

Appendix 1

GENERAL TERMS AND CONDITIONS

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GC 1. DEFINITIONS

All capitalized terms not defined in these Terms and Conditions shall have the same meaning as in the Order to which these Terms and Conditions are attached.

- A. **“Agreement”** means the Order and these Terms and Conditions, as these may be amended or supplemented from time to time; and the expressions “hereof”, “herein”, “hereto”, “hereunder”, “hereby” and similar expressions refer to this Agreement and unless otherwise indicated, references to section are to sections in this Agreement.
- B. **“Goods”** means the items that are required to be delivered by Supplier pursuant to an Order, and includes all related products, materials, component parts, packaging, labelling, data and documentation.
- C. **“Contract Price”** means as set out in the Order.
- D. **“Deliverables”** means all base materials, information, research results, computer programs, data analyses, drawings, documents and notes or materials of any type whatsoever developed or prepared by the Supplier (or its employees, subcontractors or employees of its subcontractors) in relation to the performance of the Services.
- E. **“Event of Force Majeure”** means any cause beyond the control of the Municipality or the

Supplier which prevents the performance by either party of any of its duties, liabilities and obligations under this Agreement not caused by its default or act of commission or omission and not avoidable by the exercise of reasonable effort or foresight by that Party including explosion, fire, casualty or accidents, epidemics, cyclones, earthquakes, floods, droughts, war, civil commotion, terrorism, blockade or embargo, and acts of God, but excluding lack of or insufficient financial resources to discharge and pay any monetary obligations and excluding increases in commodity prices, inability to obtain labour, equipment or materials, strikes, lockouts or other labour disputes.

- F. **“Municipality”** means the Municipality of the County of Kings.
- G. **“Municipality Party”** means any agency, board or commission owned, governed or controlled by or affiliated with the Municipality (including inter-municipal arrangements to which the Municipality is a party).
- H. **“Proposal”** means any acknowledgement, estimate, bid, quote, offer to sell, invoice or other proposal of the Supplier relating to the supply of Goods and/or Services to the Municipality.
- I. **“Services”** mean the work, tasks, activities, materials and other deliverables to be performed or provided by the Supplier pursuant to an Order, and includes any related data, documentation or Deliverables.
- J. **“Specifications”** means (i) the requirements, attributes and specifications for the Goods and/or Services that are set out or referenced in the Order; (ii) documentation published by the Supplier relating to the Goods and/or Services; (iii) operational and technical features and functionality of the Goods and/or Services; (iv) standards or levels of service performance for Services; and (v) requirements of the Goods and/or Services that are expressly set out or referenced by the Municipality in the Order.
- K. **“Supplier”** means the party indicated on the Order that is contracting with the Municipality for the provision of Goods and/or Services.
- L. **“Supplier IP”** means the Supplier’s pre-existing intellectual property or derivatives thereto, owned by the Supplier and used in the performance of the Services.

All other capitalized terms shall have the meaning ascribed to them in this Agreement.

GC 2. ORDER CONFIRMATION

This Order is not binding on the Municipality until the Supplier provides acceptance of this Agreement in writing (an "**Order Confirmation**"). Following the receipt of an Order Confirmation, the Municipality may at any time prior to the delivery of the Goods or performance of the Services, upon notice to the Supplier, cancel or change the Order, or any portion thereof, for any reason, including, without limitation, for the convenience of the Municipality or due to failure of the Supplier to comply with the Agreement, unless otherwise noted.

GC 3. DELIVERY OF GOODS AND SERVICES

GC 3.01. **Delivery Date.** The Supplier shall deliver the Goods in the quantities and at the time specified in the Order unless otherwise agreed in writing by the parties (the "**Delivery Date**") to the Delivery Point. If Supplier fails to deliver the Goods in full on the Delivery Date, the Municipality may terminate the Order immediately by providing written notice to the Supplier and the Supplier shall indemnify the Municipality against any losses, claims, damages, and reasonable costs and expenses directly attributable to the Supplier's failure to deliver the Goods on the Delivery Date.

GC 3.02. **Delivery Point.** Unless otherwise specified in writing, all Goods shall be delivered to the location specified in the Order (the "**Delivery Point**") during the hours of 8:30 a.m. and 4:00 p.m. Nova Scotia, Canada time.

GC 3.03. **Labour and Equipment.** The Supplier shall furnish at its own expense all labour, machinery, equipment, tools, transportation and other inputs required to perform the Services and provide the Goods. The Municipality will not be liable for any loss of or damage to machinery, equipment or tools furnished by the Supplier. The Supplier shall, at its own expense, and in accordance with the invoicing, delivery terms, shipping, packing, and other instructions printed on the face of the Order or otherwise provided to the Supplier by the Municipality in writing, pack, load, and deliver Goods to the Delivery Point. No charges for freight, transportation, insurance, shipping, storage, handling, demurrage, cartage, packaging or similar charges will be accepted or paid by the Municipality unless explicitly stated in the applicable Order or otherwise agreed to in writing by the Municipality.

