



**Agreement for
Request for **Quotation for Forensic Software**
No.: Doc5668453548**

for

Toronto Cyber Security Division

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AGREEMENT BETWEEN CITY AND SUPPLIER

THIS AGREEMENT is entered into on the Effective Date

BETWEEN

CITY OF TORONTO
(the "City")

And

[LEGAL NAME OF SUPPLIER]
(the "Supplier")

Background:

The Supplier was selected in accordance with the provisions of Municipal Code Chapters 71 and 195 to provide [Forensic Software](#) in accordance with the Solicitation [Request for Quotations Doc5649797048](#) at a total cost not to exceed \$ [\[●Amount\]](#) exclusive of applicable taxes.

The parties therefore agree:

1. The following Agreement Documents are incorporated into and form an integral part of the Agreement:
 - (a) Information Sheet and Special Conditions, attached as Schedule A to this Agreement;
 - (b) Pricing Form, attached as Schedule B to this Agreement;
 - (c) Definitions, attached as Schedule C to this Agreement;
 - (d) General Conditions, attached as Schedule D to this Agreement;
 - (e) Requirements for Deliverables (Part 3 of the Solicitation, as amended), attached as Schedule E to this Agreement;
 - (f) Supplier Bid, submitted on [\[Date\]](#), attached as Schedule F to this Agreement;
 - (g) Completed Forms, attached as Schedule G to this Agreement; and
 - (h) any other document identified elsewhere in the Agreement as a document forming part of the Agreement.
2. The Supplier shall provide the Deliverables in accordance with the Agreement.
3. The City shall pay the Supplier in accordance with the Agreement.
4. This Agreement may be executed by electronic signature that is received by the City in a file format acceptable to the City. Such electronic signature is deemed to be an original signature for the purpose of this Agreement with the same legal effect as an original signature.

5. The Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
6. The Agreement may be transmitted by electronic mail or such similar device and the signatures in the transmission will be treated as binding as if they were originals. Each party undertakes to provide the other party with a copy of the Agreement bearing original signatures upon demand.

The parties' authorized representatives have executed this Agreement.

CITY OF TORONTO

Authorized by [Council, Committee]
under Item [ABxx.xx] on [date].

Name:
Title:
Date:
I have authority to bind the City.

Name:
Title:
Date:
I have authority to bind the City.

[LEGAL NAME OF SUPPLIER]

Name:
Title:
Date:
I have authority to bind the Supplier.

Name:
Title:
Date:
I have authority to bind the Supplier.

APPROVED AS TO FORM

.....
For Name, Title
File #

SCHEDULE A – INFORMATION SHEET AND SPECIAL CONDITIONS

Information Sheet

Row	Input Information	Reference	Description
1	Solicitation	Schedule C (Definitions)	<i>To be finalized after award</i>
2	Effective Date	Schedule C (Definitions); Section 1.11 of Schedule D (General Conditions)	<i>To be finalized after award</i>
3	Commencement Date	Schedule C (Definitions)	<i>To be finalized after award</i>
4	Extension Term(s)	Schedule C (Definitions)	The City at its sole discretion shall be entitled to extend the Agreement for four (4) additional 1-year periods. The City will provide Notice in Writing to the Supplier of its intent to exercise an extension option prior to the end of the Initial Term or an Extension Term, as applicable. Any extensions to the Agreement shall be on the same terms and conditions as the Initial Term."
5	Initial Term	Schedule C (Definitions)	Effective Date to Initial Term Expiry Date
6	Initial Term Expiry Date	Schedule C (Definitions)	<i>To be finalized after award</i>
7	Extension Term Expiry Date(s)	Schedule C (Definitions)	<i>To be finalized after award</i>
8	City Address	Schedule C (Definitions)	Metro Hall 55 John St. Toronto, ON, M5V 3C6
9	City Representative	Schedule C (Definitions)	<i>To be finalized after award</i>
10	Project Lead	Schedule C (Definitions)	<i>To be finalized after award</i>
11	Supplier Address	Schedule C (Definitions)	<i>To be finalized after award</i>
12	Supplier Representative	Schedule C (Definitions)	<i>To be finalized after award</i>
13	Record	Schedule C (Definitions)	No modifications
14	Billing and Payment	Section 4.2 of Schedule D (General Conditions)	No modifications

15	Document Retention	Section 4.8 of Schedule D (General Conditions)	No modifications
16	Insurance	Section 8.1 of Schedule D (General Conditions)	<p>In addition to the insurance requirements in ARTICLE 8 – INSURANCE, The Supplier agrees to maintain Technology errors & omissions insurance covering liabilities for financial loss resulting or arising from acts, errors, or omissions in connection with the Services provided under the Agreement, provided that the policy is in the amount of not less than Two Million Dollars (\$2,000,000.00), per claim, including, if applicable to the Services being provided under the Agreement:</p> <p>a) will extend to infringement of copyright and other intellectual property, excluding patents and trade secrets, resulting from services provided under this agreement.</p>
17	Changes to Schedule D (General Conditions) through Solicitation Addenda	Schedule D (General Conditions)	<p>[Before execution: Must consult with Legal if Schedule D was modified by way of addenda. City staff must bring to attention of Legal any changes to Schedule D General Conditions via Solicitation addenda.]</p>

Special Conditions

1. Not Applicable

SCHEDULE B – PRICING FORM

[Before posting: leave blank]

[Before Execution: add final version of 'Pricing Form']

SCHEDULE C – DEFINITIONS

"Agreement" or "Contract" means the aggregate of the Agreement Documents agreed to by the parties and any subsequent amendments.

"Agreement Documents" means those documents set out in section 1.6 of the General Conditions (Interpretive Value of Agreement Documents).

"Bid" means all the documentation submitted by the Supplier in response to the Solicitation and includes, as applicable, the completed Bid Submission Form, completed Pricing Form, Technical Proposal and any clarification responses.

"Business Day" means any calendar day other than Saturday, Sunday, or a calendar day identified by the City as a designated or statutory holiday.

"Change Order" means a written amendment to the Agreement, which shall be deemed incorporated into and forming part of the Agreement, prepared by the Project Lead and signed by the City Representative and the Supplier stating their agreement upon:

- (a) a change in the Deliverables in Schedule E (Requirements for Deliverables) or Schedule F (Supplier Bid);
- (b) the method of adjustment or the amount of the adjustment in the Rates in Schedule B (Pricing Form); or
- (c) a change to the Initial Term Expiry Date or Extension Term Expiry Date, unless such change would result in a period of time where the combined periods of the Initial Term and any City-exercised Extension Term(s) total more than five years and requires approval of a City standing committee or City Council.

"Change Order Request" has the meaning set out in section 10.1 of the General Conditions.

"Change Order Response" has the meaning set out in section 10.3 of the General Conditions.

"City Confidential Information" means all information of the City that is of a confidential nature, including all confidential information in the custody or control of the City, regardless of whether it is identified as confidential or not, and whether recorded or not, and however fixed, stored, expressed or embodied, which comes into the knowledge, possession or control of the Supplier in connection with the Agreement. For greater certainty, the City Confidential Information:

- (a) shall include:
 - (i) all new information derived at any time from any City Confidential Information whether created by the City, the Supplier, or any third-party; and
 - (ii) all information (including Personal Information) that the City is obliged, or has the discretion, not to disclose under provincial or federal legislation or otherwise at law; but
- (b) shall not include information that:

- (i) is or becomes generally available to the public without fault or breach on the part of the Supplier of any duty of confidentiality owed by the Supplier to the City or to any third-party;
- (ii) the Supplier can demonstrate to have been rightfully obtained by the Supplier, without any obligation of confidence, from a third-party who had the right to transfer or disclose it to the Supplier free of any obligation of confidence;
- (iii) the Supplier can demonstrate to have been rightfully known to or in the possession of the Supplier at the time of disclosure, free of any obligation of confidence when disclosed; or
- (iv) is independently developed by the Supplier;

but the exclusions in this subsection shall in no way limit the meaning of Personal Information or the obligations attaching to Personal Information under the Agreement or at law.

