

SCOPE

These General Conditions form a part of every Contract with The Corporation of the City of Brampton (the “Owner”) for the purchase of goods and services, and apply as provided herein.

Where Supplementary Conditions are contained herein, it should be noted that these Supplementary Conditions shall govern in the case of inconsistency or conflict with the General Conditions.

INTERPRETATION / DEFINITIONS

In these General Conditions

“Bid” means an offer to supply goods, services or construction in a Bid Call;

“Bid Call” means an invitation from the Owner to Vendors to submit a Bid;

“Contract” means a formal legal agreement between two or more parties with binding legal and moral implications whereby goods and/or services are exchanged for money or other consideration;

“Contract Documents” means the documents making up the Contract;

“Contractor/Supplier” means the party which has entered into the Contract for the purchase of Goods and/or Services awarded by the Owner under a Bid Call;

“Goods and Services” means all labour, materials, products, articles, fixtures, services, supplies and acts required to be done, furnished or performed by the Contractor/Supplier, as specified in the Contract;

“Owner” means The Corporation of the City of Brampton;

“Personal Information” means any personal information which is required to be protected pursuant to MFIPPA or any laws (including regulations and common law) pertaining to the protection of personal, healthcare or insurance information.

Except as the context may otherwise require, the words “City” and “City of Brampton” used in these General Conditions mean The Corporation of the City of Brampton

1. Applicable Law

The Contract is to be governed by and in accordance with the laws of the Province of Ontario and the parties agree to attorn to the jurisdiction of the courts of that Province. In addition, the requirements outlined in the City of Brampton's Purchasing By-law 19-2018, as may be amended from time to time, shall apply for all procurement processes conducted to secure goods and services as defined therein.

2. Assignment

The Contractor/Supplier shall not assign to any person any right, duty or obligation under the Contract, without the prior written consent of the Owner, and any attempt to assign without such consent shall be null and void and of no effect. Where consent is so obtained any assignment shall be made subject to the terms of the Contract and the Contractor/Supplier shall require the assignee to acknowledge such terms in writing at the time the assignment agreement is executed. Any such assignment shall not relieve the Contractor/Supplier of its obligations to the Owner under the Contract.

3. Blanket Contract

If funds are not approved to support continuation of the performance of the Contract in a subsequent fiscal year, then the Contract shall be cancelled without penalty.

The Contractor/Supplier understands and agrees that the Contract is established on an as and when required basis and shall not oblige the Owner to authorize or order any goods or services whatsoever or to spend the estimated expenditures or any monies whatsoever. Furthermore, the Owner's liability under the Contract shall be limited to the actual amount of work specifically requested in writing and approved by the Owner's representative or designate within the period of the Contract. Quantities may be increased or decreased and any additional payment or reduction in payment shall be made at the unit prices bid.

It is the responsibility of the Contractor/Supplier to provide acceptable goods and/or services when requested and to satisfy itself that the individuals requesting goods and/or services are in fact employees of the Owner. The Owner shall endeavour to utilize the services of the Contractor/Supplier wherever and whenever the need arises; however, it shall be understood that should a situation arise where the Contractor/Supplier is unable to react in time or time does not allow the Contractor/Supplier to be contacted, then the Owner shall have the right to use an alternate source of like goods and/or services.

4. Changes

No changes in quantity, price or product substitutions will be accepted without written authority from the Owner.

5. Compliance with Laws

The Contractor/Supplier shall comply and shall ensure that all of its employees, agents and sub-contractors comply with all applicable Federal, Provincial and Municipal laws and orders of government, police, fire, health, building and other authorities in performing its obligations under the Contract including, without limitation, the *Occupational Health and Safety Act* and the *Workplace Safety and Insurance Act, 1997*, or any successor legislation, as applicable.

Failure to do so may be considered a default and the Owner shall be entitled at its sole discretion to terminate the Contract and pursue any other legal recourse which the Owner deems to be appropriate.

6. Conflict of Interest

The Contractor/Supplier must disclose to the Owner any potential conflict of interest that might compromise performance of the work. If such conflict of interest does exist, the Owner may, at its sole discretion, terminate the Contract.

The Owner reserves the right at its sole discretion to terminate the Contract, if at any time the Owner discovers evidence of an undeclared connection of any members of City Council or officials or employees of the Owner with the Contract, or any conflict of interest, or collusion or fraud.

7. Constructor

Where services are supplied under the Contract, the Contractor/Supplier, for purposes of the *Ontario Occupational Health and Safety Act*, shall be designated as the Constructor for this Project and shall assume all of the responsibilities of the Constructor as set out in that *Act* and its regulations, notwithstanding that the Contractor/Supplier has been referred to as the 'Contractor/Supplier' in this and any other related document.