GC 3.04. **Shipping Terms.** Unless otherwise agreed to in writing by the Municipality, all Goods shall be shipped Delivered at Place Unloaded ("**DPU**") as per Incoterms® 2020 to the Delivery Point. The Supplier shall give written notice of shipment to the Municipality when the Goods are delivered to a carrier for transportation. The

Supplier shall provide the Municipality all shipping documents, including any commercial invoices, packing lists, bills of lading, air waybills and any other documents necessary to release the Goods to the Municipality within three days after Supplier delivers the Goods to the transportation carrier. The Order number must appear on all shipping documents, shipping labels, bills of lading, air waybills, invoices, correspondences and any other documents pertaining to the Order.

GC 3.05. **Cross-Border Compliance.** The Supplier shall follow all instructions of the Municipality and cooperate with the Municipality (including by providing requested shipping documentation) with respect to all Goods that originate from sources or suppliers based outside Canada. The Supplier shall comply with all the requirements of the Canada Border Services Agency with respect to the importation of Goods from outside Canada.

GC 3.06. **Packaging.** All goods shall be packed for shipment in a manner sufficient to ensure that the Goods are delivered in undamaged condition and in accordance with applicable law and industry standards. The Supplier shall provide the Municipality with shipment documentation showing the Purchase Order number and contract reference number (if applicable), the quantity of pieces in the shipment, the number of cartons or containers in the shipment, the Supplier's name, the bill of lading number and the country of origin. The Supplier must provide the Municipality prior written notice if it requires the Municipality to return any packaging material. Any return of such packaging material shall be made at the Supplier's sole cost and expense.

GC 4. INSPECTION, ACCEPTANCE AND TITLE

GC 4.01. **Inspection.** All shipments of Goods and all Services performed by the Supplier are subject to the Municipality's right of inspection and testing. The Municipality shall have a period of 30 days (the "**Inspection Period**") following the delivery of the Goods to the Delivery Point or the completion of Services by the Supplier to undertake such inspection, and upon such inspection the Municipality shall in its sole but reasonable discretion accept the Goods and/or Services or reject the same.

GC 4.02. **Rejection.** The Municipality has the right to reject any Goods that are delivered in excess of or below the quantity ordered or are damaged, defective or non-compliant with the Agreement, the Order or the Specifications. If the Municipality rejects any portion of the Goods, the Municipality has the right, effective upon written notice to the Supplier, to:

- (a) rescind the Order in its entirety;
- (b) accept the Goods at a reasonably reduced price;
or

- (c) reject the Goods and require replacement of the rejected Goods.

If the Municipality requires replacement of the Goods, the Supplier shall, at its expense, promptly replace the non-conforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective goods and the delivery of replacement Goods. If the Supplier fails to deliver replacement Goods in a timely fashion, the Municipality may replace them with goods from a third party and charge the Supplier the cost thereof and terminate this Agreement for cause pursuant to GC 9.01. Any inspection or other action carried out by the Municipality pursuant to this Section shall not reduce or otherwise affect the Supplier's obligations under this Agreement, and the Municipality shall have the right to conduct further inspections after the Supplier has carried out its remedial actions.

GC 4.03. Rejection Notice. The Municipality shall provide the Supplier with a written notice of any Goods or Services that are rejected, together with the reasons for such rejection no later than the end of the Inspection Period (a "**Rejection Notice**"). If the Municipality fails to provide the Supplier with a Rejection Notice before the end of the Inspection Period, then the Municipality will be deemed to have accepted such Goods or Services.

GC 4.04. Previously Rejected Goods. The Supplier shall not deliver Goods to the Municipality that have previously been rejected by the Municipality unless delivery of such Goods is approved in writing by the Municipality in advance of delivery, and is accompanied by a written disclosure of the Municipality's prior rejection(s).

GC 4.05. Title & Risk of Loss

- (a) Title, ownership and risk of loss to any Goods shall only pass to the Municipality upon successful delivery of the Goods to the Delivery Point. Successful delivery shall be deemed to have occurred if and when the Municipality accepts the Goods in accordance with the terms of this Agreement. The Supplier bears all risk of loss or damage to the Goods until successful delivery of the Goods to the Delivery Point. It shall be the responsibility of the Supplier to obtain appropriate insurance for the Goods while they are in transit from the Supplier's loading point to the Delivery Point and up until acceptance of the Goods is made by the Municipality.
- (b) Any Deliverables and equipment provided by the Supplier under this Agreement will remain at the risk of the Supplier until they are provided with written acceptance by the Municipality.

GC 4.06. Substitutions. No exchanges of Goods,

products, or substitute or alternate Goods, products or equipment will be used unless agreed to by the Municipality. All Goods, equipment, supplies and materials used by the Supplier shall be in good working order and free from defects.

GC 4.07. Warranty Obligations. The Municipality's inspection, non-inspection, testing, non-testing, acceptance or use of the Goods and/or Services shall not limit or otherwise affect the Supplier's warranty obligations with respect to the Goods and/or Services.

GC 5. STANDARDS

GC 5.01. Standards. The Supplier shall provide continuous and uninterrupted Services to the highest standard of care, skill and diligence maintained by persons providing similar services. In the performance of the Services, the Supplier shall act honestly and in good faith with a view to the best interests of the Municipality.