"City Address" means the City mailing address and email address, as set out in Schedule A (Information Sheet and Special Conditions).

"City Representative" means the City official authorized to represent the City for purposes of this Agreement, as set out in Schedule A (Information Sheet and Special Conditions), or such other Person as may be designated by the City, from time to time.

"Claim" or "Claims" means any Proceedings, executions, liens or otherwise for compensation, liabilities, damages or loss of any kind however caused including property damage or loss, bodily injury or death, loss of reputation, loss of opportunity, economic loss, royalties, judgments, fines, penalties, interest, charges, expenses and costs (including legal costs on a substantial indemnity basis).

"Commencement Date" has the meaning set out in section 3.1 of Schedule D (General Conditions).

"Conflict of Interest" includes, but is not limited to, any situation or circumstance where in relation to the performance of its obligations under the Agreement, the Supplier's other commitments, relationships or financial interests:

- (a) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgement; or
- (b) could or could be seen to compromise, impair or be incompatible with the effective performance of its obligations under the Agreement.

"Deliverables" means everything developed for or provided to the City, including all services, in the course of performing any obligation under the Agreement or agreed to be provided to the City under the Agreement by the Supplier or its directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors, as further defined, but not limited by the Agreement Documents, including but not limited to any and all goods, services, Intellectual Property, concepts, techniques, ideas, information, documentation and other materials, however recorded, developed or provided. The Deliverables shall include, without limitation, all Records, data, plans, specifications, reports, estimates, summaries, photographs, and all other documentation prepared by the Supplier in connection with the provision of the Deliverables under the Agreement, whether they be in draft or final format.

"Effective Date" has the meaning set out in section 1.11 of the General Conditions.

"ESA" means the *Employment Standards Act, 2000*, S.O. 2000, c. 41 and all regulations under the ESA, as may be amended or replaced from time to time.

"Expiry Date" means the Initial Term Expiry Date unless the Agreement is extended by the City, in which case it means the final Extension Term Expiry Date.

"Extension Term" means the period of time from the Initial Term Expiry Date or the previous Extension Term Expiry Date, as the case may be, until the Extension Term Expiry Date for the Extension Term, as indicated in Schedule A (Information Sheet and Special Conditions), and shall only be applicable if the City, in its sole discretion, exercises the Extension Term.

"Extension Term Expiry Date" means the end date of an Extension Term, as indicated in Schedule A (Information Sheet and Special Conditions).

"General Conditions" means Articles 1 to 11 of Schedule D (General Conditions) of the Agreement.

"HRC" means the *Human Rights Code*, R.S.O. 1990, c. H.19 and all regulations under the HRC, as may be amended or replaced from time to time.

"Indemnitees" means the City, its elected and appointed officials, officers, directors, agents, representatives, employees, assigns, agencies, and boards.

"Industry Standards" include, but are not limited to:

- (a) the provision of any and all labour, supplies, equipment and other goods or services that are necessary and can reasonably be understood or inferred to be included within the scope of the Agreement or customarily furnished by Persons providing Deliverables of the type provided under this Agreement in similar situations in Ontario;
- (b) adherence to commonly accepted norms of ethical business practices, which shall include the Supplier establishing, and ensuring adherence to, precautions to prevent its employees or agents from providing or offering gifts, hospitality, inducements of greater than nominal value to any person acting on behalf of or employed by the City; and
- (c) the provision of Notice in Writing to the City of a potential Conflict of Interest or any other breach of ethical business practices.

"Initial Term" means the period of time from the Effective Date until the Initial Term Expiry Date, as indicated in Schedule A (Information Sheet and Special Conditions).

"Initial Term Expiry Date" means the end date of the Initial Term, as set out in Schedule A (Information Sheet and Special Conditions).

"Intellectual Property" means any intellectual, industrial or other proprietary right of any type in any form protected or protectable under the laws of Canada, any foreign country, or any political subdivision of any country, including any intellectual, industrial or proprietary rights protected or protectable by legislation, by common law or at equity.

"LRA" means the *Labour Relations Act, 1995*, S.O. 1995, c. 1, Sched. A and all regulations under the LRA, as may be amended or replaced from time to time.

"MFIPPA" means the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56 and all regulations under MFIPPA, as may be amended or replaced from time to time.

"Notice in Writing" means a written communication between the parties that is transmitted in accordance with section 1.9 of the General Conditions.

"OHSA" means the *Occupational Health and Safety Act*, R.S.O., 1990 c.0.1 and all regulations under the OHSA, as may be amended or replaced from time to time.

"Personnel" means individuals who provide goods or services to or on behalf of the Supplier or any of the Supplier's subcontractors in connection with the Agreement.

"Person" if the context allows, includes any individuals, persons, firms, partnerships or corporations or any combination of these.

"Personal Information" means recorded information about an identifiable individual or that may identify an individual and includes all personal information as defined in MFIPPA.

"Pre-existing Material" means any Intellectual Property owned by the Supplier prior to and independent of the performance of its obligations under the Agreement.

"Proceeding" means any action, application, claim, demand, lawsuit, or other proceeding.

"Project Lead" means the City employee designated by the City to manage the Agreement, as set out in Schedule A (Information Sheet and Special Conditions). The City may designate a new Project Lead at any time during the Term and must give the Supplier reasonable notice of the designation of a new Project Lead.

"Rates" means the price, in Canadian dollars, to be charged for the Deliverables, as set out in Schedule B (Pricing Form), representing the full amount chargeable by the Supplier for the provision of the Deliverables, including but not limited to: (a) all applicable duties and taxes, except HST; (b) all labour and material costs; (c) all travel and carriage costs; (d) all insurance costs; and (e) all other overhead including any fees or other charges required by law.

"Record" means any recorded information, including any Personal Information, in any form:

- (a) provided by the City to the Supplier, or provided by the Supplier to the City, for the purposes of the Agreement; or
- (b) created by the Supplier in the performance of the Agreement;

and shall include or exclude any information specifically described in Schedule A (Information Sheet and Special Conditions).

"Requirements of Law" mean all applicable legal obligations, including, without limitation, requirements, laws, statutes, codes, acts, ordinances, orders, decrees, injunctions, City of Toronto by-laws, rules, regulations, policies, official plans, permits, licences, regulatory approvals, authorizations, directions, and agreements with all authorities that now or at any later time may be applicable to either the Agreement or the Deliverables or any part of them, as amended, supplemented, re-enacted or replaced from time to time.

"Solicitation" means the solicitation issued by the City for the Deliverables and any addenda to it, as set out in Schedule A (Information Sheet and Special Conditions).

"Supplier Address" means the Supplier mailing address and email address, as set out in Schedule A (Information Sheet and Special Conditions).

"Supplier Representative" means the contact person for the Supplier, as set out in Schedule A (Information Sheet and Special Conditions) or such other Person as may be designated by the Supplier, from time to time.

"Term" means the period beginning on the Effective Date and ending on the earlier of:

- (a) the Expiry Date; or
- (b) the date the Agreement is otherwise terminated in accordance with its provisions.

"Third-Party Intellectual Property" means any Intellectual Property owned by a party other than the City or the Supplier.

"WSIA" means the *Workplace Safety and Insurance Act, 1997*, S.O. 1997, c. 16, Sched. A and all regulations under WSIA, as may be amended from time to time.

"WSIB" means the Workplace Safety and Insurance Board.

