

**STANDARD SUPPLIER AGREEMENT
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ARTICLE 1 - INTERPRETATION

1.1 Defined Terms

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

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

“Business Day” means any working day, Monday to Friday inclusive, but excluding statutory and other holidays, namely: New Year's Day; Family Day, Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Christmas Day; Boxing Day and any other day which the Town has elected to be closed for business;

“Confidential Information” means all information of the Town that is of a confidential nature, including all confidential information in the custody or control of the Town, 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 Agreement. For greater certainty, Confidential Information shall include:

1. all data, formulae, preliminary findings, and other material developed in pursuance of the Services;
2. all new information derived at any time from any such information whether created by the Town, the Supplier or any third-party;
3. all information (including Personal Information) that the Town is obliged, or has the discretion, not to disclose under provincial or federal legislation or otherwise at law;

but shall 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 Town 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 shall in no way limit the meaning of Personal Information or the obligations attaching thereto under the Contract or at law;

“Conflict of Interest” includes, but is not limited to, any situation or circumstance where:

1. in relation to the procurement process, the supplier has an unfair advantage or engages in conduct, directly or indirectly, that may give it an unfair advantage, including but not limited to (i) having or having access to information that is confidential to the Town and not available to other bidders or proponents; (ii) communicating with any person with a view to influencing preferred treatment in the procurement process; or (iii) engaging in conduct that compromises or could be seen to compromise the integrity of the open and competitive procurement process and render that process non-competitive and unfair; or
2. in relation to the performance of its contractual obligations in a Town contract, the Supplier's other commitments, relationships, or financial interests (i) could or could be seen to exercise an improper influence over the objective, unbiased and impartial

exercise of its independent judgement; or (ii) could or could be seen to compromise, impair or be incompatible with the effective performance of its contractual obligations;

“Deliverables” means everything developed for or provided to the Town in the course of performing under the Contract or agreed to be provided to the Town under Contract by the Supplier or its directors, officers, employees, agents, partners, affiliates, volunteers, or subcontractors, as further defined, but not limited by, Schedule 1, 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;

“Effective Date” is as set out in Schedule 1 (Schedule of Deliverables, Rates and Specific Provisions);

“Expiry Date” shall be earlier of the date specified in Paragraph E of Schedule 1 – Schedule of Deliverables, Rates and Specific Provisions for the end of the term and the date of any early termination in accordance with the provisions of this Contract;

“Indemnified Parties” means the Town, and the Town’s elected officials, directors, officers, agents, employees, and volunteers;

“Industry Standards” include, but are not limited to (a) the provision of any and all labour, supplies, equipment and other goods or services that are necessary and can reasonably be understood or inferred to be included within the scope of the Contract or customarily furnished by Persons providing services of the type provided hereunder in similar situations in Ontario and; (b) adherence to commonly accepted norms of ethical business practices;

“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;

“MFIPPA” means the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended;

“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;

“Personal Health Information” has the meaning assigned to it under PHIPA;

“PHIPA” means the Personal Health Information Protection Act, Statutes of Ontario 2004, Chapter 3, Schedule A, as amended;

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

“Public Sector Organization” includes but not limited to another Canadian municipality, or any federal or provincial ministry or agency;

“Rates” means the applicable price, in Canadian funds, to be charged for the applicable Services, as set out in the Schedule of Prices, representing the full amount chargeable by the Supplier for the provision of the Services, including but not limited to: (a) all applicable duties and taxes, excluding Harmonized Sales Tax; (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 Town to the Supplier, or provided by the

Supplier to the Town, for the purposes of the Contract; or (b) created by the Supplier in the performance of the Contract; and shall include or exclude any information specifically described in Schedule 1;

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

“Services” means those services to be provided to the Town in the course of performing under the Contract or agreed to be provided to the Town under the Contract by the Supplier or its directors, officers, employees, agents, partners, affiliates, volunteers, or subcontractors, as further described in the Request, including but not limited to any goods or services and other materials;

“Submission” means all the documentation submitted by the Supplier in response to the Request;

“Supplier Address” and **“Supplier Representative”** is as set out in Schedule 1 (Schedule of Deliverables, Rates and Specific Provisions);

“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 first above written up to and including the earlier of: (i) the Expiry Date or (ii) the date of termination of the Contract in accordance with its terms;

“Third-party Intellectual Property” means any Intellectual Property owned by a party other than the Town or the Supplier.