GC 5.02. Canadian Standards Association (CSA) Compliance. All machinery and electrical devices used shall conform to CSA standards and bear CSA approval labels. Costs of approval to obtain the required certification will be the sole responsibility of the Supplier.

GC 6. COMPENSATION AND EXPENSES

GC 6.01. The Municipality shall pay the Supplier the Contract Price, in accordance with the terms set out in this Agreement.

GC 6.02. Costs and Expenses. The Supplier shall be responsible for paying for:

- (a) its own costs and expenses incurred in connection with the negotiation, preparation and execution and delivery of this Agreement;
- (b) all necessary permits, licenses and approvals required for the deliver of the Goods or execution of the Services (including, without limitation, permits, licenses and approvals obtained from the Municipality); and
- (c) all materials, supplies and equipment for the performance of the Services, which are not otherwise included in the Contract Price.

GC 6.03. Taxes.

- (a) The Municipality will pay any HST payable in respect of the various goods and services provided by the Supplier in accordance with the requirements under the *Excise Tax Act* (Canada). The Supplier is an HST registrant.
- (b) The Supplier shall pay when due all other taxes, rates, duties, assessments and license fees that

may be payable by the Supplier under applicable law or levied, rated, charged or assessed by any governmental authority in respect of the provisions of the Services to the Municipality.

GC 6.04. **Disputes.** The amount of any reduction or increase in the Contract Price shall be determined by the Municipality and the Supplier by taking into account any reduction or increase in capital or labour costs based on the pricing methodology, rates, and costs for the Services set forth in the Proposal. If the Municipality and the Supplier are unable to agree on the appropriate reduction or increase in the Contract Price the matter shall be referred for resolution pursuant to binding arbitration in accordance with the *Commercial Arbitration Act* (Nova Scotia). The Municipality shall not be liable to the Supplier for any loss (including loss of anticipated profit) or damage of any nature arising out of any reduction or deletion in Services.

GC 6.05. **Set-off.** The Municipality shall be entitled at all times to set-off any amount due or owing to the Supplier by the Municipality under the Agreement against any amount or amounts for which the Supplier is or may be liable by virtue of the Supplier's failure to comply with any statutory or regulatory requirement, any duty, or any obligation arising out of or relating to the performance of the Agreement. The Municipality shall also have the right to withhold any payment which relates to that portion of the Services which have not been provided by the Supplier in accordance with the terms of the Agreement, or which relates to a dispute between the Parties (until such time as the dispute is resolved).

GC 7. SUPPLIER REPRESENTATION AND WARRANTIES

GC 7.01. **Title.** The Supplier warrants clear title to Goods at the time title to the Goods passes to the Municipality.

GC 7.02. **Conformance with Specifications.** The Supplier warrants that the Deliverables, Services and any Goods or equipment provided under this Agreement will conform to the Specifications, are free from defects and/or imperfections, are merchantable and fit for the purposes for which they are ordinarily employed, and are available for delivery to the Municipality at the time specified in this Agreement.

GC 7.03. **Performance of Services.** The Supplier warrants that all Services will be performed with reasonable care, diligence and skill and at least in accordance with the standards of care generally practiced by competing providers of similar services.

GC 7.04. **Warranty Period.** Unless a longer period is specified on the Order, the Supplier's warranty shall extend for no less than a period of 12 months after the Goods, equipment, Deliverables or Services are

delivered and accepted by the Municipality.

GC 7.05. **Warranty Remedies.** If the Municipality, acting reasonably, determines that the Supplier has breached any warranties under Sections GC 7.01, GC 7.02, GC 7.03 or GC 13.01(a), and without prejudice to any other right or remedy available under this Agreement, the Supplier will, within 10 days after written notice by the Municipality of a warranty breach, and at the Supplier's sole expense:

- (a) refund the price for any affected Goods or Services;
- (b) provide a commercially reasonable alternative to the affected Goods or Services; or
- (c) modify (without affecting functionality), correct, replace or re-perform the affected Goods or Services.

GC 7.06. **Other.** The Supplier further represents and warrants that:

- (a) it is registered to conduct business in Nova Scotia;
- (b) the Service Provider's employees and subcontractors are licensed, certified, registered or otherwise authorized to provide the necessary professional services to the full extent that may be required by law and applicable professional associations and shall maintain such license, certification, registration or authorization for the duration of this Agreement; and
- (c) it has full power and authority to enter into and perform its obligations under this Agreement and the person signing this Agreement on behalf of the Supplier has been properly authorized and empowered to enter into such Agreement. The Supplier further acknowledges that it has read all of the terms, conditions and provisions of this Agreement and understands all provisions thereof and agrees to be bound thereby.

GC 8. SUPPLIER COVENANTS

GC 8.01. **Conflict of Interest.** The Supplier and its employees shall take all reasonable steps to ensure avoidance of all direct or indirect conflicts of interest between any of their individual interests and those of the Municipality. If the Supplier or any one of its personnel becomes aware of any reasonable possibility of any such conflicts, then the Supplier shall promptly disclose to the Municipality the facts and circumstances pertaining to same.

