

AGREEMENT TERMS AND CONDITIONS

Note to Agreement Terms and Conditions:

The terms set out in this Part 2 – Agreement Terms and Conditions shall be incorporated in any Agreement entered into with the recommended Supplier substantially in the form as presented in this Part 2 - Agreement Terms and Conditions. These terms are mandatory and are not negotiable. Any Supplier wishing to request that the City consider any changes to the terms and conditions set out in Part 2 – Agreement Terms and Conditions must follow the process outlined in Section 1.7 (Addenda) of Part 1 – RFQ Process Terms and Conditions.

These Part 2 Agreement Terms and Conditions are deemed to be incorporated into and take precedence over the terms of any purchase order issued in connection with this RFQ.

1. Compliance with Laws

The Supplier will be required to comply, at its sole expense, with all federal, provincial and municipal laws, rules and regulations (including, without limitation, the City's Fair Wage and other policies or by-laws applicable to the City's suppliers, the Ontario Fire Code, the Ontario Employment Standards Act, the Ontario Human Rights Code, the Ontario Labour Relations Act, the Workplace Safety and Insurance Act, the Income Tax Act and Occupational Health and Safety requirements) in relation to the provision of any Services, including the obtaining of all necessary permits and licences, and shall submit proof of such compliance to the City, upon request, and the Supplier shall indemnify and save the City harmless from any liability or cost suffered by it as a result of the Supplier's failure to comply with this provision.

2. Non-Exclusivity

The awarding of an Agreement to a Supplier shall not be a guarantee of exclusivity.

3. Confidentiality

The Supplier shall treat as confidential all information of any kind which comes to the attention of the Supplier in the course of carrying out the Services and shall not disseminate such information for any reason without the express written permission of the City or otherwise in accordance with MFIPPA or other applicable privacy law. The Supplier may be required to enter into a detailed confidentiality and conflict of interest agreement in a form satisfactory to the City Solicitor.

4. Conflict of Interest

The Supplier shall: (a) avoid any Conflict of Interest in the performance of its contractual obligations; (b) disclose to the City without delay any actual or potential Conflict of Interest that arises during the performance of its contractual obligations; 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 Contract upon giving notice 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 or manage a Conflict of Interest; or (c) the Supplier's Conflict of Interest cannot be resolved to the City's reasonable satisfaction.

5. Indemnities

The Supplier shall indemnify and save harmless the City of Toronto, its Mayor, Members of Council, officers, employees, and agents from and against any losses, liens, charges, claims, demands, suits, proceedings, recoveries and judgements (including legal fees and costs) arising from or related to the Supplier's performance or non-performance of its obligations, including payment obligations to its approved Subcontractors and suppliers and others, and including breach of any confidentiality obligations under this Agreement.

Upon assuming the defence of any action covered under this section the Supplier shall keep City of Toronto reasonably informed of the status of the matter, and the Supplier shall make no admission of liability or fault on City of Toronto's part without City of Toronto's written permission.

6. Intellectual Property Indemnity

The Supplier shall indemnify and save harmless the City of Toronto, its Mayor, Members of Council, officers, employees, and agents from and against any losses, liens, charges, claims, demands, suits, proceedings, recoveries and judgements (including legal fees and costs) arising from infringement, actual or alleged, by the Proposal, its use or misuse, or by any of the deliverables developed or provided or supplied under or used in connection with the Services (including the provision of the Services themselves), of any Canadian, American or other copyright, moral right, trade-mark, patent, trade secret or other thing with respect to which a right in the nature of intellectual/industrial property exists.

7. Employment & WSIB Indemnity

Nothing under this Agreement shall render the City responsible for any employment, benefit or termination liability (including those under or in connection with the Workplace Safety and Insurance Act, 1997 or any successor legislation ("WSIA"), whether statutorily required, at common law or otherwise, resulting from Services supplied under this Agreement by persons employed or otherwise engaged by the Supplier. In the event that employment related costs, or other related responsibility falls to the City for any reason whatsoever, the Supplier agrees to indemnify the City for such costs.

8. No Assignment

The Supplier shall not assign any part of the project that may be awarded to it under the Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld. However, such written consent shall not under any circumstances relieve the Supplier of its liabilities and obligations under this RFQ and the Agreement.