“Town Address” and **“Town Representative”** is as set out in Schedule 1 (Schedule of Deliverables, Rates and Specific Provisions).

ARTICLE 2 – GENERAL PROVISIONS

2.1 No Indemnities from Town

Notwithstanding anything else in the Contract, any express or implied reference to the Town 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 Town, whether at the time of execution of the Agreement or at any time during the Term, shall be void and of no legal effect.

2.2 Entire Agreement

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

2.3 Severability

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

2.4 Condonation Not a Waiver

Any failure by the Town to insist in one or more instances upon strict performance by the Supplier of any of the terms or conditions of the Contract shall not be construed as a waiver by the Town of its right to require strict performance of any such terms or conditions, and the obligations of the

Supplier with respect to such performance shall continue in full force and effect.

2.5 Changes By Written Amendment or Change Order Only

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

2.6 Force Majeure

Neither party shall be liable for damages caused by delay or failure to perform its obligations under the Contract where such delay or failure is caused by an event beyond its reasonable control. The parties agree that an event shall not be considered beyond one's reasonable control if a reasonable businessperson applying due diligence in the same or similar circumstances under the same or similar obligations as those contained in the Contract would have put in place contingency plans to either materially mitigate or negate the effects of such event. Without limiting the generality of the foregoing, the parties agree that force majeure events shall include natural disasters and acts of war, insurrection and terrorism but shall not include shortages or delays relating to supplies or services or the current Covid-19 pandemic. If a party seeks to excuse itself from its obligations under this Contract due to a force majeure event, that party shall immediately notify the other party of the delay or non-performance, the reason for such delay or non-performance and the anticipated period of delay or non-performance. If the anticipated or actual delay or non-performance exceeds fifteen (15) Business Days, the other party may immediately terminate the Contract by giving notice of termination and such termination shall be in addition to the other rights and remedies of the terminating party under the Contract, at law or in equity.

2.7 Notices by Prescribed Means

Notices shall be in writing and shall be delivered by postage-prepaid envelope, personal delivery, electronic mail, or facsimile and shall be addressed to, respectively, the Town Address to the attention of the Town Representative and to the Supplier Address to the attention of the Supplier Representative. Notices shall be deemed to have been given: (a) in the case of postage-prepaid envelope, five (5) Business Days after such notice is mailed; or (b) in the case of personal delivery, electronic mail, or facsimile one (1) Business Day after such notice is received by the other party. In the event of a postal disruption, notices must be given by personal delivery, electronic mail 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.

2.8 Governing Law

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

2.1 Interpretive Value of Contract Documents

In the event of a conflict or inconsistency in any provisions in the Contract: (a) the Supplementary Terms and Conditions shall govern over the Agreement; (b) the main body of the Agreement shall govern over the Schedules to the Agreement; (c) the Agreement (including its Schedules) shall govern over the Request and the Submission; and (d) the Request shall govern over the Submission. Any addendum(s) to the Request shall govern over those documents that are to be amended by their contents.

2.2 Counterparts and Electronic Signatures

This Agreement may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a 'pdf' format data file, or is electronic (including, without limitation, a DocuSign signature), such signature shall create a valid and binding obligation of the party executing (or on whose behalf

such signature is executed) with the same force and effect as if such facsimile, “.pdf”, or electronic signature were an original thereof.

