



GENERAL TERMS AND CONDITIONS

(APPLICABLE TO GOODS & SERVICES RFQ)

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ARTICLE 1 – INTERPRETATION

1.01 Defined Terms

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

“Agreement” or “Contract” means the contract letter similar in form to the one included in the Request for Quote when signed by The City and the Supplier.

“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;

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

“City Confidential Information” means all information of The City that is of a confidential nature, including all confidential information in the custody or control of The City, 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 Supplier in connection with the Contract. For greater certainty, City Confidential Information will: (a) include: (i) all new information derived at any time from any such information whether created by The City, the Supplier or any third-party; (ii) all information (including Personal Information) that The City 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 Supplier of any duty of confidentiality owed by the Supplier to The City or to any third-party; (ii) the Supplier can demonstrate to have been rightfully obtained by the Supplier, without any obligation of confidence, from a third-party who had the right to transfer or disclose it to the Supplier free of any obligation of confidence; (iii) the Supplier can demonstrate to have been rightfully known to or in the possession of the Supplier at the time of disclosure, free of any obligation of confidence when disclosed; or (iv) is independently developed by the Supplier; but the exclusions in this subparagraph will in no way limit the meaning of Personal Information or the obligations attaching thereto under the Contract or at law;

“Conflict of Interest” means any perceived, potential, or actual state of affairs or circumstances where, in relation to the Deliverables or The City, a potential Supplier:

- (a) has other commitments, relationships, financial interests, or involvement in pending or ongoing litigation that:
- (i) could or could be seen to exercise an improper influence over the objective, unbiased, and impartial exercise of independent judgment by any personnel of The City or its advisors; or
 - (ii) could or could be seen to compromise, impair, or be incompatible with the effective performance of its obligations under the Contract;



- (b) has contractual or other obligations to The City that could or could be seen to become compromised or otherwise impaired as a result of its need to perform or performance of the Contract; or
- (c) has knowledge of City Confidential Information that could give or could be seen to give it an unfair competitive advantage.

“Deliverables” means everything developed for or provided to The City in the course of performing under the Contract or agreed to be provided to The City under the Contract by the Supplier 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;

“Documentation” means the specifications, user manuals, technical documents, release notes, instructions and other materials furnished or published by The City concerning the Proprietary Information;

“Expiry Date” is the date set out in the Contract;

“FOIP” means the *Freedom of Information and Protection of Privacy Act*, Revised Statutes of Alberta 2000, Chapter F-25, as amended;

“Indemnified Parties” means The City and The City’s elected officials, 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 will include the Supplier 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 City;

“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 Supplier 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;

“Proprietary Information” means all inventions, concepts, ideas, data, processes, methods, formulas, techniques, improvements, modifications or enhancements, whether or not patentable, as well as all trade secrets, including, but not limited to, all data, marketing strategies, new research material, pending projects and Proposals, research and development, technological data, all proprietary information, lists, pricing, documentation, software and know-how;

“Rates” means the applicable price, in Canadian funds, to be paid for the applicable Deliverables, as set out in the Contract, representing the full amount chargeable by the Supplier 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 City to the Supplier, or provided by the Supplier to The City, for the purposes of the Contract; or (b) created by the Supplier in the performance of the Contract;

“Requirements of Law” mean all applicable requirements, laws, statutes, codes, acts, ordinances, orders, decrees, injunctions, bylaws, 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;

“RFQ” means the Request for Quote issued by The City for the Deliverables and any addenda to it;

“Supplier” means the entity that enters into the Contract with The City to perform the Deliverables;

“Supplier Accounts” means the Supplier’s detailed books, accounts, records and documentation, including, without limitation, contracts, original and unedited payroll records, bank records, invoices issued to subcontractors and suppliers, records of quotations and related correspondence, ledgers and other similar books of records, detailed daily time records for personnel and equipment, and all similar information that is necessary to substantiate and verify all direct and indirect costs incurred by the Supplier relating directly or indirectly to the Contract and all work performed under the Contract.