9. Subcontractors

The Supplier shall be solely responsible for the payment of every Subcontractor employed, engaged, or retained by it for the purpose of assisting it in the performance of its obligations under the Agreement. The Supplier shall coordinate the services of its Subcontractors in a manner acceptable to the City, and ensure that they comply with all the relevant requirements of the Agreement.

The Supplier shall be liable to the City for all costs or damages arising from acts, omissions, negligence or wilful misconduct of its Subcontractors.

10. Personnel and Performance

The Supplier shall make available appropriately skilled workers, consultants or Subcontractors, as appropriate, and must be able to provide the necessary materials, tools, machinery and supplies to carry out the project.

The Supplier shall be responsible for its own staff resources and for the staff resources of any Subcontractors and third-party service providers.

The Supplier shall ensure that its personnel (including those of approved sub-contractors), when using any City buildings, premises, equipment, hardware or software shall comply with all security policies, regulations or directives relating to those buildings, premises, equipment, hardware or software.

Personnel assigned by the Supplier to perform or produce the Services or any part of it, (including those of approved Subcontractors) may, in the sole discretion of the City, be required to sign non-disclosure agreement(s) satisfactory to the City before being permitted to perform such services.

11. Independent Contractor

The Supplier and the City agree and acknowledge that the relationship between the City and the Supplier is one of owner and independent contractor and not one of employer-employee. Neither is there any intention to create a partnership, joint venture or joint enterprise between the Supplier and the City.

12. Insurance

The Supplier agrees to purchase and maintain in force:

- a. Commercial General Liability provided that the policy:
 - (i) is in the amount of not less than Two Million Dollars (\$2,000,000.00), per occurrence.
 - (ii) adds the City of Toronto as an additional insured.
 - (iii) includes, non-owned Automobile Liability, Product Completed-Operations Liability, Employer's Liability and/or Contingent Employer's Liability, Cross Liability and Severability of Interest, and any other provision relevant to the Services;
- b. Automobile Liability insurance with a minimum limit of Two Million Dollars (\$2,000,000) for all owned or leased licensed motorized vehicles used in the performance of Services.
 - (a) Prior to commencing services, and twenty (20) days prior to the expiration, amendment or extension of any then current insurance or any part thereof, the Supplier shall provide the City with certificates of insurance as proof of such coverage, in a form acceptable to the City, signed by the insurer or its authorized agent, without notice or request by the City.
 - (b) The Supplier agrees that the insurance requested shall be primary and shall not call into contribution any insurance available to the City, and the insurance policies may be subject to reasonable deductible amounts, which deductible amounts shall be borne by the Supplier.

- (c) It is understood and agreed that the coverage and limits of liability noted are not to be construed as the limit of liability of the Supplier in the performance of Services.
- (d) 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 damage or loss to its property and shall require its property insurers to waive any right of subrogation against the City.
- (e) Each policy (except for the policy of automobile liability insurance) shall require the insurer(s) to notify the City in writing, by registered mail, at least thirty (30) Calendar Days (fifteen (15) Calendar Days if cancellation is due to non-payment of premium), prior to any cancellation of the Supplier's insurance.

13. Warranties and Covenants

The Supplier represents, warrants and covenants to the City (and acknowledges that the City is relying thereon) that any deliverable resulting from or to be supplied or developed under the Agreement will be in accordance with the City's functional and technical requirements (as set out in the RFQ) and, if applicable, will function or otherwise perform in accordance with such requirements.

14. Third Party Software

Where the City is in possession of software containing or constituting confidential proprietary information belonging to third parties, the Supplier shall not, except in the usual incidental manner genuinely necessary for the intended use of such software on the equipment of the City,

- (a) analyze, copy, decompile, disassemble, translate, convert, reverse engineer or duplicate any physical embodiment or part thereof, or permit any person to do so; or
- (b) divulge to any unauthorized person the ideas, concepts or techniques, or make any other improper use, of such software.

The Supplier shall fully defend, save harmless and indemnify the City from and against any loss or damages suffered by the City as a result of any failure by the Supplier, its officers, directors, partners, contract personnel, agents and employees or any of them to comply with the provisions hereof.