ARTICLE 3 - NATURE OF RELATIONSHIP BETWEEN TOWN AND SUPPLIER

3.1 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 which would in any way interfere with the rights of the Town under this Contract.

3.2 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.

3.3 Supplier Not a Partner, Agent, or Employee

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

3.4 Non-Exclusive Contract, Work Volumes

The Supplier acknowledges that it is providing the Services to the Town on a non-exclusive basis. The Town makes no representation regarding the volume of goods and services required under the Contract. The Town 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.

3.5 Responsibility of Supplier

The Supplier shall be liable for any damages, costs, expenses, losses, claims, or actions arising from either a breach, violation, or non-performance of the terms of the Contract or from any errors, omissions, negligent acts or willful misconduct relating to any Services provided by itself or by its Personnel. The Supplier shall advise its Personnel of their obligations under the Agreement and shall ensure their compliance with the applicable terms of the Agreement. This paragraph shall survive the termination or expiry of this Contract.

3.6 No Subcontracting or Assignment

The Supplier may subcontract or assign the whole or any part of the Contract or any monies due under it only with the prior written consent of the Town. Such consent shall be in the sole discretion of the Town and subject to the terms and conditions that may be imposed by the Town. Without limiting the generality of the conditions which the Town may require prior to consenting to the Supplier’s use of a subcontractor, every contract entered into by the Supplier with a subcontractor shall adopt all of the terms and conditions of this Contract as far as applicable to those parts of the Services provided by the subcontractor. At the request of the Town, prior to the issuance of any payment by the Town, the Supplier shall provide a declaration from every subcontractor that it has been paid in full for all services and materials provided. Nothing contained in the Contract shall create a contractual relationship between any subcontractor or its directors, officers, employees, agents, partners, affiliates or volunteers and the Town.

3.7 Duty to Disclose Change of Control

In the event that the Supplier undergoes a change in control the Supplier shall immediately disclose such change in control to the Town and shall comply with any terms and conditions

subsequently prescribed by the Town resulting from the disclosure.

3.8 Conflict of Interest

The Supplier shall: (a) avoid any Conflict of Interest in the performance of its contractual obligations; (b) disclose to the Town 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 Town to resolve any Conflict of Interest. In addition to all other contractual rights or rights available at law or in equity, the Town 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 Town to resolve a Conflict of Interest; or (c) the Supplier's Conflict of Interest cannot be resolved. This paragraph shall survive any termination or expiry of the Contract.

3.9 Contract Binding

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

3.10 Agreement with Public Sector Organization

If any Public Sector Organization seeks to acquire the Services under the same or similar terms of the Agreement, the Supplier may be requested to offer the Services to such organization(s) on the terms of a non-Town agreement being a separate agreement between the Supplier and the Public Sector Organization that contains the same or similar terms of the Agreement.

Any obligation, cost or liability arising under or in connection with the non-Town agreement shall remain with the parties to the non-Town agreement. The Indemnified Parties shall not be responsible or liable to any party to the non-Town agreement and no party to the non-Town agreement shall make any representation or covenant or enter into any agreement to the contrary.

For greater certainty, no party to the non-Town agreement shall have any cause of action, action, claim, demand, or lawsuit against the Indemnified Parties as a result of any act or omission of the parties to the non-Town agreement or as a result of any act or omission of the Indemnified Parties in connection with the Agreement. Additionally, the non-Town agreement shall not: (i) have the effect of creating an employment, partnership, or agency relationship between a party to the non-Town agreement on the one hand and the Indemnified Parties on the other; (ii) impose or result in the imposition of any cost, obligation, liability, or covenant on the Indemnified Parties; (iii) relieve the Supplier of its performance of any responsibility, obligation, covenant, or liability in connection with the Agreement; and (iv) negate, impede, or impair the exercise of any rights, licenses or permissions under or in connection with the Agreement by any Indemnified Parties or by any persons authorized under or in connection with the Agreement to exercise such rights, licenses or permissions on behalf of the Indemnified Parties.

