



# Town of Whitby

## Terms and Conditions (Standard and Purchase Order)

### 1) Definitions

**Bid** - An offer by a Bidder or Vendor in response to a procurement process or a request for quotation from the Town - whether oral or written.

**Bidder** - An individual, partnership, firm or corporation, including its respective successors and assigns, or any entity that is responding to a procurement process from the Town or a request for quote – whether oral or written.

**Bid Document** – The Request for Quotation (Q), Tender (T), or Proposal (RFP) issued by the Town that states the Town’s requirements and specifications for Work and to which bids are invited to supply or perform the Work.

**Confidential Information** - means all confidential or proprietary written, recorded, electronic or oral information, knowledge, data or materials provided (whether or not such confidentiality or proprietary status is indicated orally, or whether or not the specific words “confidential” or “proprietary” are used) to the Vendor by the Town in connection or pursuant to the obligations as set out in the Contract.

**Conflict of Interest** - is defined as a situation or circumstance, real or perceived, which could give a Vendor or consultant an unfair advantage during a procurement process or compromise the ability of a Vendor to perform its obligations under the Contract.

**Contract** - A binding agreement for the supply of goods, services, equipment or construction between the Town and the Vendor. The Contract may consist of any or all of the following: the Purchase Order authorizing the Vendor to perform the Work and any amendments; the Bid Document and any addenda, Bid submission; these Standard Terms and Conditions and surety.

**Intellectual Property Rights** – Means all the intellectual property, industrial and other proprietary rights, protected or protectable, under the laws of Canada, any foreign country, including, without limitation:

- i. all trade names, trademarks, service marks, logos, brand names and other identifiers and all rights therein and otherwise under trade mark law;
- ii. all rights under copyright law, including all copyrights and moral rights;
- iii. all trade secrets, inventions, discoveries, devices, processes, designs, techniques, ideas, and other confidential or proprietary information, whether or not reduced to practice, and all rights therein and otherwise under trade secret law;
- iv. all domestic and foreign patents and the registrations, applications, renewals, extensions and continuations (in whole or in part) thereof, and all rights therein and otherwise under patent law; and

- v. all goodwill associate therewith and all rights and causes of action for infringement, misappropriation, misuse, dilution or unfair trade practices associated with (i) through (iv) above.

**Project** - A specific set of operations performed and delivered by the Vendor designed to accomplish a Town goal and is given a unique number and name and the scope defined in the applicable Contract.

**Purchase Order** - Is a type of contract in the current Town format that is a binding agreement between the Town and the Vendor formalizing all the terms and conditions of a proposed transaction and authorizing the purchase of goods, services, equipment or commence performance of the Work.

**Subcontractor** - An individual, partnership, firm or corporation having a contract – whether oral or written, with the Vendor for the supply or performance of any part of the Work.

**Town** - The Corporation of the Town of Whitby, its successors and assigns.

**Vendor** – A supplier, seller, provider of goods and/or services, including consulting services to the Town or Bidder that includes an individual, partnership, firm or corporation, and its respective successors and assigns, or any entity that is responding to a procurement process or awarded a Contract by the Town

**Work** - All labour, goods, materials, products, articles, equipment, fixtures, services, construction, supplies, and acts required to be supplied or performed by the Vendor, and the scope of which is defined in the Contract.

## 2) Precedence of Contract Documents

If there is any conflict or inconsistency between the documents constituting the Contract, unless otherwise provided, such documents will prevail in the following order, but only to the extent necessary to resolve the conflict of inconsistency:

- i. If a standard form agreement applies i.e. CCDC Stipulated Price Contract or OPS, then the Supplementary Conditions to the General Conditions take precedence over the General Conditions of such agreements;
- ii. The Contract between the Town and the Vendor and any attachments thereto in respect of the Work or performance of the Vendor;
- iii. The Bid Document and any attachment thereto in respect of the Work or performance of the Vendor;
- iv. The Addenda to the Bid Document in the order of the most recent date issued;
- v. These Standard Terms and Conditions; and
- vi. The Purchase Order issued by the Town

## 3) Contract

The intent of the Contract is that the Vendor shall supply work which is fit and suitable for the Town's intended use and complete for a particular purpose.

