

City of Niagara Falls Purchase Order Terms & Conditions

DEFINITIONS

In these Terms and Conditions:

“Change in Work” means the deletion, extension, increase, decrease, alteration or other revisions to the Work of the Supplier as specified in the Contract Documents, issued by the City through a purchase order.

“City” means The Corporation of the City of Niagara Falls.

“Consultant” means when identified the party to the Contract that the City has awarded the Work.

“Contract” means a commitment by the City for the Procurement of Deliverables Goods and/or Services from a Supplier, which may be evidenced by an agreement executed by the Supplier and the City, or a Purchase Order issued by the City to the Supplier.

“Contract Documents” means change order(s), purchase order(s), supplementary terms and conditions, general conditions, specifications, contract drawings, information available to Supplier and any amendments thereto.

“Deliverables” means the goods and any related services as described in the Purchase Order.

“Goods” means supplies, equipment, materials, products, structures and fixtures to be delivered, installed or constructed or other things (if any), specified in the Purchase Order (including any part of the goods specified).

“Purchase Order” means a purchaser’s written document to a Supplier formalizing the Deliverables, all terms and conditions of a proposed transaction (e.g., description of the requested items, cost of items being purchased, delivery schedule, terms of payment, transportation) and includes these Purchase Order Terms and Conditions.

“Schedule” means the most recent schedule indicating the timing of major activities of the Work submitted by the Supplier and approved in writing by the City.

“Service(s)” means services in which the physical component of an activity would predominate but which may result in deliverables in the form of reports, drawings, designs, training materials, software modifications or similar physical components;

“Services” means all labour, and Work performed required to complete the Purchase Order.

“Supplier” means any individual or organization offering Goods and/or Services including but not limited to contractors, consultants, vendors and service organizations;



City of Niagara Falls Purchase Order Terms & Conditions

“Work” means the design, manufacture, fabrication, supply and/or related services or supply of Goods as required by the Contract Documents.

GENERAL TERMS

- 1. General.** These Purchase Order Terms and Conditions shall govern the Purchase Order (the **“PO”**) issued by The Corporation of the City of Niagara Falls (the **“City”**) to the Supplier and for the provision of the Deliverables described in the PO, and any attachments appended thereto.
- 2. Obligations of Supplier.** The Supplier shall; **(a)** exercise a standard of care, skill, judgment, civility, and diligence that would normally be exercised by an experienced, skilled and prudent Supplier providing similar Deliverables for similar projects; **(b)** provide the Deliverables in compliance with all applicable laws, regulations C.S.A., U.L., C.G.S.B. and all other applicable standards, building codes, planning/zoning regulations, By-laws of the City, applicable City policies, and rules, as amended from time to time. The Supplier shall, in a timely manner, provide the City with a copy of all correspondence, reports, compliance orders, charges or other documents it receives under the relevant legislation that apply to any of the Deliverables and obtain all permits required to provide the Deliverables and ensure that it and its personnel have obtained all required certifications. Proof of permits and certifications shall be presented to the City upon request; and shall not subcontract any or all of the supply services without the written consent of the City. This is a non-exclusive arrangement. The City may from time to time retain other Suppliers / Consultants for similar or the same services.
- 3. Schedule and Workplan.** Time is of the essence under this contract. The Supplier shall provide the Deliverables in accordance with the schedule approved by the City (the **“Schedule”**). Where applicable, the Supplier shall provide the Deliverables in accordance with the workplan provided by the City (the **“Workplan”**) and the Schedule incorporated into the Workplan as approved by the City. The Supplier shall not commence any part of the Work until it has received written notification from the applicable department’s General Manager or their duly authorized representative.
- 4. Inadequate Services.** The Supplier shall immediately correct at its own cost and expense any Work deemed inadequate by the City. If the Work is not corrected to the satisfaction of the City, the City may retain a third party to rectify or otherwise perform the Work and back charge the Supplier for the City’s reasonable costs, expenses, and damages, or terminate the PO.
- 5. Price and Payment.** The price of the Deliverables, inclusive of but not limited to all costs, expenses, overhead, profit, administration, contingency, allowances, fees, any