The Contractor/Supplier:

- i) acknowledges having read and understood the *Occupational Health and Safety Act* together with the Owner's Health and Safety Policies and Procedures;
- ii) covenants and agrees to observe strictly and faithfully the provisions of the *Occupational Health and Safety Act* and all regulations and rules promulgated thereunder together with the Owner's Health and Safety Policies and Procedures;
- iii) agrees to indemnify and save the Owner harmless for damages or fines arising from any breach or breaches of the said *Occupational Health and Safety Act* and/or the Owner's Health and Safety Policies and Procedures;

- iv) assumes full responsibility for the enforcement of the Occupational Health and Safety Act and the Owner's Health and Safety Policies and Procedures and shall ensure compliance therewith;
- v) further acknowledges and agrees that any breach or breaches of the Occupational Health and Safety Act and/or the Owner's Health and Safety Policies and Procedures whether by the Contractor/Supplier or any of its sub-contractors may result in the Contractor/Supplier and/or sub-contractor being removed from the site and in the immediate termination of the contract herein and the forfeiture of all sums owing to the Contractor/Supplier by the Owner;
- vi) shall allow access to the work site on demand to representatives of the Owner to inspect work sites to ensure compliance with the Occupational Health and Safety Act and the Owner's Health and Safety Policies and Procedures;
- vii) agrees that any damages or fines that may be assessed against the Owner by reason of a breach or breaches of the Occupational Health and Safety Act by the Contractor/Supplier or any of its sub-contractors will entitle the Owner to set-off the damages so assessed against any monies that the Owner may from time to time owe the Contractor/Supplier under the contract or under any other contract whatsoever; and
- viii) the Contractor/Supplier agrees that where any portion of the work or services in the Contract is contracted to a sub-contractor the provisions of this section will apply to the sub-contractor and the Contractor/Supplier will enforce said provisions.

The Contractor/Supplier shall provide a list of all controlled hazardous materials or products containing hazardous materials, all physical agents or devices or equipment producing or omitting physical agent and any substance, compound, product or physical agent that is deemed to be or contains a designated substance in accordance with the Workplace Hazardous Materials Information System (WHMIS) as defined under the Ontario Occupational Health & Safety Act and shall provide appropriate Ontario Material Health & Safety Data Sheets for these substances used for the performance of the required work, all prior to the performance of work.

Where hazardous materials, physical agents and/or designated substances are used in the performance of the required work, the Contractor/Supplier shall ensure that the requirements of the Ontario Occupational Health & Safety Act and associated regulations are complied with.

8. Contract Alterations

No alterations or variations of the terms of the Contract shall be valid or binding upon the Owner unless authorized in writing by the Purchasing Agent or designate.

9. Contract Requirements

The Contractor/Supplier agrees to perform the Contract in accordance with the terms, provisions, and conditions of the Contract, all specifications and requirements of the Owner and any supplemental directives issued by the Purchasing Agent, and in accordance with the Bid pursuant to which the Contract has been awarded.

10. Contract Termination for Convenience

The Owner may terminate a contract, in whole or in part, whenever the Owner determines that such termination is in the best interest of the Owner without showing cause, upon giving written notice to the Contractor/Supplier. The Owner shall pay all reasonable costs incurred by the Contractor/Supplier up to the date of termination. However, in no event shall the Contractor/Supplier be paid an amount which exceeds the price bid for the work performed. The Contractor/Supplier will not be reimbursed for any profits which may have been anticipated but which have not been earned up to the date of termination.

11. Contractor Evaluation

The Contractor's performance will be evaluated in accordance with the Owner's Vendor Performance Evaluation Process as set out in the Vendor Performance Standard Operating Procedure. The performance evaluation will be used to provide feedback to the Contractor; to provide the Contractor with the opportunity to implement performance improvements during the duration of the Contract; and, where it is in the Owner's best interests as the result of a poor performance rating, suspend the Contractor from participating in the Owner's procurement process, in accordance with the Vendor Suspension Administrative Directive.

12. Damages and Defects

The Contractor/Supplier agrees that all goods or services provided by the Contractor/Supplier shall be new upon delivery and installation, in good operating condition and free of defects in workmanship and material, and the Contractor/Supplier shall repair or replace at the Contractor/Supplier's sole expense any damaged or marred items caused or occasioned through the handling or installation by the Contractor/Supplier or otherwise occasioned in transit. The Contractor/Supplier shall repair or replace the damaged goods within 48 hours.

The Contractor/Supplier agrees to furnish adequate protection from damage for all work and to repair damage of any kind for which the Contractor/Supplier or the Contractor/Supplier's workers are responsible, to the premises or equipment, to its own work or the work of other Contractor/Suppliers, at the Contractor/Supplier's expense.

When goods are rejected, same must be removed by the Contractor/Supplier from the premises of the Owner within forty eight (48) hours after notification unless public health and safety require immediate destruction or other disposal of such rejected delivery, in which case the Owner may take such action as it deems necessary.

Rejected items left longer than forty eight (48) hours will be considered as abandoned and the Owner shall have the right to dispose of them as its own property.

13. Default by the Contractor/Supplier

If the Contractor/Supplier fails to perform its obligations under the Contract, the Owner may notify the Contractor/Supplier in writing that the Contractor/Supplier is in default and instruct the Contractor/Supplier to correct the default in five (5) business days immediately following the receipt of such notice.

If the Contractor/Supplier fails to correct the default within the time specified, or in such other time period as may be subsequently agreed upon, the Owner, without prejudice to any other right or remedy the Owner may have, may correct such default and deduct the cost from any payment due to the Contractor/Supplier.

