

# **RELATIONSHIP AGREEMENT**

**Between**

**IBM CANADA LIMITED**

**And**

**MUNICIPAL INFORMATION ASSOCIATION OF CANADA/ ASSOCIATION DES  
SYSTEMES D'INFORMATION MUNICIPALE DU CANADA**

**Dated**

**SEPTEMBER 30, 2009**

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### **Schedule A:** Form of ILAN

## **RELATIONSHIP AGREEMENT**

This Relationship Agreement (this "**Agreement**"), effective as of September 30, 2009 (the "**Effective Date**") is entered into by and between IBM Canada Limited ("**IBM**"), and Municipal Information Systems Association of Canada/Association des Systèmes D'Information Municipale du Canada ("**MISA**"). IBM and MISA are each a "**Party**" to this Agreement and are collectively the "**Parties**."

The Parties agree as follows:

### **ARTICLE I** **DEFINITIONS**

#### **Section 1.1    Certain Definitions**

The following terms when used in this Agreement shall have the meanings set forth below:

"**Acceptance Criteria**" shall mean the needs analysis and acceptance tests as the Parties may mutually agree upon from time to time for the MRMV2 Package.

"**Affiliates**" shall mean any corporation, partnership or other entity that directly or indirectly, owns, is owned by, or is under common ownership or control with, such party hereto, for so long as such ownership exists.

"**Agreement**" shall have the meaning given in the preamble and includes its Schedules (and any attachments thereto), as any of the foregoing are amended from time to time.

"**Configuration Profiles**" shall mean the various settings of application options in the IBM Base Software Programs which are specific to an instance of an installation (e.g. language, colours, network addresses, etc.).

"**Confidential Information**" shall have the meaning given in Section 7.1(b).

"**Derivative Work**" shall mean a work which is based upon one or more preexisting works and that would be a copyright infringement if prepared without the authorization of the copyright owners of the preexisting works, including, but not limited to, a revision, modification, translation, abridgment, condensation, expansion or any other form in which such preexisting works may be recast, transformed or adapted.

"**Discloser**" shall have the meaning given in Section 7.1(a).

"**Effective Date**" shall have the meaning given in the preamble.

"**Force Majeure Event**" shall have the meaning given in Section 12.9.12.

"**IBM**" shall have the meaning given in the preamble.

**"IBM Personnel"** means employees or contractors of IBM and its Affiliates.

**"IBM Relationship Manager"** shall have the meaning given in Section 5.1.

**"IBM Base Software Products"** means the following IBM software computer programs: Rational Software Modeler, Rational Requirements Composer, Rational RequisitePro, Lotus Quickr, Tivoli Monitoring, Tivoli Storage Manager and DB2.

**"ILAN"** shall mean the IBM International License Agreement for Non-Warranted Programs in the form of the license agreement attached as Schedule A.

**"Indemnitee"** means a person eligible for indemnification pursuant to ARTICLE IX.

**"Indemnitor"** means a person obligated to provide indemnification pursuant to ARTICLE IX.

**"Initial Term"** shall have the meaning given in Section 4.1.

**"Intellectual Property"** shall mean all intellectual property and other similar proprietary rights afforded legal protection by any governmental authority in its jurisdictions, including such rights in and to: patents and patent applications, any counterparts claiming priority therefrom, utility models, patents of importation/confirmation, certificates of inventions, certificates or registration and like rights; trademarks, service marks, logos, any registrations of, applications to register, and renewals and extensions of, any of the foregoing with or by any governmental entity in any jurisdiction, and the goodwill associated therewith; copyrights in software and copyrights in other software-related specifications and documentation, rights in databases and any registrations of, applications to register, and renewals and extensions of, any of the foregoing with or by any governmental entity in any jurisdiction; domain names; and trade secrets (including business, technical and know-how information, non-public information, inventions, invention disclosures, design, discoveries, improvements, software and Confidential Information.

**"IPLA"** shall mean the IBM International Program License Agreement pursuant to which MISA has licensed and will license the IBM Base Software Programs.

