

**THE CORPORATION OF THE CITY OF VAUGHAN**  
**PROCUREMENT SERVICES DEPARTMENT**  
**STANDARD TERMS AND CONDITIONS OF**  
**PURCHASE**

**VERSION DATE: September 15, 2020**

**TABLE OF CONTENTS**

1. DEFINITIONS .....	4
2. INTRODUCTION .....	4
3. CONFLICT OF INTEREST .....	5
4. DELIVERY OF GOODS AND SERVICES .....	5
5. HAZARDOUS MATERIALS .....	6
6. INSPECTION; ACCEPTANCE AND REJECTION.....	6
7. TRAINING .....	7
8. AUDIT AND DOCUMENT RETENTION .....	7
9. INVOICES .....	8
10. PRICING / PAYMENT TERMS.....	8
11. SET-OFF .....	9
12. GENERAL REPRESENTATIONS AND WARRANTIES OF VENDOR .....	10
13. SPECIFIC REPRESENTATIONS, WARRANTIES, AND COVENANTS .....	10
14. SERVICE MANAGEMENT .....	11
15. SUB-CONTRACTING .....	12
16. INTELLECTUAL PROPERTY RIGHTS.....	12
17. INSURANCE .....	13
18. TERMINATION.....	13
19. CITY POLICIES.....	14
20. INDEMNITIES; LIMITATION OF LIABILITY .....	14
21. CONFIDENTIALITY .....	16
22. COMPLIANCE WITH APPLICABLE LAWS, WSIB AND ANTI-BRIBERY .....	16
23. NOTICES .....	17
24. THE ACCESSIBILITY FOR ONTARIANS WITH DISABILITIES ACT, 2005, S.O. 2005, c. 11 (AODA).....	17
25. GENERAL .....	18
a. Governing Law: .....	18
b. Entire Agreement: .....	18

---

Standard Terms and Conditions of Purchase

---

c. Waiver: .....	18
d. Assignment:.....	18
e. Enurement:.....	18
f. Language: .....	19
g. Independent Contractors: .....	19
h. Further Assurances: .....	19
i. Severability:.....	19
j. Survival:.....	19
k. Amendments: .....	19
l. Agreements in Writing: .....	19
m. Dispute Resolution: .....	19
n. Eligibility of Vendor:.....	19
o. Environmental Responsibility: .....	20
p. Evaluation of Performance: .....	20
q. Exports into Canada (Goods):.....	20
r. Expenses:.....	20
s. Headings: .....	20
t. Publicity/Use of Names: .....	20
u. Rights and Remedies: .....	20

## Standard Terms and Conditions of Purchase

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### 1. DEFINITIONS

- a. “**City**” means The Corporation of the City of Vaughan.
- b. “**Contract**” means the Purchase Order, these Terms and Conditions, any competitive bid process documents (and awarded responses thereto) or other Agreements referenced or incorporated by reference in the Purchase Order, any Specifications, any City issued Change Orders, and any Change Orders or other amending agreements signed by the City and the Vendor (each a “**Contract Document**”).
- c. “**Goods**” means the goods that are required to be delivered by the Vendor pursuant to the Contract, including all materials, component parts, packaging, and labelling of such goods.
- d. “**Purchase Order**” means the valid, applicable Purchase Order (which has a unique date and Order Number) issued by directly by the City’s Procurement Services Department to the Vendor.
- e. “**Services**” means any services to be provided by the Vendor to the City pursuant to the Contract.
- f. “**Specifications**” means the requirements, attributes and specifications for the Goods or Services that are set out or referenced in the Purchase Order or in a document referenced in the Purchase Order, including (a) documentation published by the Vendor relating to the Goods or Services, (b) operational and technical features and functionality of the Goods or Services, (c) standards or service levels for Services, and (d) City business requirements that are set out or incorporated by reference in the applicable Purchase Order.
- g. “**Terms and Conditions**” means these Standard Terms and Conditions of Purchase.
- h. “**Vendor**” means the party indicated on the Purchase Order that is contracting with City for the supply of Goods and/or Services.
- i. “**Business Day**” means Monday through Friday inclusive but excluding Saturday and Sunday and any recognized statutory holiday in the City of Vaughan.

### 2. INTRODUCTION

- a. The Vendor shall be deemed to have agreed to be bound by these Terms and Conditions by accepting the Purchase Order, delivering the Goods, and/or performing the Services.
- b. The provisions in each Contract Document are in addition to and supplement the provisions in the other Contract Documents.
- c. If there is any conflict or inconsistency between the provisions in the applicable Purchase Order or any other Contract Document and these Terms and Conditions, the provisions in the applicable Purchase Order or other Contract Document shall prevail to the extent of the conflict.
- d. Unless the City agrees otherwise in writing, the Vendor terms and conditions of supply shall not apply in respect of any purchase of Goods or Services by the City from the Vendor, even if referenced in a Purchase Order or provided by the Vendor to the City.