If the Contractor/Supplier fails to correct the default in the time specified or in such other time period as may be subsequently agreed upon, the Owner may terminate the Contract by giving written notice of termination to the Contractor/Supplier. The Contractor/Supplier will be paid for goods provided and accepted, and services satisfactorily performed, prior to termination less any costs incurred by the Owner in reprocurring the remainder of the Contract.

14. Delivery of Goods

All goods delivered must be standard new equipment or material of the latest model except as otherwise specifically stated in the tender. Where any part or nominal appurtenances of equipment is not described, it shall be understood that all the equipment and appurtenances which are usually provided in the manufacturer's stock model shall be furnished.

Goods must be new items except as otherwise specifically stated in the Purchase Order.

Where goods are furnished for a specified price per unit of weight, the Owner reserves the right to require such materials to be weighed on scales designated by it, in which case payment shall be made on the basis of the net weight of the materials furnished.

Delivery must be made as ordered and in accordance with the Purchase Order. If no delivery instructions appear on an order it will be interpreted to mean prompt delivery. Burden of proof of delay in receipt of the order shall rest with the Contractor/Supplier.

For any exception to the delivery date specified on the Contract, the Contractor/Supplier shall give prior notification of the cause and extent of anticipated delay and obtain written approval from the Purchasing Agent.

Failure of the Contractor/Supplier to deliver within the time specified or within reasonable time as interpreted by the Owner, or failure to make replacements of rejected goods or services when so requested, will constitute authority for the Owner to purchase in the open market to replace the goods or services rejected or not delivered. On all such purchases, the Contractor/Supplier agrees to promptly reimburse the Owner for excess costs occasioned by such purchases. Such purchases will be deducted from the contract quantities. If such cost is not paid by the Contractor/Supplier, it shall be deducted from the balance of the purchase price owing; however, should public necessity demand it, the Owner reserves the right to use or consume goods or services which are superior in quality with no adjustment in price.

15. Environmental Responsibility

For the duration of the Contract, the Contractor/Supplier shall, upon request, provide proof acceptable to the Purchasing Agent, that goods and services being provided under the Contract continue to meet any applicable environmental standard required by the Contract.

16. Ethical Conduct

In addition to being in compliance with all applicable federal, provincial and municipal laws and regulations, Contractor/Suppliers shall behave in an ethical manner having regard for and demonstrating care for, the condition of or well-being and fair treatment of all persons, places and things.

17. FOB/Freight

All goods and services shall be FOB destination and freight prepaid, by the Contractor/Supplier to any specified delivery location within the City of Brampton boundaries, unless otherwise noted in the Purchase Order.

Where specific authorization is granted to ship goods FOB Shipping Point, the Contractor/Supplier agrees to prepay all shipping charges, and route via cheapest common carrier, and bill the Owner for the shipping charges as a separate item on the invoice. Four copies of Certified Customs Invoices are required with foreign shipments.

The Owner reserves the right to refuse COD shipments.

18. Force Majeure

The Parties shall not be liable to each other for any loss, damage or other claim whatsoever arising out of a delay, failure or inability to perform any obligation(s) contained

THE CORPORATION OF THE CITY OF BRAMPTON
General Conditions – Goods and Services

in the Contract for any cause which is beyond the Parties reasonable control. Without fault or negligence, such causes may include, but are not limited to, any act of God, fire, flood, earthquake, tornado, labour disputes, war, revolution, riot, sabotage, terrorism, act of the public enemy, explosion, act or failure to act of any government, agency, board or commission. Lack of finances shall in no event be deemed to be a cause beyond a Party's control.

In the event that performance of the Contract, in the reasonable opinion of either Party, is made impossible by force majeure, then such Party shall so notify the other in writing. At the request of the Owner, the Contractor/Supplier shall:

- a) complete the provision of the Deliverables with such adjustments as are required by the existence of the force majeure and are agreed upon by both Parties;
- b) suspend all Deliverables to be provided pursuant to the Contract for the duration of an emergency work stoppage resulting from, for example, a labour dispute. Upon resolution of such an emergency work stoppage both Parties shall advise in writing, that work can be resumed and Contractor/Supplier shall use commercially reasonable efforts to restaff the Project. Any adjustments to be made to the work schedules due to the suspension of Deliverables shall be agreed upon by both Parties; or
- c) terminate the agreement as a last option.

Notwithstanding the above, the Parties agree that effective March 17, 2020 the Province of Ontario issued a State of Emergency to address the ongoing COVID-19 pandemic for all non-essential businesses within Ontario. Subsequently on March 24th, the Province outlined which services were essential. On April 3rd, further amendments were made to the essential services list. Municipal government and the services provided were considered essential. Further, suppliers which support such essential services were also deemed essential. The Parties agree that they will, despite these circumstances, work together in good faith to perform the services using their best commercial efforts. In the event the Contractor/Supplier is unable to perform under the Agreement as a result of COVID-19, upon notice to the Owner and subject to mutual agreement, services may cease with no additional claim for costs by either Party and only additional time being permitted. As other circumstances change, the Parties will communicate with one another to ensure a joint solution will be met which ensures the safety and health for all those which participate in the services.