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

“Term” means the period of time from the effective date set out in the Contract up to and including the earlier of: the Expiry Date or the date of termination of the Contract in accordance with its terms;

“**The City**” means The City of Calgary, a corporation pursuant to section 4 of the Municipal Government Act, R.S.A. Chapter M-26.

“**Third-Party Intellectual Property**” means any Intellectual Property owned by a party other than The City or the Supplier.

ARTICLE 2 – GENERAL TERMS

2.01 No Indemnities from The City

Notwithstanding anything else in the Contract, any express or implied reference to The City 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 City, whether at the time of execution of the Contract or at any time during the Term, will 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 date of execution 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, will not be affected thereby.

2.04 Force Majeure

Neither party will 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 will 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 will include natural disasters and acts of war, insurrection and terrorism but will 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 will 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 will 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 will be in writing and will be delivered by postage-prepaid envelope, personal delivery or facsimile and will be addressed to, respectively, The City Address to the attention of The City representative and to the Supplier Address to the attention of the Supplier representative as respectively set out in the Contract. Notices will 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 facsimile one (1) Business Day after such notice is received by the other party. In the event of a postal disruption, notices will be given by personal delivery or by facsimile. 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 and Jurisdiction**

The Contract will be governed by and construed in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein. The parties submit to the exclusive jurisdiction of the courts of Alberta.

ARTICLE 3 – NATURE OF RELATIONSHIP BETWEEN THE CITY AND SUPPLIER

3.01 **Supplier's Power to Contract**

The Supplier 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 who would in any way interfere with the rights of The City 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 **Supplier Not a Partner, Agent or Employee**

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

3.04 **Responsibility of Supplier**

The Supplier hereby confirms that it has acquainted itself with the work site (as applicable) and any other conditions pertaining to the performance of the Contract prior to entering the Contract. The City does not accept any responsibility for the failure of the Supplier to familiarize itself with all conditions applicable to the Supplier's performance of the Contract prior to execution of the Contract. The Supplier 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 Supplier's liabilities under the Contract and under the general application of law. The Supplier will advise these individuals and entities of their obligations under the Contract and will ensure their compliance with the applicable terms of the Contract. In addition to any other liabilities of the Supplier pursuant to the Contract or otherwise at law or in equity, the



Supplier will 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 will survive the termination or expiry of this Contract.

3.05 No Subcontracting or Assignment

The Supplier will 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 City. Such consent will be in the sole discretion of The City and subject to the terms and conditions that may be imposed by The City. Without limiting the generality of the conditions which The City may require prior to consenting to the Supplier's use of a subcontractor, every contract entered into by the Supplier with a subcontractor will 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 will create a contractual relationship between any subcontractor or its directors, officers, employees, agents, partners, affiliates or volunteers and The City.

3.06 Duty to Disclose Change of Control

In the event that the Supplier undergoes a change in control the Supplier will immediately disclose such change in control to The City and will comply with any terms and conditions subsequently prescribed by The City resulting from the disclosure.

3.07 Conflict of Interest

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

3.08 Contract Binding

The Contract will enure to the benefit of and be binding upon the parties and their successors, executors, administrators and their permitted assigns.

ARTICLE 4 – PERFORMANCE BY SUPPLIER

4.01 Commencement of Performance

The Supplier will commence performance upon receipt of written instructions from The City to do so.

4.02 Deliverables Warranty and Compliance with SEEPP and Supplier Code of Conduct

The Supplier hereby represents and warrants that the Deliverables:



- a) will be provided in accordance with:
 - (i) the Contract;
 - (ii) Industry Standards; and
 - (iii) Requirements of Law;
- b) will be provided fully in a professional and competent manner by persons possessing the skill, care, diligence and experience of skilled individuals qualified in their occupations;
- c) will be free from defects in material, workmanship and design;
- d) will be suitable for the purposes intended; and
- e) free from liens or encumbrance on title or otherwise.

