

# General Terms and Conditions

## ARTICLE 1 – INTERPRETATION

### 1.01 Defined Terms

When used in the Contract, the following words or expressions have the following meanings:

**“Authority”** means any government authority, agency, body or department, whether federal, provincial or municipal, having or claiming jurisdiction over the Contract; and **“Authorities”** means all such authorities, agencies, bodies and departments;

**“Board Confidential Information”** means all information of the Board that is of a confidential nature, including all confidential information in the custody or control of the Board, regardless of whether it is identified as confidential or not, and whether recorded or not, and however fixed, stored, expressed or embodied, which comes into the knowledge, possession or control of the Contractor in connection with the Contract. For greater certainty, Board Confidential Information shall: (a) include: (i) all new information derived at any time from any such information whether created by the Board, the Contractor or any third-party; (ii) all information (including Personal Information) that the Board is obliged, or has the discretion, not to disclose under provincial or federal legislation or otherwise at law; but (b) not include information that: (i) is or becomes generally available to the public without fault or breach on the part of the Contractor of any duty of confidentiality owed by the Contractor to the Board or to any third-party; (ii) the Contractor can demonstrate to have been rightfully obtained by the Contractor, without any obligation of confidence, from a third-party who had the right to transfer or disclose it to the Contractor free of any obligation of confidence; (iii) the Contractor can demonstrate to have been rightfully known to or in the possession of the Contractor at the time of disclosure, free of any obligation of confidence when disclosed; or (iv) is independently developed by the Contractor; but the exclusions in this subparagraph shall in no way limit the meaning of Personal Information or the obligations attaching thereto under the Contract or at law;

**“Business Day”** means any working day, Monday to Friday inclusive, but excluding statutory holidays and other days on which the Board has elected to be closed for business;

**“Conflict of Interest”** includes, but is not limited to, any situation or circumstance where (a) in relation to the procurement process, the proponent has an unfair advantage or engages in conduct, directly or indirectly, that may give it an unfair advantage, including but not limited to (i) having or having access to information in the preparation of the Contractor’s Submission that is confidential to the Board and not available to other proponents; (ii) communicating with any person with a view to influencing preferred treatment in the procurement process; or (iii) engaging in conduct that compromises or could be seen to compromise the integrity of the open and competitive procurement process and render that process non-competitive and unfair; or (b) in relation to the performance of its contractual obligations in a Board contract, the Contractor’s other commitments, relationships or financial interests (i) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgment; or (ii) could or could be seen to compromise, impair or be incompatible with the effective performance of its contractual obligations;

**“Contractor’s Intellectual Property”** means Intellectual Property owned by the Contractor prior to its performance under the Contract or created by the Contractor during the Term of the Contract independently of the performance of its obligations under the Contract;

**“Contractor’s Submission”** shall have the meaning set out on the Purchase Order;

**“Deliverables”** means everything developed for or provided to the Board in the course of performing under the Contract or agreed to be provided to the Board under the Contract by the Contractor or its directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors, including but not limited to any goods or services or any and all Intellectual Property and any and all concepts, techniques, ideas, information, documentation and other materials, however recorded, developed or provided;

**“FIPPA”** means the *Freedom of Information and Protection of Privacy Act*, Revised Statutes of Ontario, 1990, Chapter F.31, as amended;

**“Indemnified Parties”** means the Board and the Board’s directors, officers, agents, employees and volunteers;

**“Industry Standards”** include, but are not limited to (a) the provision of any and all labour, supplies, equipment and other goods or services that are necessary and can reasonably be understood or inferred to be included within the scope of the Contract or customarily furnished by Persons providing Deliverables of the type provided hereunder in similar situations in Alberta and; (b) adherence to commonly accepted norms of ethical business practices, which shall include the Contractor establishing, and ensuring adherence to, precautions to prevent its employees or agents from providing or offering gifts or hospitality of greater than nominal value to any person acting on behalf of or employed by the Board;

**“Intellectual Property”** means any intellectual, industrial or other proprietary right of any type in any form protected or protectable under the laws of Canada, any foreign country, or any political subdivision of any country, including, without limitation, any intellectual, industrial or proprietary rights protected or protectable by legislation, by common law or at equity;

**“Newly Created Intellectual Property”** means any Intellectual Property created by the Contractor in the course of performance of its obligations under the Contract;

**“Person”** if the context allows, includes any individuals, persons, firms, partnerships or corporations or any combination thereof;

**“Personal Information”** means recorded information about an identifiable individual or that may identify an individual;