19. Inclusive Customer Service

The Contractor/Supplier shall comply with the requirements of O. Reg. 429/07 under the *Accessibility for Ontarians with Disabilities Act, 2005*, and the Owner's Inclusive Customer Service Policy which affirms the principles therein and which outlines the Owner's commitment to inclusive customer service by providing barrier-free access to all goods, services, information and resources.

The Contractor/Supplier shall be responsible for carrying out each service interaction in a manner that positively reinforces customer service excellence by treating each customer with dignity and respect, and by exercising care and attention to individual needs.

The Contractor/Supplier shall comply with the requirements of O. Reg. 429/07 and the Owner Inclusive Customer Service Policy, and shall ensure that training, record keeping and reporting take place as required, including:

- (a) providing training to all personnel who will be delivering goods or services to the Owner, at a minimum, by providing a copy of the "Inclusive Customer Service resource manual for Vendors" as provided by the Owner on its Website at <http://www.brampton.ca/en/City-Hall/Accessibility/Pages/Vendors.aspx>, to all such personnel and requiring them to review the same before commencing any work for the Owner;
- (b) maintaining a record of all training provided;
- (c) furnishing to the Owner upon request, within ten business days, information regarding the method of training provided, the date on which training was provided, and the number of personnel trained.
- (d) providing further training as may be required from time to time should the Owner's Inclusive Customer Service Policy be amended.

20. Indemnification

The Contractor/Supplier agrees that the Owner shall not be liable for any injury or damage (including death) to any employees, officer or agent of the Contractor/Supplier, unless the injury loss or damage is caused by the negligence of an officer or employee of the Owner while acting within the scope of his or her employment.

The Contractor/Supplier agrees that the Contractor/Supplier shall, at all times, indemnify and save harmless the Owner, each of its elected officials, officers, employees and agents from and against all claims, demands, losses, costs, damages, action, suits or other proceedings made, sustained, brought or made upon the Owner in respect of any costs, expenses, loss, damage or injury, including death, and reasonable legal fees, arising out of any cause, whether direct or indirect, by reason of or in connection with

negligent acts or omissions of the Contractor/Supplier or any of its officers, directors, employees or agents in connection with the services performed, purportedly performed or required to be performed by the Contractor/Supplier under the Contract.

21. Independent Contractor/Supplier

The Contractor/Supplier, any employees of the Contractor/Supplier and its agents and sub-contractors shall not be deemed to be at any time employees or servants, agents or sub-contractors of the Owner. The parties agree that the Contractor/Supplier shall be an independent contractor/supplier in the provision of the goods and services under the Contract and that no employment relationship is to be created between the Contractor/Supplier or any employees of the Contractor/Supplier and the Owner.

22. Insolvency, Winding Up

In the event of any proceeding, voluntary or involuntary, in bankruptcy or insolvency, winding up or other creditors' proceeding by or against the Contractor/Supplier, or in the event of the appointment, with or without Vendor's consent, of a receiver, a receiver and manager, agent liquidator or other similar administrator, or an assignee for the benefit of creditors, the Owner shall be entitled to cancel any unfilled part of the Contract without any liability whatsoever.

23. Inspection

The Owner reserves the right to inspect and have a demonstration of any/all goods which maybe offered or of the Contractor/Supplier's premises and at any point during the Contract.

The inspection of goods or services and the making of chemical and physical tests to determine whether or not the specifications are being complied with shall be made in the manner prescribed by the Owner.

Any material or work which fails in any way to meet the terms of the Contract is subject to rejection or to be paid for on an adjusted price basis. The decision of the Owner shall be final.

All costs associated with the inspection or testing of any material or work shall be borne by the Contractor/Supplier.

24. Insurance

The Contractor/Supplier shall at all times during the currency of the term of the Contract and any extension or renewal thereof, at its own expense, obtain and provide the Owner with evidence of:

Commercial General Liability Insurance, against all claims for personal injury, including bodily injury resulting in death, and property damage with an inclusive limit

THE CORPORATION OF THE CITY OF BRAMPTON
General Conditions – Goods and Services

of not less than Three Million (\$3,000,000.00) per occurrence. Such policy shall name the Owner as an additional insured with respect to the liability arising out of the operations of the named insured.

Auto Liability Insurance with an inclusive third party liability limit of not less than Two Million (\$2,000,000.00) per occurrence for loss or damage resulting from bodily injury to or death of one or more persons and for loss or damage to property. This policy must cover all vehicles owned, leased or operated by or on behalf of the insured.

The City of Brampton Certificate of Insurance form is the only form that the Owner will accept. No other forms will be accepted. A sample Certificate of Insurance form is available at the City's website

www.brampton.ca/EN/Business/insurance/Pages/welcome.aspx.

The Contractor/Supplier shall be required to deliver to the Owner an executed City of Brampton Certificate of Insurance form evidencing the insurance as required.

The Owner will only accept insurance policies and/or certificates, where the Owner is an additional insured, from issuing institutions that have the following minimum ratings:

Standard & Poor's	-	minimum rating of BBB
Moody's	-	minimum rating of baa
A.M. Best	-	minimum rating of B+

If such policy is cancelled, changed or materially altered in any way that would affect the Owner, thirty (30) days prior written notice by registered mail will be given by the Contractor/Supplier's insurer to the Owner.