**"MISA"** shall have the meaning given in the preamble.

**"MISA Material"** means any works of authorship and other materials owned or controlled by MISA, including, but not limited to, the MRM inclusive of the MRM Metamodel and MRM Reference Profiles and tools, documentation, text, information, designs, specifications, instructions, data, user information and trade secrets, if any, associated with the foregoing.

**"MISA Member Associations"** shall mean the five regional member associations of MISA in Canada, being MISA BC, MISA Prairie, MISA Ontario, RIMQ and MISA Atlantic, as well as any changes to the member associations within Canada as may be approved through decision of the MISA board of directors from time to time.

***“MISA Personnel”*** means employees, contractors or volunteers of MISA or any MISA Member Association.

***“MISA Relationship Manager”*** shall have the meaning given in Section 5.1.

***“MRM”*** means the municipal reference model owned by MISA that defines common language in which the programs, services, processes, resources, outputs and outcomes of municipalities can be described.

***“MRMv2 Package”*** means the combined package of the Service Design Workbench loaded with the MRM data that is releasable to the MRM user community and for the purposes of this Agreement each and every future or successive release of such combined package.

***“MRM Metamodel”*** means that component of the MRM that is the schema specifying municipal concepts (e.g. programs, services, etc. ) and attributes (e.g. description, output type, target group, efficiency and effectiveness measures, etc.) and the relationships between them.

***“MRM Reference Profiles”*** means that component of the MRM that are the catalogues of common vocabularies and definitions used in and by municipalities (e.g. a beautiful city program, a solid waste disposal service, etc.) based on the MRM Metamodel.

***“Nonperforming Party”*** shall have the meaning given in Section 12.9.12.

***“Party”*** and ***“Parties”*** shall have the meaning given in the preamble.

***“Recipient”*** shall have the meaning given in Section 7.1(a).

***“Residual Information”*** shall have the meaning given in Section 7.3(a).

***“Service Design Extensions”*** means the IBM software programs consisting of components that automate the flow of data between the various IBM software products within the IBM Base Software Products.

***“Service Design Workbench”*** means the set of computer programs consisting of the IBM Base Software Products together with the Service Design Extensions and Configuration Profiles permitting and defining interoperability between the various components.

***“Term”*** shall have the meaning given in Section 4.1.

## **ARTICLE II**


### **BASE SERVICES**

#### **Section 2.1    In General**

MISA and IBM are entering into a joint collaboration with a view to jointly developing throughout the Term of this Agreement the MRMv2 Package using IBM’s Service Design Workbench and MISA’s MRM Metamodel and MRM Reference Profiles. In the course of the


development of the MRMv2 Package, the Parties will disclose and transfer to each other Confidential Information and other items necessary for the creation of the MRMv2 Package. The Parties agree to treat the Confidential Information in accordance with the terms of this Agreement.

## **Section 2.2    Scope of Work**





(a) MISA shall provide IBM with use of and access to the MRM and all its successive iterations (in progress or complete), at no charge, throughout the Term of this Agreement.


(b) MISA shall license from IBM the IBM Base Software Products under the IPLA.



(c) IBM shall design and develop the Service Design Extensions for integration into its Service Design Workbench. Throughout the Term of this Agreement, to the extent that IBM determines it is advisable or necessary to develop or perform upgrades on the Service Design Extensions, it shall do so at no cost to MISA and IBM shall work with MISA to ensure (i) compatibility with the then current iteration of the MRM, and (ii) that such upgrades continue to support the MRMv2 Package or any successive iteration thereto. MISA shall license the Service Design Extensions from IBM under the terms of the ILAN. If any of the upgrades or developments require additional software that is not contained in the IBM Base Software Products, MISA shall be responsible for licensing such software at MISA's own expense.



