software-as-a-Service Agreement**  
<https://www.beauceronsecurity.com/tos>

At Beauceron Security Inc. we are in the business of risk management. To contain risks and keep fees economical, we have put in place the terms and conditions set out below. Upon accessing this website or upon purchasing our products or support services, as the case may be, you agree to these terms on conditions.

"We," "us", "our" or "Beauceron" refers to Beauceron Security Inc. "You" or "Your" refers to you as a Beauceron customer or a visitor to [www.beauceronsecurity.com](http://www.beauceronsecurity.com).

### **GENERAL**

This website and these terms and conditions are provided "as is" and are accessed and used by you at your own risk. Although reasonable efforts are used to ensure that the website is current and contains no errors or inaccuracies, we make no representations, warranties or guarantees that the information, content or materials included in this website will be error free, completely accurate or current at all times, or at any time.

Beauceron controls this website from its offices within New Brunswick, Canada. You agree that (a) all matters relating to access to, use of, or purchases through this website will be governed by the laws of New Brunswick and the federal laws of Canada applicable to New Brunswick; (b) the courts of York County, New Brunswick have jurisdiction; (c) the United Nations Convention on Contracts for the International Sale of Goods will not apply; and (d) you are responsible for complying with all local laws. Unless otherwise specified, references to dates and time of day mean Atlantic Standard Time.

Beauceron may modify these terms and conditions from time to time, for any reason, by posting revised terms and conditions on this website. Please review these terms and conditions from time to time so you will be apprised of any changes. If you continue to use this website after the revised terms and conditions have been posted, you will be deemed to have agreed to them.

### **HELPFUL DEFINITIONS**

**"Business Day"** means Monday to Friday except for statutory holidays in the Province of New Brunswick, Canada;

**"Confidential Information"** means any and all information disclosed, either directly or indirectly, by a disclosing party ("**Disclosing Party**") to a receiving party ("**Receiving Party**") in connection with this Agreement, whether provided before, on or after the Effective Date, including without limitation, any inventions or discoveries (whether or not patentable), trade secrets, ideas, concepts, prototypes, designs, financial information, technical data or know-how, marketing and product information, pricing, business plans, contracts policies and procedures, customer lists (including customer information), technologies (including computer programs, computer code, modules, scripts, algorithms, routines, systems, databases, equipment, features, processes,

methodologies, schematics, testing procedures, software design and architecture, design and function specifications, analysis and performance information, and user documentation), internal documentation and materials and any personal information pertaining to an individual or person, such as employees or customers, together with all notes, memoranda, analysis, records, or other documents prepared by Receiving Party or its representatives containing or based upon, in whole or in part, information acquired from Disclosing Party in connection with this Agreement; verbal, written or machine-readable form, and regardless of whether it is specifically identified or marked as "confidential" or "proprietary";

**"Documentation"** means the user and technical manuals in paper or electronic format for the Software that we generally make available to our customers, as updated, amended and replaced from time to time;

**"Effective Date"** means the earlier of the date on which (1) we receive your payment of the fees and (2) the date your users access the Software;

**"Maintenance"** means Updates and Upgrades to the Software;

**"Maintenance Release"** means periodic releases of revisions to the Software and may include any Update, release or other adaptation or modification of the Software that we may generally provide to our license holders; but, not an Upgrade;

**"SaaS Agreement"** or "Agreement" means these terms and conditions together with our proposal, quote, sales order or invoice;

**"Software"** or **"Software as a Service"** or **"SaaS"** means our cloud-based behaviour change platform to which we have provided you access;

**"Support Services"** means telephone and email answers to resolve inquiries concerning the functioning and use of the SaaS and malfunctions as set out in these terms and conditions;

**"Training"** means the education and training of your system administrators and other personnel to assist in preparing you to operate, manage and use the Software.

**"Update"** means changes to the Software to correct errors or defects, or to make the Software conform to our specifications; and,

**"Upgrade"** means improvements, enhancements, additions or changes to the Software which:

- (a) provide new or enhanced capability;
- (b) replace any portion of a Beauceron product; or,
- (c) enable the SaaS to operate with third-party technology.

## **TERM**

The initial term of this Agreement commences on the Effective Date and continues for a period of one (1) year, subject to early termination, unless otherwise specified on the proposal, quote, sales order or invoice. This Agreement may be automatically renewed thereafter for an unlimited number of one (1) year periods upon our receipt of your annual fees.

## **TERMINATION**

There are two ways this Agreement may be terminated prior to expiry.

First, if either of us breaches any provision of this Agreement, the non-breaching party may, by notice to the breaching party, terminate this Agreement upon one hundred and twenty (120) days written notice unless, in the case of a breach capable of remedy, the breaching party cures the breach within that period.

Second, either of us may terminate this Agreement within thirty (30) days written notice if the other commits one or more of the following breaches of this Agreement:

- (a) terminates our respective business;
- (b) voluntarily or involuntarily files a bankruptcy petition or similar proceeding under the laws of our respective jurisdiction;
- (c) becomes insolvent or makes an assignment for the benefit of creditors;
- (d) fails to comply with any other material provision of this Agreement; or,
- (e) you fail to pay us amounts due in accordance with this Agreement.