City of Niagara Falls Purchase Order Terms & Conditions

other costs the Supplier is liable for in the performance of the Work and applicable taxes (i.e., HST) and import duty where applicable and all required packaging, shipping, prepaid cartage, freight and/or postage charges, shall be as stated on the PO, and payable upon satisfactory delivery of the Deliverables, as determined by the City in its sole discretion. The Consultant fees, inclusive of any disbursements, shall be stated on the PO. The price of the Deliverables shall remain fixed for the duration of the PO, subject only to adjustments as provided for in the Contract Documents. All invoices submitted shall be emailed to ap@niagarafalls.ca and shall identify the following: **(a)** identify The Corporation of the City of Niagara Falls as the purchaser **(b)** contain the Supplier's name, current address and contact information; **(c)** identify and separate applicable HST; **(d)** include the date the invoice is being issued; **(e)** state the period of time in which the Deliverables were provided to the City; **(f)** reference the PO number; **(g)** include the Supplier's HST registration number; **(h)** detail a proper description of the goods and/or services including costs; and **(i)** be supported by documentation evidencing provision of the Deliverables or a portion thereof.

- 6. Use of Documents and Copyright.** The City shall maintain ownership of the documents and drawings produced by the Supplier in connection with the Work. If applicable, drawings shall be prepared as per the City's current [Digital Drawing and Layering Standards](#), unless approved otherwise by the City in writing. All concepts, products or processes produced by or resulting from the Work rendered by the Supplier, and which can be patented, capable of trademark or otherwise, shall be and remain the property of the Supplier. The City shall have permanent, non-exclusive, royalty-free license to use any concept, product or process which is able to be patented, capable of trademark or otherwise produced by or resulting from the Work rendered by the Supplier for the purpose with the City's general use, for archival and exhibition purposes, for renovations, additions to and to service an applicable project (if any), or for use as reference documents on other projects.
- 7. Substitutions.** The Supplier may offer in writing to furnish material, products, equipment, methods of fabrication or process other than specified in the Contract, which shall be substantially equal or better in every respect. The Supplier shall submit all technical details of the proposed substitutions to the City for its review and approval. The City shall be sole judge of the quality of the material, product, equipment, method of fabrication or process offered in substitution, and shall indicate approval or disapproval in writing.
- 8. Delivery Requirements.** **(a)** Except as expressly provided otherwise in the PO, the Supplier is responsible, at its cost, for packing and transporting the Deliverables to the City at its designated delivery point (the "**Delivery Point**"). **(b)** The Supplier shall

City of Niagara Falls Purchase Order Terms & Conditions

give the City advance Notice of not less than five (5) Working Days to confirm that the Deliverables are ready to be packed and shipped. **(c)** Each package shall be clearly marked with the Delivery Point, a PO number or other reference number as provided by the City, and other marks as stipulated in writing by the City. All Deliverables shall be clearly identified and tagged as instructed by the City. **(d)** The Supplier shall pack and protect all parts of the Deliverables in accordance with standard industry practice having regard to methods of carriage and handling and to the weather conditions through which they will pass during transport to the Delivery Point. The Supplier shall provide and fit all lifting and handling devices required for lifting and handling the Deliverables in transit. **(e)** The Supplier shall give the City Notice of the estimated date of delivery in accordance with the Schedule, the type of transport used and the name and address of the carrier, freight forwarder and/or agent. **(f)** Before the Supplier delivers any Deliverables, the Supplier shall provide to the Purchaser all information relating to (as applicable): the operating instructions for the Deliverables; any dangers associated with the Deliverables; any manufacturers' specifications in respect of the Deliverables; and any procedures necessary to ensure that persons properly using the Deliverables are not exposed to hazards. **(g)** Upon arrival at the Delivery Point, the Supplier must ensure that an employee of the City signs for the delivery, and clearly prints their name on the delivery receipt. **(h)** As soon as possible after receipt of the Deliverables at the Delivery Point, the City will advise the Supplier of any damage, shortages, or non-conformities. The Supplier shall, at its sole expense, immediately take all necessary measures to rectify any damage, shortages, or non-conformities. The City will not bear any portion of the cost for any such repair or replacement.