SCHEDULE D – GENERAL CONDITIONS

1. ARTICLE 1 – INTERPRETATION AND GENERAL PROVISIONS

1.1 Amendments

The provisions in this Schedule are subject to any changes made to them under any addendum to the Solicitation, as listed in Schedule E (Requirements for Deliverables), and any special conditions contained in Schedule A (Information Sheet and Special Conditions).

1.2 Defined Terms

The words or expressions used in the Agreement have the meanings defined in Schedule C (Definitions).

1.3 No Indemnities from the City

Despite anything else in the Agreement, the City will not provide an indemnity or any other form of indebtedness or contingent liability that would directly or indirectly increase the indebtedness or contingent liabilities of the City.

1.4 Entire Agreement

The Agreement Documents form the entire Agreement between the parties with regard to the provision of Deliverables and supersede any prior understanding or agreement, collateral, oral or otherwise with respect to the provision of the Deliverables, existing between the parties.

1.5 Severability

If any provision of the Agreement is determined to be void, invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, the remaining provisions of the Agreement will remain in effect and bind the parties.

1.6 Interpretive Value of Agreement Documents

If there is a conflict or inconsistency in any provisions in the Agreement, the Agreement Documents shall be interpreted in accordance with the following order of precedence, unless otherwise set out in Schedule A (Information Sheet and Special Conditions):

- (a) any amendment to the Agreement made in accordance with the provisions of the Agreement, shall take precedence only over those specific provisions of the Agreement expressly amended, in order of most recent date issued (if any);
- (b) Schedule A (Information Sheet and Special Conditions);
- (c) The Agreement (excluding the Schedules and Bid);
- (d) Schedule B (Pricing Form);
- (e) Schedule D (General Conditions);
- (f) Schedule C (Definitions);
- (g) Schedule E (Requirements for Deliverables);
- (h) Schedule F (Supplier Bid), including all clarifications to the Bid in accordance with the Solicitation; and

(i) Schedule G (Completed Forms).

1.7 Interpretive Value of Headings

The headings in the Agreement are for convenience of reference only and in no manner modify or interpret the Agreement.

1.8 Force Majeure

Neither party shall be liable for damages caused by delay or failure to perform its obligations under the Agreement where such delay or failure is caused by an event beyond its reasonable control. The parties agree that an event shall not be considered beyond one's reasonable control if a reasonable person applying due diligence in the same or similar circumstances under the same or similar obligations as those contained in the Agreement would have put in place contingency plans to either materially mitigate or negate the effects of such event. Without limiting the generality of the foregoing, the parties agree that force majeure events shall include natural disasters, epidemics, acts of war, insurrection, terrorism, but shall not include shortages or delays relating to supplies or services, or financial difficulties experienced by a party. If a party seeks to excuse itself from its obligations under the Agreement due to a force majeure event, that party shall immediately notify the other party of the delay or non-performance, the reason for such delay or non-performance and the anticipated period of delay or non-performance. Upon the ceasing of the force majeure event, the parties shall resume their responsibilities under the terms and conditions of the Agreement within 10 Business Days (or, if the same is not possible, within a reasonable period of time).

1.9 Notice in Writing

Any Notice in Writing required to be given or that may be given under the Agreement must be in writing and must be delivered by hand, email, registered mail, or courier, and shall be addressed to, respectively, the City Address to the attention of the City Representative and to the Supplier Address to the attention of the Supplier Representative. A Notice in Writing shall be deemed to have been given:

- (a) in the case of registered mail, five Business Days after such notice is mailed; or
- (b) in the case of delivery by hand, email, or courier, the same day as delivery.

If a Notice in Writing delivered by hand, email, or courier is received after 5:00 pm Eastern Time or on a day that is not a Business Day, such notice shall be deemed to have been given on the next Business Day. If there is a postal disruption, Notices in Writing must be delivered by hand or email.

1.10 Choice of Law

The Agreement is governed by the laws of the Province of Ontario and the laws of Canada. The parties agree that as permitted under section 6 of the International Sales Conventions Act, none of the Conventions set out in its Schedules 1, 2, or 3 apply to the Agreement.

1.11 Choice of Forum

The parties agree that, where a court or tribunal that has jurisdiction over a Proceeding under or with respect to the Agreement sits in Toronto, Ontario, then the Proceeding must be brought in Toronto. Should no such court or tribunal sit in Toronto, then the Proceeding must be brought where the court or tribunal sits that is closest to Toronto within the Province of Ontario.

1.12 Requirements of Law

In performing obligations pursuant to this Agreement, the parties shall adhere to the Requirements of Law.

1.13 Effective Date

The Effective Date of the Agreement is set out in Schedule A (Information Sheet and Special Conditions).

2. ARTICLE 2 – NATURE OF RELATIONSHIP BETWEEN THE CITY AND SUPPLIER

2.1 Supplier's Power to Enter into Agreement

The Supplier represents and warrants that it has the full right and power to enter into the Agreement and that it has not entered into any other agreement with any other Person that would in any way interfere with the rights of the City under the Agreement.

2.2 Representatives May Bind the Parties

The parties represent that their respective signatories have the authority to legally bind them to the extent permissible by the Requirements of Law.

2.3 Supplier Not a Partner, Agent, or Employee

The Supplier shall have no power or authority to bind the City or to assume or create any obligation or responsibility, express or implied, on behalf of the City. The Supplier shall not hold itself out as an agent, partner, or employee of the City. Nothing in the Agreement shall have the effect of creating an employment, partnership or agency relationship between the City and the Supplier (or any of the Supplier's Personnel).

2.4 City Not Employer

The Supplier shall be solely responsible for any payment of Personnel employed or otherwise engaged by the Supplier for the purpose of carrying out any of the Supplier's obligations under the Agreement. Nothing under the Agreement shall render the City responsible for any employment entitlement, incentive, benefit, disability, income tax or termination liability (including those under or in connection with WSIA, OHSA, LRA, HRC, or ESA), whether statutorily required, at common law or otherwise, resulting from Deliverables supplied under the Agreement by the Supplier.

2.5 Responsibility of Supplier

The Supplier agrees that it is liable for the acts and omissions of its directors, officers, employees, agents, partners, affiliates, volunteers, and subcontractors. This section is in addition to any and all of the Supplier's liabilities under the Agreement and under the Requirements of Law. The Supplier shall advise these individuals and entities of its obligations under the Agreement and shall ensure their compliance with the applicable provisions of the Agreement. In addition to any other liabilities of the Supplier pursuant to the Agreement or otherwise at law or in equity, the Supplier shall be liable for all damages, costs, expenses, losses, or Proceedings arising from any breach of the Agreement resulting from the actions of the above-mentioned individuals and entities. This section shall survive the termination or expiry of the Agreement.

2.6 No Subcontracting

The Supplier shall not subcontract the whole or any part of the Agreement without the prior written consent of the City. Such consent shall be in the sole discretion of the City and subject to the terms and conditions that may be imposed by the City. Without limiting the generality of the terms and conditions which the City may require prior to consenting to the Supplier's use of a subcontractor, every contract entered into by the

Supplier with a subcontractor shall adopt all of the provisions of the Agreement as far as applicable to those parts of the Deliverables provided by the subcontractor. Nothing contained in the Agreement shall create a contractual relationship between any subcontractor or its directors, officers, employees, agents, partners, affiliates, or volunteers and the City. No subcontracting will, in any circumstances, relieve the Supplier of its liabilities and obligations under the Agreement.

2.7 No Assignment

The Supplier shall not transfer or assign the whole or any part of the Agreement or any monies due under it without the prior written consent of the City. Such consent shall be in the sole discretion of the City and subject to the terms and conditions that may be imposed by the City. No assignment will, in any circumstances, relieve the Supplier of its liabilities and obligations under the Agreement.