The Owner reserves the right to request such higher limits of insurance or other types of insurance policies appropriate to the Contract as the Owner may reasonably require from time to time.

The Contractor/Supplier is responsible for ensuring that any subcontractors used in completion of the work will be insured with the same insurance coverages and limits as noted above.

Note: Insurance requirements are subject to change based on the scope of work.

25. Invoicing

Invoices can be emailed to apinvoices@brampton.ca or mailed to the Owner's Accounts Payable Department with the following requirements:

- Purchase Order number
- Invoice number
- Invoice date
- Location of delivery / service
- Description of goods / service
- Name of Owner representative (the person requesting the goods/service)
- Harmonized Sales Tax shown separately
- Contractor/Supplier's HST registration number
- Signed delivery receipts, if any
- Work Order number, if any
- Special Notes

Each invoice shall show shipping charges as a separate item and shall contain the original or a copy of the bill indicating that payment by the Contractor/Supplier for shipping has been made, notwithstanding any agreement by the Owner to pay freight or other transportation charges.

Work shall be invoiced in accordance with the quoted prices in the Bid.

All invoices for services shall be accompanied by a valid W.S.I.B. Certificate of Clearance. In case the Contractor/Supplier has failed to provide the certificate, the Owner reserves the right to withhold payment until the valid certificate is presented regardless of the amount owed.

Where there is a holdback in respect of services (as determined by the Contract Administrator), the second and subsequent progress claim payments must be accompanied by a Statutory Declaration of Payments, Liens & Liabilities.

Invoices that do not comply with the above requirements may result in delay of payment and may be returned for adjustment prior to processing payment. Any delays resulting from this action shall not prevent the Owner from taking any payment discounts.

26. Safety Data Sheets (SDS)

The Contractor/Supplier shall provide Safety Data Sheets for each hazardous material supplied and made available to the Owner within 72 hours upon request. These sheets must also be provided prior to or at the time of pickup or delivery to the Owner.

All hazardous material containers must be clearly labelled in accordance with the Ontario *Occupational Health and Safety Act* and associated Regulations, the *Workplace Hazardous Materials Information System Act (WHMIS)* and where applicable, the *Transportation of Dangerous Goods Act* and the *Dangerous Goods Act* of Ontario.

If applicable, all hazardous material must meet Government Food and Drug Regulations in accordance with the *Food and Drugs Act* of Canada or latest revision thereof.

Failure to comply with these requirements shall result in the hazardous material being refused by the Owner and may result in cancellation of the Contract, in which event any existing stocks shall be removed and credited back to the Owner in full by the Contractor/Supplier. The Owner shall be under no obligation whatsoever to any Contractor/Supplier who does not comply with the Owner's provisions.

27. MFIPPA

Information contained in a Bid submitted to the Owner shall be subject to disclosure as may be required under the provisions of the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)*. Any confidentiality obligations of the Owner under the Bid Call are expressly subject to the obligations and requirements of *MFIPPA* now or hereafter in effect.

28. No Lemon Policy

Any equipment purchased by the Owner shall be subject to a “No Lemon Policy” whereby after three (3) attempts to repair a recurring malfunction, the Owner, at its sole discretion can direct the Contractor/Supplier to replace the equipment on a “like-for-like” basis at no additional cost to the Owner.

29. Non-Disclosure

Neither the Owner nor the Contractor/Supplier shall at any time divulge any matters relating to the business of the other party or any customers, agents of the other party which may become known to it by reason of its services or otherwise and shall be true to the other party in all dealings and transactions relating to the services contemplated by the Contract. Furthermore, neither the Owner nor the Contractor/Supplier shall use at any time, during the Contract, or after its termination, for its own benefit or purpose of any other person, firm, corporation, association or other business entity, any trade secrets, data or plans belonging to or relating to the affairs of the other party, including knowledge relating to customers, clients, or employees of the other party.

30. Order of Precedence

The Contract will be governed by the provisions contained in the Contract Documents in the order shown:

- City-authorized Change Orders
- The City's Purchase Order

Formally executed agreement, if any
Addenda
Scope of Work
Supplementary Conditions
General Conditions
Contractor/Supplier's Bid

The foregoing documents are all the Contract Documents and constitute the full agreement between the parties.

31. Over Shipment of Goods

All over shipments made are the responsibility of the Contractor/Supplier. The Owner reserves the right to reject and return, at the Contractor/Supplier's expense, any goods in excess of the quantity ordered or, at the Contractor/Supplier's discretion, the Owner may keep the goods on a "no charge" basis.

32. Ownership and Delivery of Materials

The Contractor/Supplier agrees that all information and material of any kind whatsoever acquired or prepared by or for the Contractor/Supplier pursuant to the Contract shall, both during and following the termination of the Contract, be the sole property of the Owner, including all information and material provided by the Owner to the Contractor/Supplier for the purposes of the Contract.

Upon the request of the Owner, the Contractor/Supplier agrees to deliver forthwith to the Owner all materials and information specified in the request that is/are the property of the Owner and in the possession or under the control of the Contractor/Supplier. No copy or duplicate of any such material or information delivered to the Owner shall be retained by the Contractor/Supplier without the prior written approval of the Owner. The Contractor/Supplier further agrees not to destroy any material or information which is the property of the Owner without the Owner's prior written approval. This provision survives the expiration or termination of the Contract.