## Standard Terms and Conditions of Purchase

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- e. The City makes no guarantee of the value or volume of goods or work to be assigned to the Vendor. The Purchase Order / Contract is not an exclusive contract for the provision of the Goods and/or Services listed. The City may contract with others for the same or similar goods and/or services to those described or may obtain the same or similar internally.

### **3. CONFLICT OF INTEREST**

The Vendor, its partners, directors, officers, employees, agents and volunteers shall not provide any services to the City or any person, group, or organization funded in whole or in part, by the City where the provision of such services (in the opinion of the City), actually or potentially, creates a conflict of interest with the provision of service pursuant to the Contract, without the Vendor first disclosing to the City the actual or potential conflict of interest with the City and obtaining approval from a City authorized representative to proceed.

### **4. DELIVERY OF GOODS AND SERVICES**

- a. All Goods and Services will be requested by the issuance of a Purchase Order. The City shall have no financial liability or other obligations with respect Goods provided and/or Services performed which were not ordered via a Purchase Order.
- b. The Vendor will, at its own expense, pack, load, and deliver the Goods to the 'Ship To' free on board ("**FOB**") point set out on the face of the Purchase Order ("**FOB Point**") (i) in accordance with the invoicing, delivery, shipping, packing, and other instructions set out in the Purchase Order or Contract or otherwise provided to the Vendor by the City in writing, and (ii) such that the Goods are protected against damage, deterioration, and contamination.
- c. The Vendor shall ensure that instructions for installation, operation, maintenance, and repair of the Goods are shipped with the Goods.
- d. Goods containing hazardous material or fragile in nature shall be appropriately labelled and, upon request by the City, shall include all reasonably necessary documentation required by the City in order to comply with any applicable laws.
- e. *Packaging and Disposal* - Where goods are being delivered and installed under the Contract, the Vendor shall eliminate or reduce the amount of packaging to the extent possible and shall remove packaging after installation. Packaging once removed, must be recycled or transported and disposed of in accordance with all applicable laws and regulations governing waste disposal. Further, the Vendor must indicate where garbage is taken for disposal when requested to do so by the City.
- f. Time is of the essence with respect to the delivery of the Goods and performance of the Services.
- g. Goods shall be delivered and Services shall be performed by the applicable date of delivery for Goods or performance of Services set out in a Purchase Order or Contract ("**Delivery Date(s)**"). The Vendor shall immediately notify the City if the Vendor is likely to be unable to meet a Delivery Date.

## Standard Terms and Conditions of Purchase

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- h. Failure on the part of the Vendor to complete performance by the stated Delivery Date(s) will entitle the City to any one or combination of the following remedies: cancel the Purchase Order without incurring or being liable for any costs, fees, charges or surcharges of any kind whatsoever; and/or reassign the Contract (or late portion thereof) and charge the original Vendor with all incremental costs involved.
- i. Title and risks of loss or damage shall remain with the Vendor until, and shall pass to the City upon, receipt of the Goods at the FOB Point.
- j. Goods shall be shipped with transportation pre-paid by the Vendor (charges may be recoverable from the City, if set out in the applicable Purchase Order or Contract) to the ultimate City destination.
- k. If Goods are imported into Canada, the Vendor is responsible for all legal, regulatory, and administrative requirements related to importation and the payment of all associated duties, customs, taxes, fees, and charges.

### **5. HAZARDOUS MATERIALS**

The Vendor agrees to provide, upon and as requested by City, to satisfy any applicable laws governing the use of any hazardous substances either of the following:

- a. all reasonably necessary documentation to verify the material composition, on a substance by substance basis, including quantity used of each substance, of any Goods, and/or of any process used to make, assemble, use, maintain or repair any Goods; or
- b. all reasonably necessary documentation to verify that any Goods and/or any process used to make, assemble, use, maintain or repair any Goods, do not contain, and the Services do not require the use of, any particular hazardous substances specified by the City.

### **6. INSPECTION; ACCEPTANCE AND REJECTION**

- a. *Over Shipments of Goods.* All over shipments made are the responsibility of the Vendor. The City reserves the right to reject and return, at the Vendor's expense, any goods in excess of the quantity ordered or; at the Vendor's discretion, the City may keep the goods on a "no charge" basis.
- b. All shipments of Goods and performance of Services shall be subject to the City's right of inspection and acceptance.
- c. The City shall have the right to reject any Goods or Services that are not in conformance with the Specifications or any contractual requirement, and any Goods that are delivered in excess of the quantity ordered or are damaged or defective.
- d. Payment or Transfer of title to the City of Goods shall not constitute the City's acceptance of those Goods.
- e. If, within ninety (90) days after delivery, the City determines that any Goods and/or Services are defective, the City may reject them and, at the City's option and at the Vendor's sole cost and

## Standard Terms and Conditions of Purchase

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expense, require the Vendor to (i) provide a full credit or refund of all amounts paid by the City to the Vendor for the rejected Goods, or (ii) replace the defective Goods or re-perform the defective Services within a reasonable time period specified by the City.