2.8 Duty to Disclose Change of Control

If the Supplier undergoes a change in control, the Supplier shall immediately disclose such change in control to the City and shall comply with any terms and conditions subsequently prescribed by the City resulting from the disclosure.

2.9 Conflict of Interest

The Supplier shall:

- (a) avoid any Conflict of Interest in the performance of its obligations under the Agreement;
- (b) disclose to the City without delay any actual or potential Conflict of Interest that arises during the performance of its obligations under the Agreement; and
- (c) comply with any requirements prescribed by the City to resolve any Conflict of Interest.

In addition to all other contractual rights or rights available at law or in equity, the City may immediately terminate the Agreement upon giving Notice in Writing to the Supplier where:

- (a) the Supplier fails to disclose an actual or potential Conflict of Interest;
- (b) the Supplier fails to comply with any requirements prescribed by the City to resolve a Conflict of Interest; or
- (c) the Supplier's Conflict of Interest cannot be resolved to the City's satisfaction.

This section shall survive the termination or expiry of the Agreement.

2.10 Supplier Code of Conduct

The Supplier acknowledges and agrees to comply with the City's Supplier Code of Conduct, as set out in Article 13 of Chapter 195, Procurement, of the City of Toronto Municipal Code, and to be bound by its terms.

2.11 Agreement Binding

The Agreement shall enure to the benefit of and be binding upon the parties and their successors, executors, administrators, and their permitted assigns.

3. ARTICLE 3 – PERFORMANCE BY SUPPLIER

3.1 Commencement of Performance

The Supplier shall commence performance on the Commencement Date indicated in Schedule A (Information Sheet and Special Conditions) or, if no such Commencement Date is indicated, then upon receipt of written instructions from the City. The Supplier shall provide the Deliverables in accordance with the Agreement.

3.2 Performance Warranty for Deliverables

The Supplier represents and warrants that the Deliverables will be:

- (a) provided fully and diligently in a professional and competent manner by persons qualified and skilled in their occupations;
- (b) free from defects or encumbrances and suitable for the purposes intended, in compliance with all applicable specifications; and
- (c) provided in accordance with the Agreement, Industry Standards, and Requirements of Law.

If any of the Deliverables, in the opinion of the City, are inadequately provided, defective or otherwise do not conform to the requirements of the Agreement, the Supplier shall make the necessary corrections without delay and at its own expense as specified by the City in a Notice in Writing.

3.3 Use and Access Restrictions

The Supplier shall only have access to, or use of, City premises, property, technology, or information that is necessary, as determined by the City, for the performance of its obligations under the Agreement; or upon receipt of pre-authorization from the City in oral or written notice. The Supplier shall ensure that its Personnel comply with all security policies, regulations, or directives relating to such City premises, property, technology, or information, of which the Supplier has received oral or written notice, or otherwise ought to have reasonably been aware. The Supplier further acknowledges that the City may monitor the Supplier to ensure compliance with this section. This section is in addition to and does not limit any other obligation or restriction placed upon the Supplier.

3.4 Notification by Supplier to the City

During the Term, the Supplier shall advise the City promptly of:

- (a) any contradictions, discrepancies or errors found or noted in the Agreement;
- (b) supplementary details, instructions or directions that do not correspond with those contained in the Agreement; and
- (c) any omissions or other faults that become evident and should be corrected in order to provide the Deliverables in accordance with the Agreement and any additional Requirements of Law.

3.5 Condonation Not a Waiver

Any failure by the City to insist in one or more instances upon strict performance by the Supplier of any of the provisions of the Agreement shall not be construed as a waiver by the City of its right to require strict performance of any such provisions, and the

obligations of the Supplier with respect to such performance shall continue in full force and effect.

3.6 Changes by Written Amendment Only

Any changes to the Agreement shall be by written amendment (which may be a Change Order) signed by the parties authorized representatives. No changes shall be effective or shall be carried out in the absence of such an amendment.

3.7 Non-Exclusive Agreement, Volumes

The Supplier acknowledges that it is providing the Deliverables to the City on a non-exclusive basis. The City makes no representation regarding the volume of Deliverables required under the Agreement. The City reserves the right to contract with other parties for the same or similar goods and services as those provided by the Supplier and reserves the right to obtain the same or similar Deliverables internally or from other parties.

3.8 Performance by Specified Individuals Only

The Supplier agrees that to the extent specific Personnel are named in the Agreement as being assigned by the Supplier to provide Deliverables, or any part of the Deliverables, only those Personnel shall provide those Deliverables under the Agreement. The Supplier shall not replace or substitute any of the Personnel named in the Agreement without the prior written approval of the City, which will not be unreasonably withheld. Should the Supplier require the substitution or replacement of any of the individuals named in the Agreement, it is understood and agreed that any proposed replacement must possess similar or greater qualifications than the individual named in the Agreement. The Supplier shall not claim fees for any replacement individual greater than the Rates established under the Agreement.

3.9 Occupational Health and Safety Act

The Supplier acknowledges and represents that:

- (a) the Personnel are qualified to provide the Deliverables, are trained in the health and safety hazards expected to be encountered in providing the Deliverables, and possess the knowledge and skills to allow them to work safely;
- (b) the Supplier has provided, and will provide during the course of the Agreement, all necessary personal protective equipment for the protection of Personnel;
- (c) the Supplier's supervisory employees are competent, as defined in OHSA, and will carry out their duties in a diligent and responsible manner with due consideration for the health and safety of Personnel;
- (d) the Supplier has in place occupational health and safety, workplace violence and workplace harassment policies in accordance with OHSA; and
- (e) the Supplier has a process in place to ensure that health and safety issues are identified and addressed and for reporting work-related injuries and illnesses.

3.10 Proof of Health and Safety Representations

The Supplier shall provide upon request by the Project Lead, the following as proof of the representations made above:

- (a) documentation regarding the training programs provided or to be provided during the Term (for example, documentation of types of training, frequency of training and re-training); and
- (b) the policies referred to in subsection 3.9(d).

3.11 Adequate Levels of Supervision

The Supplier shall provide adequate levels of supervision in all aspects of the Deliverables. The City retains the right to require that the Supplier supply additional supervisory employees where the hazards in the work, in the opinion of the City, require this, and if supervision is not, in the opinion of the City, deemed to be adequate.

3.12 Notification of Events

The Supplier shall immediately notify the City if any of the following events occurs:

- (a) A critical injury that arises out of the performance of the Agreement;
- (b) A requirement or order is issued to the Supplier by the Ministry of Labour, or other health and safety regulatory authority, arising out of the performance of the Agreement; or
- (c) A charge is laid or a conviction is entered arising out of the performance of the Agreement, including but not limited to a charge or conviction under OHSA, WSIA, and/or the Criminal Code, R.S.C 1985, c. C-46, as amended.

The Supplier shall immediately take all corrective measures necessary to address the issues identified or arising out any such requirements, orders, charges or convictions.

3.13 Entering on City Site

Where Personnel are entering property of the City or performing work at a site controlled by the City, and the hazards in the work in the opinion of the City so require, the Supplier shall ensure such Personnel receive training in the health and safety policy and procedures of the City and comply with the standards established in the City's health and safety policies and procedures, or such greater standards as established in the Supplier's safety policies or procedures, at all times during the performance of work under the Agreement.

3.14 Supplier Compliance with Safety Requirements

The Supplier shall be responsible for any delay in the Deliverables as a result of any violation or alleged violation of any federal, provincial or municipal health and safety requirement by the Supplier, it being understood that no such delay shall be a force majeure or uncontrollable event for the purposes of extending the time for performance of the Agreement or entitling the Supplier to additional compensation, and the Supplier shall take all necessary steps to avoid delay in the Deliverables without additional cost to the City.