33. Packaging and Disposal

Goods shall be securely and properly packed for shipment according to accepted standard commercial practice, without extra charge for packing materials or containers. Containers to remain the property of the Owner unless otherwise stated in the Purchase Order.

The Contractor/Supplier shall eliminate or reduce the amount of packaging to the extent possible and shall remove packaging from delivered and installed items. Packaging once removed, must be recycled or transported and disposed of in accordance with all applicable laws and regulations governing waste disposal. Further, the

Contractor/Supplier must indicate where garbage is taken for disposal when requested to do so by the Owner.

Unless otherwise provided for in the Contract, the Contractor/Supplier shall pay all packaging, freight, insurance and other charges whatsoever, in connection with the supply and delivery of the goods and the return of deficient goods or goods wrongly supplied.

34. Patents

The Contractor/Supplier shall indemnify and save harmless the Owner, its Councilors, employees and agents from any and all liability, damages, orders, injunctions, penalties, costs and expenses arising in relation to any actions, causes of action, claims, suits or other proceedings commenced against the Owner by any third party regarding the receipt, purchase or use by the Owner of the Contractor/Supplier's services under the Contract and which infringes any third party patent, copyright, trade secrets, secret process or any other intellectual property entitlement whatsoever and from liability of any kind for the use of any composition, secret process, invention article, appliance, good or service furnished or used in performance of the Contract of which the Contractor/Supplier is not the patentee, assignee, licensee or trademark holder.

35. Payments

The Owner's method of payment is by electronic payment only. The Contractor/Supplier shall be required to complete the Accounts Payable Direct Deposit Set-Up Form.

All payments will be made within thirty (30) days from receipt of an approved invoice. All invoices must be approved by the Owner.

The Owner shall not be required to make any payment to anyone other than the Contractor/Supplier.

Except only where expressly provided otherwise, all prices in the Contract are stated and shall be paid in Canadian currency.

All charges against the Contractor/Supplier shall be subject to deduction or setoff from current obligations that are due or may become due in respect of this or any other transaction with the Contractor/Supplier. In the event that collection is not made in this manner the Contractor/Supplier shall pay the Owner, on demand, the amount of such charges.

Where there is a question of non-performance, the Owner may withhold payment in whole or in part against which to charge back any adjustment required.

The Contractor/Supplier shall not claim or apply for penalty charges in respect of late payment.

36. Permits

The Contractor/Supplier shall pay and obtain for all necessary permits, approvals, licenses and fees where required.

37. Personal Information

The Contractor will comply with any laws pertaining to Privacy Protection to which the Owner is subject (including MFIPPA, regulations and common law). In addition, the Contractor will provide the Owner with information, cooperation and assistance, as requested by the Owner from time to time, in order to enable the Owner to comply with any and all requirements to which the Owner is subject under any laws pertaining to the Privacy Protection (including MFIPPA, regulations and common law).

38. Price

Everything supplied under the Contract shall be at or based on the price or prices set forth or referred to, and in accordance with the Contract. No changes in quantity, price or product substitutions will be accepted without written authority from the Owner.

The Contractor/Supplier warrants that the prices for goods under the Contract are not less favorable than those currently extended to any other customer for the same or similar goods in similar quantities. In the event the Contractor/Supplier reduces its price for such goods during the Contract, the Contractor/Supplier shall reduce the prices under the Contract correspondingly. If the price is not stated in the Contract, the price shall be the lower of the later price last quoted or paid, or the prevailing market price.

In the event that the Owner is entitled to a cash discount, the period of computation will commence on the date of receipt of a correctly completed invoice.

39. Publicity/Use of Names

Except as provided for in the Contract, any news release, public announcement, advertisement, or publicity released by the parties concerning the Contract or the initiative will be subject to the prior written approval of the other party and any third parties as required. Any such publicity shall give due credit to the contributions of each party.

Neither party has the right to use the other's name, logo, trademark, insignia or other intellectual property without the prior written consent of the other.

The Contractor/Supplier agrees to obtain the written consent of the Owner before publishing or issuing any information regarding the Owner or the Contract.

40. Quality

All goods and services purchased under the Contract must meet or exceed commonly accepted industry standards as to quality of material and workmanship and must be warranted as such.

Electrical equipment must comply with C.S.A. Standard of institutional use and/or Ontario Hydro special approval prior to delivery.

The Owner may return to the Contractor/Supplier at the Contractor/Supplier's risk and expense, any goods which in the opinion of the Purchasing Agent are defective or inferior in quality for full purchase credit or replacement as the Purchasing Agent may require, at no additional cost to the Owner.

41. Quantities

Quantities shown are estimated requirements and should be used as a guide only. Quantities may be increased or decreased and any additional payment or reduction in payment shall be made at the unit prices bid.

There is no obligation on the part of the Owner to purchase more or less than the quantity listed. The Owner reserves the right to purchase more or less than the quantity listed, depending upon actual requirements during the life of the Contract.