GC 8.02. **Personnel.** The Supplier is solely responsible for all aspects of employment and labour

relations in connection with its workforce. All employees of the Supplier shall be under the direct management and sole supervision of the Supplier. The Supplier shall be responsible for all payroll functions and shall pay in a timely manner all salaries and benefits, taxes, employment insurance premiums, Canada Pension Plan premiums or contributions, *Workers Compensation Act* (Nova Scotia) assessments and any other assessments or contributions of any kind or nature whatsoever that are payable to any governmental authority in respect of the Supplier's employees. It is the express mutual understanding and intention of the Supplier and the Municipality that the Supplier is not a successor to, or common employer with the Municipality and nothing in the Agreement shall be construed, interpreted, understood or implied contrary to that mutual intention and understanding.

GC 8.03. Qualifications. The Supplier shall ensure its employees are competent to perform the Services and are properly qualified, trained and supervised in keeping with the qualification, training and supervision provided by a reasonably prudent Supplier of similar services in a public environment.

GC 8.04. Policies. The Supplier shall require all of its employees and approved subcontractors performing Services to adhere to the policies and by-laws of the Municipality (<https://www.countyofkings.ca/government/policies.aspx> and <https://www.countyofkings.ca/government/bylaws.aspx>), as may be amended or replaced from time to time. The Supplier shall ensure that any employees who do not meet the standards required by this Agreement do not provide Services at any facilities and are promptly removed from the work site. Failure to comply with these provisions constitutes a material breach of the Agreement entitling the Municipality to immediately terminate the Agreement pursuant to Section GC 9.01.

GC 8.05. Personnel Changes.

- (a) The Supplier shall use all reasonable efforts to minimize the possibility of changes in its human resources assigned to perform the Services under this Agreement. If a change is necessary, the Supplier is required to promptly notify the Municipality.
- (b) The Supplier shall use all reasonable efforts to promptly replace such resource with another that is of at least equal competence.
- (c) All resource replacements contemplated in this Section are subject to the Municipality's written approval.
- (d) The Supplier shall bear all additional costs incurred as a consequence of any replacements.

GC 8.06. Use of Subcontractors.

- (a) The Supplier may, upon first obtaining the written approval of the Municipality, retain the services of a subcontractor as may be required to perform the Services. In seeking such approval, the Supplier shall provide to the Municipality the names of any proposed subcontractors and activities to be performed by them.
- (b) The Municipality, acting reasonably, shall be entitled to impose any term or condition in connection with any approval of any proposed assignment or subcontract in order to ensure the continued and effective provision of goods or services to the Municipality. Subcontracting or assigning the Agreement to any firm or individual whose current or past or other interests may, in the Municipality's opinion, give rise to a conflict of interest in connection with the Agreement will not be permitted.
- (c) The Supplier shall be responsible for the performance of the Services under this Agreement and for the acts and omissions and errors of all subcontractors and of persons directly or indirectly employed or contracted by them and for coordinating activities of the approved subcontractors.
- (d) For subcontractors retained by the Supplier and approved by the Municipality, the Supplier shall bind the subcontractors to a contract containing terms and conditions which are consistent with the terms of this Agreement.
- (e) Nothing contained in this Agreement creates any contractual relationship between any of the Supplier's subcontractors and the Municipality.

GC 8.07. Security. Only employees of the Supplier specifically assigned to perform the Services or approved subcontractors pursuant to Section GC 8.06 will be allowed to enter the Municipality's facilities or sites. Where required by the Municipality, the Supplier shall ensure that all approved subcontractors and service representatives that enter the Municipality's facilities or sites are reported to the Municipality's representative, so that the Municipality's representative will be aware of who is at the facility or site and the duration of that person's visit. The Supplier shall comply with all of the Municipality's relevant policies relating to building security, information systems access and card access systems and shall be held responsible for any damages or injuries resulting from the misuse or loss of keys, unauthorized use of the Municipality's information systems and/or access cards.

GC 8.08. Criminal Record Checks.

- (a) If requested by the Municipality at any time, the Supplier shall ensure that their employees or subcontractors have security clearance, obtained from the Royal Canadian Mounted Police or similar law enforcement agency, to work in any of the Municipality's buildings and properties.
- (b) If requested by the Municipality at any time, the Supplier shall ensure that their employees or subcontractors have a Criminal Record Check and Vulnerable Sector Check. If this security clearance is not available, the reason for unavailability must be clearly stated, and may be grounds for removal of such employee or subcontractor from providing Goods or Services at the discretion of the Municipality.

GC 9. TERMINATION

GC 9.01. **Termination for Cause.** The Municipality may terminate the Agreement immediately by giving the Supplier notice in writing, if the Supplier:

- (a) in the opinion of the Municipality, fails to perform the Services or any portion thereof within the time stated in the Agreement for such completion;
- (b) becomes insolvent;
- (c) commits an act of bankruptcy;
- (d) abandons the Services;
- (e) assigns the Agreement without the required written consent;
- (f) performs conduct detrimental to the Municipality;
- (g) has any conflict of interest which may, in the opinion of the Municipality, have an adverse effect on this Agreement; or
- (h) fails to cure the default of a material obligation in accordance with Section GC 10.04.