3.15 Direction of Supplier Employees

The parties acknowledge and agree that employees of the City, including senior officers, have no authority to direct, and will not direct, how Personnel do work or perform a task that is the subject of the Agreement. Nothing in the Agreement shall be construed as making the City the "employer" (as defined in OHSA) of any person employed or engaged by the Supplier for the performance of the Agreement, either instead of or jointly with the Supplier.

3.16 Accessibility for Ontarians with Disabilities Act

The Supplier shall ensure that all Deliverables, as appropriate for each Deliverable, conform with the requirements of the HRC, the Ontarians with Disabilities Act, 2001, the Accessibility for Ontarians with Disabilities Act, 2005, and their respective regulations as they apply to the City. The Supplier shall comply with the City's accessibility standards, policies, practices, and procedures, which may be in effect during the Term of the Agreement and apply to the Deliverables to be provided by the Supplier. The accessible customer service training requirements applicable to the City's suppliers may be reviewed at: <https://www.ontario.ca/laws/regulation/110191>.

3.17 Accessibility Training

The Supplier shall require all applicable Personnel to fulfill the training requirements set out in the City's policy on Accessible Customer Service Training Requirements for Contractors, Consultants and other Services Providers. The City of Toronto requirements may be reviewed at: <https://www.toronto.ca/business-economy/doing-business-with-the-city/understand-the-procurement-process/purchasing-policies-legislation/accessible-customer-service-training-requirements/>.

3.18 City Rights and Remedies and Supplier Obligations Not Limited to Agreement

The express rights and remedies of the City and obligations of the Supplier set out in the Agreement are in addition to and shall not limit any other rights and remedies available to the City or any other obligations of the Supplier at law or in equity.

4. ARTICLE 4 – PAYMENT FOR PERFORMANCE AND AUDIT

4.1 Payment According to Agreement Rates

The City shall, subject to the Supplier's compliance with the provisions of the Agreement, pay the Supplier for the Deliverables provided at the Rates established under Schedule B (Pricing Form) and applicable HST.

4.2 Default Billing and Payment Process

Unless the parties expressly set out an alternative billing and payment process in Schedule A (Information Sheet and Special Conditions), the following process shall govern:

- (a) The Supplier shall provide the City with a monthly invoice no later than 10 Business Days after the end of each month;
- (b) The Supplier shall follow all instructions provided by the City regarding ordering and invoicing of Deliverables as outlined on the City of Toronto's Accounts Payable Requirements website, which may be updated from time to time without notice to the Supplier: <https://www.toronto.ca/business-economy/doing-business-with-the-city/follow-up-on-city-contracts/accounts-payable-requirements/>;
- (c) The City shall approve or reject the invoice and if the City rejects the invoice, it shall so advise the Supplier promptly in writing and the Supplier shall provide additional information as required by the City to substantiate the invoice;
- (d) Each invoice is subject to the approval of the City before any payment is released and payment shall be made within 30 calendar days of such approval; and

- (e) The City may make payments under the Agreement by way of procurement card and the Supplier shall accept and process any such payments in accordance with the City's procurement card protocols.

4.3 Set Off

The City has the right to retain out of monies payable to the Supplier under the Agreement the total amount outstanding from time to time for any or all Claims arising out of the default of the Supplier of its obligations to the City. This shall include Claims pursuant to this, or any other contract or Proceeding between the Supplier and the City, which have not been settled between the City and the Supplier. Without limiting the foregoing, if the Supplier at any time fails to provide all Deliverables to the City as specified within the Agreement, or fails to replace Deliverables rejected by the City, then the City shall be permitted to procure such Deliverables elsewhere and charge any additional costs incurred by the City to the Supplier, unless otherwise specified, and deduct such amounts from payments due to the Supplier or to otherwise collect such costs from the Supplier by any other method permitted by law.

4.4 No Expenses or Additional Charges

There shall be no other charges payable by the City under the Agreement to the Supplier other than the Rates established under Schedule B (Pricing Form) and applicable HST.

4.5 Payment of Taxes and Duties

Unless otherwise stated, the Supplier shall pay all applicable taxes and duties, including excise taxes incurred by or on the Supplier's behalf with respect to the Agreement.

4.6 Payment of Taxes by the City

The Supplier shall invoice and collect HST from the City for the Deliverables in accordance with the provisions of the *Excise Tax Act*, R.S.C. 1985, c.E-15, as amended or replaced from time to time.

4.7 Withholding Tax

The City shall withhold any applicable withholding tax from amounts due and owing to the Supplier under the Agreement and shall remit it to the appropriate government in accordance with applicable tax laws. This section shall survive the termination or expiry of the Agreement.

4.8 Document Retention and Audit

For seven years or such duration as specified in Schedule A (Information Sheet and Special Conditions) after the Expiry Date or any date of termination of the Agreement, the Supplier shall maintain all necessary records to substantiate:

- (a) all charges and payments under the Agreement; and
- (b) that the Deliverables were provided in accordance with the Agreement and with Requirements of Law.

During the Term, and as specified above after the Term, the Supplier shall permit and assist the City in conducting audits of the operations of the Supplier to verify (a) and (b) above. The City shall provide the Supplier with Notice in Writing at least 10 Business Days prior to its requirement for such audit. The Supplier's obligations under this section shall survive any termination or expiry of the Agreement.

5. ARTICLE 5 – PROMOTION, CONFIDENTIALITY, AND MFIPPA

5.1 Promotion Restrictions

Any publicity or publications related to the Agreement shall be at the sole discretion of the City. The City may, in its sole discretion, acknowledge the Deliverables provided by the Supplier in any publicity or publication. The Supplier shall not make use of its association with the City without the prior written consent of the City. Without limiting the generality of this section, the Supplier shall not, among other things, at any time directly or indirectly communicate with the media in relation to the Agreement unless it has first obtained the express written authorization to do so by the City.

5.2 City Confidential Information

During and following the Term, the Supplier shall:

- (a) keep all the City Confidential Information confidential and secure;
- (b) limit the disclosure of the City Confidential Information to only those of its Personnel who have a need to know it for the purpose of providing the Deliverables and who have been specifically authorized to have such disclosure;
- (c) not directly or indirectly disclose, destroy, exploit or use any City Confidential Information (except for the purpose of providing the Deliverables, or except if required by order of a court or tribunal, subject to section 5.5), without first obtaining:
 - (i) the written consent of the City; and
 - (ii) in respect of any the City Confidential Information about any third party, the written consent of such third party;
- (d) provide the City Confidential Information to the City on demand; and
- (e) return all the City Confidential Information to the City before the end of the Term, with no copy or portion kept by the Supplier.

5.3 Restrictions on Copying

The Supplier shall not copy any City Confidential Information, in whole or in part, unless copying is essential for the provision of the Deliverables. On each copy made by the Supplier, the Supplier must reproduce all notices which appear on the original.

5.4 Injunctive and Other Relief

The Supplier acknowledges that breach of any provisions of this Article may cause irreparable harm to the City or to any third-party to whom the City owes a duty of confidence, and that the injury to the City or to any third-party may be difficult to calculate and inadequately compensable in damages. The Supplier agrees that the City is entitled to obtain injunctive relief (without proving any damage sustained by it or by any third-party) or any other remedy against any actual or potential breach of the provisions of this Article.

5.5 Notice and Protective Order

If the Supplier or any of its Personnel become legally compelled to disclose any City Confidential Information, the Supplier will provide the City with prompt notice to that effect in order to allow the City to seek one or more protective orders or other

appropriate remedies to prevent or limit such disclosure, and it shall co-operate with the City and its legal counsel to the fullest extent. If such protective orders or other remedies are not obtained, the Supplier will disclose only that portion of the City Confidential Information which the Supplier is legally compelled to disclose, only to such person or persons to which the Supplier is legally compelled to disclose, and the Supplier shall provide notice to each such recipient (in co-operation with legal counsel for the City) that the City Confidential Information is confidential and subject to non-disclosure on terms and conditions equal to those contained in the Agreement and, if possible, shall obtain each recipient's written agreement to receive and use such City Confidential Information subject to those terms and conditions.