ARTICLE 4 - PERFORMANCE BY SUPPLIER

4.1 Commencement of Performance

The Supplier shall commence performance upon receipt of written instructions from the Town.

4.2 Deliverables Warranty

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

forthwith make the necessary corrections at its own expense as specified by the Town in a rectification notice.

4.3 Health and Safety

With respect to its own workers and subcontractors, if any, the Supplier will be responsible for meeting all of the “employer” obligations under the Occupational Health and Safety Act (Ontario) (the “OHSA”) and shall ensure that the Services are provided in accordance with the OHSA and its regulations as well as any Town policies with which the Supplier has been provided. This includes, but is not limited to, the duties to provide a safe workplace, provide information and educate workers on workplace hazards, appoint a competent supervisor, prepare, and provide a health and safety policy, implement a comprehensive health and safety program to support such policy and take every reasonable precaution to protect the health and safety of its workers. Without limiting the generality of the foregoing, the Supplier shall provide all safety equipment necessary to protect its own workforce and all persons affected by a Supplier’s work relating to any Services, shall ensure such equipment is at all times in good working order and shall ensure its staff who operate the equipment are fully trained and qualified to do so. The Supplier shall immediately notify the Town of any Ministry of Labour orders or charges issued to the Supplier and provide the Town with copies of such orders or charges.

4.4 Accessibility

Without limiting the generality of section 3.2, the Supplier shall comply with, and ensure that any subcontractors comply with, applicable accessibility laws, regulations and by-laws, including but not limited to the Ontarians with Disabilities Act, 2001 (ODA), the Accessibility for Ontarians with Disabilities Act, 2005 (AODA), Ontario Regulation 429/07 (Accessibility Standards for Customer Service) and Ontario Regulation 191/11 (Integrated Accessibility Standards), during the term of the Contract.

Without limiting the generality of the foregoing, the Supplier shall ensure that all of its employees, agents, volunteers, and any subcontractors, who, as part of the Contract: (a) deal with members of the public or other third parties; or (b) participate in developing policies, practices and procedures governing the provision of goods or services to members of the public or other third parties, receive training about the provision of its goods or services to persons with disabilities. The Supplier shall ensure that such training includes, without limitation, a review of the purposes of the AODA and the requirements of Ontario Regulation 429/07.

The Town reserves the right to inspect the Supplier’s training records relating to Ontario Regulation 429/07 and Ontario Regulation 191/11, which must describe its training policy and summarize the training, including to whom the training has been given and when the training was given. The Town also reserves the right to require the Supplier to amend its training policies, practices, and procedures if the Town deems the training is not compliant with the requirements of Ontario Regulation 429/07 and Ontario Regulation 191/11.

4.5 Shipment of Goods

To the extent that the Deliverables include the shipment of goods to the Town, all such goods shall be F.O.B. Destination to the Town’s place of business, or such other location as may be specified in the Contract. No transportation or delivery charges of any kind, including, without limitation, packing, storage, cartage, or customs brokerage charges, shall be paid by the Town, unless specifically agreed by the Town in writing. The Deliverables will be suitably packed in such a manner as will ensure their safe transportation undamaged to their destination. The Deliverables will remain at the risk of the Supplier until the Deliverables are received by the Town. Receipt of the Deliverables at the Town’s location does not constitute acceptance of the Deliverables by the Town. The Deliverables are subject to the Town’s inspection and acceptance within a reasonable period of time after delivery. If any of the Deliverables, in the opinion of the Town, are inadequately provided or require corrections, the Supplier shall make the necessary corrections at its own

expense as specified by the Town in a rectification notice.

4.6 Use and Access Restrictions

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

4.7 Notification by Supplier to Town

During the Term, the Supplier shall advise the Town 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 Services in accordance with the Contract and Requirements of Law.