- f. Title to rejected Goods that are returned to the Vendor shall transfer to the Vendor upon such delivery.
- g. Should the Vendor fail to comply with the foregoing, the City may, at its option and in addition to any other recourse available to the City, terminate the Contract, in whole or in part, with the Vendor bearing all costs and risks associated with the rejected Goods and/or Services.
- h. The Vendor agrees to reimburse the City for all transportation and other related costs incurred and overpayments made in respect of the rejected Goods and/or Services.
- i. The Vendor shall not deliver Goods that were previously rejected on grounds of non-compliance with the Contract, unless delivery of such Goods is approved in advance by the City and is accompanied by a written disclosure of the City's prior rejection(s).
- j. The City's inspection, testing, or acceptance or use of the Goods or Services hereunder shall not limit or otherwise affect the Vendor's warranty obligations hereunder with respect to the Goods or Services, and such warranties shall survive inspection, testing, acceptance and use of the Goods or Services.
- k. Any electronic equipment purchased by the City shall be subject to a 'No Lemon Policy' whereby after two (2) attempts to repair a recurring malfunction, the City, at its sole discretion can direct the Vendor to replace the equipment on a like-for-like basis at no additional cost to the City.

### **7. TRAINING**

- a. Where necessary and reasonably determined by the City or otherwise specified in the Contract, the Vendor shall provide qualified training personnel to instruct the City's operators until they are familiar and competent in the operation and daily maintenance of the purchased Goods or Services.
- b. Unless otherwise stated, the cost of such training will be included in the purchase price.

### **8. AUDIT AND DOCUMENT RETENTION**

- a. As used in this section, "**Records**" means:
  - any transactional documents, City consents/approvals, and communications/approvals from regulatory agencies relating to the Contract,
  - Vendor books, payrolls, and accounts related to the Contract, and
  - documentation supporting the contents of the Vendor's applicable bid or proposal submission.
- b. The Vendor shall maintain detailed and accurate Records for the following period of time: the term of the Contract plus three (3) years from the date of final payment, or longer as required to resolve unresolved audit questions. During this time, the City reserves the right, in its sole discretion, to inspect and audit the Records of the Vendor and the Vendor shall supply certified copies of payrolls

## Standard Terms and Conditions of Purchase

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and any other Records requested by the City. The City shall provide the Vendor forty-eight (48) hours prior written notice of its requirement for such audit or certified copies.

### **9. INVOICES**

- a. Unless otherwise provided elsewhere within the Contract, invoices shall:
  - (i) be submitted on a monthly basis,
  - (ii) itemize HST and any other taxes payable by the City separately,
  - (iii) denote exempt or zero-rated supplies on a line by line basis,
  - (iv) be delivered to the City's day-to-day contact person and to Procurement Services Department, City Hall, 2141 Major Mackenzie Drive, Level 100, Vaughan, Ontario L6A 1T1., to the attention of the Buyer who issued the Purchase Order,
  - (v) provide a detailed account of Services performed and Goods provided and otherwise comply with form and content requirements as agreed upon between the Parties and as otherwise required by the City,
  - (vi) reference the Vendor's applicable HST registration number and any other tax registration number(s),
  - (vii) reference the Purchase Order number, and
  - (viii) include a valid business registration number on the invoice.
- b. If the *Harmonized Services Tax* applies, the Vendor agrees to invoice in accordance with the *Excise Tax Act*.
- c. If the Services involve progress payments, the invoice schedule shall be based on the Services schedule and milestones as outlined in the Contract.
- d. For time and materials Contracts, the Vendor shall invoice the City monthly on a time and expense basis, charging the goods/services/actual hours/disbursements, as applicable, incurred each month up to the Contract amount.
- e. The Vendor, when invoicing for expenses, shall provide receipt(s) for those expenses, and otherwise adhere to the other provisions regarding expenses contained in the Contract. Only reasonable, pre-approved expenses (with supporting documentation) may be submitted for reimbursement. Valid expenses will be reimbursed at-cost without mark-up.
- f. Invoices that do not comply will be returned for adjustment prior to processing payment, and any delays resulting from this action shall not prevent the City from taking any payment discounts.

### **10. PRICING / PAYMENT TERMS**

- a. Prices for the Goods and/or Services will be set out in the applicable Purchase Order or Contract and are not subject to adjustment except as otherwise agreed to by the parties in writing.