(d) MISA confirms that the current version of the MRMv2 Package that exists as of the date hereof has demonstrated the capabilities of the package to address the functional needs specified in Appendix 1 to the Memorandum of Understanding in place between the Parties (the "MOU") and MISA's right to return the IBM Base Software Products in accordance with the MOU is hereby extinguished. MISA and IBM agree that it is each Party's intention that the MRMv2 Package be ready for release to the MRM user community on or before December 31, 2009. MISA and IBM shall continue to work together to determine and agree on the scope of features for the initial release version of the MRMv2 Package and the specific Acceptance Criteria for the MRMv2 Package on or about October 31, 2009. IBM will develop and deliver the Service Design Workbench incorporating the Acceptance Criteria, in one or more iterations, on or before December 1, 2009. MISA and IBM shall also compile on or before December 31, 2009 a prioritized list of future desired enhancements for successive releases of the MRMv2 Package. MISA shall conduct the necessary acceptance and usability tests promptly with the goal of providing acceptance or rejection within one week of the release and delivery by IBM to MISA of each iteration of the delivered MRMv2 Package. MISA shall conduct such acceptance and usability tests in good faith, with a goal of ensuring that the iteration of the MRMv2 Package will reasonably address the needs and expectations of anticipated users. It is understood by the Parties that some additional or advanced needs may not be included within the first release of the MRMv2 Package and may need to be provided in a subsequent release.




**ARTICLE III**  
**DISTRIBUTION AND LICENSING PLANS**

**Section 3.1    General**

The Parties wish to enable each other and interested third parties to view and demonstrate the MRMv2 Package.

**Section 3.2    Licensing**



(a) IBM hereby grants to MISA, a non-exclusive, royalty-free, non-transferable (except as permitted in this Agreement) license to access and use the Service Design Workbench in connection with providing the MRMv2 Package to its MISA Member Associations and their municipal members and other government and private sector organizations within Canada for use by them in connection with their business operations. IBM acknowledges that MISA will be permitting third parties to use the Service Design Workbench in connection with their use of the MRMv2 Package. To the extent that MISA wishes to access and use the Service Design Workbench, in connection with the MRMv2 Package or otherwise, outside of Canada, MISA shall seek permission from IBM prior to doing so.

(b) Upon acceptance by MISA of the MRMv2 Package, MISA hereby grants IBM and its Affiliates, a non-exclusive, royalty-free, non-transferable (except as permitted in this Agreement) license to access and use the MRM and provide the MRMv2 Package to its customers, business partners and potential customers in both the public and private sector in Canada and throughout the world. IBM shall be entitled to combine the MRMv2 Package with other IBM programs and services for this purpose. Nothing herein shall permit IBM to transfer or assign MISA's right, title and interest in and to the MRM.

(c) Provided that the rights granted to IBM pursuant to Section 3.2(b) are maintained, nothing in this Section 3.2 shall be interpreted as limiting MISA's right to make the MRM available to other public or private sector organizations, including placing all or part of the MRM in the public domain or making it available through an open source license or similar provision that permits others to access, use or prepare Derivative Works based on the MRM.

(d) Provided that the rights granted to IBM pursuant to Section 3.2(b) are maintained, MISA may, at its sole discretion, transfer ownership of all or part of the Intellectual Property contained in the MRM, or the MRM itself or any part thereof, to another Canadian public sector or not-for-profit organization.

(e) In the event that MISA were to contemplate selling or otherwise transferring or disposing of any of its right, title and interest in the MRM or any component thereof to any person or organization, other than a Canadian public sector or not-for-profit organization, MISA shall first provide notice to IBM of such intention and IBM shall have fifteen (15) business days following receipt of such notice to provide MISA with an expression of interest and then a further fifteen (15) business days to provide MISA with a letter of intent which would include significant terms relating to valuation and timing. In the event of an offer from a



third party, MISA will promptly notify IBM of such offer and IBM will have fifteen (15) business days to negotiate in good faith with MISA a counter offer

## ARTICLE IV

### TERM

#### Section 4.1 Term.

The term of this Agreement shall begin on the Effective Date and shall expire on the fifth (5th) anniversary of the Effective Date ("***Initial Term***"), unless terminated earlier or extended in accordance with this Agreement. The period of time from the Effective Date until this Agreement terminates is the "***Term***."