4.8 Supplier to Comply With Reasonable Change Requests

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

4.9 Pricing for Requested Changes

Where a Town change request includes an increase in the scope of the previously contemplated Services, the Town shall set out, in its change request, the proposed prices for the contemplated changes. Where the Rates in effect at the time of the change request:

- (a) include pricing for the particular type of goods or services contemplated in the change request, the Supplier shall not unreasonably refuse to provide those goods or services at prices consistent with those Rates; or
- (b) are silent to the applicable price for the particular goods or services contemplated in the change request, the price shall be negotiated between the Town and the Supplier within a reasonable period of time;

and in any event, such change request shall not become effective until a written amendment or change order reflecting the change has been executed by the parties.

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 Services, only those individuals shall provide the Services under the Contract. The Supplier shall not replace or substitute any of the individuals named in the Contract without the prior written approval of the Town, 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 must possess similar or greater qualifications than the individual named in the Contract and that the Town reserves the right to verify such qualifications. The Supplier shall not claim fees for any replacement individual greater than the Rates established under the Contract.

4.11 Town Rights and Remedies and Supplier Obligations Not Limited to Contract

The express rights and remedies of the Town and obligations of the Supplier set out in the

Contract are in addition to and shall not limit any other rights and remedies available to the Town or any other obligations of the Supplier at law or in equity.

ARTICLE 5 - PAYMENT FOR PERFORMANCE AND AUDIT

5.1 Payment According to Contract Rates

The Town shall, subject to the Supplier's compliance with the provisions of the Contract, pay the Supplier for the Services provided at the Rates established under the Contract.

5.2 Hold Back or Set Off

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

5.3 No Expenses or Additional Charges

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

5.4 Payment of Taxes and Duties

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

5.5 Withholding Tax

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

5.6 Document Retention and Audit

For seven (7) years after the Expiry Date or any date of termination of the Contract, the Supplier shall maintain all necessary records to substantiate (a) all charges and payments under the Contract and (b) that the Services were provided in accordance with the Contract and with Requirements of Law. During the Term, and for two (2) years after the Term, the Supplier shall permit and assist the Town in conducting audits of the operations of the Supplier to verify (a) and (b) above. The Town shall provide the Supplier with at least ten (10) Business Days prior notice of its requirement for such audit. The Supplier's obligations under this paragraph shall survive any termination or expiry of the Contract.

ARTICLE 6 - CONFIDENTIALITY AND MFIPPA

6.1 Confidentiality and Promotion Restrictions

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

6.2 Confidential Information

During and following the Term, the Supplier shall: (a) keep all Confidential Information confidential and secure; (b) limit the disclosure of 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 Services and who have been specifically authorized to have such disclosure; (c) not directly or indirectly disclose, destroy, exploit or use any Confidential

Information (except for the purpose of providing the Services, or except if required by order of a court or tribunal), without first obtaining: (i) the written consent of the Town and (ii) in respect of any Confidential Information about any third-party, the written consent of such third-party; (d) provide Confidential Information to the Town on demand; and (e) return all Confidential Information to the Town before the end of the Term, with no copy or portion kept by the Supplier.

6.3 Restrictions on Copying

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

6.4 Notice of Breach

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

6.5 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 Confidential Information, the Supplier will provide the Town with prompt notice to that effect in order to allow the Town to seek one or more protective orders or other appropriate remedies to prevent or limit such disclosure, and it shall co-operate with the Town 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 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 shall provide notice to each such recipient (in co-operation with legal counsel for the Town) that such Confidential Information is confidential and subject to non-disclosure on terms and conditions equal to those contained in the Agreement and, if possible, shall obtain each recipient's written agreement to receive and use such Confidential Information subject to those terms and conditions.

6.6 Protection of Privacy

The Supplier shall adhere to or exceed the standards set in MFIPPA, PHIPA, or any other relevant Ontario or federal privacy legislation or common law as may be passed or amended from time to time, as relates to the confidential and secure treatment, including collection, use, disclosure or retention, of Personal Information, Personal Health Information and Town Confidential Information which the Supplier comes into contact with in the course of performing its obligations under, or otherwise in connection with, the Contract.