GC 9.02. **Termination for Convenience.**

- (a) The Municipality may terminate the Agreement by giving the Supplier 30 days' advance notice in writing of the date on which the Agreement is terminated.
- (b) In the event of termination pursuant to Section GC 9.02, the Municipality shall pay to the Supplier all reasonable fees incurred by the Supplier in accordance with the Agreement up to the date of termination, including payment for Goods it has delivered and for which acceptance has been provided. The Municipality shall have no further liability whatsoever to the Supplier for any loss of

profit or any losses suffered either directly or indirectly, by the Supplier as a result of the termination of this Agreement.

GC 9.03. **Material Adverse Changes.** In the event of an adverse material change in the Municipality's capital or operating budgets, the Municipality reserves the right to cancel or reduce its contractual obligations without penalty.

GC 9.04. **Obligations on Termination.** The Supplier agrees that termination or suspension of the Agreement or a change to the Services to be provided under this Agreement does not operate so as to relieve or discharge the Supplier from any obligation under this Agreement or imposed upon the Supplier by law in respect to the Services or any portion of the Services that the Supplier has completed.

GC 10. DELAY, DEFAULT, AND SUSPENSION OF GOODS AND/OR SERVICES

GC 10.01. **Delay.** Except when due to an Event of Force Majeure, if the Supplier fails to deliver the Goods or complete the Services or any part of the Services by any date or deadline specified in the Order or approved change orders, the Municipality may elect to obtain substitute goods and services from a third party, in which case the Supplier must reimburse the Municipality for the difference, if any, between the charges incurred by the Municipality for the substitute services and the charges specified in the Agreement that the Municipality would owe to the Supplier if not for the delay.

GC 10.02. **Suspension of Services.**

- (a) In any circumstance where the Municipality, acting reasonably, is of the view the Supplier are is not acting in accordance with the requirements of the Agreement or the Goods and/or Services pose any unacceptable risks to the safety of the Municipality staff, Supplier employees, or the public, the Municipality may, without incurring any liability to the Supplier, immediately suspend, in whole or in part, the Agreement on written notice to the Supplier for such a period of time as the Municipality may determine. Upon receipt of such notice, the Supplier agrees it will immediately vacate the subject Municipality's facilities and sites along with its employees and equipment until such period of time as the Municipality may determine.
- (b) The Municipality may otherwise temporarily suspend delivery of the Goods and/or performance of the Services by giving the Supplier 14 days' advance notice in writing of the temporary suspension.
- (c) The Municipality shall not be responsible for any

fees incurred by the Supplier during the period of any suspension unless the Supplier provides the Municipality with supporting documentation to show that such fees were reasonably necessary.

- (d) The Supplier shall resume and complete its obligations in accordance with the terms of the Agreement upon receiving notice from the Municipality to do so. The Municipality shall make an equitable adjustment to the terms of this Agreement which are affected by the suspension including time requirements and payment.

GC 10.03. Force Majeure.

- (a) If the Municipality or the Supplier fails to perform any term of the Agreement and such failure is due to an Event of Force Majeure, that failure will not be deemed to be a default under the Agreement. The Party affected by an Event of Force Majeure will immediately notify the other Party and will take all reasonable steps to minimize the extent and duration of the Event of Force Majeure and the period of all delays resulting from the Event of Force Majeure will be excluded in computing the time within which anything is required or permitted by such Party to be done under this Agreement, it being understood and agreed that the time within which anything is to be done under this Agreement will be extended by the total period of all such delays. During the Event of Force Majeure requiring suspension or curtailment of a Party's obligation under this Agreement, that Party will suspend or curtail its operations in a safe and orderly manner.
- (b) If an Event of Force Majeure prevents the Supplier from delivering Goods and/or providing Services at any facility for a period of one or more days, the Municipality may thereafter, at its option, and without incurring any liability to the Supplier, on notice to the Supplier, either suspend in whole or in part delivery of the Goods and/or the performance of further Services on a site by site basis or for all sites, or terminate this Agreement with respect to the affected Goods and/or Services, or as necessary, the entire Agreement. In the event of such suspension, the Supplier agrees it will vacate the affected site(s) along with all of its employees and equipment until such period of time as the Municipality may determine and the Municipality shall have the right to obtain substitute Goods and/or Services from a third party or through its own forces at its sole discretion for the duration of such period of suspension. In the event of such termination, the Municipality shall be entitled to a refund of all prepaid costs related to the Goods and/or Services prevented by the Event of Force Majeure.

GC 10.04. Default.

- (a) If the Supplier fails to perform a material obligation under this Agreement, the Municipality may consider the Supplier to be in default and may assert a default claim by giving the Supplier a written and detailed notice of default. The Supplier shall have 30 days after receipt of the notice of default to either (i) cure the default or (ii) if the default is not curable within 30 days, to provide a written cure plan. The Supplier will begin implementing the cure plan immediately after receipt of notice by the Municipality that it approves the cure plan.
- (b) If the Supplier, in performing its obligations under this Agreement, acts contrary to any applicable laws, by-laws, regulations, codes and orders of any authority having jurisdiction, the Supplier shall be responsible for and shall bear all resulting costs, expenses, penalties and damages. If the Municipality is required to do anything or take any steps or pay any sums to rectify such non-compliance, the Municipality may subtract the cost of such rectifications from any monies owed to the Supplier. Such action shall not be deemed a waiver of any action that the Municipality may pursue to collect any monies paid that exceed the monies owed to the Supplier.