For clarity, the Vendor acknowledges and agrees that none of the conditions contained in the Vendor's standard terms and conditions or general conditions of sale shall be in force or in effect unless agreed to in writing by the Town and specifically referred to in the Purchase Order.

#### **4) Proof of Ability**

If requested by the Town and in its sole discretion, the Vendor may be required to show, in terms of experience and facilities, evidence of its ability, as well as that of any proposed Subcontractor, to perform the Work by the specified delivery date.

#### **5) Delivery**

Unless otherwise stated or agreed to by the Town in writing, the Work specified in the Contract shall be delivered or completely performed by the Vendor within the period set out in such Contract.

A detailed delivery ticket or piece tally, showing the exact quantity of goods, materials, products, articles, equipment, fixtures, services or supplies shall accompany the delivery of same.

The Work delivered or performed by the Vendor shall be subject to further inspection and approval by the Town.

All goods delivered are subject to inspection and test within a reasonable time after delivery at the purchaser's premises, and if unsatisfactory, may be returned, without penalty or restocking charge, to the supplier.

Failure of a Vendor to fulfil delivery as per the Contract will be considered sufficient cause to cancel a Contract.

#### **6) Pricing**

Prices shall be in Canadian Funds, quoted separately for each item stipulated, F.O.B. destination.

Prices stipulated in the Bid must include all incidental costs and the Vendor shall be deemed to be satisfied as to the full requirements of the Bid. No claims for extra or additional Work performed outside of the Contract specifications will be accepted by the Town unless the Town provides prior written authorization prior to commencement of such extra or additional Work. Should the Vendor require more information or clarification on any part of the Bid Document or request for quotation, the Vendor is responsible for making such request for further information or clarification with the Town prior to the submission of its Bid.

All prices quoted shall include applicable customs duty, excise tax, freight, insurance, royalties and patent license fees, and all other charges of every kind attributable to the Work. Goods and Services Tax and Provincial Sales Tax shall be extra, unless otherwise specified herein.

HST, as applicable, must be shown separately on all invoices.

No charges will be allowed for packaging or cartage unless otherwise stated on the Purchase Order.

If the Vendor intends to manufacture or fabricate any part of the Work outside of Canada, it shall arrange for its shipping procedures so that its agent or representative in Canada is the "Importer of Record" in accordance with Canadian custom laws and regulations.

Should any additional tax, duty or any change or variation in any tax or duty be imposed by the Government of Canada or the Province of Ontario become directly applicable to Work subsequent to its submission by the Bidder and before the delivery of the Work, where appropriate, the Town may issue a purchase order that reflects an increase or decrease in the price of Work to compensate for such change or variation as of the effective date that such additional tax, duty or any change or variation in any tax or duty be imposed by the Government of Canada or the Province of Ontario.

## 7) Terms of Payment

### 7.1 Town Designated Construction Projects and Work

This section applies to all invoices submitted to the Town for payment for all Town designated Construction Projects and Work governed by the Construction Act, R.S.O. 1990, as amended (the “**Construction Act**”). The following sections - s. 7.1.1 - Proper Invoice Details, s.7.1.2 – Additional Invoice Requirements and s.7.1.3 Method of Delivery will constitute a Proper Invoice under the Construction Act (such requirements collectively referred to as “**Proper Invoice Requirements**“ or a “**Proper Invoice**”).

Vendors shall submit the following to the Town:

#### 7.1.1 Proper Invoice Details

- a) Vendor’s full legal name;
- b) Vendor’s full address – place of business and/or head office, email address, telephone number
- c) Town contact information including: Town Project Manager’s First and Last Name, Title and Department;
- d) Valid HST Registration Number;
- e) Invoice Date;
- f) Unique Invoice Number;
- g) Purchase Order Number as assigned by the Town;
- h) Applicable RFP/Tender Number, Town Contract, Project Number and Project Site Address;
- i) Description of Work including a summary breakdown for each respective goods, materials or service category;
- j) Invoice Period;
- k) Amount Due - separate line items showing the subtotal, HST and total amount due; and
- l) Previously invoiced amounts and total amounts invoiced to date