On termination of this Agreement, your use of the Software as well as any access to our Maintenance and Support Services will cease.

## **PAYMENT**

All fees will be set out in a proposal, quote, sales order or invoice as provided by us to you. Renewal fees are based on our then-applicable annual subscription fees. Support Services shall be performed on a "time and materials" basis and any statement of fees prior to the Support Services completion is an estimate only.

Fees for our excluded services below, as well as services not otherwise set out in these terms and conditions, shall be calculated at the then-applicable rate set forth in our proposal, quote, sales order or invoice indicating:

- (a) nature of services;
- (b) list of expenses; and,

- (c) registration numbers for applicable taxes.

Our invoices are payable:

- (a) by you upon receipt in Canadian dollars, unless otherwise specified in the proposal, quote, sales order or invoice, and
- (b) within thirty (30) days, unless otherwise specified in the SaaS Agreement or invoice.

You agree that you shall not withhold from payments any federal, state or provincial income tax, unemployment insurance premiums, premiums or contributions to any federal, state or provincial retirement plan or any other amounts not required by law.

### **SERVICE MODEL**

You may use our Software for your own internal use to:

- (a) measure, monitor and manage cyber risk as assessed by the system using our user surveys, self-assessments, education and quizzes as well as external threat information gathered by our SaaS;
- (b) deliver online-based educational materials via included course modules, licensed third-party content or your unique modules using our course builder tool;
- (c) conduct simulated social engineering attacks via email and text message against only your organization or a subsidiary using the built-in simulated phishing emails or custom emails;
- (d) deliver email newsletters for security awareness with content provided by us, developed by you or through licensed third-party content; and,
- (e) use any other features for the purposes they were designed according to the Documentation that we may make available to you during the Term.

You may not:

- (a) use, copy, modify, rent, sell, distribute or transfer any part of the Software except as provided in this Agreement, and shall not authorize or instruct any third party to engage in any of the specific uses of the Software as identified in in this Agreement;
- (b) connect to third party systems through unlicensed application programming interface;
- (c) reverse engineer, decode, decompile, or disassemble the Software;
- (d) sublicense the Software to third-party organization;

(e) add, remove, obscure or modify any label or other indication of trademark, copyright or other intellectual property rights on the Software, our Documentation or other written material supplied by us; or,

(f) duplicate or reproduce any Software, our Documentation or other written material supplied by us,

without our explicit prior written consent.

You acquire only the right to use the Software in accordance with this Agreement and you do not acquire any intellectual property rights to the Software, our Documentation or our Confidential Information. You retain all intellectual property rights to your content and data.

### **TRAINING**

You may use all of our training methods and materials supplied or developed under this Agreement (and these materials shall be considered our Documentation owned solely by us) during, and for the sole purpose of, this Agreement. Copying or reproducing any of our Documentation or training material for external distribution is strictly prohibited. Fees for training and Documentation shall be set out in our proposal, quote, sales order or invoice.

### **MAINTENANCE RELEASES**

A Maintenance Release may contain, among other things, revisions, error corrections, enhancements, improvements or other changes to the user interface, functionality, compatibility, capabilities, performance, efficiency or quality of the Software. Each Maintenance Release constitutes a part of the Software and is subject to the terms and conditions of this Agreement.

### **SUPPORT SERVICES**

Support Services are provided during normal business hours (9:00am to 5:00pm AST) on Business Days. We may engage certain third parties for the purposes of providing Support Services.

### **SUPPORT ROLES AND RESPONSIBILITIES**

We divide support requests into the following categories with the associated responsibilities:

(a) **Tier One** addresses basic user authentication issues, basic user interface questions and user questions about score, reporting suspected phishes, and typos and errors in custom content developed by you. You are responsible for all Tier One requests.

(b) **Tier Two** addresses administrative user questions related to managing your tenant not covered by our standard documentation. We, or our third-party contractor, will respond within one (1) Business Day of each Tier Two request.

(c) **Tier Three** addresses:



- (1) broken functionality in the SaaS; and,
- (2) service availability or speed issues.

### **TIER TWO AND THREE PROTOCOL**

We will notify you of the action that will be taken and, if applicable, of the availability of a fix. We will make all reasonably commercial efforts to:

- (a) restore the SaaS to functionality within one (1) Business Day an issue is reported if it is related to a service outage;
- (b) respond to any support requests and initiate resolution within one (1) Business Day of receipt to our support email address [support@beauceronsecurity.com](mailto:support@beauceronsecurity.com); and,
- (c) resolve each issue within five (5) Business Days from when the issue was reported.

### **EXCLUDED SERVICES**

The following are excluded from our Support Services:

- (a) any of your communication charges;
- (b) issues due to improper use of the SaaS resulting from insufficient training;
- (c) issues arising from applying the SaaS to uses for which the SaaS was not designed;
- (d) issues related to your system and software environment;
- (e) issues relating to your network;
- (f) telephone support relating to business-consulting or training-related issues; and,
- (g) government or regulatory changes affecting SaaS.