5.6 MFIPPA Records and Compliance

The Supplier and the City acknowledge and agree that MFIPPA applies to and governs all Records and may require the disclosure of such Records to third parties. Furthermore, the Supplier agrees:

- (a) to keep Records secure;
- (b) to provide Records to the City within five Business Days of being directed to do so by the City for any reason including an access request or privacy issue;
- (c) not to access any Personal Information unless the City determines, in its sole discretion, that access is permitted under MFIPPA and is necessary in order to provide the Deliverables;
- (d) not to directly or indirectly use, collect, disclose or destroy any Personal Information for any purposes that are not authorized by the City;
- (e) to ensure the security and integrity of Personal Information and keep it in a physically secure and separate location safe from loss, alteration, destruction or intermingling with other records and databases and to implement, use and maintain the most appropriate products, tools, measures and procedures to do so;
- (f) to restrict access to Personal Information to those of its directors, officers, employees, agents, partners, affiliates, volunteers, or subcontractors who have a need to know it for the purpose of providing the Deliverables and who have been specifically authorized by the City to have such access for the purpose of providing the Deliverables;
- (g) to implement other specific security measures that in the reasonable opinion of the City would improve the adequacy and effectiveness of the Supplier's measures to ensure the security and integrity of Personal Information and Records generally; and
- (h) that any confidential information supplied to the City may be disclosed by the City where it is obligated to do so under MFIPPA by an order of a court or tribunal.

This section shall prevail over any inconsistent provisions in the Agreement.

5.7 Survival

This Article 5 shall survive the termination or expiry of the Agreement.

6. ARTICLE 6 – OWNERSHIP OF DELIVERABLES AND INTELLECTUAL PROPERTY

6.1 Ownership of Deliverables

The Supplier agrees that the Deliverables shall be the exclusive property of the City.

6.2 Supplier's Transfer of Intellectual Property

The Supplier transfers and assigns unconditionally and irrevocably any and all Intellectual Property rights that the Supplier may have now or in the future with respect to the Deliverables, with the exception of any Pre-existing Material.

6.3 Supplier's Grant of License for Pre-existing Material

The Supplier grants to the City a perpetual, worldwide, non-exclusive, irrevocable, royalty-free, transferrable and sub-licensable license to use, reproduce, distribute, modify, adapt, translate, convert, and develop derivative works based on, any Pre-existing Material contained within the Deliverables, in any form, which license shall survive the termination or expiry of the Agreement.

6.4 Presumption Regarding Intellectual Property

The presumption governing the Agreement shall be that the City shall be the sole owner of any Intellectual Property in any form contained in any of the Deliverables. If any Pre-existing Material forms any part of the Deliverables, the Supplier shall notify the City as such prior to the delivery of the particular Deliverable containing any such Pre-existing Material. In the absence of any such notice the presumption shall remain that the City is the sole owner of any Intellectual Property contained in the Deliverables.

6.5 Moral Rights Waiver

The Supplier unconditionally and irrevocably waives in favour of the City, in whole and in part, any and all moral rights it may have in the Deliverables, including any Pre-existing Material contained in the Deliverables, and shall obtain the same waiver in favour of the City from its Personnel.

6.6 No Restrictive Material in Deliverables

The Supplier shall not incorporate into any Deliverables anything that would restrict the right of the City to modify, further develop or otherwise use the Deliverables in any way that the City deems necessary, or that would prevent the City from entering into any contract with any contractor other than the Supplier for the modification, further development of or other use of the Deliverables.

6.7 Supplier Representation and Warranty Regarding Third-Party Intellectual Property

The Supplier represents and warrants that:

- (a) the Deliverables and their provision and use shall not infringe or induce the infringement of any Third-Party Intellectual Property rights; and
- (b) the Supplier has obtained all necessary assignments and licences of Intellectual Property and all waivers of moral rights in all the Deliverables.

The Supplier shall provide satisfactory proof of (a) and (b) to the City upon request.

6.8 The City May Prescribe Further Compliance

The City reserves the right to prescribe the specific manner in which the Supplier shall perform its obligations relating to this Article.

6.9 Survival

This Article 6 shall survive the termination or expiry of the Agreement.

7. ARTICLE 7 – INDEMNITY

7.1 Supplier Indemnity

The Supplier shall indemnify and save harmless the Indemnitees from and against any and all Claims resulting from:

- (a) any breach, violation or non-performance by or on behalf of the Supplier of any obligation or responsibility of the Supplier contained in the Agreement, including any express or implied warranty;
- (b) any negligent acts, errors or omissions or wilful misconduct by or on behalf of the Supplier relating to the Deliverables to be provided under the Agreement or otherwise in connection with the Agreement;
- (c) any acts performed by or on behalf of the Supplier beyond the authority of the Supplier conferred by the Agreement, whether negligent or otherwise;
- (d) any inaccuracy in or breach of any of the representations or warranties of the Supplier contained in the Agreement or the Deliverables;
- (e) any infringement by the Supplier of any patent, trade secret, service mark, trade name, copyright, official mark, moral right, trademark, industrial design or other proprietary rights conferred by contract, common law, statute or otherwise in respect of the Deliverables or any matter provided to the City or performed by the Supplier, or anyone else for whom at law it is responsible;
- (f) any privacy, confidentiality or security breaches or violations by the Supplier relating to the Deliverables to be provided under the Agreement or otherwise in connection with the Agreement;
- (g) any employment entitlement, incentive, benefit, disability, income tax or termination liability (including but not limited to that under or in connection with WSIA, OHSA, LRA, HRC or ESA) whether statutorily required, at common law or otherwise, resulting from Deliverables to be provided under the Agreement or the Supplier's performance of the Agreement;
- (h) any determination that the Supplier's independent contractor or self-employed status is deemed to be not bona fide, by any body or in any forum, and any taxes, prosecutions, demands or related costs or employment responsibility the City may suffer in any way as a result of that determination;
- (i) any Claim against the City by the Province of Ontario or the Government of Canada, and any of their respective ministries, agencies, boards and commissions, including but not limited to the Ministry of Labour, Ontario Labour Relations Board, Human Rights Tribunal of Ontario, WSIB, Minister of National Revenue, Canada Revenue Agency, the Canada Pension Commission, and the Canada Employment Insurance Commission, or any other body, agency, or governmental unit, for any amount deemed owing or payable, including personal income tax, employee health tax, employment insurance, workers' compensation coverage, pension and/or any source deduction, HST submission, or any penalty, fine, order, award or outstanding payment, attributable to the Supplier's performance of the Agreement for the period of time the Deliverables are provided under the Agreement, retroactive or otherwise; and

- (j) any payment or employer's payroll remittances for the Personnel providing Deliverables under the Agreement, including employment insurance, Canada Pension Plan, income tax, employer health tax, employee health premiums and workers' compensation premiums, pension, HST as applicable and/or any source deduction or outstanding payment deemed owing or payable, attributable to the period of time the Deliverables are provided under the Agreement, retroactive or otherwise.

The Claims set out in this section 7.1 include all incidental, indirect, or consequential damages incurred by any person, entity, or organization, including the Indemnitees, arising from such Claims or any loss of use, revenue or profit by any such person, entity or organization resulting from such Claims.