Should the Supplier include third party components within the Solution, the Supplier must secure the rights to use and repackage third party components and pass on those rights to the City without additional charges.

15. Ownership of Intellectual Property and Deliverables

The City will own all intellectual property rights, including (without limitation) copyright, in and to all deliverables provided by the Supplier and its Subcontractors. All information, data, plans, specifications, reports, estimates, summaries, photographs and all other documentation prepared

by the Supplier in the performance of the Services under the Agreement, whether they be in draft or final format, shall be the exclusive property of the City.

16. Payment Schedule

A payment schedule satisfactory to the City shall form part of the Agreement.

No fees or reimbursable expenses shall become payable to the Supplier pursuant to the Agreement other than pursuant to one or more signed schedules.

The Supplier shall submit invoices in such detail as may be required by the City, and the City reserves the right to require further proof or documentation from the Supplier in respect of services performed or expenses incurred by the Supplier and the Supplier shall provide, without delay, such further proof or documentation.

If the City does not approve of the Services which are the subject of the invoice, the City shall advise the Supplier in writing of the reasons for non-approval and the Supplier shall remedy the problem at no additional cost to the City before the City shall be obliged to pay the invoice or any part of it, as the case may be.

The Supplier shall be solely responsible for the payment of all personnel costs including statutory and otherwise (including without limitation Subcontractors and suppliers and their respective personnel) made available by it and used for performance of any of the Services.

17. Termination Provisions

Upon giving the Supplier not less than thirty (30) days' prior written notice, the City may, at any time and without cause, cancel the Agreement, in whole or in part. In the event of such cancellation, the City shall not incur any liability to the Supplier apart from the payment for the goods, material, articles, equipment, work or services that have been satisfactorily delivered or performed by the Supplier at the time of cancellation.

Failure of the Supplier to perform its obligations under the Agreement shall entitle the City to terminate the Agreement upon ten (10) calendar days' written notice to the Supplier if a breach which is remediable is not rectified in that time. In the event of such termination, the City shall not incur any liability to the Supplier apart from the payment for the goods, material, articles, equipment, work or services that have been satisfactorily delivered or performed by the Supplier at the time of termination.

All rights and remedies of the City for any breach of the Supplier's obligations under the Agreement shall be cumulative and not exclusive or mutually exclusive alternatives and may be exercised singularly, jointly or in combination and shall not be deemed to be in exclusion of any other rights or remedies available to the City under the Agreement or otherwise at law.

No delay or omission by the City in exercising any right or remedy shall operate as a waiver of them or of any other right or remedy, and no single or partial exercise of a right or remedy shall preclude any other or further exercise of them or the exercise of any other right or remedy.

Upon termination, all originals and copies of data, plans, specifications, reports, estimates, summaries, photographs, and other documents that have been accumulated and/or prepared by the Supplier in performance of the Agreement shall be delivered to the City in a clean and readable format.

18. Right to Audit

The City may audit all financial and related records associated with the terms of the Agreement including timesheets, reimbursable out of pocket expenses, materials, goods, and equipment claimed by the Supplier. The Supplier shall at all times during the term of the contract, and for a period of 2 years following completion of the Agreement, keep and maintain records of the Work performed pursuant to this Agreement. This shall include proper records of invoices, vouchers, timesheets, and other documents that support actions taken by the Supplier. The Supplier shall at their own expense make such records available for inspection and audit by the City at all reasonable times.

19. Set Off

If the Supplier at any time fails to supply all goods or services to the City as specified within the Agreement, or fails to replace goods or services rejected by the City, then the City shall be permitted to procure such goods or services 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.

20. Right to Retain Monies

The City shall have the right to retain out of monies payable to the Supplier under the Agreement the total amount outstanding for time to time of 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 cause of action between the Supplier and the City which have not been settled between the City and the Supplier.