If any of the Deliverables, in the opinion of The City, are inadequately provided or require corrections, the Supplier will forthwith make the necessary corrections at its own expense as specified by The City in writing. Throughout the Term and any renewal thereof the Supplier will comply with the Supplier Code of Conduct and SEEPP. The Supplier will also maintain current and detailed documentation to substantiate such compliance.

4.03 **Use and Access Restrictions**

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

4.04 **Notification by Supplier to The City**

During the Term, the Supplier will advise The City 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 **Condonation Not a Waiver**

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

4.06 **Changes By Written Amendment Only**

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



4.07 **Supplier to Comply With Reasonable Change Requests**

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

4.08 **Pricing for Requested Changes**

Where a City change request includes an increase in the scope of the previously contemplated Deliverables, The City will 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 Supplier will 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 will be negotiated between The City and the Supplier within a reasonable period of time and in any event, such change request will not become effective until a written amendment reflecting the change has been executed by the parties.

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

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

4.10 **Performance by Specified Individuals Only**

The Supplier 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 will provide the Deliverables under the Contract. The Supplier will not replace or substitute any of the individuals named in the Contract without the prior written approval of The City, which may not arbitrarily or unreasonably be withheld. Should the Supplier require the substitution or replacement of any of the individuals named in the Contract, it is understood and agreed that any proposed replacement will possess similar or greater qualifications than the individual named in the Contract. The Supplier will not claim fees for any replacement individual greater than the Rates established under the Contract.

4.11 **City Rights and Remedies and Supplier Obligations Not Limited to Contract**

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

4.12 **Extended Warranty**

Unless stipulated otherwise in the Contract, the Supplier warrants the Deliverables will work as contemplated and specified in the Request for Quote for a period of one (1) year from the commencement of the Term.



ARTICLE 5 – PAYMENT

5.01 **Payment According to Contract Rates**

The City will, subject to the Supplier's compliance with the provisions of the Contract, pay the Supplier for the Deliverables provided at the Rates established under the Contract.

5.02 **Hold Back or Set Off**

- (a) The City may hold back payment or set off against payment if, in the opinion of The City acting reasonably, the Supplier has failed to comply with any requirements of the Contract.
- (b) Where the Supplier has incurred any liability to The City, whether arising from or under the Contract or otherwise, The City may set off the amount of such liability against any liability or payment of The City to the Supplier arising from or under the Contract.
- (c) Further to the requirement in Section 8.04, The City may also refuse to pay the Supplier unless the Supplier provides a letter or other evidence from the WCB that the Supplier's account with the WCB is in good standing. If The City receives information from the WCB that the account of the Supplier has ceased to be in good standing with the WCB, The City may suspend payment to the Supplier until either:
 - (i) the Supplier has obtained a letter of clearance from the WCB indicating that the Supplier's account has been brought back into good standing; or
 - (ii) The City pays the WCB any amount owing on behalf of the Supplier or pays the amount of the WCB's demand for payment in respect of the Supplier or its sub-contractor.
- (d) If The City pays any amount to the WCB on behalf of the Supplier, The City may deduct that amount from any amount owing to the Supplier under the Agreement or under any other contract, or may demand a reimbursement from the Supplier. These rights are in addition to and not in substitution for any other right at law or in equity which The City has by reason of the failure of the Supplier to comply with the requirements of the WCB.

5.03 **No Expenses or Additional Charges**

There will be no other charges payable by The City under the Contract to the Supplier other than the Rates established under the Contract.

5.04 **Payment of Taxes and Duties**

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

5.05 **Withholding Tax**

The City will withhold any applicable withholding tax from amounts due and owing to the Supplier under the Contract and will remit it to the appropriate government in accordance with applicable tax laws. This paragraph will 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 Supplier, the interest charged by the Supplier, if any, for any late payment will not exceed the pre-judgment interest rate established under the *Judgment Interest Act* Revised Statutes of Alberta 2000 Chapter J-1, in effect on the date that the payment went into arrears.