## Standard Terms and Conditions of Purchase

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- b. The price indicated on the Purchase Order is the total cost and includes all fees and charges of any kind, including patent, permit, inspection, royalty and license fees, charges for crating, boxing, cartage and re-stocking and government tax levies, unless otherwise stated on the Purchase Order.
- c. All applicable taxes are specified on the Purchase Order.
- d. Unless stated otherwise, all prices shall be in Canadian dollars and exclude all applicable sales, goods and services, harmonized sales, value added, use, transfer, or similar taxes.
- e. The City will pay the Vendor all undisputed amounts within thirty (30) days after receipt of such invoice.
- f. Payment by the City shall not be deemed acceptance of Goods and/or Services.
- g. In accordance with the applicable invoice, the City will pay, and the Vendor will remit to the appropriate taxing authorities, all applicable taxes.
- h. Notwithstanding any other provision of the Contract, the City may withhold all applicable withholding taxes and remit those taxes to the applicable governmental authorities as required by applicable laws.
- i. The City will have no obligation to pay any amount invoiced if the invoice was delivered to the City more than sixty (60) days following the date on which the Vendor's right to invoice the City for such payment arose, regardless of the invoice date.
- j. If City disputes an invoiced item, it shall provide the Vendor with a written description of its concerns within fifteen (15) Business Days of receipt of subject invoice. The Parties will negotiate in good faith to resolve the invoice and other disputes under the Contract. Resolved amounts shall be paid within thirty (30) days of resolution.
- k. Where there is a question of non-performance by the Vendor, payment in whole or in part may be withheld by the City.
- l. In the event that the City is entitled to a discount for prompt payment, the withholding of payment as provided herein shall not deprive the City from taking such discount.
- m. Any portion of the Services which fails in any way to meet the terms of the Contract is subject to rejection, or to be paid for on an adjusted basis, and the decision of the City is final.
- n. All prices shall remain firm for the duration of the Contract unless expressly provided and agreed to in writing by the City.

### **11. SET-OFF**

The Vendor hereby agrees that any monies owing by the City to the Vendor may at any time be set-off against monies owing to the City by the Vendor.

## **12. GENERAL REPRESENTATIONS AND WARRANTIES OF VENDOR**

The Vendor hereby represents and warrants to the City as follows:

1. If the Vendor holds itself out as a corporation, then it warrants that it is a corporation duly incorporated, validly subsisting and in good standing under the laws of the Province of Ontario and duly authorized and licensed to provide the Goods and/or Services.
2. The Vendor is duly authorized and empowered and has the corporate power and authority to enter into the Contract and to perform all terms and obligations contained herein and that all necessary corporate proceedings, by-laws and requirements have been effected and complied with in order to enable the Vendor to enter into the Contract.
3. Neither the execution nor the delivery of the Contract nor the fulfillment or compliance with any of the terms hereof shall conflict with, or result in the breach of the terms, provisions or conditions of, or constitute default under, the letters patent, articles, constating documents, by-laws as amended of the Vendor or any other contract or instrument to which the Vendor is a party thereto or require any consent or action by any administrative or any Federal, Provincial or Municipal government body.
4. There are no actions, claims, demands or other proceedings pending or threatened before any court or administrative agency which could adversely affect the financial condition of the Vendor or the operations and activities thereof, and no outstanding judgment, orders or decrees enforceable against the Vendor whatsoever.

## **13. SPECIFIC REPRESENTATIONS, WARRANTIES, AND COVENANTS**

a. *Goods*: The Vendor represents, warrants, and covenants that the Goods provided hereunder will be:

- (i) of merchantable quality,
- (ii) fit and suitable for the purposes intended,
- (iii) new,
- (iv) free from all defects in material, workmanship, and design,
- (v) in strict compliance with the Specifications,
- (vi) free from any liens or encumbrances on title whatsoever,
- (vii) in conformance with any samples provided to the City,
- (viii) compliant with all applicable laws; and further that

that all electrical and electronic components and equipment supplied under this Purchase Order shall be approved in accordance in the Ontario Electrical Safety Code and must certified so the intended use of the equipment in Canada by certified organization accredited to the *Standards Council of Canada Act*.

b. *Services*: The Vendor represents, warrants, and covenants that it shall perform all Services:

## Standard Terms and Conditions of Purchase

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- (i) exercising that degree of professionalism, skill, diligence, and integrity that would reasonably be expected from a skilled and experienced service provider providing services under the same or similar circumstances,
  - (ii) in accordance with all Specifications, Contractual requirements and all applicable City policies, guidelines, and codes of conduct, and
  - (iii) using only personnel with the skills, training, expertise, and qualifications necessary to carry out the Services.
- c. *IP*: The Vendor represents, warrants, and covenants that:
  - (i) it has the unfettered right to enter into the Contract and to supply the Goods and/or Services hereunder, and
  - (ii) at all times all Goods and Services will not be in violation of or infringe or misappropriate any intellectual property right or any other right of any third party.
- d. *Manufacturer Warranty*: The Vendor shall assign to the City all manufacturer's warranties for Goods not manufactured by or for the Vendor and shall take all necessary steps required by such third party manufacturers to assign such warranties to the City.
- e. If either of the warranties in Sections (a) or (b) is breached, and without prejudice to any other right or remedy available to the City, the Vendor will, at the City's option and the Vendor's sole cost and expense, refund the purchase price for, or correct or replace the affected Goods, or re-perform the affected Services, within ten (10) days after notice by the City to the Vendor of such warranty breach. All associated costs, including costs of re-performance, costs to inspect the Goods and/or Services, costs to transport the Goods from the City to the Vendor, and costs to return shipment to the City will be borne by the Vendor.
- f. If any Goods are subject to a claim or allegation of violation, infringement, or misappropriation of intellectual property rights or any other right of any third party, the Vendor shall, at its sole option, cost, and expense, and without prejudice to any other right or remedy available to the City, promptly provide the City with a commercially reasonable alternative, including the procurement for the City of the right to continue using the Goods in question, the replacement of such Goods with a non-infringing alternative satisfactory to the City, or the modification of such Goods (without affecting functionality) to render them non-infringing.

### **14. SERVICE MANAGEMENT**

- a. The Vendor shall:
  - (i) Supervise its workers, consultants, agents and subcontractors to ensure they conform to the requirements of the service, specifications and the terms and conditions of the Contract.
  - (ii) Make available, upon request of the City from time to time, staff knowledgeable about the delivery of the Services for consultation with a representative or representatives of the City. The City shall provide, upon request of the Vendor, a representative or representatives of the City to consult with the Vendor with respect to the Services being delivered.

## Standard Terms and Conditions of Purchase

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- b. *Equipment* – The Vendor shall bear the risk and responsibility of any equipment, tools, or supplies delivered to any site or facility by or on behalf of the Vendor, prior to, during or after carrying out the Services, unless otherwise expressly provided in the Contract.
- c. *Key Personnel* - Where specific personnel have been proposed by the Vendor for the performance of the Services, and have been accepted by the City, such personnel shall not be replaced with other personnel without the prior written consent of the City, such consent shall not be unreasonably withheld.
- d. *Day-to-day Contacts* - Each Party shall appoint a day-to-day contact to govern the relationship between the parties with respect to the Contract and provide notice to the other of such appointee (Vendor's appointee shall be considered a key personnel).
- e. *Emergency Telephone Number* - Prior to commencing the Work, the Vendor shall provide the City with the name(s) and telephone number(s) of its representative(s) who can be contacted on a 24-hour basis in case of an emergency during the term of the Contract.
- f. *Meetings* – The Vendor shall attend all progress, planning and other meetings outlined in the Contract, agreed upon between the Parties from time-to-time and as otherwise may be reasonably requested by the City.
- g. *Reporting Requirements* - The Vendor shall prepare and submit reports in the form, content and frequency as agreed upon between the Parties and as otherwise may be reasonably requested by the City.

### **15. SUBCONTRACTING**

- a. The Vendor shall not subcontract any portion of the Services without the prior written consent of the City.
- b. Subcontracting shall not relieve the Vendor of its liabilities and obligations under the Contract.
- c. Should any subcontractor fail to perform the Services in a satisfactory manner, the City may, in its sole discretion, require the Vendor to replace such subcontractor.
- d. The City shall have no obligation to deal directly with any subcontractor.
- e. The Vendor shall be solely responsible for the payment of all amounts owing to subcontractors.
- f. The Vendor shall coordinate the provision of the products and/or services by subcontractors in a manner acceptable to the City and shall ensure that subcontractors comply with the terms and conditions of the Contract.
- g. The Vendor shall be liable for acts and omissions of subcontractors including being liable to the City for all costs or damages arising from the acts, omissions, negligence or willful misconduct of subcontractors.

### **16. INTELLECTUAL PROPERTY RIGHTS**

- a. The City will own all right, title and interest including all intellectual property and proprietary rights in and to all works, results, solutions, outcomes, innovations, business processes, ideas, inventions and all other manifestations arising from or out of the Services (“**City Property**”).

## Standard Terms and Conditions of Purchase

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- b. The Vendor hereby grants to the City a worldwide, fully paid-up, royalty-free, non-exclusive, sub-licensable, perpetual license to use, copy, modify, and distribute any intellectual property and related intellectual property rights licensed, acquired or developed by Vendor and embedded within the City Property for the sole purpose of using the Goods and/or Services.