42. Receipt of Goods

Delivery of goods to the Owner and any acknowledgement of receipt by the Owner shall not be deemed to be confirmation by the Owner that the goods are satisfactory in accordance with the Contract.

Upon receipt of goods, the requisitioner shall have the right to inspect the goods to ensure that the correct items have been delivered, and sign for receipt of goods. Anything supplied by the Contractor/Supplier under the Contract is subject to inspection and approval by the Owner.

Nothing contained in the Contract shall relieve in any way the Contractor/Supplier from the obligation of testing, inspection and quality control.

When goods or quantities are incorrect, the requisitioner shall contact the Contractor/Supplier to arrange for return of, additional or replacement of goods as the case may be. The Contractor/Supplier shall provide price adjustments or credits resulting from above.

When a receiving signature can be obtained in the appropriate central receiving area, this must NOT be construed to be acceptance of the goods received, their quality or quantity,

but is simply the receipt of a package. The requisitioner of the goods will ascertain the correctness and/or acceptability of the goods, whether or not payment has been made.

Delivery is not complete until the goods have been actually received and accepted. The risk of loss or damage prior to completion of delivery shall be upon the Contractor/Supplier, and any such loss or damage to goods or materials ordered hereunder shall not release the Contractor/Supplier from any obligation hereunder.

43. Receipt of and Addresses for Notices in Writing

Notices in writing will be addressed to the Contract Administrator at the address set out in the Purchase Order.

Notice in Writing will be addressed to the Contractor/Supplier as shown on the Bid from the Contractor/Supplier.

The delivery of a *Notice in Writing* will be by hand, by courier, by prepaid first class mail, or by facsimile or other form of electronic communication during the transmission of which no indication of failure of receipt is communicated to the sender. A *Notice in Writing* delivered by one party in accordance with the *Contract* will be deemed to have been received by the other party on the date of delivery if delivered by hand or courier, or if sent by mail it shall be deemed to have been received five calendar days after the date on which it was mailed, provided that if either such day is not a business day, then the *Notice in Writing* shall be deemed to have been received on the business day next following such day. A *Notice in Writing* sent by facsimile or other form of electronic communication shall be deemed to have been received on the date of its transmission provided that if such day is not a business day or if it is received after the end of normal business hours on the date of its transmission at the place of receipt, then it shall be deemed to have been received at the opening of business at the place of receipt on the first business day next following the transmission thereof. An address for a party may be changed by *Notice in Writing* to the other party setting out the new address in accordance with this provision.

44. Right to Audit

The Vendor shall maintain complete, true and correct records, together with such supporting or underlying documents and materials, for the duration of this Contract. All such records shall be in an organized and accessible manner to the City and its authorized representatives. The Vendor will retain these records for a period which is the greatest of (i) seven (7) years following the completion, expiry or termination of this Contract, including any and all renewals thereof; or (ii) such period that any such records are required to be retained under any applicable laws and regulations; and (iii) in the case of any matter which is the subject of dispute under the Contract, the date on which a final resolution of the dispute is achieved. No provision of this Contract will be construed so as to give the City any control whatsoever over the Vendor's records.

The City and its authorized representatives shall have the right to audit, to examine and make copies of or extracts from all financial and related records relating to or pertaining to the Contract kept by or under the control of the Vendor, including, but not limited to those kept by the Vendor, its employees, agents, assigns, successors, and subcontractors. Such records shall include, but are not limited to, accounting records; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); related payroll documents (timesheets, etc.); bank statements and journals. Costs of any audits conducted under the authority of this section and not addressed elsewhere will be borne by the City unless the audit identifies or discloses overpricing or overcharges (of any nature) by the Vendor to the City in excess of 0.5 percent (.5%) of the total Contract billings. In this case, in addition to the Vendor making prompt adjustments for the overcharges, the Vendor shall also promptly reimburse the City for the actual cost of the City's audit.

During the Term and for seven (7) years following the expiry or termination of this Contract, the City or any authorized representative of the City will be entitled, upon at least five (5) business days' prior notice to Vendor, to review or audit any of these records. When requested by the City, the Vendor will provide the City and any authorized representatives referred to in this section with access to and copies of these records as well as any further information that may be required with reference to these records. The City and its authorized representatives referred to in this section will have the right to remove all such documents for the purpose of making copies and will return them to the place from which they were removed.

The Vendor shall ensure the City has these audit rights with the Vendor's employees, agents, assigns, successors and subcontractors and the obligations of these rights shall be explicitly included in any subcontract or agreement formed between the Vendor and any subcontractors to the extent that those subcontracts or agreements relate to fulfillment of the Vendor's obligations to the City.

This right to audit shall not be construed to limit, revoke, or abridge any other rights, powers, remedies or obligations relating to audit which the City may have by municipal, provincial, or federal statute, ordinance or regulation, whether those rights, remedies powers, or obligations are express or implied.

This right to audit section shall survive the completion, expiry or termination of this Contract.