GC 11. CONFIDENTIALITY AND PUBLICITY

GC 11.01. Confidential Information. Information pertaining to the Municipality obtained by the Supplier from the Municipality or a Municipality Party as a result of this Agreement is confidential and must not be disclosed without written permission of Municipality.

GC 11.02. Limitation. Notwithstanding the foregoing, data, information and material will not be considered confidential if such data, information and material is obtainable by the Supplier through other means than the Municipality or if such data, information and material has been published or distributed by the Municipality to the general public.

GC 11.03. Advertising. The Supplier will not use the name of the Municipality, a Municipality Party or any contents of this Agreement in any advertising or publications without prior written consent from the Municipality.

GC 12. FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

GC 12.01. Municipality Obligations. The Supplier acknowledges that the Municipality is subject to the requirements of the *Municipal Government Act* (Nova Scotia), in particular, those provisions relating to Freedom

of Information and Protection of Privacy. All information and records pertaining to this Agreement will be maintained in confidence or disclosed by the Municipality in accordance with the provisions of the *Municipal Government Act* (Nova Scotia).

GC 12.02. **Supplier Obligations.**

- (a) **Freedom of Information.** The Supplier acknowledges that it is also subject to the provisions of the *Municipal Government Act* (Nova Scotia) relating to Freedom of Information and Protection of Privacy, including all information or records under its care or control collected or created for the purposes of this Agreement.
- (b) **Personal Information.** The Supplier must not permit the collection, use and/or disclosure of any personal information (as defined by section 461(f) of the *Municipal Government Act* (Nova Scotia)) without the consent of the individual to whom the personal information pertains.
- (c) **Data.** In the event that the Supplier is (i) acquired by a non-Canadian company or (ii) in the event of termination of this Agreement, the Supplier agrees, at no cost to the Municipality and upon reasonable notification from the Municipality, to provide to the Municipality all of the Municipality's data in electronic format, and to completely purge all of the Municipality's data, including backups, from the Supplier's possession prior to the completion of the acquisition. A certificate from an independent third party verifying that all data, including backups, has been purged shall be provided to the Municipality (i) prior to such acquisition of the Supplier by a non-Canadian company or (ii) following termination of this Agreement. Acceptable third parties include professional accountants, certified auditors and IT professionals.

GC 13. INTELLECTUAL PROPERTY

GC 13.01. **Intellectual Property Ownership.**

- (a) The Supplier agrees that the Deliverables shall vest in and become the absolute property of the Municipality, including assignment of all copyright. The Supplier agrees that this transfer of property and assignment of copyright applies to the Deliverables, notwithstanding that the Deliverables may contain wording to the contrary.
- (b) For greater certainty, Deliverables as defined in Section GC 13.01(a) does not include the Supplier IP, which remains the Supplier's intellectual property. Notwithstanding the foregoing, the Supplier agrees that any of the

Supplier IP used in the performance of the Services or incorporated into the Deliverables may be used by the Municipality for its business purposes and may be shared with the Municipality's other Suppliers. To the extent that the Supplier IP is included in the Deliverables, the Municipality shall receive a perpetual, royalty-free, non-transferable, non-exclusive, worldwide license to reproduce, distribute, use and display the Deliverables for the purpose for which they were intended.

- (c) In recognition that the Municipality is to be the sole owner of all rights to the Deliverables, Supplier shall, and shall cause its subcontractors and employees, as applicable to:
 - (i) forever, unconditionally, and irrevocably sell, assign, convey, and transfer to the Municipality all of Supplier's, any subcontractors' and employees' rights, title and interest in and to the Deliverables and work product created by the Supplier under this Agreement, and all worldwide intellectual property rights therein, including, without limitation, the rights in any copyrights, patents and trade secrets; and
 - (ii) waive any moral rights to the Deliverables in favour of the Municipality,

to the fullest extent such that, following the assignment, the Municipality shall have all ownership rights that would otherwise be possessed by Supplier or subcontractor or employee. Without prejudice to any rights which may exist in the Municipality by virtue of any prerogative rights and powers or by virtue of the *Copyright Act*, R.S.C. 1985, c. C-42, the Supplier agrees that all present and future rights in the copyright in the Deliverables will vest absolutely and immediately in the Municipality. The Supplier agrees that execution of this Agreement constitutes the written assignment of copyright and waiver of moral rights.

- (d) Upon termination of this Agreement, the Supplier shall deliver all of the Deliverables to the Municipality on demand by the Municipality. The Supplier may keep copies of the Deliverables. Once the Municipality has possession of the Deliverables, the Municipality is solely responsible for the use that the Municipality makes of the Deliverables in other projects.
- (e) The Municipality agrees to indemnify and hold harmless the Supplier from any claim, liability or cost (including reasonable legal fees) arising out of any modification of the Deliverables by the Municipality or any person that obtains the

Deliverables from or through the Municipality.

GC 13.02. Infringement and Indemnification.