### **17. INSURANCE**

- a. The Vendor represents and warrants to the City that it shall pay for and maintain the necessary insurance and coverage amounts, as requested by the City, with Reputable Insurers (defined below):
  - (i) as specified in the Contract Documents; or
  - (ii) if not specified, that would be maintained by a prudent supplier of goods and services similar to the Goods and Services provided hereunder, including, as applicable, professional errors and omissions liability insurance and comprehensive commercial general liability insurance (including product liability coverage, all-risk contractors' equipment insurance, and automobile liability insurance).
- b. The Vendor will promptly deliver to the City, as and when requested, written proof of such insurance.
- c. If required or requested, the City will be named as an additional insured under any such policies.
- d. The City's Standardized Certificate of Insurance form can found on the Insurance and Risk Management page of the City web page. Dependent on the subject matter of the Contract, alternative Certificates of Insurance form(s) may be accepted at the discretion of the City's Insurance and Risk Manager.
- e. Insurance policies will provide that they cannot be cancelled, or materially changed so as to affect the coverage provided under the Contract, without the insurer providing at least thirty (30) days prior written notice to the City, in which case the City may terminate the Contract.
- f. "**Reputable Insurers**" means entities which are licensed under the *Ontario Insurance Act, R.S.O. 1990, c.1.8* to transact insurance in Ontario and meet all requirements of the Financial Services Commission of Ontario.

### **18. TERMINATION**

The City may terminate the Contract, in whole or in part, upon giving notice to the Vendor where:

- (i) the City determines that the Vendor has materially breached the Contract, failed to cure any breach within a reasonable time as determined by the City or been in breach of Contract more than three (3) times in any twelve (12) month period;

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Standard Terms and Conditions of Purchase

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- (ii) the City unilaterally decides to terminate the Contract for convenience, in which case the City will reimburse to the Vendor only those agreed upon early termination costs reasonably incurred by the Vendor up to the effective date of termination; or
- (iii) the Vendor ceases to carry on business or is adjudicated bankrupt, becomes insolvent, makes an assignment for the benefit of creditors, has a receiver, and/or administrator appointed over the Vendor or its assets, or makes or proposes any arrangement for the compromise of its debts, in which case the City may make whatever payment, if any, to the Vendor as the City shall determine.

**19. CITY POLICIES**

- a. Where all or part of the Services are to be performed on the City's premises/property, the Vendor agrees to fully comply with and adhere to all relevant City policies and rules of conduct (including, without limitation, policies and rules of conduct concerning health and safety, security, workplace environment, discrimination, sexual harassment, and technology and Internet use policies) and will cause all of its personnel involved in the provision of the Services to comply with and adhere to such policies.
- b. Upon request by the Vendor, the City will supply the Vendor with a copy of such policies.

**20. INDEMNITIES; LIMITATION OF LIABILITY**

- a. The Vendor shall indemnify, defend, and hold harmless the City, its directors, officers, employees, Councillors, Mayor, consultants, agents, and other representatives ("**City Indemnified Parties**") from and against any claims, actions, suits, demands, fines, losses, damages, expenses, legal fees, and all other liabilities brought against or incurred by the City Indemnified Parties arising out of:
  - (i) the Vendor's breach of any covenant, warranty, or other provision of, or any of its obligations under, the Contract,
  - (ii) any defect with respect to Goods, irrespective of when the defect is discovered,
  - (iii) any violation, infringement, or misappropriation (including allegations thereof) of intellectual property rights or any other right of any third party by the Vendor and/or in connection with the Goods and/or Services,
  - (iv) any intentional, wrongful, or negligent act or omission of the Vendor or any of its employees, agents, affiliates or contractors, or
  - (v) any statutory requirement which the Vendor or any subcontractor is required by law to pay.
- b. Neither party shall be liable for any special, incidental, indirect, or consequential damages arising out of the Vendor's or the City's performance under the Contract, except in respect of:
  - (i) the Vendor's breach of its obligations under the 'Intellectual Property Rights' section above,



## Standard Terms and Conditions of Purchase

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- (ii) the Vendor's breach of its obligations under the 'Confidentiality' section herein, or
- (iii) fraud or willful misconduct of the Vendor or any of its employees, agents, affiliates or contractors.

## Standard Terms and Conditions of Purchase

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### **21. CONFIDENTIALITY**

- a. The Vendor shall:
- (i) safeguard and keep confidential any and all information, including personal information, relating to the City or its business obtained or accessed by the Vendor or provided to the Vendor in connection with the Contract, including copies of City Property retained by the Vendor, if any (“**Confidential Information**”);
  - (ii) use Confidential Information solely for the purposes of carrying out its obligations under the Contract;
  - (iii) not release Confidential Information to any third party without the City’s prior written consent;
  - (iv) upon request by the City, enter into a non-disclosure agreement with the City regarding Confidential Information;
  - (v) upon termination or expiry of the Contract for any reason whatsoever, at the City’s option, (a) deliver to the City all records of the Confidential Information, or (b) securely destroy the Confidential Information; and
  - (vi) immediately notify the City if the security and/or confidentiality of Confidential Information has been compromised in any way.
- b. The Vendor, on behalf of itself, its directors, officers, employees and agents, acknowledges that the provisions of the *Municipal Freedom of Information and Protection of Privacy Act* are applicable to the Contract.