ARTICLE 6 – CONFIDENTIALITY AND FOIP**6.01 Confidentiality and Promotion Restrictions**

Any publicity or publications related to the Contract will be at the sole discretion of The City. The City may, in its sole discretion, acknowledge the Deliverables provided by the Supplier in any such publicity or publication. The Supplier will not make use of its association with The City without the prior written consent of The City. Without limiting the generality of this paragraph, the Supplier will 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 City.

6.02 City Confidential Information

During and following the Term, the Supplier will: (a) keep all City Confidential Information confidential and secure; (b) limit the disclosure of City 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 City 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 City and (ii) in respect of any City Confidential Information about any third-party, the written consent of such third-party; (d) provide City Confidential Information to The City on demand; and (e) return all City Confidential Information to The City before the end of the Term, with no copy or portion kept by the Supplier.

6.03 Restrictions on Copying

The Supplier will not copy any City Confidential Information, in whole or in part, unless copying is essential for the provision of the Deliverables. On each copy made by the Supplier, the Supplier will reproduce all notices that appear on the original.

6.04 Injunctive and Other Relief

The Supplier acknowledges that breach of any provisions of this Article may cause irreparable harm to The City or to any third-party to whom The City owes a duty of confidence, and that the injury to The City or to any third-party may be difficult to calculate and inadequately compensable in damages. The Supplier agrees that The City 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.

6.05 Notice and Protective Order

If the Supplier or any of its of its directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors become legally compelled to disclose any City Confidential Information, the Supplier will provide The City with prompt notice to that effect in order to allow The City to seek one or more protective orders or other appropriate remedies to prevent or limit such



disclosure, and it will co-operate with The City and its legal counsel to the fullest extent. If such protective orders or other remedies are not obtained, the Supplier will disclose only that portion of City Confidential Information which the Supplier is legally compelled to disclose, only to such person or persons to which the Supplier is legally compelled to disclose, and the Supplier will provide notice to each such recipient (in co-operation with legal counsel for The City) that such City Confidential Information is confidential and subject to non-disclosure on terms and conditions equal to those contained in the Contract and, if possible, will obtain each recipient's written agreement to receive and use such City Confidential Information subject to those terms and conditions.

6.06 **FOIP Records and Compliance**

The Supplier and The City acknowledge and agree that FOIP applies to and governs all Records and may require the disclosure of such Records to third parties. Furthermore, the Supplier agrees (a) to keep Records secure; (b) to provide Records to The City within seven (7) calendar days of being directed to do so by The City for any reason including an access request or privacy issue; (c) not to access any Personal Information unless The City determines, in its sole discretion, that access is permitted under FOIP 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 City; (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 City 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 City would improve the adequacy and effectiveness of the Supplier's measures to ensure the security and integrity of Personal Information and Records generally; and (h) that any confidential information supplied to The City may be disclosed by The City where it is obligated to do so under FOIP, by an order of a court or tribunal or pursuant to a legal proceeding and the provisions of this paragraph will prevail over any inconsistent provisions in the Contract.

6.07 **Survival**

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

ARTICLE 7 – INTELLECTUAL PROPERTY

7.01 **City Intellectual Property**

The Supplier 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 City to the Supplier will remain the sole property of The City at all times.

7.02 **License for Use**

The City grants, and the Supplier accepts, a non-exclusive, non-assignable license under Intellectual Property owned, licensed or otherwise controlled or in the possession of The City to permit the Supplier to use the Proprietary Information and Documentation provided by The City to



the Supplier only as necessary to allow the Supplier to satisfy its obligations under this Contract. The benefit of the license granted under this Contract is limited solely to the Supplier.

7.03 No Use of The City Insignia

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

7.04 Ownership of Intellectual Property

The City will be the sole owner of any Newly Created Intellectual Property. The Supplier irrevocably assigns to and in favour of The City and The City 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 City 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 Supplier's Intellectual Property, the Supplier grants to The City a licence to use that Supplier Intellectual Property in the manner contemplated in this Article, the total consideration for which will be payment of the Rates to the Supplier by The City.