**“Proceeding”** means any action, claim, demand, lawsuit, or other proceeding;

**“Rates”** means the applicable price, in Canadian funds, to be charged for the applicable Deliverables, as set out in the Contract, representing the full amount chargeable by the Contractor for the provision of the Deliverables, including but not limited to: (a) all applicable duties and taxes (except applicable sales tax, which should be itemized separately); (b) all labour and material costs; (c) all travel and carriage costs; (d) all insurance costs; and (e) all other overhead including any fees or other charges required by law;

**“Record”**, for the purposes of the Contract, means any recorded information, including any Personal Information, in any form: (a) provided by the Board to the Contractor, or provided by the Contractor to the Board, for the purposes of the Contract; or (b) created by the Contractor in the performance of the Contract;

**“Requirements of Law”** mean all applicable requirements, laws, statutes, codes, acts, ordinances, orders, decrees, injunctions, by-laws, rules, regulations, official plans, permits, licenses, authorizations, directions, and agreements with all Authorities that now or at any time hereafter may be applicable to either the Contract or the Deliverables or any part of them;

**“Term”** means period of time from the Order Date set out on the Purchase Order up to and including the earlier of: (i) the Completion Date set out on the Purchase Order, or as extended in accordance with the Contract, or (ii) the date of termination of the Contract;

**“Third-Party Intellectual Property”** means any Intellectual Property owned by a party other than the Board or the Contractor;

## **ARTICLE 2 – GENERAL TERMS**

### **2.01 No Indemnities from the Board**

Notwithstanding anything else in the Contract, any express or implied reference to the Board providing an indemnity or any other form of indebtedness or contingent liability that would directly or indirectly increase the indebtedness or contingent liabilities of the Board, whether at the time of issuance of the Contract or at any time during the Term, shall be void and of no legal effect.

### **2.02 Entire Contract**

The Contract embodies the entire agreement between the parties with regard to the provision of Deliverables and supersedes any prior understanding or agreement, collateral, oral or otherwise with respect to the provision of the Deliverables, existing between the parties at the commencement of the Contract.

### **2.03 Severability**

If any term or condition of the Contract, or the application thereof to the parties or to any Persons or circumstances, is to any extent invalid or unenforceable, the remainder of the Contract, and the application of such term or condition to the parties, Persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby.

### **2.04 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. The parties agree that an event shall not be considered beyond one’s 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 natural disasters and acts of war, insurrection and terrorism but shall not include shortages or delays relating to supplies or services. 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 or 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.

**2.05 Notices by Prescribed Means**

Notices shall be in writing and shall be delivered by postage-prepaid envelope, personal delivery or email and shall be addressed to, respectively, the Board Address and the Contractor Address. Notices shall be deemed to have been given: (a) in the case of postage-prepaid envelope, five (5) Business Days after such notice is mailed; or (b) in the case of personal delivery or email one (1) Business Day after such notice is received by the other party. In the event of a postal disruption, notices must be given by personal delivery or by email. Unless the parties expressly agree in writing to additional methods of notice, notices may only be provided by the methods contemplated in this paragraph.

**2.06 Governing Law**

The Contract shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

**ARTICLE 3 – NATURE OF RELATIONSHIP BETWEEN BOARD AND CONTRACTOR**

**3.01 Contractor's Power to Contract**

The Contractor represents and warrants that it has the full right and power to enter into the Contract and there is no agreement with any other Person that would in any way interfere with the rights of the Board under this Contract.

**3.02 Representatives May Bind the Parties**

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

**3.03 Contractor Not a Partner, Agent or Employee**

The Contractor shall have no power or authority to bind the Board or to assume or create any obligation or responsibility, express or implied, on behalf of the Board. The Contractor shall not hold itself out as an agent, partner or employee of the Board. Nothing in the Contract shall have the effect of creating an employment, partnership or agency relationship between the Board and the Contractor (or any of the Contractor's directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors).

**3.04 Responsibility of Contractor**

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

**3.05 No Subcontracting or Assignment**

The Contractor shall not subcontract or assign the whole or any part of the Contract or any monies due under it without the prior written consent of the Board. Such consent shall be in the sole discretion of the Board and subject to the terms and conditions that may be imposed by the Board. Without limiting the generality of the conditions which the Board may require prior to consenting

to the Contractor's use of a subcontractor, every contract entered into by the Contractor with a subcontractor shall adopt all of the terms and conditions of this Contract as far as applicable to those parts of the Deliverables provided by the subcontractor. Nothing contained in the Contract shall create a contractual relationship between any subcontractor or its directors, officers, employees, agents, partners, affiliates or volunteers and the Board.