#### 7.1.2 Additional Proper Invoice Requirements

In addition, Vendors shall also submit the following documentation to the Town:

- (a) A valid WSIB clearance certificate that covers the invoice period;
- (b) If holdback is being retained by the Town, then on the second invoice and every invoice thereafter, a Statutory Declaration from the Company declaring that all accounts for labour, subcontracts, products, construction equipment, and other indebtedness which may have been incurred by the Company in

the substantial performance of the Work and for which the Town might in any way be held responsible have been paid in full, except for amounts properly retained as a holdback or as an identified amount in dispute on form CCDC 9A-2018 or some other alternate form acceptable to the Town; and

- (c) Any other requirement or backup documentation specified in the Town's Bid Document, Contract or Purchase Order or as may be requested by the Town in writing e.g. tally sheet confirming work quantities and/or deliverables; approved change orders authorized by the Town or its consultant; or any other supporting documentation to substantiate the Work delivered and/or performed to date.

### **7.1.3 Method of Delivery**

- (a) The Vendor shall send invoices via electronic mail to both the attention of the Town contact(s) specified in the Contract and/or Purchase Order and via email to **constructionap@whitby.ca**. The Vendor shall reference the invoice Purchase Order number in the email subject line.
- (b) Invoices not received by the Town contacts set out herein as instructed will not be acknowledged or considered received by the Town.
- (c) Invoices delivered after 4:00 pm between Monday to Friday or statutory holiday or weekend will be considered received on the next business day.
- (d) Invoice Blackout Dates - No construction invoices will be accepted by the Town between the period of December 10<sup>th</sup> to January 2<sup>nd</sup> (inclusive) of the following year. Invoices received during this period will be deemed received by the Town on January 3<sup>rd</sup>.

### **7.1.4 Processing of Proper Invoices**

Failure of the Vendor to submit a Proper Invoice will not be processed for payment by the Town until a Proper Invoice is received by the Town. It is the Vendor's responsibility to submit and re-submit a Proper Invoice to the Town whether the Town provides notice or not.

### **7.1.5 Payment Disputes**

- (a) Upon receipt of a Proper Invoice from the Vendor, the Town may approve or dispute – all or part of the contents of the Proper Invoice.
- (b) If the Town does not agree with the invoiced Work or amounts, the Town will review the invoice with the Vendor and try to resolve the disputed amounts within ten (10) calendar days from the date of receipt. If the invoice cannot be resolved between the Town and the Vendor within ten (10) calendar days, the Town may pay the portion that it determines is owing and will include with the payment an explanation for any reduction of the invoiced amount. Any Notice of Non-Payment shall comply with the Construction Act.
- (c) The Town may withhold payment under the Contract for any disputed amounts, without interest, until such dispute is settled or resolved – informally or formally i.e. litigation, adjudication or any formal dispute resolution procedure.

- (d) No payment made under the Contract will constitute a waiver of any terms of the Contract or any other rights available at law or equity.
- (e) Unless otherwise agreed to by the parties, the Town will not be liable for any charge or fees for late payment.
- (f) If the Vendor is in any way indebted to the Town, either under the terms of the Contract or for any other reason, the Town shall have the right of set-off to the extent of such debt.

## **7.2 All Other Town Projects and Work**

The following sections shall apply to all other Projects and Work authorized by the Town, not subject to the Construction Act.

- (a) Payments made hereunder, including final payment, shall not relieve the Vendor from its obligations or liabilities under the Contract.
- (b) The Town shall have the right to withhold from any sum otherwise payable or owing to the Vendor such amount as may be sufficient to remedy any defect or deficiency in the work, pending correction of it in accordance with the Contract and to the satisfaction of the Town or such amounts as the Town deems sufficient to satisfy any claims, actions or demands against the Town.
- (c) Payment may be made 30 days after delivery pursuant to the Vendor submitting an invoice, contract requirements being completed and work being deemed satisfactory to the Town.
- (d) If the Vendor is in any way indebted to the Town, either under the terms of the Contract or for any other reason, the Town shall have the right of set-off to the extent of such debt.