We may, on request and at then-prevailing rates, provide you with assistance with the excluded services on a Business Day subject to a minimum charge of:

- (a) One (1) hour for telephone, fax or modem consulting support; and
- (b) Eight (8) hours for on-site consultations (travel and living expenses will be charged at cost).

### **CONFIDENTIAL INFORMATION**

At all times during this Agreement and after its termination or expiration, each of us shall:

- (a) protect the confidentiality of the other party's Confidential Information with the same degree of care as it uses for its own similar information, but no less than a commercially reasonable degree of care;
- (b) not divulge or disclose the other party's Confidential Information to any third parties; and;
- (c) not use any Confidential Information for any purposes other than the performance of the obligations under this Agreement.

Confidential Information may only be used by those employees or agents who have a need to know such information for the purposes related to this Agreement.

Our respective confidentiality obligations do not apply to any information that is:

- (a) already known by the recipient prior to disclosure by the other party;
- (b) independently developed prior to, or independent of, the disclosure;
- (c) publicly available;
- (d) rightfully received from a third party with no duty of confidentiality;
- (e) disclosed with prior written approval;
- (f) disclosed under, or required by, law.
- (g) aggregate data gathered, created or interpreted by the Software, which will not contain any personal identifiable information.

### **EVENTS BEYOND OUR CONTROL**

If either of us is affected by any act of God, act of war, or other cause beyond our control and without fault or negligence, we shall promptly notify each other of the nature and extent of the situation. Neither of us shall be deemed to be in breach of this Agreement, or otherwise be liable to the other, by reason of any delay in performance or non-performance, of any of its obligations hereunder to the extent that such delay or non-performance is due to any delaying cause of which the other has been notified. As well, the time for performance of that obligation shall be extended accordingly, provided that we all use commercially reasonable efforts to perform.

### **WARRANTIES AND LIABILITY**

We represent and warrant to you that we own, or have sufficient rights to, all intellectual property rights to the Software and any third-party products used in the Software. The Software is provided "as is" and we do not warrant that use of the Software will be uninterrupted or error free.

We also warrant that our Maintenance and Support Services will be performed in a professional manner in conformance with generally accepted industry standards. We will rectify any Support Services which fail to conform with these standards provided you report to us in writing within thirty (30) days after the failure.

WE MAKE NO WARRANTIES, REPRESENTATIONS OR CONDITIONS WITH RESPECT TO THE SOFTWARE, MAINTENANCE OR SUPPORT SERVICES EXCEPT AS SET OUT IN THESE TERMS AND CONDITIONS AND ALL OTHER WARRANTIES, REPRESENTATIONS OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY EXCLUDED. WE DO NOT WARRANT ANY SOFTWARE OR OTHER PRODUCTS MANUFACTURED BY THIRD PARTIES AND SUPPLIED IN CONNECTION WITH THE SOFTWARE, MAINTENANCE AND SUPPORT SERVICES.

OUR LIABILITY FOR DAMAGES OR INDEMNIFICATION HEREUNDER SHALL BE LIMITED TO DIRECT DAMAGES AND SUCH AMOUNT SHALL BE NO GREATER THAN THE AMOUNT ACTUALLY BILLED TO YOU BY US FOR THE FIRST SIX (6) MONTHS OF THIS AGREEMENT. IN NO EVENT SHALL WE BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OR DAMAGES FOR YOUR LOST PROFITS, DATA, OPPORTUNITIES OR REVENUES RELATING TO THIS AGREEMENT. THESE LIMITATIONS AND EXCLUSIONS FROM LIABILITY SHALL APPLY REGARDLESS OF THE BASIS OF THE CLAIM, INCLUDING, WITHOUT LIMITATION, ANY CLAIM OF BREACH OF CONTRACT, AND SHALL APPLY FOR THE BENEFIT OF OUR OFFICERS, EMPLOYEES, AGENTS AND SUBCONTRACTORS.

NO ACTION, REGARDLESS OF FORM, ARISING OUT OF THIS AGREEMENT MAY BE BROUGHT BY EITHER PARTY MORE THAN ONE YEAR AFTER THE CAUSE OF ACTION HAS ARISEN, EXCEPT FOR PAYMENT OF AN OUTSTANDING ACCOUNT.

### **THINGS TO AVOID**

This SaaS Agreement, these terms and conditions or any right, licence, privilege or obligation provided herein may not be assigned, transferred or shared by you without our prior written consent, which consent shall not be unreasonably withheld. Any attempted assignment without such consent is void.

You may not issue press releases or otherwise publish any information with respect to the SaaS, Maintenance Releases or Support Services without our prior written consent.

### **EXTRA CONSIDERATIONS**

This Agreement will be governed in all respects by the laws of the Province of New Brunswick, Canada. Under no circumstances will either of us be a partner, employee or agent of the other. If any provision in this Agreement is held invalid or unenforceable it will be construed, limited or, if necessary, severed to the extent necessary to eliminate such invalidity or unenforceability.

### **WHERE YOU CAN FIND US**

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**+1 (877) 516-9245**

**[info@beuceronsecurity.com](mailto:info@beuceronsecurity.com)**