**3.06 Duty to Disclose Change of Control**

In the event that the Contractor undergoes a change in control the Contractor shall immediately disclose such change in control to the Board and shall comply with any terms and conditions subsequently prescribed by the Board resulting from the disclosure.

**3.07 Conflict of Interest**

The Contractor shall: (a) avoid any Conflict of Interest in the performance of its contractual obligations; (b) disclose to the Board without delay any actual or potential Conflict of Interest that arises during the performance of its contractual obligations; and (c) comply with any requirements prescribed by the Board to resolve any Conflict of Interest. In addition to all other contractual rights or rights available at law or in equity, the Board may immediately terminate the Contract upon giving notice to the Contractor where: (a) the Contractor fails to disclose an actual or potential Conflict of Interest; (b) the Contractor fails to comply with any requirements prescribed by the Board to resolve a Conflict of Interest; or (c) the Contractor's Conflict of Interest cannot be resolved. This paragraph shall survive any termination or expiry of the Contract.

**3.08 Contract Binding**

The Contract can be enforced by and is binding upon the parties and their successors, executors, administrators and their permitted assigns.

## **ARTICLE 4 – PERFORMANCE BY CONTRACTOR**

**4.01 Commencement of Performance**

The Contractor shall commence performance upon receipt of written instructions from the Board.

**4.02 Deliverables Warranty**

The Contractor hereby represents and warrants that the Deliverables (i) shall be provided fully and diligently in a professional and competent manner by persons qualified and skilled in their occupations; and (ii) shall be free from defects in material, workmanship and design, suitable for the purposes intended, in compliance with all applicable specifications and free from liens or encumbrance on title; and furthermore that all Deliverables shall be provided in accordance with: (a) the Contract; (b) Industry Standards; and (c) Requirements of Law. If any of the Deliverables, in the opinion of the Board, are inadequately provided or require corrections, the Contractor shall forthwith make the necessary corrections at its own expense as specified by the Board in a rectification notice.

**4.03 Use and Access Restrictions**

The Contractor acknowledges that unless it obtains specific written preauthorization from the Board, any access to or use of the Board property, technology or information that is not necessary for the performance of its contractual obligations with the Board is strictly prohibited. The Contractor further acknowledges that the Board may monitor the Contractor to ensure compliance with this paragraph. This paragraph is in addition to and shall not limit any other obligation or restriction placed upon the Contractor.

**4.04 Notification by Contractor to the Board**

During the Term, the Contractor shall advise the Board promptly of: (a) any contradictions, discrepancies or errors found or noted in the Contract; (b) supplementary details, instructions or directions that do not correspond with those contained in the Contract; and (c) any omissions or other faults that become evident and should be corrected in order to provide the Deliverables in accordance with the Contract and Requirements of Law.

**4.05 Failure to Enforce Not a Waiver**

Any failure by the Board to insist in one or more instances upon strict performance by the Contractor of any of the terms or conditions of the Contract shall not be construed as a waiver by the Board of its right to require strict performance of any such terms or conditions, and the obligations of the Contractor with respect to such performance shall continue in full force and effect.

**4.06 Changes by Written Amendment Only**

Any changes to the Contract shall be by written amendment signed by the parties. No changes shall be effective or shall be carried out in the absence of such an amendment. Any such written changes shall be included in the definition of Contract.

**4.07 Contractor to Comply with Reasonable Change Requests**

The Board may, in writing, request changes to the Contract, which may include altering, adding to, or deleting any of the Deliverables. The Contractor shall comply with all reasonable Board change requests and the performance of such request shall be in accordance with the terms and conditions of the Contract. If the Contractor is unable to comply with the change request, it shall promptly notify the Board and provide reasons for such non-compliance. In any event, any such change request shall not be effective until a written amendment reflecting the change has been executed by the parties.

**4.08 Pricing for Requested Changes**

Where a Board change request includes an increase in the scope of the previously contemplated Deliverables, the Board shall set out, in its change request, the proposed prices for the contemplated changes. Where the Rates in effect at the time of the change request (a) include pricing for the particular type of goods or services contemplated in the change request, the Contractor shall not unreasonably refuse to provide those goods or services at prices consistent with those Rates; or (b) are silent to the applicable price for the particular goods or services contemplated in the change request, the price shall be negotiated between the Board and the Contractor within a reasonable period of time and in any event, such change request shall not become effective until a written amendment reflecting the change has been executed by the parties.