6.7 MFIPPA Records and Compliance

The Supplier and the Town acknowledge and agree that MFIPPA 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 Town within seven (7) calendar days of being directed to do so by the Town for any reason including an access request or privacy issue;
- (c) not to access any Personal Information unless the Town determines, in its sole discretion, that access is permitted under MFIPPA and is necessary in order to provide the Services;
- (d) not to directly or indirectly use, collect, disclose, or destroy any Personal Information for any purposes that are not authorized by the Town;
- (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 Services and who have been specifically authorized by the Town Representative to have such access for the purpose of providing the Services;
- (g) to implement other specific security measures that in the reasonable opinion of the Town 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 Town may be disclosed by the Town where it is obligated to do so under MFIPPA, by an order of a court or tribunal or pursuant to a legal proceeding;

and the provisions of this paragraph shall prevail over any inconsistent and the provisions in the Contract.

6.8 Injunctive and Other Relief

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

6.9 Survival

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

ARTICLE 7 - INTELLECTUAL PROPERTY

7.1 Town 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 Town to the Supplier shall remain the sole property of the Town at all times.

7.2 No Use of Town Insignia

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

7.3 Ownership of Intellectual Property

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

7.4 Supplier's Grant of Licence

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

the Town a perpetual, world-wide, non-exclusive, irrevocable, transferable, royalty free, fully paid up right and licence; (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 Town.

7.5 No Restrictive Material in Deliverables

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

7.6 Supplier Representation and Warranty Regarding Third-Party Intellectual Property

The Supplier represents and warrants that the provision of the Deliverables shall 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.

7.7 Survival

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

ARTICLE 8 - INDEMNITY, INSURANCE AND BONDS

8.1 Supplier Indemnity

The Supplier hereby agrees to indemnify, defend 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, by whomever made, sustained, incurred, brought or prosecuted, including for third party bodily injury (including death), personal injury and property damage arising out of or attributable to (a) any breach, violation or non-performance of the Contract by the Supplier or its Personnel; or (b) any errors, omissions, negligent acts or wilful misconduct by the Supplier or its Personnel in relation to and in performance of the Services (collectively, "Claims").

8.2 Supplier's Insurance

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

(a) Commercial General Liability insurance

Commercial General Liability insurance for all Deliverables to a limit of not less than five million dollars (\$5,000,000) per occurrence.

This policy will be extended to include:

- Bodily injury, death, and property damage
- Cross Liability/Severability of Interests clause
- Contractual Liability
- Premises and operations
- Broad form property damage
- Products and completed operations

- Owner's and contractors protective
- Sudden and Accidental Pollution Liability coverage;
- Non-Owned Automobile (SPF 6) to a limit of not less than two million dollars (\$2,000,000)

The policy shall be endorsed to:

- Include the Corporation of the Town of Lincoln and any indemnified parties included as Additional Insured with respect to the operations and obligations of the Supplier and their performance of the work as outlined in this Agreement; and
- Contain an undertaking by the insurers to give thirty (30) days prior written notice in the event that there is a material change in the foregoing policies or coverage affecting the Additional Insured(s) or cancellation of coverage before the expiration date of any of the foregoing policies.

(b) Automobile Insurance

Automobile Insurance (OAP1) for both owned and leased vehicles with inclusive limits of not less than two million dollars (\$2,000,000).

Proof of automobile insurance will not be required if the Supplier provides a signed letter stating that they do not own or lease vehicles.

(c) Additional Insurance Requirements

Any other type of insurance specified in Schedule 1 (Schedule of Deliverables, Rates and Specific Provisions) or required elsewhere under the Contract.