45. Rights and Remedies

If the Owner terminates the Contract for cause, the Owner shall have the following rights and remedies:

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- i) The Owner may retain any Performance Security deposited by the Contractor/Supplier to the use of the Owner and carry out the works in any way the Owner deems best to secure completion of the Contract and performance and delivery of all goods and services to the satisfaction of the Owner, and the Contractor/Supplier shall be liable for all direct or indirect damages, costs and expenses incurred by the Owner in excess of those provided for in the Contract.
 - ii) All payments previously made by the Owner shall be refunded by the Contractor/Supplier to the Owner, immediately upon the return of previously delivered or performed goods and services without prejudice to any other rights, recourse or remedies the Owner may have available to recover all direct and indirect damages caused by the Contractor/Supplier's default and termination of the Contract.
 - iii) The Owner may withhold further payment, in whole or in part, to the Contractor/Supplier.
 - iv) The Owner may remove the Contractor/Supplier's name from the Owner's Official Vendor File for a specified period.
 - v) All rights and remedies available to the Owner are distinct, separate and cumulative and shall not be exclusive of any rights or remedies available to the Owner under the Contract or otherwise at law or in equity. No delay or omission by the Owner in exercising such a right or remedy or single or partial exercise of any right or remedy shall include any other or further exercise of such right or remedy or the exercise of any other right or remedy.

46. Sub-Contracting

The Contractor/Supplier shall not sub-contract any portion of the Contract work without prior written approval by an authorized representative of the Owner.

The Contractor/Supplier shall be solely responsible for the payment of every sub-contractor employed, engaged, or retained by it for the purpose of assisting it in the performance of its obligations under the Contract. The Contractor/Supplier shall coordinate the provision of the goods and services by its sub-contractors in a manner acceptable to the Owner, and ensure that they comply with all the relevant requirements of the Contract.

The Contractor/Supplier shall be liable to the Owner for all costs or damages arising from acts, omissions, negligence or willful misconduct of its sub-contractors, suppliers and of persons directly or indirectly employed by them.

47. Survival of Clauses

Upon the termination of the Contract for any reason including normal expiration, clauses pertaining to indemnity and limitation of liability, confidential and proprietary information, and publicity, in addition to any other clauses which survive by operation of law, shall survive the expiration or other termination of the Contract.

48. Taxes

The Contractor/Supplier is required to be registered and in full compliance with legislative requirements for the Harmonized Sales Tax (HST).

Invoices paid to addresses outside Canada shall be subject to applicable withholding taxes in accordance with the *Income Tax Act* of Canada and any applicable treaties.

49. Timing

Time is of the essence for the delivery or provision of the goods and services requested.

50. Waiver

Any failure by either party to enforce at any time any of the provisions, including the termination provisions of the Contract shall not be construed to be a waiver of such provision or of the right of either party to enforce such provision or exercise any other rights available to it under the Contract or at law at any time.

51. Warranties

The Contractor/Supplier expressly warrants that all goods or services furnished under the Contract:

- (a) shall conform to all specifications and appropriate standards, will be new, and free from defects in material or workmanship;
- (b) will conform to any statements made on containers or labels or advertisements for such goods or services, and that any goods will be adequately contained, packaged, marked, and labelled;
- (c) will conform in all respects to samples;
- (d) will be merchantable, and will be safe and appropriate for the purpose for which goods or services of that kind are normally used;
- (e) are suitable for their intended purposes, will perform in accordance with the Owner's specifications and will satisfy the Owner's requirements and operate in

accordance with all published performance specifications contained in any of the Contractor/Supplier's product manuals; and

- (f) the Contractor/Supplier has the full power and legal right to convey all products hereunder which shall pass to the Owner in accordance with the terms of the Contract, and all goods and products hereunder shall be free from all liens, encumbrances, security interests and all transactions contemplated under the Contract shall be in the ordinary course of business of the Contractor/Supplier within the meaning of the *Personal Property Security Act*.

Inspection, test, acceptance or use of the goods or services furnished hereunder shall not affect the Contractor/Supplier's obligation under these warranties, and such warranties shall survive inspection, test, acceptance and use.

All the Contractor/Supplier's warranties under the Contract shall run to the Owner, its successors, assigns and customers, and users of products sold by the Owner. The Contractor/Supplier agrees to replace or correct defects of any goods or services not conforming to the foregoing warranty promptly, without expense to the Owner, when notified of such nonconformity by the Owner, provided the Owner elects to provide the Contractor/Supplier with the opportunity to do so. In the event of failure of the Contractor/Supplier to correct defects in or replace nonconforming goods or services promptly, the Owner, after reasonable notice to the Contractor/Supplier, may make such corrections or replace such goods and services and charge the Contractor/Supplier for the cost incurred by the Owner in doing so.

52. Warranty

All goods and services shall carry a minimum of a one (1) year comprehensive warranty from the time of the acceptance by the Owner.

53. Workplace Safety and Insurance Board

A valid Workplace Safety and Insurance Board Clearance Certificate from the Ontario Workplace Safety and Insurance Board shall be required to perform the work.

If Workplace Safety and Insurance Board Insurance is not required, proof of such status from the Workplace Safety and Insurance Board shall be provided to the Owner.

Any changes to the Workplace Safety and Insurance Board status during the term of the Contract, such that coverage is required, a valid Workplace Safety and Insurance Board Clearance Certificate shall immediately be provided to the Owner.

End of General Conditions.