Appendix G: Application Service Provider (ASP) Agreement

{Example Only not for Official Use}

Application Service Provider (ASP) Agreement

Between
Vendor Name “Company ABC”
And
The Government of [insert applicable official name] (the “Government”)

Whereas, Vendor and the Government entered into ASP Agreement [insert applicable Agreement No.] which is between the Vendor and the Government, signed and dated by the Government on [insert applicable date], and by Vendor on [insert applicable date], for Vendor to facilitate the provision of electronic, on-line, real-time access to the electronic files of the Government which comprise the Secured Transaction/Collateral or Business Registry;

Now therefore, in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the Government and Vendor agree as follows:

1.0 Database Identification

1.1 This Agreement sets forth the terms and conditions for Vendor to facilitate the provision of electronic, on-line, real-time access to the electronic files of the Government that comprise the Secured Transaction/Collateral or Business Registry.

2.0 Definitions

The following terms will have the meaning ascribed to them below, unless otherwise stated hereunder.

2.1 “Access Services Agreement” means the Access Services Agreement executed by Vendor on [insert applicable date] and by the Government on [insert applicable date];

2.2 “Agreement” means this Agreement, inclusive of Appendices hereto, between the Government and Vendor;

2.3 “Appendix A” means the Client Fees payable by Clients to the Government for use of the Service;

2.4 “Application Solution”, means the Base Software and any Modified Software licensed by the Government from the Vendor;

2.5 “Business Day” means Monday through Saturday, excluding such holidays as may be determined by the Management Committee;

2.6 “Client”, means those individuals or entities authorized by the Government to have Electronic Access to the Database;

2.7 “Client Account” means the account established by Vendor on behalf of the Government to receive deposits from Clients;

2.8 “Client Agreement “means the contract between the Government and a Client for Electronic Access to the Database;
2.9 “Client Support Centre” means the operation, including personnel and processes, established by Vendor to provide assistance to Clients in their obtaining Electronic Access to the Database. The operation of the Client Support Centre is more fully described in subsection 13.2 of this Agreement;

2.10 “Client Transaction” means a single Electronic Access by a Client to effect a Database registration, search, update, discharge of interest, input or information retrieval;

2.11 “Database” means the electronic files of the Government which comprise the Secured Transactions/Collateral or Business Registry to which Clients may be granted access by the Government;

2.12 “Electronic Access”, means on-line, real-time, access to the Database;

2.13 “Project Team” means the representatives of Vendor and the Government who have been assigned by their respective organizations to perform the tasks specified in this Agreement;

2.14 “Parties”, means Vendor and the Government and “Party” means one of them as the context requires;

2.15 “Government’s Clearing Account” means the account set up by Vendor on behalf of the Government for the receipt by the Government of Client fees from the Client Account;

2.16 “Registry” means the Secured Transactions/Collateral or Business Registry of the Government;

2.17 “Service” means the facilitation by Vendor of the provision to Clients of Electronic Access to the Database for purposes including, but not limited to, registration, information retrieval, search, update and discharge of interest, input and information retrieval during the term of this Agreement;

2.18 “Vendor System” means the combination of information processing and telecommunications equipment, software and associated tables, acquired and developed by Vendor for provision of the Service. The Vendor System includes components developed to provide access to the Application Solution.

3.0 Agreement

3.1 The Government retains the Vendor to facilitate the provision of the Service to Clients, on behalf of the Government, for the compensation described in section 9.0 below. The Parties shall undertake their prescribed obligations in accordance with the terms and conditions of the Agreement. Clients shall contract directly with the Government for the Service.

3.2 In undertaking its obligations, Vendor shall ensure that the technology comprising the Vendor System meets industry-standard computing and networking requirements, including the use of commercial computing and network products supported by the vendor and the deployment of third party software at version levels supported by the licensors.

4.0 Term

4.1 Subject to subsection 4.2, payment of the amount prescribed in subsection 9.7, and provided only that neither Party is in material breach of any of its obligations hereunder the consequence of which the party not in material breach has terminated this Agreement for breach of contract, this Agreement shall be in effect from [insert date], to [insert date] and, thereafter, shall automatically continue, in accordance with the same terms and conditions, for an additional XX [enter number of years] year period until [insert date].

4.2 Either Party may provide written notification to the other Party at least twelve (12) months prior to the end of the initial XX [insert term] year term (i.e., written notification by [insert date], of its decision to terminate this Agreement at the end of the initial XX[ enter term] year term. Failure to provide such
written notification shall result in its automatic renewal for an additional XX [enter term] year period as prescribed in subsection 4.1.

5.0 Scope of Database Access

5.1 Clients shall be granted access to the Database for purposes including but not limited to registration, information retrieval, search, input, update and discharge of interest.