## **8) Laws, Regulations and Policies**

The Vendor, including its employees, contractors, subcontractors and suppliers shall comply with relevant Federal, Provincial and Municipal statutes, regulations, Town Policies including but not limited to Town's Code of Conduct and Health and Safety, and by-laws pertaining to the Work and its performance.

## **9) Correction of Deficiencies**

Upon receipt of notice from the Town that any portion of the Work, including Work during the warranty period are not performed in accordance with the Contract (the "**Defect**" or "**Defective Services**"), the Vendor must correct or re-perform the Defect or Defective Services. The Vendor must correct or re-perform the Defective Services (including providing any additional services necessary to correct such Defect) at no cost to the Town prior to the time specified in the Town's notice. If the Vendor fails to correct any Defect in the Services identified by the Town pursuant to this section, the Town may correct any Defect at the Vendor's risk and costs. Any costs and expenses incurred by the Town in having to correct the Vendor's Defective Services will be recoverable from the Vendor as a debt due and payable.

## 10) Early Termination

### a) Termination for Convenience

The Town may, in its sole and absolute discretion, for any reason whatsoever, terminate the Contract, or any portion thereof, on ten (10) days' notice in writing to the Vendor. Upon such termination, the Vendor shall perform no further Work other than those reasonably necessary to close out that portion of the Work e.g. Work needed to mitigate any health and safety issues on site.

Notwithstanding any other provision, if the Town terminates the Vendor pursuant to this section, the sole claim of the Vendor against the Town and the sole liability of the Town under the Contract shall be payment of:

- i. all undisputed invoices for Work provided up to the effective date of termination; and
- ii. any reasonable and auditable cancellation expenses incurred by the Vendor as a result of termination under this section.

### b) Termination with Cause

If the Vendor:

- i. Knowingly provided false information in its Bid to the Town;
- ii. Engages in wilful misconduct or is negligent;
- iii. Unethical bidding practises and incidents of fraud
- iv. Repudiates the Contract or abandons the Work;
- v. Fails to comply with any request, instruction or order of the Town or fails to pay its accounts when due;
- vi. Materially breaches any law or directives of any relevant authority relating applicable to the Work;
- vii. Breaches any Town's policies and procedures with respect to the provision of the Work, including, but not limited to the Purchasing Policy, Town's Code of Conduct Policy and Health and Safety Policy;
- viii. Breaches any Confidentiality provision;
- ix. Breaches any Conflict of Interest provision;
- x. Goes into receivership, insolvency, bankruptcy, or a resolution is passed for the Vendor's liquidation or winding-up; or
- xi. Commits any other breach of the Contract and one of the following applies:
  - a) the nature of the breach cannot be cured; or
  - b) the breach can be cured, but the Vendor has failed to cure such breach within 30 days after receipt of notice from the Town of the breach,

the Town shall be entitled to immediately terminate the Contract upon providing written notice to the Vendor.

If the Town terminates the Contract pursuant to Subsection 10(b) – Termination With Cause, then in addition to any other legal remedy or recourse in law or equity available to the Town, the Town shall be entitled to:

- i. withhold any amounts due to the Vendor to cover the costs of disputes arising from or in connection with the termination;

- ii. complete the Work or have a third party complete the Work and charge to the Vendor any additional costs in connection to the completion of the Services that are over and above the pricing quoted by the Vendor in the Bid and/or Contract; and
- iii. Recover from the Vendor loss, damage and expense incurred by the Town by reason of the termination (which may be deducted from any monies due or becoming due to the Vendor, any balance to be paid by the Vendor to the Town).

In addition, upon termination in accordance with this section, the Vendor shall immediately refund to the Town any monies advanced by the Town that the Vendor has not expended in accordance with the approved budget for the Work.

Upon termination, the Vendor acknowledges that the Town shall have the right to take possession of and use any completed or partially completed portions of the Work performed to date by the Vendor, despite any provisions expressed or implied to the contrary.