**4.09 Non-Exclusive Contract, Work Volumes**

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

**4.10 Performance by Specified Individuals Only**

The Contractor agrees that to the extent that specific individuals are named in the Contract as being responsible for the provision of the Deliverables, only those individuals shall provide the Deliverables under the Contract. The Contractor shall not replace or substitute any of the individuals named in the Contract without the prior written approval of the Board, which may not

arbitrarily or unreasonably be withheld. Should the Contractor require the substitution or replacement of any of the individuals named in the Contract, it is understood and agreed that any proposed replacement must possess similar or greater qualifications than the individual named in the Contract. The Contractor shall not claim fees for any replacement individual greater than the Rates established under the Contract.

**4.11 Board Rights and Remedies and Contractor Obligations Not Limited to Contract**

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

**ARTICLE 5 – PAYMENT FOR PERFORMANCE AND AUDIT**

**5.01 Payment According to Contract Rates**

The Board shall, subject to the Contractor's compliance with the provisions of the Contract, pay the Contractor for the Deliverables provided at the Rates established under the Contract.

**5.02 Hold Back or Set Off**

The Board may hold back payment or set off against payment if, in the opinion of the Board acting reasonably, the Contractor has failed to comply with any requirements of the Contract.

**5.03 No Expenses or Additional Charges**

There shall be no other charges payable by the Board under the Contract to the Contractor other than the Rates established under the Contract.

**5.04 Payment of Taxes and Duties**

Unless otherwise stated, the Contractor shall pay all applicable taxes, including excise taxes incurred by or on the Contractor's behalf with respect to the Contract.

**5.05 Withholding Tax**

The Board shall withhold any applicable withholding tax from amounts due and owing to the Contractor under the Contract and shall remit it to the appropriate government in accordance with applicable tax laws. This paragraph shall survive any termination or expiry of the Contract.

**5.06 Interest on Late Payment**

If a payment is in arrears through no fault of the Contractor, the interest charged by the Contractor, if any, for any late payment shall not exceed the Bank of Canada's prime rate, in effect on the date that the payment went into arrears.

**5.07 Document Retention and Audit**

For seven (7) years after the expiry or termination of the Contract, the Contractor shall maintain all necessary records to substantiate (a) all charges and payments under the Contract and (b) that the Deliverables were provided in accordance with the Contract and with Requirements of Law. During the Term, and for seven (7) years after the Term, the Contractor shall permit and assist the Board in conducting audits of the operations of the Contractor to verify (a) and (b) above. The Board shall provide the Contractor with at least ten (10) Business Days prior notice of its requirement for such audit. The Contractor's obligations under this paragraph shall survive any termination or expiry of the Contract.

## **ARTICLE 6 – CONFIDENTIALITY**

### **6.01 Confidentiality and Promotion Restrictions**

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

### **6.02 Board Confidential Information**

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

### **6.03 Restrictions on Copying**

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

### **6.04 Notice of Breach**

The Contractor shall notify Board promptly upon the discovery of loss, unauthorized disclosure, unauthorized access or unauthorized use of Board Confidential Information.

### **6.05 Injunctive and Other Relief**

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

### **6.06 Notice and Protective Order**

If the Contractor or any of its directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors become legally compelled to disclose any Board Confidential Information, the Contractor will provide the Board with prompt notice to that effect in order to allow the Board to seek one or more protective orders or other appropriate remedies to prevent or limit such disclosure, and it shall co-operate with the Board and its legal counsel to the fullest extent. If such protective orders or other remedies are not obtained, the Contractor will disclose only that portion of Board Confidential Information which the Contractor is legally compelled to disclose, only to such person or persons to which the Contractor is legally compelled to disclose, and the Contractor shall provide



notice to each such recipient (in co-operation with legal counsel for the Board) that such Board Confidential Information is confidential and subject to non-disclosure on terms and conditions equal to those contained in the Contract and, if possible, shall obtain each recipient's written agreement to receive and use such Board Confidential Information subject to those terms and conditions.