### **22. COMPLIANCE WITH APPLICABLE LAWS, WSIB AND ANTI-BRIBERY**

- a. The Vendor shall comply with all applicable Federal, Provincial, and Municipal laws, regulations, standards, and codes relevant to the performance and execution of the Vendor’s obligations under the Contract.
- b. The Vendor shall also obtain all applicable permits, licenses, exemptions, consents and approvals required for the Vendor to manufacture (if applicable) and deliver the Goods and perform the Services.
- c. Without limiting the foregoing, the Vendor shall be at all times registered, and will be solely responsible for registering, itself and all persons engaged for service by it under applicable workers’ compensation legislation and will pay all applicable workers’ compensation premiums/assessments/levies and maintain such registrations and workers’ compensation coverage in each jurisdiction where Services are performed.

Standard Terms and Conditions of Purchase

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- d. Out-of-province Vendors are not exempt from having to register and must comply with the requirements of the Workplace Safety and Insurance Board of Ontario. Prior to commencing the Work, out-of-province Vendors NOT required to be registered in Ontario shall provide:
  - (i) written confirmation from the Workplace Safety and Insurance Board of Ontario stating the Vendor is not required to be registered in Ontario; and
  - (ii) evidence of compliance with the requirements of the province or territory of the Vendor's place of business with respect to workers compensation insurance.
- e. Upon request by the City, the Vendor shall provide the City with evidence of compliance with this section in a form satisfactory to the City. Subject to applicable laws, failure to provide satisfactory evidence in respect to workers' compensation insurance shall result in payment being withheld until satisfactory evidence of compliance has been provided by the Vendor.
- f. Should the Vendor or any of its employees, agents, contractors or representatives give or offer any gratuity to, or attempt to bribe any member of City Council or any City officer or servant, then the City shall be at liberty to cancel the Contract forthwith or to direct City staff to take the whole or any part of the Contract out of the hands of the Vendor, without prejudice to any other rights and remedies accruing to the City under the Contract or by operation of law.

**23. NOTICES**

- a. Notices to the City shall be hand delivered to the City's Procurement Services Department desk, attn.: Director of Procurement Services or sent by registered mail to: Procurement Services Department, City Hall, 2141 Major Mackenzie Drive, Level 100, Vaughan, Ontario L6A 1T1, ATTN: Director of Procurement Services. The Vendor shall ensure that a copy of any notice provided to the City's Procurement Services Department is provided to the Vendor's day-to-day City contact.
- b. Notices to the Vendor may be emailed to the Vendor's day-to-day contact or couriered to the address of the Vendor as indicated on the Purchase Order.
- c. Notices sent by mail/courier will be deemed received five (5) Business Days after the day of sending (unless there was an interruption in postal service e.g. a strike during this five (5) Business Day period in which case the notice will be deemed undelivered, and the sender shall use an alternate delivery method which can evidence actual receipt by the recipient).

**24. THE ACCESSIBILITY FOR ONTARIANS WITH DISABILITIES ACT, 2005, S.O. 2005, C. 11 (AODA)**

- a. Vendors who deal with the public or other third parties on behalf of the City, as well as Vendors who participate in developing City policies, practices or procedures governing the provision of goods and services to members of the public or other third parties, shall comply with the *Accessibility for Ontarians With Disabilities Act, 2005, S.O. 2005, c. 11* and all applicable regulations thereunder ("**AODA**").
- b. The Vendor shall submit to the City or Ministry, if requested, documentation describing its accessibility training policies, practices and procedures, and a summary of the contents of training, together with a record of the dates on which training is provided and the number of attendees.

## Standard Terms and Conditions of Purchase

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- c. The City reserves the right to require the Vendor, at the Vendor's expense, to amend its accessibility policies, practices and procedures if the City deems them not to be in compliance with the requirements of AODA.
- d. The Vendor shall only assign those employees who have successfully completed training in accordance with AODA to provide services to, or on behalf of, the City.
- e. The Vendor shall ensure that any information, products, deliverables and/or communication (as defined under AODA) produced pursuant to the Contract shall be in conformity with World Wide Web Consortium Web Content Accessibility Guidelines (WCAG) 2.0 Level AA and shall be provided in accessible Word, Excel, PowerPoint, PDF, etc.