All insurance policies shall be:

- Written with an insurer licensed to do business in Ontario,
- Be non-contributing with, and will apply only as primary and not excess to any other insurance or self-insurance available to the contractor, and
- With the exception of Owned Automobile Liability (OAP 1), each policy shall contain an undertaking by the insurers to notify the Town in writing not less than thirty (30) days before any material change in risk or cancellation of coverage.

8.3 Proof of Insurance

The Supplier shall provide the Town 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. The Supplier shall provide the Town with renewal replacements on or before the expiry of any such insurance. Upon the request of the Town, a copy of each insurance policy shall be made available to it. The Supplier shall ensure that each of its subcontractors obtains all the necessary and appropriate insurance that a prudent person in the business of the subcontractor would maintain and that the Town 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.

8.4 Workplace Safety and Insurance Act Coverage

The Supplier warrants and agrees that it has complied and will comply with all applicable workplace safety and insurance laws and regulations and, if the Supplier is subject to the Workplace Safety and Insurance Act ("WSIA"), will provide proof of valid WSIA coverage by means of a current clearance certificate (or other means acceptable to the Town) to the Town upon request. The

Supplier covenants and agrees to pay when due, and to ensure that each of its subcontractors pays when due, all amounts required to be paid by it and its subcontractors under the WSIA during the Term, failing which the Town shall have the right, in addition to and not in substitution for any other right it may have pursuant to the Contract or otherwise at law or in equity, to pay to the Workplace Safety and Insurance Board (the "WSIB") any amount due pursuant to the WSIA and unpaid by the Supplier or its subcontractors and to deduct such amount from any amount due and owing from time to time to the Supplier pursuant to the Contract together with all costs incurred by the Town in connection therewith. The Supplier further agrees to indemnify the Indemnified Parties for any and all liability, loss, costs, damages, and expenses (including legal fees) or other charges in connection with the Supplier's failure to comply with any applicable workplace safety and insurance laws or related to the Supplier's status with the WSIB.

8.5 Supplier Participation in Proceedings

Without limiting the generality of 8.1 above, upon receiving written or verbal notice of any Claim, the Supplier shall promptly respond to the claimant and advise the Town of the particulars of such Claim. If notice of any Claim is received directly by the Town, the Town will forward such notice to the Supplier. Within thirty (30) days after receiving notice of a Claim, either from the claimant or the Town, the Supplier shall conduct an investigation and attempt to resolve the Claim. The Supplier shall keep the Town informed of the status of any Claim received on a reasonable basis.

The Supplier shall, at its expense, to the extent requested by the Town acting reasonably, conduct the defence of any Claim against any Indemnified Parties referred to in this Article and any negotiations for their settlement. The Town may elect to participate in or conduct the defence of any such Claim by notifying The Supplier in writing of such election without prejudice to any other rights or remedies of the Town under the Contract, at law or in equity. Each Party participating in the defence shall do so by actively participating with the other's counsel. The Supplier shall forthwith advise the Town of any settlement of any Claim and particulars of the amount of payment of any sums of money in connection with such settlement. This paragraph shall survive any termination or expiry of the Contract.

8.6 Contract Security, if required

The Contractor shall provide, and shall maintain in good standing until the fulfillment of the Contract, a performance bond and a labour & materials bond, in the amount and form prescribed by the procurement process (if any) issued by a duly licensed surety company authorized to transact a business of suretyship in the Province of Ontario acceptable to the Town, guaranteeing the faithful performance of the Contract and the payment of all obligations incurred in the event of the Supplier's default, including, but not limited to the following:

- (a) the payment of legal, accounting, architectural, engineering, and other consultant's expenses incurred by the Town in determining the extent of Services completed and any additional services required as a result of the interruption of the Services; and;
- (b) the payment of additional expenses to the Town in the form of security guard services, light, heat, power, loss of use of premises, and other related costs, payable over the period between the default of the Contract and commencement of the Services under the terms of this Contract, including any associated taxes.