**6.07 FIPPA Records and Compliance**

The Contractor and the Board acknowledge and agree that FIPPA applies to and governs all Records and may require the disclosure of such Records to third parties. Furthermore, the Contractor agrees (a) to keep Records secure; (b) to provide Records to the Board within seven (7) calendar days of being directed to do so by the Board for any reason including an access request or privacy issue; (c) not to access any Personal Information unless the Board determines, in its sole discretion, that access is permitted under FIPPA and is necessary in order to provide the Deliverables; (d) not to directly or indirectly use, collect, disclose or destroy any Personal Information for any purposes that are not authorized by the Board; (e) to ensure the security and integrity of Personal Information and keep it in a physically secure and separate location safe from loss, alteration, destruction or intermingling with other records and databases and to implement, use and maintain the most appropriate products, tools, measures and procedures to do so; (f) to restrict access to Personal Information to those of its directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors who have a need to know it for the purpose of providing the Deliverables and who have been specifically authorized by a Board representative to have such access for the purpose of providing the Deliverables; (g) to implement other specific security measures that in the reasonable opinion of the Board would improve the adequacy and effectiveness of the Contractor's measures to ensure the security and integrity of Personal Information and Records generally; and (h) that any confidential information supplied to the Board may be disclosed by the Board where it is obligated to do so under FIPPA, by an order of a court or tribunal or pursuant to a legal proceeding and the provisions of this paragraph shall prevail over any inconsistent provisions in the Contract.

**6.08 Survival**

The provisions of this Article shall survive any termination or expiry of the Contract.

**ARTICLE 7 – INTELLECTUAL PROPERTY**

**7.01 Board Intellectual Property**

The Contractor agrees that all Intellectual Property and every other right, title and interest in and to all concepts, techniques, ideas, information and materials, however recorded, (including images and data) provided by the Board to the Contractor shall remain the sole property of the Board at all times.

**7.02 No Use of the Board Insignia**

The Contractor shall not use any insignia or logo of the Board except where required to provide the Deliverables, and only if it has received the prior written permission of the Board to do so.

**7.03 Ownership of Intellectual Property**

The Board shall be the sole owner of any Newly Created Intellectual Property. The Contractor irrevocably assigns to and in favour of the Board and the Board accepts every right, title and interest in and to all Newly Created Intellectual Property in the Deliverables, immediately following the creation thereof, for all time and irrevocably waives in favour of the Board all rights of integrity and other moral rights to all Newly Created Intellectual Property in the Deliverables, immediately following the creation thereof, for all time. To the extent that any of the Deliverables include, in

whole or in part, the Contractor's Intellectual Property, the Contractor grants to the Board a licence to use that Contractor Intellectual Property in the manner contemplated in this Article, the total consideration for which shall be payment of the Rates to the Contractor by the Board.

**7.04 Contractor's Grant of License**

For those parts of the Deliverables that are Contractor Intellectual Property, the Contractor grants to the Board a perpetual, world-wide, non-exclusive, irrevocable, transferable, royalty free, fully paid up right and license: (a) to use, modify, reproduce and distribute, in any form, those Deliverables; and (b) to authorize other Persons, including agents, contractors or sub-contractors, to do any of the former on behalf of the Board.

**7.05 No Restrictive Material in Deliverables**

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

**7.06 Contractor Representation and Warranty Regarding Third-Party Intellectual Property**

The Contractor represents and warrants that the provision of the Deliverables shall not infringe or induce the infringement of any Third-Party Intellectual Property rights. The Contractor further represents and warrants that it has obtained assurances with respect to any Contractor Intellectual Property and Third-Party Intellectual Property that any rights of integrity or any other moral rights associated therewith have been waived.

**7.07 Survival**

The obligations contained in this Article shall survive the termination or expiry of the Contract.

## **ARTICLE 8 – INDEMNITIES AND INSURANCE**

**8.01 Contractor Indemnity**

The Contractor hereby agrees to indemnify and hold harmless the Indemnified Parties from and against any and all liability, loss, costs, damages and expenses (including legal, expert and consultant fees), causes of action, actions, claims, demands, lawsuits or other proceedings, (collectively, "Claims"), by whomever made, sustained, incurred, brought or prosecuted, including for third party bodily injury (including death), personal injury and property damage, in any way based upon, occasioned by or attributable to anything done or omitted to be done by the Contractor, its subcontractors or their respective directors, officers, agents, employees, partners, affiliates, volunteers or independent contractors in the course of performance of the Contractor's obligations under, or otherwise in connection with, the Contract. The Contractor further agrees to indemnify and hold harmless the Indemnified Parties for any incidental, indirect, special or consequential damages, or any loss of use, revenue or profit, by any person, entity or organization, including, without limitation, the Board, claimed or resulting from such Claims. The obligations contained in this paragraph shall survive the termination or expiry of the Contract.