### **25. GENERAL**

a. *Governing Law:*

The Contract will be governed by and construed in accordance with the laws of the Province of Ontario, and the laws of Canada applicable therein. The Vendor and the City irrevocably submit to the exclusive jurisdiction of the courts of the Province of Ontario located in the Greater Toronto Area in relation to any dispute or proceeding arising out of the Contract. The United Nations Conventions on Contracts for the International Sale of Goods and any legislation enacted for the same do not apply.

b. *Entire Agreement:*

The Contract Documents contain the entire agreement between the parties and supersedes all prior and contemporaneous agreements and understandings between the parties relating to the subject matter hereof. Except with respect to any non-disclosure agreement which may be entered into by the parties, there are no other agreements, guarantees, representations, understandings, statements, promises or inducements, oral or otherwise, contrary or in addition to the terms of the Contract.

c. *Waiver:*

All waivers must be in writing and signed by the party to be bound by the waiver. No waiver will be inferred from or implied by any failure to act or delay in acting by a party in respect of any default, breach, non-observance under the Contract, or the failure to exercise or the delay in exercising a right or remedy under the Contract.

d. *Assignment:*

The Vendor shall not assign any of its rights, duties or obligations under the Contract to any other person without the City's prior written consent, which consent may be unreasonably withheld. The City may assign all or part of the Contract without the consent of the Vendor.

e. *Enurement:*

## Standard Terms and Conditions of Purchase

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The Contract will be binding upon and will enure to the benefit of and be enforceable by each of the parties and their respective successors and permitted assigns.

f. *Language:*

The parties acknowledge and agree that the Contract be prepared in the English language. Les parties reconnaissent avoir exigé que les présentes soient rédigées en langue anglaise.

g. *Independent Contractors:*

The parties to the Contract are independent contractors and nothing will be construed to create any partnership, joint venture, or relationship of principal and agent or employee and employer between the City and the Vendor or the Vendor's personnel.

h. *Further Assurances:*

Each party will perform, at its own cost, such further acts and give such further assurances, as may be reasonably required to fully perform or give effect to any part of the Contract.

i. *Severability:*

If any provision of the Contract is held invalid, illegal or unenforceable by a court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions will not be affected or impaired thereby, and such provision will be deemed to be restated to reflect the parties' original intentions as nearly as possible in accordance with applicable laws.

j. *Survival:*

Provisions which, by their nature and intent are to survive termination or expiration of the Contract, will survive the earlier termination or expiration of the Contract.

k. *Amendments:*

Any alterations, additions, or deletions to the Contract including changes to the scope of Services shall not be valid or binding on the City unless authorized in writing by the City's Director of Procurement Services, or memorialized on the City form of Change Order executed by authorized City personnel at the Director level or above.

l. *Dispute Resolution:*

The parties shall make good faith efforts to resolve disputes before commencing litigation, but nothing in this section shall prevent a party from pursuing equitable relief.

m. *Eligibility of Vendor:*

The City shall have the right to de-list any Vendor from future bidding for failure by the Vendor to accept a Contract that has been offered by the City pursuant to a Call for Bids or for unsatisfactory performance of a Contract that has been awarded and implemented.

## Standard Terms and Conditions of Purchase

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n. *Environmental Responsibility:*

As/if applicable, for the duration of the Contract, the Vendor shall, upon request, provide proof (acceptable to the City), that goods and services being provided under the Contract continue to meet the environmental standard (if any) proffered in its original bid/proposal submission.

o. *Evaluation of Performance:*

At any time during performance of the Contract, the City may complete an evaluation of the Vendor's performance.

A copy of this evaluation may be given to the Vendor.

The evaluation may be placed on file with the City.

The evaluation may be made available to persons requesting City references for the Contract and also may be reviewed and may form part of the City's criteria when awarding future contracts; the Vendor hereby acknowledges, agrees and consents to such maintenance, use and disclosure of vendor performance evaluations.

p. *Exports into Canada (Goods):*

Where applicable, the Vendor must forward properly certified customs invoices separately to the City's day-to-day contact at the time shipment is made.

q. *Expenses:*

All Vendor expenses for extras or for travel or administrative expenses shall be the responsibility of the Vendor unless specifically set out elsewhere in the Contract as being reimbursable by the City. Reimbursements if any would be made at cost with no mark-up.

r. *Headings:*

The headings within any Contract Document are for convenience and reference only and shall not affect or be used to interpret the provisions therein.

s. *Publicity/Use of Names:*

Except as may be expressly provided for in the Contract, any news release, public announcement, advertisement, or publicity released by the Vendor concerning the Contract or any related project will be subject to the prior written approval of the City and any applicable third parties. Any such publicity shall give due credit to the contributions of each party. The Vendor agrees to obtain the written consent of the City before publishing or issuing any information regarding the City or the Contract.

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

t. *Rights and Remedies:*

## Standard Terms and Conditions of Purchase

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All rights and remedies available to the City are distinct, separate and cumulative and shall not be exclusive of any rights or remedies available to the City under the Contract or otherwise at law or in equity.

No delay or omission by the City in exercising such a right or remedy or single or partial exercise of any right or remedy shall preclude any other or further exercise of such right or remedy or the exercise of any other right or remedy.