- (a) The Supplier represents and warrants that, to the best of its knowledge, neither it nor the Municipality will infringe any third party's intellectual property rights (including patent, copyright or industrial design) as a result of the use of the Municipality's use of the Goods, performance of the Services or the Municipality's use of the Deliverables.
- (b) The Supplier shall indemnify and hold harmless the Municipality against any or all lawsuits, claims, demands and/or expenses, patent litigation, intellectual property infringement or any claims by third parties in or in relation to Goods, the Deliverables or provision of the Services.
- (c) If anyone makes a claim against the Municipality or the Supplier concerning intellectual property infringement or royalties related to the Goods, Services or the Deliverables, that Party agrees to notify the other Party in writing immediately.
- (d) If anyone brings a claim against the Municipality pursuant to this Section GC 13.02, the Supplier agrees to participate fully in the defense and any settlement negotiations and to pay all costs, damages and legal costs incurred or payable as a result of the claim, including the amount of any settlement. Both Parties agree not to settle any claim unless the other Party first approves the settlement in writing.
- (e) The Supplier has no obligation regarding claims that were only made because:
 - (i) the Municipality modified the Deliverables without the Supplier's consent or used the Deliverables or part of the Deliverables without following a requirement of the Agreement; or
 - (ii) the Municipality used the Deliverables with a product that the Supplier did not supply under the Agreement (unless that use is described in the Agreement or the manufacturer's specifications).

GC 14. LIMITATION OF LIABILITY AND INDEMNIFICATION

GC 14.01. EXCEPT AS EXPRESSLY OTHERWISE PROVIDED IN THIS AGREEMENT, IN NO EVENT WILL THE MUNICIPALITY BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING

NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, AGGRAVATED, OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER THE SUPPLIER WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. EXCEPT AS EXPRESSLY OTHERWISE PROVIDED IN THIS AGREEMENT, IN NO EVENT WILL THE AGGREGATE LIABILITY OF THE MUNICIPALITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, EXCEED THE AMOUNT PAID BY THE MUNICIPALITY UNDER THIS AGREEMENT.

GC 14.02. Indemnification.

- (a) In addition to the indemnities provided for in Section GC 13.02, the Supplier agrees to indemnify and hold harmless the Municipality, its officers, its agents, its employees and its volunteers from and against any and all losses, claims, demands, payments, suits, judgments, charges, expenses, actions, cause of actions, and costs caused by or arising from:
 - (i) materialman's or labourer's liens;
 - (ii) the willful actions or misconduct of the Supplier including, but not limited to, trespass or nuisance;
 - (iii) the negligent performance of the Services; or
 - (iv) any negligence or unlawful acts of the Supplier, its employees, agents, or subcontractors.
- (b) The Municipality may set off any sums owed by the Supplier to the Municipality pursuant to this indemnity from any sums due to the Supplier. This right is in addition to any other remedies available to the Municipality under law.
- (c) In the event that any action, suit, claim or demand is brought or made against the Municipality or any of its servants, agents, or employees, as set out in Section GC 14.02(a), the Municipality shall give the Supplier a written notice and the Supplier shall have the option of contesting the validity of the action, suit, claim or demand by appropriate legal proceedings. If the Supplier elects to contest, it shall give written notice to the Municipality within seven days of receipt of the notice from the Municipality. On final determination of such action, suit, claim or demand, the Supplier shall immediately pay any judgment awarded against the Municipality or any

of its servants, agents or employees, together with all proper costs and charges.

- (d) In the event that the Supplier shall not elect, within the period of seven days to contest any action, suit, claim or demand, the Municipality may commence any such action, suit, claim or demand at the sole discretion of the Municipality. The Supplier shall immediately pay to the Municipality any sums paid by the Municipality, together with any sum as shall represent the reasonable costs of the Municipality in defending or settling any action, suit, claim or demand.
- (e) Without restricting the generality of the foregoing, for the purposes of Sections GC 14.02(a) and GC 14.02(c), costs shall mean party-party costs, solicitor-client costs, and solicitor and his/her own client costs, whether the Municipality retains internal or external counsel.
- (f) The obligations of the Supplier under this Section GC 14.02 shall not extend to the liability of the Municipality, its employees, agents, officers or servants where liability arises from the negligent act or omission of the Municipality.

GC 15. INSURANCE

GC 15.01. **Insurance Coverage.** During the term of this Agreement, the Supplier shall carry the following insurance:

- (a) **General Liability Insurance.** General liability insurance covering the services and operations of the Supplier for bodily injury and/or property damage with policy limits of not less than **\$1,000,000** per occurrence. Such policy shall include the following: Cross Liability; Non-Owner Vehicles & Contractual Liability
- (b) **Professional Liability Insurance.** Professional liability insurance covering the services provided by the Supplier with policy limits of not less than **\$1,000,000** per claim and in the aggregate. The Supplier shall obtain such insurance when the Supplier subcontracts for any work from such a design professional, and prior to the submission of construction documents. Any design professional required to obtain professional liability insurance must maintain proof of insurance for the term of the Agreement.
- (c) **Order Specific Insurance.** Any other insurance as specified in the Order.

GC 15.02. **Proof of Insurance.**

- (a) Required insurance shall be in a form and with insurers acceptable to the Municipality, acting

reasonably. Certificates of insurance shall be provided to the Municipality by the Supplier or the Supplier's broker and evidence of renewal shall be provided to the Municipality not less than 30 days prior to the expiry dates of the policies. Certified copies of policies shall be provided on request by the Municipality.