## 11) Contract Cancellation

The Town shall, in its sole and absolute discretion, have the right at any time to cancel any uncompleted (including partial completion) or unperformed portion of the Work. The Town shall not be liable to the Vendor for any special, indirect, incidental, consequential, lost profit, or punitive loss or damage, and for the purposes of this clause, the term "loss" includes partial loss or reduction in value as well as complete or total loss arising directly or indirectly from the cancelled portion(s) of the Work.

## 12) Quantities

Payment will be based on the unit complete at the quoted price on actual quantities delivered and deemed satisfactory by the Town.

## 13) Workplace Safety and Insurance Board (WSIB) Coverage

Vendors shall be in full compliance with the requirements of the Workplace Safety and Insurance Act, 1997, S.O. 1997, c.16, Schedule A, as amended (the "**Workplace Safety and Insurance Act**"). The Vendor must be registered with the Workplace Safety and Insurance Board ("**WSIB**") as an Employer and must maintain registration as an Employer with the WSIB for the duration of the contract.

Upon the award of a Contract, the Vendor shall provide the Town with a valid copy of the current WSIB Clearance Certificate and agrees to provide valid WSIB Clearance Certificates upon request for the duration of the Contract and any warranty period. All of the Vendor's personnel must be covered by the insurance plan as required under the Workplace Safety and Insurance Act, or must provide an identification number and/or letter from the WSIB verifying their status as an Independent Operator.

The Vendor shall not conduct any construction or related Works unless they are in good standing with WSIB and can provide the Town with a current WSIB Clearance Certificate issued from WSIB.

The Vendor acknowledges that the Town may suspend the Work until receipt of a valid WSIB Clearance Certificate and the Town shall not be responsible or liable for any

delays, costs, expenses, fees incurred by the Vendor or any third party as a result of such suspension.

In no event shall the Contract be construed as creating an employer/employee relationship. The Vendor will not be eligible to participate in any Town employee benefit plan, policy, program or practice, including but not limited to, vacation pay, holiday pay, health insurance, unemployment insurance, workers' compensation insurance and fringe benefit plan.

## 14) Insurance

Unless otherwise specified by the Town in writing, the Vendor shall, at its own expense (including the cost of deductibles), obtain and keep in full force and effect during the term of the Contract, including all renewals and extensions, the following forms of insurance with insurers licensed and approved to operate in the Province of Ontario:

- a) **Commercial General Liability** insurance including premises and all operations for an amount not less than **two million (\$2,000,000) dollars per occurrence**, for third party bodily injury and property damage, products and completed operations, contractual liability, personal injury, owners and contractors protective coverage, non-owned automobile and contain a cross liability and severability of interest clause.
- b) **Automobile Liability insurance** including all vehicles and commercial trailers owned and/or leased by the vendor for an amount not less than **two million (\$2,000,000.00) dollars** covering all vehicles and commercial trailers used in any manner in connection with the performance of the terms of the Contract.
- c) **Professional Liability Insurance** covering the work and services described in the contract. The policy shall provide coverage for an amount not less than **two million (\$2,000,000.00) dollars per claim**.

The Commercial General Liability policy shall include The Corporation of the Town of Whitby as an additional insured in respect of all operations performed by or on behalf of the Vendor in relation to the Contract requirements

The Vendor shall provide the Town with proof of the required insurance on the Town's standard [Certificate of Insurance form](#) .

An updated Certificate of Insurance shall be supplied no later than thirty (30) days prior to the expiry date of any required coverage.

Should additional limits of liability coverage be in the form of an Umbrella or Excess Liability policy, the Certificate of Insurance must clearly identify which underlying liability policy is affected by the Umbrella or Excess policy limits.

Each policy of insurance shall provide that the policy shall be non-contributing with, and shall apply only as primary and not excess to any other insurance available to the Corporation of the Town of Whitby. The policies shown above will not be cancelled or permitted to lapse unless the Insurer notifies the Corporation of the Town of Whitby in writing at least thirty (30) days prior to the effective date of the cancellation or expiry.

The Town reserves the right to require additional types of insurance coverage or higher limits of insurance coverage depending on the type of exposure and nature of the Contract.