7.05 Supplier's Grant of License

For those parts of the Deliverables that are Supplier Intellectual Property, the Supplier grants to The City 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 City.

7.06 No Restrictive Material in Deliverables

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

7.07 Supplier Representation and Warranty Regarding Third-Party Intellectual Property

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

7.08 Survival

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

ARTICLE 8 – INDEMNITIES AND INSURANCE

8.01 Supplier Indemnity

The Supplier 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 Supplier, its subcontractors or their respective directors, officers, agents, employees, partners, affiliates, volunteers or independent contractors in the course of performance of the Supplier's obligations under, or otherwise in connection with, the Contract. The Supplier 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 organisation, including, without limitation, The City, claimed or resulting from such Claims. The obligations contained in this paragraph will survive the termination or expiry of the Contract.

8.02 Insurance

The Supplier hereby agrees to put in effect and maintain insurance for the Term, at its own expense, in a form that is satisfactory to The City and with insurers allowed by the laws of the Province of Alberta to issue insurance policies in Alberta, the following insurance policies:

- (a) A commercial general liability insurance policy for bodily injury (including death) and property damage in an amount of not less than two million (\$2,000,000.00) dollars (CGL) inclusive limit for any one occurrence and such policy must include:
 - i) The City as an additional insured;
 - ii) a cross liability clause;
 - iii) contractual liability coverage; and
 - iv) a non-owned automobile liability clause;
- (b) If the Supplier is providing professional services, a professional liability insurance policy for damages arising out of errors, omissions, or negligent acts by or on behalf of the Supplier in providing professional services under this Contract, such insurance policy to be in an amount of not less than the amount indicated in the Request for Quote for any one claim, and in the annual aggregate, or such other amount as agreed to by The City and the Supplier and confirmed in writing, and such insurance must remain in operation for at least twelve (12) months after termination of the Contract; and
- (c) A provision for The City to be given thirty (30) days written notice prior to cancellation, and thirty (30) days prior notice of any material change requested by the Supplier of the insurance policies.

The Supplier will be responsible for all deductibles that may apply in any of the required insurance policies.

The Supplier covenants and agrees that The City's insurance requirements will not be construed to and will not, in any manner, limit or restrict the liability of the Supplier.

8.03 Proof of Insurance

The Supplier will provide The City 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 execution of the Contract by The City, and renewal replacements on or before the expiry of any such insurance. Upon the request of The City, a copy of each insurance policy will be made available to it. The Supplier will 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 City 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.

8.04 Account with Alberta Workers` Compensation Board

The Supplier must maintain an account in good standing with the Worker's Compensation Board (Alberta) ("WCB") or other jurisdiction approved by The City throughout the Term unless indicated otherwise. The Supplier's account must include coverage for all individuals who may be involved in providing the Deliverables. The City may seek verification from the WCB at any time during the Supplier's performance of the Deliverables to confirm that the Supplier's account remains in good standing.

ARTICLE 9 – TERMINATION, EXPIRY, RENEWAL AND AUDIT RIGHTS

9.01 Immediate Termination of Contract

The City may immediately terminate the Contract upon giving notice to the Supplier where (a) The City in its sole and absolute discretion, determines the Supplier has engaged in conduct prohibited by these terms and conditions; (b) The City's "Procurement Policy for a Party with a Dispute with The City applies to the Supplier; (c) the Supplier is insolvent, adjudged bankrupt, makes a general assignment for the benefit of its creditors or a receiver is appointed on account of the Supplier's insolvency; (d) the Supplier breaches any provision in Article 6 (Confidentiality and FOIP) of the Contract; (e) the Supplier breaches the Conflict of Interest paragraph in Article 3 (Nature of Relationship Between The City and Supplier) of the Contract; (f) the Supplier, prior to or after executing the Contract, makes a material misrepresentation or omission or provides materially inaccurate information to The City; (g) the Supplier undergoes a change in control which adversely affects the Supplier's ability to satisfy some or all of its obligations under the Contract; (h) the Supplier subcontracts for the provision of part or all of the Deliverables or assigns the Contract without first obtaining the written approval of The City; or (i) the Supplier's acts or omissions constitute a substantial failure of performance. 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 Performance Improvement Notice