9. Ownership to the Deliverables. Title to the Deliverables shall vest in the City free and clear of all security interests and encumbrances upon delivery made in accordance with these Terms and Conditions. Irrespective of the vesting of title, the Supplier / Consultant shall bear all risks of loss and damage and shall be responsible for insuring the Deliverables against all risks and loss or damage until receipt in good order by the City. The Supplier grants to the City an irrevocable, transferable, non-exclusive, fully paid-up, royalty-free, perpetual, worldwide license to use, copy, modify or sub-license solely for the purpose of the operation, repair and maintenance of the Deliverables (if any).

10. Records and Audit. The Supplier shall maintain and preserve up-to-date, complete and accurate records, which clearly identify the Supplier's time and expenses in respect of the supply of the Deliverables to be paid in accordance with these Terms and Conditions. If requested by the City, the Supplier shall make available to the City full accounts, records, receipts, disbursements, vouchers and documents for the purpose of substantiating all charges related to the Deliverables, for a period of two (2) years from the date of final payment to the Supplier. In order to provide data for

City of Niagara Falls Purchase Order Terms & Conditions

the calculation of fees on a time basis, the Supplier shall keep detailed records of the hours worked and salaries paid to the Supplier's staff employed for the prescribed Work. Within twenty-four (24) hours of a written request from the City, the City may inspect and audit the books, payrolls, accounts, and records of the Supplier relating to the Work, during regular office hours.

- 11. Change in Work.** The City may, in writing, at any time after the execution of the PO or the commencement of the Work, delete, extend, increase, vary or otherwise alter the Work forming the subject of the PO by issuing a revised PO noted as "Change Order". Any revision to the PO made by the City shall represent full payment for all costs and expenses associated with a change in the Work. The City shall have no liability whatsoever for any claim for payment for additional work or services provided or additional costs incurred by the Supplier which have not been authorized in writing and in advance by the City.
- 12. Delays.** If the Supplier or anyone engaged directly or indirectly by the Supplier delays the performance of the Deliverables, the Supplier shall be responsible for all costs, fees and expenses to recover the lost time under the Schedule. If the Supplier fails to meet the Schedule, the City may, at the sole cost of the Supplier retain other persons to provide the Deliverables, and deduct the cost from any fees payable by the City to the Supplier, or if no fees are payable, the Supplier shall reimburse the City for such costs.
- 13. Force Majeure.** If performance of any obligation of a party is delayed or cannot be fulfilled by an event beyond its control, then the time for fulfilling such obligation shall be extended for such reasonable time as the parties may agree. Neither party shall be entitled to payment for its costs or reimbursement of its expenses incurred by such delays. Causes beyond the control of the parties shall include government action or failure of the government to act where such action is required, acts of war, insurrection and terrorism, acts of God, strikes, fires, accidents, emergencies, declared pandemics or epidemics, or other such causes not due to the Supplier's fault or negligence.
- 14. Warranty.** The Supplier warrants that the Deliverables provided as services are fit and safe for the use of which they are intended, and they meet all applicable legal requirements and regulations. The Supplier warrants that the Deliverables provided as goods: **(a)** shall be new, of good quality and free from contaminants; **(b)** will be free of defects in materials, workmanship and design and shall be in in good working order and condition; **(c)** will correspond in all material respects with the City's requirements; **(d)** will be fit for their intended purpose and use; and **(e)** will not infringe or misappropriate the intellectual property of a third party. The warranties set

City of Niagara Falls Purchase Order Terms & Conditions

out herein shall survive the delivery, inspection, and acceptance of the Deliverables for the standard manufacturer's warranty period, unless stated otherwise within the PO. The Supplier shall, at its own expense, repair and make good any defects, deficiencies, imperfections or faults in the Work which appear and are brought to the Supplier's attention by the City within a period ending one (1) year from the Supplier's completion of the Work, unless otherwise stated in the PO or the bid opportunity document. The City shall notify the Supplier of any defects in the Goods that arise during the warranty period, and the Supplier, within five (5) working days of receipt of such notice, shall remedy any such defect. Failure by the Supplier to remedy defects in accordance with this Section 14 shall entitle the City to remedy the defect itself or contract a third party to remedy the defect and recover its costs for doing so from the Supplier. The Supplier further warrants any and all remedial work it performs for a further period of six (6) months beyond the initial warranty period. The Supplier will make available to the City (by assignment or otherwise) all manufacturer's warranties provided with respect to any of the Deliverables.