#### Section 4.2 Extension.

By giving written notice to the other Party no less than six (6) months prior to end of the Initial Term, either Party shall have the right to extend the Term of this Agreement beyond the Initial Term for an additional three (3) year period so long as the other Party has not then previously provided a notice of termination pursuant to ARTICLE XI. Moreover, a Party's exercise of its right to extend the Term shall not prohibit the other Party from thereafter exercising any of its right to terminate pursuant to ARTICLE XI.

#### Section 4.3 Licenses in Effect

Notwithstanding Sections 4.1 and 4.2, the rights and licenses granted by each of IBM and MISA to one another pursuant to Section 3.2 above, including the right to continue to allow use by other organizations, shall remain in full force and effect following the expiration or termination of this Agreement.


## ARTICLE V

### RELATIONSHIP MANAGERS

#### Section 5.1 Relationship Managers

MISA and IBM shall jointly discuss and solve issues related to this Agreement. MISA shall designate an individual ("***MISA Relationship Manager***") to serve as the primary point of accountability for MISA for issues related to this Agreement. IBM shall designate an individual ("***IBM Relationship Manager***") to serve as the primary point of accountability for IBM in relation to this Agreement. Both Parties may change the respective Relationship Manager upon notice.

**ARTICLE VI**  
**EXPENSES AND CHARGES**



Each Party shall bear its own expenses incurred in connection with this Agreement. Other than the licensing fees and other agreed upon fees for the IBM Base Software Products, neither IBM nor MISA will charge the other Party for the use or licensing of the MRM or the Service Design Workbench. IBM shall invoice MISA for the IBM Base Software Products in accordance with the terms of the IPLA.

**ARTICLE VII**  
**CONFIDENTIALITY**

**Section 7.1    Confidential Information**

(a) IBM and MISA agree that the following terms apply when one Party (the “*Discloser*”) discloses Confidential Information of such Party to the other Party (the “*Recipient*”) under this Agreement.

(b) “*Confidential Information*” means information provided or to which access is given by the Discloser to the Recipient that:

- (i) if disclosed in tangible form, is marked confidential or with a similar restrictive legend;
- (ii) if disclosed orally is (1) identified at the time of disclosure as Confidential Information and (2) is summarized in a writing sent to the Recipient within 30 days after disclosure.

**Section 7.2    Obligations**

(a) The Recipient will:

- (i) use the same care and discretion to avoid disclosure, publication or dissemination of the Discloser’s Confidential Information as the Recipient uses with its own similar information that it does not wish to disclose, publish or disseminate (but in no event less than reasonable care); and
- (ii) use the Discloser’s Confidential Information for the purpose for which it was disclosed or otherwise for the benefit of the Discloser.

(b) The Recipient may disclose Confidential Information to:

- (i) the Recipient’s subcontractors or those third parties engaged to provide services under this Agreement, *provided that* the Confidential Information must necessarily be disclosed for the subcontractor or such third party to provide the particular services contracted for; and

- (ii) any other entity where disclosure is permitted under this Agreement, or otherwise *provided* the Recipient obtains the Discloser's prior written consent.

Prior to such disclosure, the Recipient will obtain such entity's written agreement to treat the Confidential Information in accordance with the applicable terms of this Agreement, including placing obligations on such third party to abide by the obligations of Recipient under Section 7.2(b).

- (c) Other than general announcements confirming the existence of this Agreement and the nature of the relationship created hereby, neither MISA nor IBM shall disclose, publish or disseminate the terms of this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld.

### **Section 7.3    Residual Information**

(a) The Recipient may disclose, publish, disseminate and use for any purpose the ideas, concepts, know-how and techniques that remain in the unaided memories of persons who have had access to the Confidential Information. A person's memory shall be considered unaided if the person has not intentionally committed to memorize the Confidential Information for the purpose of retaining and subsequently using or disclosing it ("***Residual Information***"), except to the extent such disclosure, publication, dissemination or use infringes the Discloser's patent rights or copyrights.