21. Occupational Health and Safety

- a. The Supplier shall comply with all federal, provincial or municipal occupational health and safety legislative requirements, including, and without limitation, the *Occupational Health and Safety Act*, R.S.O., 1990 c.0.1 and all regulations thereunder, as amended from time to time (collectively the "OHSA").
- b. Nothing in this section shall be construed as making the City the "employer" (as defined in the OHSA) of any workers employed or engaged by the Supplier for the *Services*, either instead of or jointly with the Supplier.
- c. The Supplier agrees that it will ensure that all Subcontractors engaged by it are qualified to perform the *Services* and that the employees of Subcontractors are trained in the health and safety hazards expected to be encountered in the *Services*.
- d. The Supplier acknowledges and represents that:
 - i. The workers employed to carry out the *Services* have been provided with training in the hazards of the *Services* to be performed and possess the knowledge and skills to allow them to work safely;

- ii. The Supplier has provided, and will provide during the course of the agreement, all necessary personal protective equipment for the protection of workers;
 - iii. The Supplier's supervisory employees are competent, as defined in the OHSA, and will carry out their duties in a diligent and responsible manner with due consideration for the health and safety of workers;
 - iv. The Supplier has in place an occupational health and safety, workplace violence and workplace harassment policies in accordance with the OHSA; and
 - v. The Supplier has a process in place to ensure that health and safety issues are identified and addressed and a process in place for reporting work-related injuries and illnesses.
- e. The Supplier shall provide, at the request of the *General Manager* or their designate, the following as proof of the representations made in paragraph d(i) and d(iv):
- i. documentation regarding the training programs provided or to be provided during the *Services* (i.e. types of training, frequency of training and re-training); and
 - ii. the occupational health and safety policy.
- f. The Supplier shall immediately advise the *General Manager* or their designate in the event of any of the following:
- i. A critical injury that arises out of *Services* that is the subject of this agreement;
 - ii. An order(s) is issued to the Supplier by the Ministry of Labour arising out of the *Services* that is the subject of this agreement;
 - iii. A charge is laid or a conviction is entered arising out of the *Services* that is the subject of this agreement, including but not limited to a charge or conviction under the OHSA, the *Criminal Code*, R.S.C 1985, c. C-46, as amended and the *Workplace Safety and Insurance Act*, 1997, S.O. 1997, c. 16, Sched. A, as amended.
- g. The Supplier shall be responsible for any delay in the progress of the *Services* 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 circumstance for the purposes of extending the time for performance of the *Services* or entitling the Supplier to additional compensation, and the Supplier shall take all necessary steps to avoid delay in the final completion of the *Services* without additional cost to the City.
- h. The parties acknowledge and agree that employees of the City, including senior officers, have no authority to direct, and will not direct, how employees, workers or other persons employed or engaged by the Supplier do work or perform a task that is the subject of this agreement.

22. Workplace Safety and Insurance Act

The Supplier shall secure, maintain and pay all costs for Workplace Safety and Insurance Board ("WSIB") workers' compensation coverage for its employees providing Services under this agreement, whether required statutorily or not under the Workplace Safety and Insurance Act, 1997.

The Supplier represents and warrants that it shall be in good standing with the WSIB throughout the term of this agreement. Prior to supplying the Services and prior to receiving payment, the Supplier shall produce a Clearance Certificate issued by the WSIB confirming that the Supplier has paid its assessment based on a true statement of the amount of its current payroll in respect of the Services and that the City is relieved of financial liability. Thereafter, throughout the period of Services being supplied, a new Clearance Certificate will be obtained from the WSIB by the Supplier and provided to the City every 90 days or upon expiry of the Certificate's validity period whichever comes first.

The Supplier shall ensure that any and all persons, including but not limited to volunteers, students, Subcontractors and independent contractors, providing services under this agreement, have secured WSIB coverage, whether required statutorily or not, for the term of this agreement.

23. Accessibility Standards and Customer Service Training Requirements

The Supplier must ensure that all deliverables conform to the requirements of the Accessibility for Ontarians with Disabilities Act, 2005.

The Supplier shall require all applicable personnel (including those of its Subcontractors) 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. For a copy of the City of Toronto requirement, visit the website at

<https://www.toronto.ca/business-economy/doing-business-with-the-city/understand-the-procurement-process/purchasing-policies-legislation/accessible-customer-service-training-requirements/>

24. City of Toronto – Invoice/Billing Requirements

For details on the City of Toronto's invoice and billing requirements, please refer to:

<https://www.toronto.ca/business-economy/doing-business-with-the-city/follow-up-on-city-contracts/what-should-be-on-my-invoice/>