## 15) Indemnification and Limitation of Liability

### a) Indemnification

The Vendor agrees to defend, fully indemnify and save harmless the Town, its elected officials, employees and agents, from and against from all actions, suits, claims, demands, losses, damages, costs, charges, expenses (any of which will be referred to herein as a “**Claim**”, and collectively, “**Claims**”), including without limitation, all legal fees and costs incurred with a Claim, including the enforcement of this indemnification provision, which may arise out of or in connection with:

- i. Any negligent or wilful act or omission of the Vendor or any of the Vendor’s employees or any other person for whom the Vendor is responsible at law;
- ii. Any violation by the Vendor of any law, statute, ordinance or regulation;
- iii. Any lien or any other encumbrance that is filed or registered in respect of the Work;
- iv. The death or personal injury of any person;
- v. Any physical loss of or damage to property or assets of any third party;
- vi. Any infringement of a third party’s Intellectual Property Rights from performing the Work or that results in the creation, development or production of any work product in the performance of the Work.

### b) Exclusions

The Town, including its elected officials, employees and agents shall not be liable, whether in contract, tort, for breach of statutory duty, or otherwise, arising under or in connection with the Contract for any special, indirect, incidental, consequential, loss of profits or punitive loss or damage, and for the purposes of this clause, the term “loss” includes partial loss or reduction in value as well as complete or total loss.

Furthermore, the Town, including its elected officials, employees and agents shall not be liable for any cost of preparation or presentation of the Bid, and all submissions and accompanying documents submitted by the Vendor will not be returned and will become the property of the Town.

There will be no payment to Vendors for work related to and/ or materials supplied in the preparation, presentation and/ or evaluation of any Bid, nor for any Contract negotiations whether they are successful or unsuccessful.

The Town, its elected officials, employees and agents shall not be responsible for any liabilities, costs, expenses, loss or damage incurred, sustained or suffered by any Vendor, prior or subsequent to, or by reason of the acceptance, or non-acceptance by the Town of any tender, quotation or proposal, or by reason of any delay in the acceptance of any tender, quotation or proposal.

### c) Limitation of Liability

The Town’s liability in connection with the Contract is limited to a sum equal to the aggregate invoiced amount submitted under the Contract.

## **16) Health and Safety**

The Vendor shall be responsible for complying with and enforcing compliance of all applicable laws including but not limited to the Occupational Health and Safety Act (Ontario), the Technical Standards and Safety Authority Act 2000 (Ontario), the Workplace Safety and Insurance Act (Ontario), and its regulations (collectively “**Health and Safety Laws**”). The Vendor shall ensure its employees, contractors and sub-contractors or any person the Vendor is responsible for in law comply with such are aware of and comply with such Health and Safety Laws.

The vendor warrants that any “Hazardous Materials” or “Hazardous Physical Agent” supplied on this order shall be properly labelled and accompanied by prescribed SDS information as may be required by the Occupational Health and Safety Act, or any legislated Federal, International or Municipal Act or Regulation covering a shipment of “Hazardous Material” or “Hazardous Physical Agent”

## **17) Unpaid Accounts**

The Vendor shall defend, fully indemnify and save harmless the Town, its elected officials, employees and agents, from all actions, suits, claims, demands, losses, damages, costs, charges, expenses arising out of the unpaid accounts relating to the Work. The Town shall have the right at any time to require satisfactory evidence that the Work in respect of which any payment has been made or is to be made by the Town is free and clear of liens, attachments, claims, demands, charges or other encumbrances which may include a Statutory Declaration from the Vendor in a form acceptable to the Town.

## **18) Suspension of Work**

The Town may, without invalidating the Contract, suspend performance by the Vendor at any time for any part or all of the Work for such reasonable period of time as the Town may determine is required.

The resumption and completion of Work after the suspension shall be governed by a schedule established by or otherwise approved by the Town.

## **19) Changes in the Work**

The Town may, without invalidating the Contract, authorize the Vendor to make changes to the Work. When a change causes an increase or decrease in the Work, the contract price shall be increased or decreased by the application of unit prices to the quantum of such increase or decrease, or in the absence of applicable unit prices, by an amount to be agreed upon between the Town and the Vendor. All such changes shall be in writing and in a form approved by the Town.