Without limiting the foregoing in any way, the bonds shall indemnify and hold harmless the Town for and against costs and expenses (including legal and consultant services and court costs) arising out of or as a consequence of any default of the Supplier under this Contract. The Supplier shall be responsible for notifying the surety company of any changes made to the Contract during the course of providing the Services. The Supplier shall be responsible for the costs of all premiums for bonds required by this Contract.

8.7 Other Security, if required

The Supplier shall file with the Town upon execution of this Agreement security in the form of a cash deposit by bank draft or certified cheque; in the amount prescribed by the procurement process (if any) and in a form acceptable to the Town to guarantee the performance of the Services in accordance with the requirements of the Contract. In the event that the Supplier fails to provide the Services required by this Contract as and when required by the Town, including if it fails or neglects to proceed with reasonable speed or, in the event that the Services are not being provided according to any applicable specifications and requirements of the Town set out in the Contract, in addition to any other remedy the Town may have, upon the Town Representative giving seventy two 72 hours written notice by prepaid registered mail to the Supplier, the Town may, without further notice, proceed to supply all materials and to do all necessary works in connection with the Services, including the repair or reconstruction of faulty work and the replacement of materials not in accordance with the specifications, at the Supplier's expense and draw upon the security delivered to the Town by the Supplier for the costs to the Town of performing the necessary work, including and engineering fees and administrative costs of the Town.

ARTICLE 9 - TERMINATION, EXPIRY AND EXTENSION

9.1 Immediate Termination of Contract

The Town may immediately terminate the Contract upon giving notice to the Supplier where:

- (a) the Supplier knowingly provided false information in its Submission;
- (b) if any representation or warranty made by the Supplier shall prove to have been incorrect in any material respect during the Term, and such incorrect representation or warranty is incapable of being remedied;
- (c) the Supplier is 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 5 (Confidentiality and MFIPPA) of the Agreement;
- (e) the Supplier breaches the Conflict of Interest paragraph in Article 2 (Nature of Relationship Between Town and Supplier) of the Agreement;
- (f) the Supplier, prior to or after executing the Agreement, makes a material misrepresentation or omission or provides materially inaccurate information to the Town;
- (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 Services or assigns the Contract without first obtaining the written approval of the Town; or
- (i) the Supplier's acts or omissions constitute a substantial failure of performance;

and the above rights of termination are in addition to all other rights of termination available at law, or events of termination by operation of law.

9.2 Dispute Resolution by Rectification Notice

Without limiting the Town's right to provide notice of immediate termination in the event of a substantial failure of performance pursuant to the above paragraph, where the Supplier fails to comply with any of its obligations under the Contract, the Town may issue a rectification notice to the Supplier setting out the manner and timeframe for rectification. Within three (3) Business Days of receipt of that notice, the Supplier shall either: (a) comply with that rectification notice; or (b) provide a rectification plan satisfactory to the Town. If the Supplier fails to either comply with that rectification notice or provide a satisfactory rectification plan, the Town may immediately terminate the Contract. Where the Supplier has been given a prior rectification notice, the same subsequent

type of non-compliance by the Supplier shall allow the Town to immediately terminate the Contract.

9.3 Termination on Notice

The Town reserves the right to terminate the Contract, without cause, upon [thirty (30)] days prior written notice to the Supplier.

9.4 Supplier's Obligations on Termination

On termination of the Contract, the Supplier shall, in addition to its other obligations under the Contract and at law:

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

This paragraph shall survive any termination of the Contract.

9.5 Supplier's Payment upon Termination

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

9.6 Termination in Addition to Other Rights

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

9.7 Expiry and Extension of Contract

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

9.8 Evaluation of Performance

The Supplier will be subject to a performance evaluation during the course of, and/or at the conclusion of the assignment.

In the event that the Supplier fails to perform its obligations under the Contract, the Town may, in addition to any and all legal and equitable remedies available to it, place the Supplier on probation or suspend the Supplier from participating in future procurement opportunities.