**8.02 Insurance**

The Contractor hereby agrees to put in effect and maintain insurance for the Term, at its own cost and expense, with insurers having a secure A.M. Best rating of B + or greater, or the equivalent, all the necessary and appropriate insurance that a prudent person in the business of the Contractor would maintain including, but not limited to, the following:

- (a) commercial general liability insurance on an occurrence basis for third party bodily injury, personal injury and property damage, to an inclusive limit of not less than **\$5,000,000** per occurrence and including products and completed operations liability The policy is to include the following:
- the Board as an additional named insured with respect to liability arising in the course of performance of the Contractor's obligations under, or otherwise in connection with, the Contract
  - contractual liability coverage
  - cross-liability and severability of interests clause
  - employers liability coverage
  - 30 day written notice of cancellation, termination or material change
  - tenants legal liability coverage (if applicable and with suitable sub-limits)
  - non-owned automobile coverage with blanket contractual coverage for hired automobiles

### **8.03 Proof of Insurance**

The Contractor shall provide the Board with proof of the insurance required by this Contract in the form of valid certificates of insurance that reference this Contract and confirm the required coverage, before the issuance of the Contract by the Board, and renewal replacements on or before the expiry of any such insurance. Upon the request of the Board, a copy of each insurance policy shall be made available to it. The Contractor shall ensure that each of its subcontractors obtains all the necessary and appropriate insurance that a prudent person in the business of the subcontractor would maintain and that the Board and Indemnified Parties are named as additional insured with respect to any liability arising in the course of performance of the subcontractor's obligations under the subcontract for the provision of the Deliverables.

## **ARTICLE 9 – TERMINATION, EXPIRY AND EXTENSION**

### **9.01 Immediate Termination of Contract**

The Board may immediately terminate the Contract upon giving notice to the Contractor where (a) the Contractor is adjudged bankrupt, makes a general assignment for the benefit of its creditors or a receiver is appointed on account of the Contractor's insolvency; (b) the Contractor breaches any provision in Article 6 (Confidentiality) of the Contract; (c) the Contractor breaches the Conflict of Interest paragraph in Article 3 (Nature of Relationship Between Board and Contractor) of the Contract; (d) the Contractor, prior to or after executing the Contract, makes a material misrepresentation or omission or provides materially inaccurate information to the Board; (e) the Contractor undergoes a change in control which adversely affects the Contractor's ability to satisfy some or all of its obligations under the Contract; (f) the Contractor subcontracts for the provision of part or all of the Deliverables or assigns the Contract without first obtaining the written approval of the Board; or (g) the Contractor's acts or omissions constitute a substantial failure of performance and the above rights of termination are in addition to all other rights of termination available at law, or events of termination by operation of law.

### **9.02 Dispute Resolution by Rectification Notice**

Subject to the above paragraph, where the Contractor fails to comply with any of its obligations under the Contract, the Board may issue a rectification notice to the Contractor setting out the manner and time-frame for rectification. Within seven (7) Business Days of receipt of that notice, the Contractor shall either: (a) comply with that rectification notice; or (b) provide a rectification plan satisfactory to the Board. If the Contractor fails to either comply with that rectification notice

or provide a satisfactory rectification plan, the Board may immediately terminate the Contract. Where the Contractor has been given a prior rectification notice, the same subsequent type of non-compliance by the Contractor shall allow the Board to immediately terminate the Contract.

**9.03 Termination on Notice**

The Board reserves the right to terminate the Contract, without cause, upon thirty (30) calendar days prior notice to the Contractor.

**9.04 Contractor's Obligations on Termination**

On termination of the Contract, the Contractor shall, in addition to its other obligations under the Contract and at law (a) at the request of the Board, provide the Board with any completed or partially completed Deliverables; (b) provide the Board with a report detailing: (i) the current state of the provision of Deliverables by the Contractor at the date of termination; and (ii) any other information requested by the Board pertaining to the provision of the Deliverables and performance of the Contract; (c) execute such documentation as may be required by the Board to give effect to the termination of the Contract; and (d) comply with any other instructions provided by the Board, including but not limited to instructions for facilitating the transfer of its obligations to another Person. This paragraph shall survive any termination of the Contract.

**9.05 Contractor's Payment Upon Termination**

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

**9.06 Termination in Addition to Other Rights**

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

**9.07 Expiry and Extension of Contract**

The Contract shall expire on the original Expiry Date, unless the Board exercises its option to extend the Contract as set out in the Contract Letter, such extension to be upon the same terms (including the Rates in effect at the time of extension), conditions and covenants contained in the Contract, excepting the option to renew. The option shall be exercisable by the Board giving notice to the Supplier not less than thirty (30) days prior to the original Expiry Date. The notice shall set forth the precise duration of the extension.