15. Municipal Freedom of Information and Protection of Privacy Act (MFIPPA). The Supplier specifically acknowledges that the City is subject to the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, and that the City may be compelled by law to disclose certain information provided by the Supplier.

16. Accessibility for Ontarians with Disability Act (AODA) Standards of Accessibility Compliance. All corporations or persons performing work for the City must comply with the *Accessibility for Ontarians with Disability Act, 2005* ("AODA") and the integrated Accessibility Standards Regulations (O. Reg. 191/11) Ontario Regulation 191/11. Pursuant to section 7 and section 80.49 of the O.Reg. 191/11, Integrated Accessibility Standards Regulations, made under the AODA, corporations or persons who provide goods, services or facilities on behalf of the City shall ensure that all of their employees, agents, volunteers, or others for whom that are responsible, receive training on the requirements of accessibility standards referred to in the integrated Accessibility Standards Regulations and in the Human Rights Code as it pertains to the persons with disabilities. Such corporations or persons shall submit to the City, if requested, documentation describing their accessibility training policies and procedures, and a summary of the contents of training, together with a record of the dates which training is provided and the number of attendees.

- i. **Accessible Documents / Communication** – Studies, reports and/or plans that result from any contract must be created and provided to the City in an accessible format to Adobe Acrobat 2020 or higher. Documents created, adapted or otherwise presented on behalf of the City or to City employees will be

City of Niagara Falls Purchase Order Terms & Conditions

made available in accessible formats as required by AODA and O.Reg. 191/11 for the lifespan of the document. Unless determined by the City to not be practicable, corporations or persons shall ensure that any information, products, deliverables and/or communication, as defined in the Integrated Accessibility Standards Regulations, produced pursuant to any contract, shall be in conformity with the World Wide Web Consortium Web Content Accessibility Guidelines (WCAG) 2.0 Level AA, as may be revised from time to time, and shall be provided in accessible Word, Excel, PowerPoint, PDF, etc. Submitted documents will be checked with the current version of the PDF Accessibility Checker (available for the free from <https://pdfua.foundation>.) All PDF documents will need to pass this checker to be deemed accessible.

- ii. **Website Content** – As per the Integrated Accessibility Standards Regulation under the AODA, internet websites and web content must conform to the World Wide Web Consortium (W3C), Web Content Accessibility Guidelines (WCAG) 2.0 Level AA, as may be revised from time to time, with the exception of the live captions and pre-recorded audio descriptions. All corporations or persons under any Contract shall undertake all necessary tasks to redesign and update the website to achieve compliance with WCAG 2.0 Level AA, as may be revised from time to time. The corporation or persons will also be responsible for providing a fully functional accessible website, which conforms to WCAG 2.0 Level AA current legislated requirements. The City requires web content created for the City to be provided in accessible PDF to comply with the World Wide Web Consortium (W3C), Web Content Accessibility Guidelines (WCAG) 2.0 Level AA requirements. All references to the World Wide Web Consortium (W3C), Web Content Accessibility Guidelines (WCAG) 2.0 Level AA requirements, as set out herein, shall refer to all current legislated requirements.
- iii. **Facilitators** – Corporations or persons who facilitate a public open house or otherwise seek/receive feedback on behalf of the City shall ensure that all communication, equipment and materials take into account persons with disabilities so that all in attendance may participate equally as outlined in the AODA legislation. This includes but is not limited to: **(a)** communication in a format that allows an individual to receive/provide all information in an alternate format; **(b)** hold events in venues that are physically accessible; **(c)** communicate at all opportunities that documents are available in accessible formats and communication supports; provide contact information for these requests; and be prepared to provide this accommodation; **(d)** utilize the City's assistive listening equipment; and **(e)** ensure that the event aligns with the City's Accessibility Policy and Procedures.
- iv. **Built Environment** The Design of Public Spaces Standards under the Integrated Accessibility Standards Regulation must be included in the design and build

City of Niagara Falls Purchase Order Terms & Conditions

process by contracted professionals when building or renovating, regardless of project size for all City owned, operated or leased facilities.