- (b) If the Supplier is legally obliged to be covered by workers' compensation and health and safety regulations, the Supplier shall provide evidence of coverage and evidence that the premiums have been paid and are up to date. Supplier shall also be responsible for obtaining and providing evidence that any subcontractor is also covered as required by law.
- (c) If the Supplier is not required to obtain mandatory workplace injury insurance, the Municipality may elect to obtain such insurance for the Supplier or subcontractor for the Term. Any fees paid by the Municipality to obtain such insurance on behalf of the Supplier or any subcontractor may, at the discretion of the Municipality, be deducted from amounts payable by the Municipality under this Agreement.

GC 15.03. **Cost of Insurance.** The Supplier shall be responsible for the payment of all premium and deductible amounts relating to the insurance policies, and the Supplier shall maintain the insurance from the date of this Agreement until the Agreement is terminated.

GC 15.04. **Coverage.** The insurance coverage requirements as specified in this Section GC 15 shall not be construed as a limit to the Supplier's liability under this Agreement.

GC 15.05. **Modification to Insurance Policies.** During the term of the Agreement, the Municipality, acting reasonably and at its cost, has the right to have the Supplier increase or decrease the insurance limits, purchase additional insurance policies and/or change insurance coverages.

GC 16. INTERPRETATION

GC 16.01. **Headings.** The division of this Agreement into sections and the insertion of the recitals and headings are for convenience and reference only and shall not affect the construction or interpretation of the Agreement.

GC 16.02. **Currency.** All transactions referred to in this Agreement will be made in Canadian Dollars.

GC 16.03. **Time is of the Essence.** Time shall be of the essence in this Agreement.

GC 16.04. **Days.** All references to "days" in this

Agreement shall refer to calendar days. In the event that any date on which any action is required to be taken under this Agreement is not a business day, such action shall be required to be taken on the next succeeding day which is a business day unless otherwise provided in this Agreement.

GC 16.05. **Interpretation.** Wherever in this Agreement the context so requires, the singular number shall include the plural number and vice versa and any gender used shall be deemed to include the feminine, masculine or neuter gender and "person" shall mean an individual, partnership, consortium, corporation, joint venture or other entity or government or any agency, department or instrumentality thereof and vice versa.

GC 17. MISCELLANEOUS

GC 17.01. **Independent Contractor.** The Supplier is an independent contractor. The Agreement does not create or establish any relationship as partners, joint venturers, employer and employee, master and servant or principal and agent.

GC 17.02. **Governing Law.** This Agreement is governed exclusively by and construed and enforced in accordance with the laws of Nova Scotia and the laws of Canada applicable therein. Unless stated otherwise herein, the Supplier attorns to the exclusive jurisdiction of the courts of Nova Scotia to determine any dispute arising out of this Agreement.

GC 17.03. **Compliance with Laws.** The Supplier shall comply with all relevant federal, provincial and municipal legislation, codes, by-laws and regulations applicable to the Goods and Services, including, without limitation, employee-related laws, ordinances, rules, regulations and orders with respect to occupational health and safety, hazardous materials, workers' compensation and unfair labour practices. This includes any Municipality policies and procedures in force at the time of the performance of the Services. Where there are two or more laws, by-laws, regulations or codes applicable to the Services, the more restrictive shall apply.

GC 17.04. **Entire Agreement.** This Agreement supersedes all prior agreements, negotiations and discussions, whether oral, written or otherwise, between the Parties with respect to its subject matter. This Agreement contains the final and entire understanding and agreement between the Parties with respect to its subject matter. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective heirs, personal representatives, successors and assigns.

GC 17.05. **Assignment.** The Supplier will not assign this Agreement or any part thereof for any or all of the Services without the prior written consent of the Municipality.

GC 17.06. **Survival.** All obligations of the Supplier which by their terms are intended or are appropriate to survive the termination of the Agreement shall survive the cancellation, termination or expiration of the Agreement, including, but not limited to Sections GC 11, GC 12, GC 13, GC 14.02 and this Section GC 17.06.

GC 17.07. **Further Assurances.** The Parties shall, with reasonable diligence, hold all meetings, perform all acts, execute and deliver all documents and instruments, do all such things and provide all such reasonable assurances as may be reasonably necessary or desirable to give effect to the provisions of this Agreement.

GC 17.08. **Amendment.** This Agreement may not be amended except by a written instrument signed by the Parties.

GC 17.09. **Waiver.** A waiver by the Party of a breach or default of the other Party under the Agreement shall not be deemed a waiver of any subsequent or other breach or default by the breaching Party. The failure of a Party to enforce compliance with any term or condition of the Agreement shall not constitute a waiver of such term or condition. Any such waiver, in order to be binding upon a Party, must be expressed in writing and signed by the Party and then such waiver shall only be effective in the specific instance and for the specific purpose for which it is given.

GC 17.10. **Precedence of Documents.** In the event of any ambiguity, conflict or inconsistency among any of the provisions of the Agreement then the provisions establishing the higher quality or level of goods and services, safety, reliability and durability shall govern.