(b) Nothing contained in this Section 7.3 gives the Recipient the right to disclose, publish, or disseminate the source of Residual Information, the Discloser's financial, statistical, or personnel data, or the Discloser's business plans, other than as set forth in this Agreement.

(c) It is understood that receipt of Confidential Information hereunder shall not create any obligation in any way limiting or restricting the assignment or reassignment of employees within the respective Parties or their Affiliates.

### **Section 7.4    Exclusions**

(a) The Recipient may disclose, publish, disseminate and use the Discloser's Confidential Information that is:

- (i) already in its possession without obligation of confidentiality;
- (ii) developed independently;
- (iii) obtained from a source other than the Discloser without obligation of confidentiality;
- (iv) publicly available when received, or thereafter becomes publicly available through no fault of the Recipient; or

- (v) disclosed by the Discloser to another entity without obligation of confidentiality.

(b) The Recipient may disclose Confidential Information to the extent required by applicable law or regulation, *provided* the Recipient gives the Discloser prompt written notice of such required disclosure to allow the Discloser a reasonable opportunity to obtain a protective order.

#### **Section 7.5 Duration**

The obligations specified in this ARTICLE VII shall survive the termination or expiration of this Agreement for five (5) years, except that such obligations with respect to source code shall survive in perpetuity.

### **ARTICLE VIII**

#### **REPRESENTATIONS WARRANTIES AND COVENANTS**

##### **Section 8.1 Ownership by MISA**

MISA covenants that it has the sole and exclusive right, title and interest in and to the MRM and MISA further covenants that the MRM does not infringe the rights of any third party or misappropriates any trade secrets. MISA will promptly notify IBM in writing if it becomes aware of any pending or threatened claims, including, but limited to, infringement with regard to the MRM.

##### **Section 8.2 Authorization and Other Contracts**

Each Party represents that:

(a) they have the requisite corporate power and authority to enter into this Agreement and to carry out the transactions contemplated by this Agreement;

(b) the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement have been duly authorized by the requisite corporate action on the part of such Party and will not constitute a violation of any judgment, order or decree;

(c) the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement will not constitute a material default under any material contract by which it or any of its material assets are bound, or an event that would, with notice or lapse of time or both, constitute such a default; and

(d) there is no proceeding pending or, to the knowledge of the Party, threatened which challenges or may have a material adverse affect on this Agreement or the transactions contemplated by this Agreement.

### **Section 8.3    Disclaimer**

OTHER THAN AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THERE ARE NO EXPRESS WARRANTIES OR CONDITIONS AND THERE ARE NO IMPLIED WARRANTIES OR CONDITIONS, INCLUDING THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## **ARTICLE IX INDEMNITIES**

### **Section 9.1    Indemnity by MISA**

MISA agrees to indemnify IBM against and hold it harmless from losses incurred by any such Indemnitee to the extent arising from any claim that the MRM or any MISA Materials infringes, misappropriates or otherwise violates the Intellectual Property rights of any person.

### **Section 9.2    Indemnity by IBM**

IBM agrees to indemnify MISA against and hold it harmless from all losses incurred by any such Indemnitee to the extent arising from any claim that MISA's use of the Service Design Workbench in accordance with this Agreement infringes, misappropriates or otherwise violates the Intellectual Property rights of any person.

### **Section 9.3    Additional Indemnities**

Each Party agrees to indemnify the other Party and its Affiliates and/or Member Associations, as the case may be, against and hold them harmless from any loss, liability, cost or expense (including reasonable fees and expenses of counsel) incurred by any such Indemnitee to the extent arising from any of the following:

- (a) For bodily injury (including death) and physical harm to real property and tangible personal property caused by the Indemnitor's negligence; or
- (b) any claim, demand, charge, action, cause of action or other proceeding asserted against the Indemnitee but resulting from an act or omission of the Indemnitor in its capacity as an employer of a person.