- v. **Videos** must include but are not limited to; open captioning, transcripts, audio description and ASL/LSQ interpretation (standard 30 frame/second for sign language interpretation insert).
- vi. **Transportation** In accordance with the AODA and the Integrated Accessibility Standard Regulation, it is expected that Suppliers comply with the municipal requirements when fulfilling a City contract.
- vii. **Self-Serve Kiosks**
The Integrated Accessibility Standards Regulation under the AODA requires that accessibility features be incorporated when designing, procuring or acquiring self-service kiosks. A kiosk is defined in this legislation as an interactive electronic terminal, including a point-of-sale device, intended for public use that allows users to access one or more services or products or both. The vendor/supplier must demonstrate how the kiosks will comply with the Integrated Regulation, AODA requirements.

17. Approval by Other Authorities. If the Work is subject to review by a governmental authority or agency other than the City, the Supplier shall be responsible for any such application, however, such application, shall be submitted through the offices of the City and unless authorized by the City in writing, such applications for approval or review shall not be obtained by direct contact by the Supplier with such other authority, department of government or agency.

18. Publication. The Supplier agrees to obtain the written consent, as applicable and required by the City, of the applicable department's General Manager at the City or their duly authorized designate, before publishing or issuing any detailed information regarding the Work.

19. Confidential Data. The Supplier shall not divulge any specific information identified as confidential, communicated, or acquired by it or disclosed by the City in the course of carrying out the Work without the prior written approval of the City. All digital data submitted to the Supplier by the City is deemed confidential and subject to the conditions set out in the City's Electronic Intellectual Property End User Licence Agreement, a sample of which is available upon request.

20. Suspension. The City may, at any time, suspend the Work by providing written notice to the Supplier.

21. Termination. The PO for the work may be terminated as follows: **(a)** by the mutual written agreement of the parties, **(b)** by the City, immediately, if the Supplier is in default or breach in respect of any condition or provision of these Terms and

City of Niagara Falls Purchase Order Terms & Conditions

Conditions or the PO, and such default or breach has not been remedied to the reasonable satisfaction of the City within five (5) working days of providing written notice to the Supplier requiring that such default or breach be remedied, (c) by the City, for any or no reason, upon not less than ten (10) days prior written notice, or (d) by the Supplier upon written Notice to the City, where the City has failed to observe or perform any of its obligations under these Terms and Conditions, and such failure has not been remedied to the reasonable satisfaction of the Supplier within thirty (30) days notice to the City detailing the nature of such failure and requiring that such failure be remedied.

22. Immediate Termination. The Contract will terminate immediately upon: (a) the winding up or dissolution of the Supplier, or (b) subject to the provisions of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, the Supplier making an assignment for the benefit of its creditors, becoming bankrupt or insolvent, undergoing reorganization, making a proposal to its creditors, or otherwise becoming financially unable to perform its obligations under these Terms and Conditions. If the Supplier is terminated pursuant to Section 21(b), the Supplier, in the City's sole discretion, may be prohibited from participating in future procurements for similar or any services with the City for two (2) years from the date of termination.

23. Remedies Upon Termination. If the Contract is terminated for any reason other than pursuant to Section 21(b), then: (a) the City is excused from further performance, (b) any amounts payable by the Supplier to the City is immediately due and payable, (c) the City shall not be responsible for paying any amount over and above the chargeable amounts, including payment on a pro-rated basis if applicable, incurred up to the effective date of such termination, or a later date if Work, already commenced by the Supplier, cannot reasonably be discontinued until such later date, (d) the City shall retain any rights, powers and remedies it has or may have against the Supplier, and (e) the City may enter an Contract with another person to provide the balance of the Deliverables. The Supplier shall be liable for all costs incurred by the City in having the Deliverables provided by another person(s).

24. Indemnification. The Supplier shall: (a) defend, indemnify and save the City and its elected officials, officers, and employees harmless from and against any and all claims of any nature, actions, causes of action, losses, fines, proceedings, demands, expenses, costs, damages, including all legal costs and expenses reasonably incurred by the City such which may arise or result from the Supplier's breach of this Contract by the Supplier and the Supplier's negligence, willful misconduct, or fraud; (b) make full and complete compensation for interest or damages of every nature and kind whatsoever, of a third party including but not limited to bodily injury, sickness, disease or death or damage to or destruction of