Subject to the above paragraph, where the Supplier fails to comply with any of its obligations under the Contract, The City may issue a notice to the Supplier setting out the manner and time-frame for rectification. Within five (5) Business Days of receipt of that notice, the Supplier will either: (a) comply with that notice; or (b) provide a rectification plan satisfactory to The City. If the Supplier fails to either comply with the notice or provide a satisfactory rectification plan, The City may immediately terminate the Contract. If the Supplier has been given a prior notice to improve its performance or comply with any of its obligations under the Contract by The City and the Supplier engages in a subsequent act of non-compliance of the same type or form as described in the prior notice, The City may immediately terminate the Contract.

**9.03 Termination on Notice**

The City reserves the right to terminate the Contract, without cause, upon thirty (30) calendar day's prior notice to the Supplier. If requested by The City under the notice of termination, the Supplier will suspend the provision of Deliverables under the Contract upon receipt of the notice of termination and take all necessary or appropriate steps to limit disbursements and minimize costs.

9.04 Supplier's Obligations on Termination

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

9.05 Supplier's Payment Upon Termination

On termination of the Contract, The City will only be responsible for the payment of the Deliverables provided under the Contract up to and including the effective date of any termination. Termination will not relieve the Supplier 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 City may hold back payment or set off against any payments owed if the Supplier 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 will in no way limit any rights or remedies of The City under the Contract, at law or in equity.

9.07 Expiry of Contract

The Contract will expire on the Expiry Date unless terminated earlier or renewed pursuant to its terms. The Term may be extended by agreement to bridge a gap between the Expiry Date or the end of any renewal and the commencement of an agreement to replace it.

9.08 Right to Audit Supplier Accounts

The City shall have the right to inspect, examine, make copies of and audit all Supplier's Accounts at all reasonable times, without prior notice, for the purpose of auditing and monitoring compliance with the Contract. During the term of the Contract and for a period of seven (7) years after termination or expiry of the Contract, the Supplier shall keep and maintain all Supplier Accounts in accordance with generally accepted accounting principles and International Financial Reporting Standards and all such Supplier Accounts shall be made available to The City at the Supplier's sole expense. The parties agree that:

(a) the Supplier Accounts shall be maintained in their original form without alteration, deletion or addition;

(b) if any Supplier Accounts are kept in electronic form or in any other form that requires special

- equipment or specialized knowledge to convert the data into readily readable form, all assistance and facilities reasonably required for such purpose shall be provided by the Supplier at its sole expense;
- (c) if the Supplier subcontracts all or a portion of its obligations under the Contract, the agreements formed between the Supplier and any subcontractors or supplier of goods or services shall expressly include provisions similar to the provisions contained in this section and shall require such subcontractors or suppliers of goods and services to extend the audit rights set out in these provisions to The City;
 - (d) The City's audit rights do not extend to the confidential or proprietary information, if any, of the Supplier or subcontractors;
 - (e) the costs of any audit conducted by The City under authority of this paragraph will be the responsibility of The City unless the audit identifies significant findings that would benefit The City; and
 - (f) in the event an audit identifies significant findings that would benefit The City, the Supplier shall reimburse The City for the total costs of the audit.

This paragraph shall not be interpreted to limit, revoke, or abridge any other rights, powers or obligations relating to audit that The City may have by Federal, Provincial or Municipal law, whether those rights, powers or obligations are express or implied. The provisions of this paragraph will survive any termination or expiry of the Contract.

9.09 **Proof of Compliance with SEEPP and Supplier Code of Conduct**

The Supplier will provide proof of compliance with any or all provisions of SEEPP or the Supplier Code of Conduct upon request from The City. The City will have the right to conduct reasonable inspections and audits to verify the Supplier's compliance with SEEPP and the Supplier Code of Conduct and to obtain independent verification of same at the Supplier's expense.