## **20) Vendor Performance Evaluation**

The Vendor acknowledges that at all times it is subject to the Town’s Vendor Performance Evaluation program, as amended from time to time. The Town will conduct

regular performance evaluations of the Vendor and the Work throughout the term of any Contract. Issues raised by the Town shall be rectified by the Vendor promptly and to the satisfaction of the Town.

Vendor performance that is rated as unsatisfactory or poor may result in suspension of all or any portion of the Work and/or Contract.

Performance records of the Vendor shall be maintained on file by the Town and shall be considered in future Contract or procurement decisions of the Town.

## **21) Litigation**

The Town reserves the right to not consider a Bid from or award a Contract to a Vendor, including its employees, contractors and subcontractors who has been terminated with Cause by the Town, has received an unsatisfactory or poor performance review on any previous or current Contract, or consider a Vendor who has threatened a lawsuit, action or administrative, arbitration or other legal proceeding or governmental investigation or is currently a party in any litigation involving the Town.

## **22) Conflict of Interest**

### **a) Disclosure of Conflict of Interest**

If the Vendor, its partners, personnel, or any of their respective professional advisors (including legal representatives and accountants), prior to or during the term of the Contract, discovers any perceived, potential or actual Conflict of Interest that the Vendor, its partners, personnel, or any of their respective professional advisors may have with the Town, the Vendor shall promptly disclose the perceived, potential or actual Conflict of Interest to the Town. A "Conflict of Interest" includes any situation or circumstance where, in relation to the Work and/or the Contract, the Vendor's, its partners', personnel, or any of their respective professional advisors' 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 independent judgment by any personnel of the Town; or (b) could or could be seen to compromise, impair or be incompatible with the effective performance of a Vendor's obligations under the Contract.

### **b) Breach and Waiver of Conflict of Interest**

A breach of this Section shall entitle the Town to terminate the Contract and to take such additional remedy that may be available in contract, in law or in equity.

The Town may, in its sole discretion, waive any and all perceived, potential or actual Conflicts of Interest of the Vendor, its partners, personnel, or any of their respective professional advisors. A waiver shall be upon such terms and conditions as the Town, in its sole discretion, requires to satisfy itself that the perceived, potential or actual Conflict of Interest has been appropriately managed, mitigated or minimized.

## 23) Confidentiality

- a) The Vendor, its partners, directors, officers, employees, agents, contractors, sub-contractors, both during and following the Contract:
  - i. shall treat as confidential and secure all material and information that is the property of the Town and in the possession or under the control of the Vendor pursuant to this Contract; and
  - ii. shall not, directly or indirectly, disclose or use any material or information belonging to the Town pursuant to this Contract, without first obtaining the written consent of the Town for such disclosure or use.
- b) Without limiting the generality of the foregoing:
  - i. the Vendor shall not use information acquired through the performance of this Contract to gain advantage in any other project or undertaking irrespective of the topic, scale, or scope of such projects or undertakings, and
  - ii. the Vendor shall not disclose or use any privileged information that the Town cannot or may not wish to disclose or use under the Municipal Freedom of Information and Protection of Privacy Act (“**MFIPPA**”).
  - iii. The Vendor understands and agrees that this Contract and any materials or information provided to the Town through the performance of this Contract may be subject to disclosure by the Town pursuant to MFIPPA, or otherwise.
- c) Upon receipt of a written request from the Town, the Vendor shall deliver forthwith to the Town all material and information specified in the request that is the property of the Town and in the possession or under the control of the Vendor. No copy or duplicate of any such material or information delivered to the Town shall be retained by the Vendor without the prior written approval of the Town; provided that the Vendor may retain one copy of any material or information for the purpose of defending its work product. The Vendor shall not destroy any material or information which is the property of the Town without prior written approval.

This section survives the completion or early termination of the Contract.

## 24) Accessibility for Ontarians with Disabilities Act, 2005 (AODA)

The Vendor performing work for the Town must comply with the Accessibility for Ontarians With Disabilities Act, 2005 (“**AODA**”), and regulations under this Act, including Integrated Accessibility Standards, O. Reg. 191/11, as amended.