7.2 Duty to Defend

- (a) If the City receives notice of a potential Claim or a Proceeding is commenced,

- (i) against the Indemnitees or any one of them; and
- (ii) which contains allegations, any one of which, if true, could be a Claim to which section 7.1 would apply,

even if there are other allegations raised, if true, to which section 7.1 would not apply, then the Supplier shall have a duty to defend the Indemnitee(s) so named.

- (b) The Supplier's duty to defend shall include the Supplier's obligation to pay for the costs incurred by the City to respond to the Claim or the Proceeding, including the defence of the Indemnitee(s) with respect to the Proceeding at issue, even if these steps to respond or defend were taken by the City before the Supplier was notified of the Claim or the Proceeding and were not incurred directly by the Supplier. For greater clarity, should the City have taken steps to respond or defend prior to the Supplier being notified, the Supplier shall reimburse the City for the costs related to such steps.

- (c) In the case where the Proceeding or a related counterclaim, crossclaim, or third/subsequent party claim names both the Supplier and the Indemnitees, or any one of the Indemnitees, as defendants, the Supplier's duty to defend shall include the Supplier's obligation to pay for separate representation of the Indemnitee(s):

- (i) should the City and the Supplier agree to such an arrangement; or
- (ii) should the City unilaterally request it where the Supplier asserts that the Proceeding or related counterclaim, crossclaim, or third/subsequent party claim may include a Claim or allegation to which section 7.1 would not apply.

- (d) The Supplier's duty to defend shall include the Supplier's obligation to:

- (i) not settle the Proceeding with respect to the Indemnitee(s) without the City's approval; and
- (ii) not execute any documents in relation to such settlement without the City's approval.

- (e) The Supplier's duty to defend as set out in this section 7.2 applies regardless of whether a policy of insurance naming the Indemnitees as insured or additional insured also applies to the Proceeding.
- (f) The Supplier's duty to defend as set out in this section 7.2 shall survive the termination or expiry of the Agreement.

7.3 Supplier Prohibited from Commencing Claim

The Supplier shall not commence, and irrevocably releases the City from, any Claims against the City for contribution to, or otherwise with respect to, any Claims set out in section 7.1. The Supplier agrees that if any Claim, as set out in section 7.1 is filed, pursued, or otherwise prosecuted by the Supplier, the Supplier waives the Supplier's rights to relief from such Claim, including the right to legal fees, costs, and any and all other relief whether legal or equitable, sought in such Claim. If the Supplier violates this section by suing the City or the Indemnitees, the Supplier agrees that the Supplier will pay all costs and expenses of defending against the suit incurred by the City or the Indemnitees.

7.4 Withholding of Monies under Indemnity

If any Claim is asserted in respect to which an Indemnatee is entitled to indemnification under this Article, and without prejudice to any other right or remedy the City may have, the City shall be entitled to deduct or withhold the entire value of the Claim and reasonable legal fees and costs on account of such Claim from monies owed or payable by the City to the Supplier under the Agreement or any other agreement with the Supplier, pending the final determination or settlement of any such Claim. If:

- (a) the Supplier is, becomes, or is deemed to be bankrupt or an insolvent person pursuant to the Bankruptcy and Insolvency Act (Canada);
- (b) the Supplier makes a general assignment for the benefit of creditors; or
- (c) a receiver or interim-receiver is appointed with respect to some or all of the Supplier's business, assets, or property,

then the City shall be entitled, without prejudice to any other right or remedy the City may have, to further deduct or withhold the entire value of the Claim, including reasonable legal fees and costs, from any monies owed or payable by the City to the Supplier under the Agreement or any other agreement or account.

7.5 Survival

This Article 7 shall survive the termination or expiry of the Agreement.

8. ARTICLE 8 – INSURANCE

8.1 Supplier Insurance

Without restricting the generality of the indemnification provision, the Supplier agrees to purchase and maintain in force, at its own expense and for the duration of the Term, the following policies of insurance, unless otherwise set out in Schedule A (Information Sheet and Special Conditions):

- (a) Commercial General Liability provided that the policy:
 - (i) is in the amount of not less than \$2,000,000.00, per occurrence;

- (ii) adds the City and other Indemnitees, as applicable, as additional insured(s);
 - (iii) has provisions for cross-liability and severability of interest, contingent and/or employer's liability, products and/or completed operations (if applicable), non-owned automobile liability and any other provision relevant as detailed in the Agreement; and
 - (iv) requires the insurer(s) to notify the City at least 30 calendar days (or 15 calendar days if cancellation is due to non-payment of premium), prior to any cancellation of the Supplier's insurance; and
- (b) Automobile Liability Insurance for all owned or leased licensed motorized vehicles that will be used in the performance of the Agreement with a limit of not less than \$2,000,000.00 per occurrence.

8.2 Insurance Requirements

The Supplier understands and agrees that:

- (a) all policies taken out by the Supplier shall be placed with an insurance company licensed to write insurance in the Province of Ontario or satisfactory to the City in its sole and absolute discretion;
- (b) the insurance policies required under this Agreement shall be primary and shall not call into contribution any insurance available to the City;
- (c) the coverage and limits of liability noted in the Agreement are not to be construed as the limit of liability of the Supplier in the performance of the Agreement;
- (d) the required insurance policies may be subject to reasonable deductible amounts, which deductible amounts shall be borne entirely by the Supplier;
- (e) the Supplier is responsible for any loss or damage whatsoever to any of its materials, goods, equipment or supplies and will maintain appropriate all-risk coverage as any prudent owner of such materials, goods, supplies and equipment. The Supplier shall have no claim against the City or the City's insurers for any damages or loss to the Supplier's property and shall require its property insurers to waive any right of subrogation against the City; and
- (f) the City reserves the right to require the Supplier to purchase additional insurance coverage or alter existing insurance coverage as the City may reasonably require.

8.3 Proof of Insurance

Prior to the Commencement Date, the Supplier shall deliver to the City proof of the insurance required on the City's standard form or a form acceptable to the City, signed by the insurer or an authorized agent of the insurer. The Supplier shall provide signed certificates evidencing renewals or replacements to the City prior to the expiry of any required insurance, without notice or request by the City.

9. ARTICLE 9 – WORKPLACE SAFETY AND INSURANCE BOARD

9.1 WSIB Compensation Coverage

The Supplier shall secure, maintain and pay all costs for WSIB workers' compensation coverage for its employees providing Deliverables under the Agreement, employed or

otherwise retained by the Supplier, whether required statutorily or not. The Supplier represents and warrants that it shall be in good standing with the WSIB throughout the Term of the Agreement.

9.2 Proof of Compensation Coverage

Prior to supplying the Deliverables and prior to receiving payment, the Supplier shall provide proof of workers' compensation coverage to the City in the form of a WSIB clearance certificate confirming that the Supplier has paid its assessment based on a true statement of the amount of its current payroll in respect of the Agreement. Subsequently, throughout the period of Deliverables being supplied, a new WSIB clearance certificate will be obtained by the Supplier and provided to the City every 90 calendar days or upon expiry of the certificate's validity period, whichever comes first.

9.3 Personnel Coverage

The Supplier shall ensure that all Personnel, including but not limited to volunteers, students, subcontractors and independent contractors, providing Deliverables under the Agreement, have also secured WSIB workers' compensation coverage, whether required statutorily or not, for the Term of the Agreement, which reflects the proper WSIB classification of persons providing Deliverables under the Agreement.

10. ARTICLE 10 – CHANGE ORDER PROCESS

10.1 Requesting Changes

Both parties shall have the continuing right to request in writing a Change Order in accordance with the procedures set out in this Article. The party wishing to request a Change Order shall issue a request in writing ("Change Order Request") to the other party specifying the proposed change and the purpose or objective sought with such proposed change. The Supplier shall comply with all reasonable City Change Order Requests and the performance of such requests shall be in accordance with the provisions of the Agreement.