5.2 Vendor shall not disclose, or otherwise use or access, any Database information, except as provided or required under this Agreement or any other agreement between the Parties.

5.3 The Registrar of [insert Service name] the Government ("Registrar"), or the Registrar’s designate(s), shall not be considered Clients for their use of the Service, for the purpose of administration of the [insert applicable Government] Act and its Regulation.

6.0 Bulk Transfer of Data

6.1 Clients shall not use the Service to retrieve information from the Database in bulk, without the written permission of the Government Registrar or the Registrar’s designate.

7.0 Security Requirements

7.1 The Client Agreement, where applicable, shall include provisions restricting use of the Service to specified personnel of the Client by means of passwords and other forms of unique identification.

8.0 Privacy and Confidentiality Legislation, Regulation and Policies

8.1 All Client personal information as that term is defined in the [insert name of applicable Government privacy act] or any other applicable legislation (whether federal/provincial/state/municipal), including credit card identification, shall be deleted from the Vendor System within the time period(s) stipulated by the Management Committee.

8.2 Vendor shall not disclose or otherwise use any Database information or Client information, whether personal information or otherwise, except as permitted or required under this Agreement.

8.3 This Agreement and any disclosure of personal information hereunder is subject to and shall be made in accordance with the provisions of the [insert name of applicable Government privacy act].

8.4 Vendor shall only collect and use personal information as is necessary for the performance of Vendor obligations under this Agreement.

8.5 Vendor shall protect personal information by making reasonable security arrangements against risks such as tampering, theft, sabotage, unauthorized access, collection, use, disclosure and disposal. The Parties agree that what are reasonable security arrangements will be proportionate to the sensitivity and nature of the personal information and will be based on recognized industry standards, where applicable. Financial information is presumptively highly sensitive.

8.6 Except as required to permit access to the Database by Clients pursuant to subsection 5.1, and for purposes of accommodating the use of credit cards by Clients and Vendor normal email traffic, as set out in subsection 8.7, Vendor shall not disclose or permit the storage, copying or access to personal information in any manner outside [enter jurisdiction name], or to or by a foreign or foreign controlled entity.
The Parties acknowledge that certain Client personal information may be disclosed and stored outside [enter jurisdiction] in processing credit card transactions as part of a Client Transaction, and as part of Vendor normal email traffic whereby the contents of such messages may be stored in servers of Vendor parent company in the [insert jurisdiction]. Further, the Parties acknowledge that the prior Client knowledge of, and consent to, this disclosure and storage of such personal information outside of [insert jurisdiction] shall be obtained as part of the Client Transaction process. More generally, the treatment of credit card data by Vendor will comply with the applicable standards of the [insert jurisdiction name] Payment Card Industry Data Security Standards ("PCI DSS")

Vendor shall comply with privacy legislation and regulations of the Government in regard to the treatment of Client personal information, as well as any applicable Government policies regarding privacy and confidentiality brought to its attention by the Government from time to time.

Vendor shall take all commercially reasonable measures to ensure that its contractors and agents comply with the obligations pursuant to this Agreement. Vendor agrees and acknowledges that a breach of this Agreement by its contractors or agents shall be treated as if Vendor had committed the breach itself.

Vendor shall immediately notify the Government in writing of any actual or attempted tampering, theft, sabotage, or unauthorized collection, use, storage, access or disclosure of personal information.

Vendor shall immediately notify the Government in writing of any subpoena, warrant, order, demand or request that is from a foreign court, an agency of a foreign state or another authority outside [enter jurisdiction], which is being made for the disclosure of personal information held by or accessible to Vendor. Delivery of the notice shall be made by rush courier to the [insert applicable Government department to which notice to be delivered].

Immediately following receipt of otherwise and in any manner becoming aware of any subpoena, warrant, order, demand or request referred to in Section 8.11 above, Vendor shall institute and prosecute proceedings to resist and challenge such subpoena, warrant, order, demand or request.

Charges and Payment Terms

The Government shall determine an Schedule of fees to be paid by Clients for Electronic Access to the Database, which fees are described in Appendix ‘X’. In the event that the Government changes this Agreement of fees, it shall so advise Vendor in writing, and sufficiently in advance to permit Vendor to modify the fee structure under which Electronic Access is granted.

At daily intervals, Vendor shall transfer funds from the Client Account to the Government’s Clearing Account and from the Government’s Clearing Account to such other account(s) of the Government as the Government may designate from time to time.

There shall be added to all fees and other charges an amount equal to all Federal and State/Provincial, or harmonized, sales taxes or similar taxes which the Government determines Vendor is required to collect.

The Government shall provide all information and otherwise cooperate fully with Vendor to permit Vendor to fulfill its obligations with respect to the collection and remittance of all taxes.