Pursuant to Part IV.2 Customer Service Standards and section 7 of O. Reg. 191/11, Integrated Accessibility Standards, made under the AODA, the Vendor who provide goods, services or facilities on behalf of the Town shall ensure that all of their employees, agents, volunteers, or others for whom they are responsible, receive training: about the work to be performed, including a review of the purposes of the AODA; the requirements of the Customer Service Standards, as well as instruction regarding all matters set out in Part IV.2; on the requirements of the accessibility standards referred to in O. Reg. 191/11 and on the Human Rights Code as it pertains to persons with disabilities. The Vendor shall submit to the Town, if requested, documentation describing their accessibility

training policies, practices and procedures, and a summary of the contents of training, together with a record of the dates on which training is provided and the number of attendees.

Unless the Town decides it would not be reasonably practicable, the Vendor shall ensure that any information, products, deliverables and/or communication (as defined in the Integrated Accessibility Standards Regulation) produced pursuant to a Contract shall be in conformity with World Wide Web Consortium Web Content Accessibility Guidelines (WCAG) 2.0 Level AA and shall be provided in accessible Word, Excel, PowerPoint, PDF etc.

## 25) No Assignment and Subcontracting

The Vendor may not assign the Contract or subcontract its obligations under the Contract without the express written consent of the Town, which consent may be withheld or conditioned in the Town's sole and absolute discretion.

## 26) Interpretation

The singular includes the plural. A gender includes all genders. Where the word "including", "include" or "includes" is used in the Contract, it means "including, include or includes without limitation."

If any provision of the Contract is prohibited, unenforceable or restricted in any jurisdiction or is ineffective or restricted as to that jurisdiction to the extent of the prohibition, unenforceability or restriction. Such prohibition, unenforceability or restriction shall not invalidate the remaining provisions of the Contract nor shall it affect the validity or enforceability of that provision in any other jurisdiction.

## 27) Waiver

No waiver of satisfaction of a condition or breach of the Contract will be effective unless it is in writing and signed by an authorized representative of the waiving party.

## 28) Force Majeure

Neither party shall be liable for damages caused by delay or failure to perform its obligations under the Contract where such delay or failure is caused by an event beyond its reasonable control if a reasonable business person applying due diligence in the same or similar circumstances under the same or similar obligations as those contained in the Contract 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 labour disputes, labour strikes, fires, explosions, floods, riots, governmental acts, quarantine, natural disasters and acts of war, insurrection and terrorism, acts of God, or any similar event, occurrence or condition which is not caused, in whole or in part, by that party, and which is beyond the reasonable control of that party, however, any economic hardship including lack of funds or credit shall not constitute a force majeure event (collectively referred to as a "**Force Majeure Event.**") The parties shall take reasonable action to minimize the effects of a "Force Majeure Event."

If a party seeks to excuse itself from its obligations under this Contract 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 for non-performance. If the anticipated or actual delay or non-performance exceeds fifteen (15) business days, the other party may immediately terminate the Contract by giving notice of termination and such termination shall be in addition to the other rights and remedies of the terminating party under the Contract, at law or in equity.

## **29) Time**

Time is of the essence of the Contract and no extension or variation of the Contract operates as a waiver of this provision. All dates or deadlines are to be strictly adhered to.

## **30) Governing Law**

The Contract shall be construed and enforced in accordance with the laws of the Province of Ontario. The Vendor, including its employees, contractors, subcontractors and suppliers shall comply with relevant Federal, Provincial and Municipal statutes, regulations and by-laws pertaining to the Work and its performance.

Unless required or entitled to any other form of dispute resolution by law, the parties hereby attorn to the jurisdiction of the courts of Ontario and waive any objection relating to improper venue or *forum non conveniens*.

## **31) Heading**

The division of the Contract into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of the Contract.

## **32) Authority**

Each Party stipulates that it has full authority to enter into and perform the Contract, and the person signing the Contract on behalf of the named party is properly authorized to sign it, and each party further acknowledges that it has read the Contract, understands it and agrees to be bound by it.