10.2 Change Order Request

A Change Order Request shall include, at a minimum, the following information:

- (a) description of requested change;
- (b) rationale for requested change;
- (c) detailed statement of work specifying how the proposed change would be implemented, if applicable, and a timeline for completion;
- (d) any change to Deliverables;
- (e) effect, if any, that the requested change will have on the performance of the Supplier's and City's obligations under the Agreement;
- (f) any additional or reduced costs to the City that will result from the implementation of such change; and
- (g) recommended action.

10.3 Supplier Change Order Response

If the City issues a Change Order Request to the Supplier, the Supplier shall within five Business Days of receipt of the Change Order Request (unless otherwise agreed in writing by the parties) deliver to the City a written response ("Change Order Response"), which shall include, at a minimum, the following information:

- (a) detailed statement of work specifying how the proposed change would be implemented and a timeline for completion;
- (b) any additional required change to the Deliverables as a result of the Change Order Request;
- (c) effect, if any, that the requested change will have on the performance of the Supplier's obligations under the Agreement;
- (d) any proposed additional or reduced costs to the City that will result from the implementation of such change; and
- (e) recommended action.

10.4 Change Order Approval by City

The City reserves the right to accept or reject any Change Order Response or Supplier Change Order Request and if dissatisfied with the Change Order Response received, the right to request a new one. If a Change Order Response or a Supplier Change Order Request is acceptable to the Project Lead, and if all required approvals under City by-laws, policies, and procedures have been obtained, the Project Lead will provide written approval for the Change Order Response or a Supplier Change Order Request. Upon receipt of the Change Order, the Supplier shall execute the Change Order and provide it to the City. Upon the City's receipt of a fully executed Change Order, the Supplier is authorized to commence the change in accordance with the Change Order. Despite any other provision in this Agreement, fully executed Change Orders shall be deemed to be a duly authorized amendment to the Agreement.

10.5 Change Order Not Force Majeure

Use of the Change Order process by the parties shall not be considered an event beyond the reasonable control of a party within the meaning of section 1.7 and, as a result, shall not excuse or absolve a party from any delay in or failure of performance by it under the Agreement.

10.6 Pricing for Requested Changes

Where a Change Order Request includes an increase in the scope of the previously contemplated Deliverables, the Change Order Request shall set out the proposed prices for the contemplated changes. Where the Rates in effect at the time of the Change Order Request:

- (a) include pricing for the particular Deliverables contemplated in the Change Order Request, the Supplier shall not unreasonably refuse to provide those goods or services at those Rates; or
- (b) are silent to the applicable price for the particular type of goods or services contemplated in the Change Order Request, the price shall be negotiated between the City and the Supplier within a reasonable period of time;

and in any event, such Change Order Request shall not become effective until a Change Order reflecting the change has been executed by the parties.

11. ARTICLE 11 – TERMINATION, SUSPENSION, EXPIRY AND EXTENSION

11.1 Immediate Termination

The City may immediately terminate the Agreement upon giving Notice in Writing to the Supplier where:

- (a) the Supplier is adjudged bankrupt, makes a general assignment for the benefit of its creditors or a receiver is appointed on account of the Supplier's insolvency;
- (b) The Supplier breaches any provision in Article 5 (Confidentiality and MFIPPA) of the Agreement;
- (c) the Supplier breaches the Conflict of Interest section in Article 2 (Nature of Relationship between the City and Supplier) of the Agreement;
- (d) the Supplier, prior to or after executing the Agreement, makes a material misrepresentation or omission or provides materially inaccurate information to the City or is otherwise in breach of the City's Supplier Code of Conduct;
- (e) the Supplier undergoes a change in control which adversely affects the Supplier's ability to satisfy some or all of its obligations under the Agreement;
- (f) the Supplier subcontracts for the provision of part or all of the Deliverables or assigns the Agreement without first obtaining the written approval of the City; or
- (g) the Supplier's acts or omissions constitute a substantial failure of performance;

and the above rights of termination are in addition to all other rights of termination available at law, or events of termination by operation of law.

11.2 Termination for Cause

Where the Supplier fails to comply with any of its obligations under the Agreement, the City may issue a Notice in Writing to the Supplier setting out the manner and timeframe for rectification. Within 10 Business Days of receipt of such notice, the Supplier shall either:

- (a) comply with the Notice in Writing; or
- (b) provide a rectification plan satisfactory to the City.

If the Supplier fails to either comply with that Notice in Writing or provide a rectification plan satisfactory to the City, the City may immediately terminate the Agreement in whole or in part. Where the Supplier has been given a prior Notice in Writing under this section, the same subsequent type of non-compliance by the Supplier shall allow the City to immediately terminate the Agreement.

11.3 Termination without Cause

The City may at any time terminate the Agreement in whole or in part without cause by giving a Notice in Writing to the Supplier, specifying the date upon which such termination becomes effective, provided that such termination date may not be less than

20 Business Days from the date on which the Supplier is deemed to have received such Notice in Writing. The Supplier acknowledges that this right may be exercised by the City for any reason, including circumstances where the City determines that there exists a material dispute regarding the award of the Agreement.

11.4 Supplier's Obligations on Termination

On termination of the Agreement, the Supplier shall, in addition to its other obligations under the Agreement and at law:

- (a) at the request of the City, provide the City with any completed or partially completed Deliverables;
- (b) provide the City with a report detailing:
 - (i) the current state of the provision of Deliverables by the Supplier at the date of termination; and
 - (ii) any other information requested by the City pertaining to the provision of the Deliverables and performance of the Agreement;
- (c) execute such documentation as may be required by the City to give effect to the termination of the Agreement; and
- (d) comply with any other instructions provided by the City, including but not limited to instructions for facilitating the transfer of its obligations to another Person.

This section shall survive the termination of the Agreement.

11.5 Supplier's Payment upon Termination

On termination of the Agreement, the City shall only be responsible for the payment of the Deliverables provided under the Agreement to the satisfaction of the City up to and including the effective date of any termination. Termination shall not relieve the Supplier of its warranties and other responsibilities relating to the Deliverables performed or money paid. In addition to its other rights of set off, the City may hold back payment or set off against any payments owed if the Supplier fails to comply with its obligations on termination.

11.6 Termination in Addition to Other Rights

The express rights of termination in the Agreement are in addition to and shall in no way limit any rights or remedies of the City under the Agreement, at law or in equity.

11.7 Suspension of Performance

The City may at any time, by providing Notice in Writing and without terminating the Agreement, order the Supplier to suspend performance of the Agreement or stop providing any part of the Deliverables under the Agreement. The Supplier must immediately comply with any such order in a way that minimizes the cost of doing so. The Supplier must resume providing Deliverables upon the City giving a Notice in Writing to the Supplier.

11.8 Expiry and Extension of Agreement

The Agreement shall expire on the Expiry Date. The City may, in its sole discretion, exercise an available option to extend the Agreement, and such extension will be upon the same terms and conditions contained in the Agreement. The option shall be exercisable by the City giving a Notice in Writing to the Supplier prior to the Initial Term Expiry Date or previous Extension Term Expiry Date. The Notice in Writing shall identify the duration of the Extension Term.

SCHEDULE E – REQUIREMENTS FOR DELIVERABLES

1. The parties agree that the requirements for Deliverables are set out in Part 3 of the Solicitation and are incorporated by reference and make up this Schedule E, even if not attached.

SCHEDULE F – SUPPLIER BID

The parties agree that the Supplier Bid is incorporated by reference and makes up this Schedule F, even if not attached. The Supplier Bid consists of:

[Before posting: leave blank]

SCHEDULE G – COMPLETED FORMS

The parties agree that the following documents are incorporated by reference and make up this Schedule G, even if said documents are not attached:

[City to finalize before execution](#)