As consideration for facilitating the provision of the Service, the Government shall pay Vendor:

the sum of [insert applicable $$] per month, on the first day of each month, commencing [insert date] and terminating [insert date], the sum of [insert applicable $$] per month, on the first day of each month,
commencing [insert date] and terminating [insert date], and the sum of [insert applicable $$
commencing [insert date] and terminating [insert date].

9.5.2 Credit Card Transaction Fees as follows:

i) Internet Credit Card Transaction Fee: A fee of $0.xx per credit card transaction that covers the per transaction costs charged to Vendor by the payment gateway for authorization, settlement and credit processing activities;

ii) Internet Credit Card Refund Fee: A fee of [insert amount] per refund occurrence for processing internet credit card refunds where the Government directs Vendor to issue a refund of the Government Fees (or a portion thereof) to the Client; and

iii) Credit Card Investigation Fee: A fee of [insert amount] per occurrence for undertaking internet credit card investigations on behalf of the Government. A credit card investigation will be deemed to occur when the credit card merchant bank has informed Vendor that the Client has disputed payment of the Government Fee after authorization has been received.

The credit card transaction fees described above shall not be payable to Vendor if they arose from the fault or negligence of Vendor in providing the Service to the Client.

9.5.3 The merchant fees and all other credit card usage related charges arising from the use of credit cards by Clients.

9.6 In the event that the Government exercises its right under subsection 4.2 to terminate this Agreement effective [insert date], the Government shall pay to Vendor the sum of $____, plus applicable taxes. Payment of this amount shall be due on or before [insert date].

10.0 Disclaimer of Warranties and Liabilities

10.1 Except as provided in this Agreement, neither Party makes any warranty, express or implied, by operation of law or otherwise, including any warranties of merchantability or fitness for a particular purpose. The Government makes no warranty as to the accuracy or completeness of any information or data in the Database, which disclaimer will be included in the Client Agreements.

11.0 Restrictions on Client Use or Disclosure of Database Information

11.1 Clients shall be restricted in their access to the Database and use of the information obtained thereby in accordance with the provisions of the Client Agreement and the provision of unique identification numbers to each authorized user of the Service, and/or the terms and conditions the acceptance of which is required by Clients for on-line access to the Database.

12.0 Bilingual Requirements

12.1 There are no bilingual requirements. [insert bilingual requirements if any].

12.2 Vendor shall facilitate the provision of the Service by the Government to Clients in compliance with the Official Languages Act of the Government. Specifically, the Service shall offer the following in [both] official languages:

12.1.1 Written and graphic Client materials for the Service, including brochures, e-mail communication, the Government web site, and the Client Agreement;
12.1.2 Client support from the Client Support Centre;

12.1.3 Communication with the Government concerning the operation of the Service; and

12.1.4 The undertaking of Client Transactions.

13.0 Service levels

13.1 Hours of Service Availability

For [insert jurisdiction]

13.1.1 The Agreement for hours of Service availability shall be from 7:30 A.M. to 9:00 P.M. [insert time zone] time during Business Days. This availability of the Service to Clients shall apply to all Client Transactions conducted remotely. For Client’s accessing the Service from a Government location, the hours of availability of the Service will be coincident with its hours of operation.

13.1.2 The Agreement hours of operation of the Service may be changed from time-to-time by the Management Committee without any required amendment to this Agreement.

13.1.3 Any required Agreement for maintenance for the Service will be undertaken outside of the Agreement of hours of operation.

13.2 Hours of Client Support Centre Operation

13.2.1 The Agreement hours of operation of the Client Support Centre shall be from 7:30 A.M. to 9:00 P.M., [insert time zone] time, Monday through Fridays, except for recognized holidays as determined by the Management Committee. During the hours and days that the Client Support Centre is not in operation, Clients requiring assistance may leave messages with the help desk for response by the Client Support Centre during its Agreement hours of operation.

13.2.2 The Agreement hours of operation of the Client Support Centre may be changed from time-to-time by a decision of the Management Committee without any required amendment to this Agreement.

13.3 Hours of Vendor Business Office Operation

The Agreement hours of operation of the Vendor business office are 9:00 A.M. to 5:00 P.M. Atlantic Time, Monday through Fridays, except for Government recognized holidays.

13.4 Service Review and Performance Standards

13.4.1 The Parties agree to the development of key service delivery processes, objectives and measurements. These objectives will be set out in an agreed-to Service Level document and will reflect the historical performance of the Service. The Service Level document will be a “living document”, subject to annual review.

The Service Level document will include a summary description of such matters as; Service level management and reporting, Service desk functions, incident management, problem management, system
and software change management, release management, availability management, capacity management, business continuity management and security management.

The Service Level document will also define Service delivery objectives and measurements, such as financial reporting, online services availability, response and recovery for Service outages (including disaster conditions) and Client support.