**9.08 Evaluation of Performance**

The Supplier will be subject to performance evaluation during the course of, and/or at the conclusion of the work under the Contract. In the event that the Supplier fails to perform its obligations under the Contract, the Board may, in addition to any and all legal and equitable remedies available to it, suspend the Supplier from participating in future procurement opportunities.

## **Supplementary Terms and Conditions for Minor Construction**

### **1. Occupational Health and Safety Act**

The Contractor shall:

- (a) be the designated "constructor", as defined in the *Occupational Health and Safety Act* ("OHSA"), for the work site and shall fulfill the responsibilities of the position under the OHSA, related statutes and regulations;
- (b) comply with the OHSA and ensure that the persons assigned to provide the Deliverables under the Contract adhere to the OHSA and all applicable statutes and regulations; and
- (c) give immediate notice by telephone or personal communication to the Board as to any damage or injury, or threat of damage or injury, to persons or property during the performance of the services contemplated by this contract.

The Contractor's failure to comply with any of the above requirements shall be cause for either immediate termination or suspension of the Contract until the deficiency, in the opinion of the Board and/or Workplace Safety and Insurance Board ("WSIB") is rectified at no cost to the Board.

The Contractor acknowledges and agrees that any damages or fines that may be assessed against the Board by reason of a breach or breaches of the OHSA by the Contractor or any of its subcontractors shall entitle the Board to set off the damages so assessed against any monies that the Board may from time to time owe the Contractor under this Contract or any other contract whatsoever.

### **2. Supervisor and Subcontractors**

Prior to commencing the work, the Contractor shall identify to the Board the designated work site supervisor, the designated health and safety representative, any subcontractors, and any additional personnel representing the Contractor, along with their respective roles and responsibilities in the performance of the Deliverables.

### **3. Contractor's Lawful Obligations to its Subcontractors**

The Contractor shall comply with the *Construction Act* and other applicable statute and regulation, and discharge its lawful obligations to its subcontractors. The Contractor shall satisfy any claims against the Contractor or the Board by its subcontractors. The issuance of the final payment shall not be construed as a representation that the Board has made any examination to ascertain:

- (i) how and for what purpose the Contractor has used the monies paid to the Contractor in accordance with the terms of the Contract; or
- (ii) whether the Contractor has discharged the obligations imposed on the Contractor by the *Construction Act*, the *Occupational Health and Safety Act*, or other applicable statute or regulation, noncompliance with which may render the Board personally liable for the Contractor's default.

This paragraph 3 shall survive any termination or expiry of the Contract.

4. **WSIB Assessments**

The Contractor shall, at all times, pay, or cause to be paid, any assessment or compensation required to be paid pursuant to *the Workplace Safety and Insurance Act*. Upon failure to do so, the Board may withhold an amount equal to any unpaid assessment or compensation from monies due, or to become due, to the Contractor. The Board shall not release such withheld funds until the Contractor provides it a statutory declaration that all assessments and any compensation payable to the WSIB have been paid.

5. **Co-operation of the Contractor**

The Board may perform, or retain or permit others to perform other work on or near the work site and may permit public utility companies and others to do work on or near the work site during the Contractor's performance of the Deliverables. The Contractor shall conduct and schedule the performance of the Deliverables and co-operate with those other parties so as to cause as little interference as possible with any such other work being carried out.

6. **Licenses and Permits**

The Contractor shall obtain and hold throughout the term of the Contract any and all permits, approvals, and licenses required by any municipal, provincial, or federal government or authority having jurisdiction over the whole, or any part of, the Deliverables to be performed by the Contractor pursuant to the Contract. The Contractor shall provide the Board with copies upon request.

7. **Protection of the Work and the Board's Property**

The Contractor shall observe all of the Board's procedures with regard to the security of the facility where the Deliverables contemplated by this Contract are performed and shall adequately protect the work, property, and premises of the Board. The Contractor shall be responsible for any damages due to any negligent act of the Contractor's employees, agents, contractors, subcontractors and those others for whom the Contractor is responsible.

8. **Risk and Indemnity**

The Contractor shall bear all risk of loss or damage from any cause, which may occur to any part or portion of the Deliverables, until the Deliverables have been completely accepted by the Board in writing.

If any loss or damage occurs to the Deliverables before the Board accepts the Deliverables in writing, the Contractor shall immediately repair or re-execute any damaged part of the Deliverables at the Contractor's expense.

9. **Condition of Site**

The Contractor shall confine all work to the site. The Contractor shall keep the site free from accumulations of waste material or rubbish caused by the Contractor's activities during the performance of the Deliverables and shall remove all rubbish from the site and the vicinity upon the completion of the work.