### **Section 9.4    Infringement by MISA**

If the MRM or any portion thereof becomes, or in IBM's or MISA's reasonable opinion is likely to become, the subject of an infringement or misappropriation claim or proceeding, MISA shall, in addition to indemnifying IBM as provided in this ARTICLE IX and in addition to the other rights IBM may have under this Agreement, MISA shall, at its sole discretion, have the option to either:

- (a) promptly at MISA's expense secure rights for IBM enabling IBM to use the MRM and MISA Materials as provided in this Agreement, without infringing, misappropriating

or violating any patent, copyright, trademark, trade name, trade secret or other intellectual property rights of a third party; or

(b) if such rights cannot be secured by using commercially reasonable efforts (including payment of reasonable license fees), then at MISA's expense, replace or modify the item to make it non-infringing or without misappropriation, *provided that* any such replacement or modification will not degrade the performance or quality of the MRM or the affected component thereof.

## **Section 9.5 Infringement by IBM**

If the Service Design Workbench or any portion thereof, becomes, or in IBM's or MISA's reasonable opinion is likely to become, the subject of an infringement or misappropriation claim or proceeding, IBM shall, in addition to indemnifying MISA as provided in this ARTICLE IX and in addition to the other rights MISA may have under this Agreement, IBM shall, at its sole discretion, have the option to either:

(a) promptly at IBM's expense secure rights for MISA enabling MISA to use the Service Design Workbench as provided in this Agreement, without infringing, misappropriating or violating any patent, copyright, trademark, trade name, trade secret or other intellectual property rights of a third party; or

(b) if such rights cannot be secured by using commercially reasonable efforts (including payment of reasonable license fees), then at IBM's expense, replace or modify the item to make it non-infringing or without misappropriation, *provided that* any such replacement or modification will not degrade the performance or quality of the Service Design Workbench or affected component thereof.

## **ARTICLE X**

### **LIABILITY**

#### **Section 10.1 Limit of Liability**

Except for liability arising as a result of either Party's obligation to indemnify the other Party under ARTICLE IX, in no event shall either Party be liable for any claim against the other Party by any third party. Neither Party shall be liable to the other for any lost revenue, lost profits, lost or damaged data or other consequential damages which may result from its failure to perform its obligations under this Agreement. Each Party's liability hereunder shall be limited to the following (regardless of the basis of such claim): (A) damages for bodily injury (including death) and damage to real property and tangible personal property, and (B) other actual direct damage up to a maximum of Cdn \$100,000.

Notwithstanding anything in this ARTICLE X, the limitation of IBM's liability under this Agreement as it relates to (i) the IBM Base Software Products shall be as set out in the IPLA, and (ii) the Service Design Extensions shall be as set out in the ILAN, and shall not be included in any claim for indemnity under this Agreement.

## **Section 10.2 Liability Restrictions**

- (a) The limitations set forth in Section 10.1 shall not apply with respect to:
  - (i) Losses paid to third parties pursuant to an indemnification claim under this Agreement;
  - (ii) Losses occasioned by a Party's breach of its obligations with respect to Confidential Information under ARTICLE VII; and
  - (iii) Losses occasioned by a Party's infringement of the other Party's Intellectual Property.
- (b) Each Party shall have a duty to mitigate damages for which another Party is responsible.

## **ARTICLE XI TERMINATION**

### **Section 11.1 Termination for Cause**

In the event either Party:

- (i) commits a material breach of this Agreement and fails to:
  - (1) proceed promptly and diligently to correct the breach,
  - (2) develop within thirty (30) days following notice of breach a complete plan for curing the breach, and cure the breach within sixty (60) days of such notice, or
- (ii) commits numerous connected breaches of its duties or obligations which collectively constitute a material breach of this Agreement,

then such Party may, by giving written notice to the other Party, terminate this Agreement, as of a date specified in the notice of termination, without charge and without any other liability with respect to such termination.

### **Section 11.2 Survival**

Any provision of this Agreement which contemplates performance or observance subsequent to termination or expiration of this Agreement shall survive termination or expiration of this Agreement and continue in full force and effect.