13.4.2 The Service delivery objectives and measurements developed under subsection 13.4.1 will form the basis of a formal review of the Service. The review shall be undertaken at the option of the Government on or about the third and sixth anniversaries of this Agreement (insert dates), respectively. The Government shall provide at least ninety (90) days written notification of its decision to proceed with the review to Vendor, after which the Parties will determine a mutually agreeable time and Agreement of actions for the review. The review will be undertaken in conjunction with any other provincial or territorial jurisdiction(s) that have also notified Vendor of their intention to do so.

13.5 Business Continuity and Disaster Plan

Vendor will draft a Business Continuity and Disaster Recovery Plan describing business continuity risks for the Service with planned responses, preparations and action plans. The document will be submitted to the Operations Committee for review and comment. The Business Continuity and Disaster Recovery Plan will be a “living document” subject to annual review a.

14.0 Responsibilities of the Parties

14.1 Vendor shall:

14.1.1 provide the Vendor System for the Service, including the database server, its operation environment, management of the environment, network facilities and the requisite software;

14.1.2 facilitate the provision of the Service by the Government to Clients;

14.1.3 provide a revenue management system to account for Client fees received by the Government. The revenue management system, at a minimum, shall consist of; (i) a Client Account to receive initial deposits from Clients, (ii) a Government Clearing Account for receipt by the Government of Client fees from the Client Account upon completion of a Client Transaction, (iii) the capacity for the transfer of funds into the Client Account by Clients by Electronic Funds Transfer, Electronic Cheque, Cheque, Money Order or Credit Card, (iv) a procedure for Clients to query the status of their payments into and from the Client Account, and (v) a reconciliation of all transactions processed through the Client Account and the Government Clearing Account;

14.1.4 provide, as required, software to Clients for installation on the Client’s workstation to permit Client Transactions pursuant to a software license between the Client and Vendor if required;

14.1.5 on behalf of the Government, establish and operate, with a financial institution selected by the Government, such accounts as it deems necessary including, without limitation, the Client Account and the Government Clearing Account;

14.1.6 accept and disburse funds in respect of the Client Account and the Government Clearing Account as required including receipt of Client fees, transfers between the accounts and payments to Vendor; and

14.1.7 work with the Government in a constructive and timely manner to enhance Client satisfaction and, more generally, the success of the Service.
14.2 The Government shall:

14.2.1 instruct Vendor to accept and disburse funds in respect of the Client Account, and the Government Clearing Account, as required, including the receipt of Client fees, transfers between accounts and payments to Vendor;

14.2.2 as applicable, permit Client access to the Database in accordance with the terms and conditions of the Client Agreement or, where there is no Client Agreement, in accordance with any other terms and conditions the Government may require;

14.2.3 maintain procedures for ongoing access to the Database by Vendor for the provision of Client support;

14.2.4 respond to and attempt to resolve all second and third level Service support issues forwarded by Vendor to the Government with respect to legislation, policy and Database content;

14.2.5 maintain and staff a position known as the Registrar of [insert Government Dept Name] ("Registrar"), or its equivalent, to act as the Government point of contact with Vendor for all matters associated with the operation of the Registry;

14.2.6 maintain the [insert the Act name] Act and Regulations to permit the continued operation of the Service.

14.2.7 advise Vendor in a timely manner of any Agreement periods of non-operation of the Registry; and

14.2.9 work with Vendor in a constructive and timely manner to enhance Client satisfaction and, more generally, the success of the Service.

15.0 Government Contact Person(s)

15.1 The [insert applicable title] shall be the Government contact person authorized to speak on behalf of the Government.

16.0 Client Support

16.1 Client support requests shall be dealt with by the Client Support Centre and the problem resolution services which support its operation.

17.0 Third Party Software Restrictions

17.1 Restrictions with respect to third party software are as stated in Article 10.0.

18.0 Management Committee

18.1 There shall be a Management Committee, consisting of:

Insert, by title, applicable members from Government and Vendor

18.2 The Vendor Service Manager, and any other representatives of the Government or Vendor at the request of the Management Committee, shall report to the Management Committee for purposes related to the performance of the Service.

18.3 The Management Committee shall meet as frequently as the Parties agree but, in any event, not less
frequently than annually. All decisions of the Management Committee must be unanimous. Matters which cannot be so resolved may be dealt with in accordance with the Dispute Resolution provision in the Access Services Agreement.

18.4 The members of the Management Committee may delegate their function including attendance at meetings of the Management Committee to others, and the Parties may substitute other officials of the respective organizations as members of the Management Committee.

19.0 Other Provisions

19.1 Vendor may assign the payments it receives for facilitating the provision of the Service to a third party financial institution. In so doing, it shall provide all requisite information to the Government in regard to the identity of the financial institution.

Agreed to and accepted:

By Vendor Company Name. The Government of ____________

By: ____________________________ By: ____________________________

Date: __________________________ Date: __________________________