10. **Specifications and Materials**

The Contractor shall carefully study and compare all specifications, drawings, and other instructions relating to the performance of the Deliverables and comply with the requirements of the Contract. The Contractor shall not substitute any supplies or materials where a specific brand or model has been specified in the Contract without first obtaining written approval from the Board.

11. **Inspections and Warranty**

The Contractor shall complete all of the Deliverables to the satisfaction of the Board and in accordance with timelines set out in the Contract. The Contractor shall permit the Board Representative and all others authorized by the Board, from time to time, at all times to have access to the work for the purposes of inspecting the work. The Contractor shall uncover any work for examination as required by the Board at the Contractor's expense when the work has been previously covered up without prior approval or consent from the Board.

The Contractor shall rectify any defective or deficient work at the Contractor's own expense to the satisfaction of the Board from the date on which the Contractor commences the work pursuant to the Contract to the completion date and for a warranty period of one (1) year after the completion date. An inspection by the Board Representative does not relieve the Contractor of responsibility for the quality of the work, or from any obligation to perform the work in accordance with the requirements of this Contract.

During the warranty period, if the Contractor fails to comply with the direction from the Board to rectify any defective or deficiency within five (5) calendar days, or immediately in the case of an emergency, the Board may draw upon any maintenance security it is holding and complete the required work at the Contractor's expense. Should any part of the Deliverables be repaired or replaced during the warranty period, a new warranty under the same conditions and for the same period as specified herein shall commence at the completion of the repair or replacement.

The warranty given pursuant to this section shall not limit extended warranties on any items of equipment or material called for elsewhere in the Contract.

The Contractor shall, to the extent permitted by the manufacturer and/or supplier, assign to the Board the benefit of any warranty by any manufacturers and/or suppliers in addition to the warranty as mentioned above.

This paragraph 11 shall survive any termination or expiry of the Contract.

12. **Completion of the Deliverables**

Completion of the Deliverables occurs when the Board Representative determines that the Deliverables have been completed in accordance with this Contract and the Board accepts the Deliverables in writing. The Board shall not accept the Deliverables in writing unless and until the Contractor;

- (a) has cleaned up and restored the work site to the satisfaction of the Board; and
- (b) has rectified any defects as identified in writing by the Board.

13. **Extension of the Completion Date**

If the Contractor fails to complete the Deliverables in accordance with the timelines set out in the Contract, the Board may elect to do the following:

- (a) extend the completion date by a written notice to the Contractor; or
- (b) terminate the Contract in accordance with Article 9 of the Board's General Terms and Conditions.

14. **Payment Terms**

The Contractor shall submit a monthly invoice for Deliverables completed to date in accordance with the payment schedule set out in the Contract.

The Board may adjust any invoice to reflect the Board Representative's estimate of the work completed satisfactorily as of the invoice date. Notwithstanding any other provision of the Contract, the Contractor shall not receive any payment from the Board for any unacceptable work, unauthorized work, economic loss or loss of profits.

All payments under this Contract shall be subject to the holdback and other provisions of the *Construction Act*.

Payments under this Contract may also be subject to holdback for any maintenance security provided for in this Contract.

The Contractor acknowledges that payments do not represent a final evaluation or acceptance of the work by the Board.

15. **Construction Act Holdback**

In accordance with the *Construction Act*, prior to release of the holdback the Contractor shall submit to the Board the following documents:

- (a) Workplace Safety and Insurance Board Certificate of Clearance dated after the commencement of the 60-day Lien period;
- (b) a Standard Statutory Declaration; and
- (c) proof of publication of certification of substantial performance of Contract under Section 32 of the Construction Lien Act, R.S.O., 1990 C., 30, (as amended).

Upon receipt of the above documents, expiration of the 60-day lien period and confirmation that the Contract is free of liens or unsettled claims, the lien holdback shall be released.

Notwithstanding the above, the Board may retain a portion of the holdback as assurance for the rectification of any outstanding deficiencies.

16. **Maintenance Security Holdback**

The Board will retain a maintenance security holdback, which is at no time a part of the statutory holdback under the *Construction Act*, in the amount of 1.5% of monies otherwise payable under the Contract.

The Contractor may apply in writing to the Board at the time of *substantial performance* to substitute a maintenance bond for the monies retained. Acceptance of any such alternative security shall be at the discretion of the Owner

The 1.5% maintenance security, less any deductions made therefrom in accordance with the Contract, shall be released at the end of the warranty period, provided that there are no outstanding maintenance and warranty issues.