## **ARTICLE XII**

### **GENERAL**

#### **Section 12.1 Headings and Table of Contents**

The inclusion of headings and a table of contents in this Agreement is for convenience of reference only and shall not affect the construction or interpretation hereof.

#### **Section 12.2 Invalidity of Provisions**

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof.

#### **Section 12.3 Waiver, Amendment**

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement shall be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided.

#### **Section 12.4 Governing Law**

This Agreement is a contract made under, and shall be governed by and construed in accordance with, the laws of the Province of Ontario and the laws of Canada applicable therein.

#### **Section 12.5 Freedom of Action and Restriction**

Either Party may independently develop, acquire and market material, products and services that may be competitive with (despite any similarity to) the other Party's products or services.

#### **Section 12.6 Notices**

The contacts for notice under this Agreement are as follows:

##### **IBM**

Stephen Brickell  
Healthcare & Government Innovation  
IBM Canada Limited  
3600 Steeles Avenue East  
Markham, Ontario L3R 9Z7

##### **MISA**

Roy Wiseman  
Chief Information Officer  
Region of Peel  
10 Peel Centre Drive  
Brampton, Ontario L6T 4B9



### **Section 12.7 Relationship of Parties**

Each of the Parties, in carrying out their respective obligations hereunder, is acting as an independent contractor. Neither Party is an agent of the other and neither has the authority to represent or bind the other as to any matters, except as expressly authorized in this Agreement. Nothing herein shall be construed as creating any partnership, joint venture or any other similar relationship between the Parties.

### **Section 12.8 Cumulative Remedies**

Except as otherwise expressly provided herein, all remedies provided for in this Agreement shall be cumulative and in addition to and not in lieu of any other remedies available to either Party at law or in equity.

### **Section 12.9 Assignment**

MISA may not assign this Agreement, in whole or in part, without the prior written consent of IBM, which consent shall not be unreasonably withheld. IBM shall be entitled to assign this Agreement to one or more of its Affiliates. Any entity to which this Agreement is assigned by either MISA or IBM shall agree, as a condition of such assignment, to be bound by all of the provisions of this Agreement.

### **Section 12.10 Entire Agreement**

This Agreement, its Schedules and the IPLA and ILAN are the complete agreement regarding the subject matter hereof and replace any prior oral or written communications between us.

### **Section 12.11 Counterparts**

This Agreement may be signed in counterparts and each of such counterparts shall constitute an original document and such counterparts, taken together, shall constitute one and the same instrument.

### **Section 12.12 Force Majeure.**

IBM and MISA will not be liable for any default or delay in the performance of their respective obligations under the Agreement, to the extent that such default or delay is caused, directly or indirectly, by epidemic, fire, flood, earthquake, elements of nature, acts or regulations of government bodies, court orders, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, strikes, lockouts or labor difficulties or by any other event or circumstance that is beyond the reasonable control of IBM and MISA, whichever is the entity unable to perform (the "*Nonperforming Party*"). Such event or circumstance giving rise to the default or delay is a "*Force Majeure Event*."

(a) The Nonperforming Party will be excused from any further performance of the obligations affected by such Force Majeure Event for as long as such Force Majeure Event

continues and the Nonperforming Party continues to use commercially reasonable efforts to recommence performance.

(b) Except as expressly excused in this Section 12.912, IBM and MISA will continue to perform their respective obligations during a Force Majeure Event.

*{ Signature page follows }*

IN WITNESS WHEREOF, IBM and MISA have each caused this Agreement to be signed and delivered by its duly authorized officer, all as of the date first set forth above.

**IBM CANADA LIMITED**

By

\_\_\_\_\_  
Name:

Title:

**MUNICIPAL INFORMATION SYSTEMS  
ASSOCIATION OF CANADA/ASSOCIATION  
DES SYSTEMES D'INFORMATION  
MUNICIPALE DU CANADA**

By

\_\_\_\_\_  
Name:

Title:

*Kay Wiseman*  
*Chief Information Officer*  
*Region of Peel*  
*September 30, 2009*

**Schedule “A”**

**Form of ILAN**