City of Niagara Falls Purchase Order Terms & Conditions

tangible property including loss of revenue or incurred expense resulting from disruption of service, arising out or allegedly attributable to the negligence, acts, errors, omissions, misfeasance, nonfeasance, fraud or willful misconduct of the Supplier, its directors, officers, agents, contractors and subcontractors, or any of them, in connection with or in any way related to the delivery or performance of the Deliverables; **(c)** be liable for and fully indemnify and hold harmless the City against any liability, whether direct or indirect, arising out of a claim by any third party against the City alleging that the Deliverables and its use by the City, infringes any intellectual property rights. In the event that an injunction is obtained against the City's use of the Deliverables because of patent or copyright infringement, in addition to any other remedy available to the City, the Supplier shall replace the Deliverables to the satisfaction of the City so that they become non-infringing; **(d)** upon submitting its application for final payment to the City, the Supplier waives against the City any claims of any kind whether directly or indirectly arising out of or connected with this Contract or for any injury to or death of any person or for any loss of or damage to any property belonging to the Supplier or its employees, servants, agents, invitees, licensees, contractors or visitors and for any loss or damage of the Supplier unless caused by the negligent act or omission of the City; and **(e)** be solely responsible for its employees throughout the term of this Contract, and shall defend and indemnify the City from all claims, demands, settlement, action or proceeding, arising from any health, medical disability or similar claims which the Supplier or any of its employees may have during or after the term of this Contract. This indemnity shall be in addition to and not in lieu of any insurance to be provided by the Supplier in accordance with the Deliverables and shall survive any termination of the Deliverables. The Supplier agrees to defend, indemnify, and save the City harmless from and against any and all claims of any nature, actions, causes of action, losses, expenses, fines, costs (including legal costs), interest or damages of every nature and kind whatsoever arising out of or related to the Supplier's status with the WSIB. This indemnity shall be in addition to and not in lieu of any proof of WSIB status and compliance to be provided by the Supplier in accordance with these Terms and Conditions and shall survive termination of the Deliverables.

25. Indirect Damages and Limitations of Liability. Notwithstanding any other provision of these terms and conditions, the City shall not be responsible for indirect, consequential, special, incidental or contingent damages of any nature whatsoever, including loss of revenue or profit or damages resulting from interruption of service or transmission. This limitation shall apply regardless of the form of action, damage, claim, liability, cost, expense or loss, whether in contract (including fundamental breach), statute, tort (including negligence), or otherwise, and regardless of whether the City has been advised of the possibility of such damages.

City of Niagara Falls Purchase Order Terms & Conditions

26. Insurance. Unless otherwise specified in a formal bid solicitation document, the Supplier (and any associated delivery or courier service providers) shall be required to purchase and maintain in force, at its own expense (including the payment of all deductibles) and for the duration of this Contract, the following policies of insurance, which policies shall be in a form and with an insurer acceptable to the City. Policies of insurance shall be underwritten by an insurer conducting business in the Province of Ontario. A certificate of these policies originally signed by the insurer or an authorized agent of the insurer must be delivered to the City prior to Work commencing and as and when requested by the City: **(a)** Commercial General Liability, provided that the policy: (i) is in the amount of not less than Five Million Dollars (\$5,000,000), per occurrence and an aggregate of equal to or greater than Five Million Dollars (\$5,000,000) (unless stated otherwise within the insurance requirements section of a competitive bidding opportunity); (ii) states “The Corporation of the City of Niagara Falls” as an additional insured; (iii) has provisions for cross-liability and severability of interest as between the Supplier and the City, broad form contractual liability, owner’s/contractor’s protective liability, contingent employer’s liability, employer’s liability personal injury liability, and premises and operations liability; (iv) provides non-owned automobile coverage with a limit not less than Two Million Dollars (\$2,000,000) (unless stated otherwise within the insurance requirements section of a competitive bidding opportunity) and shall include contractual non-owned coverage; (v) provides products and completed operations coverage; (vi) provides broad form property damage coverage; (vii) provides for thirty (30) days prior written notice of cancellation or material change; and (viii) shall be written on an “occurrence basis.” **(b)** The Supplier shall also furnish the City (as and when requested) with a certified copy of a Standard Automobile Liability Insurance Policy on all owned and leased vehicles with inclusive limits of not less than Two Million Dollars (\$2,000,000) per occurrence for bodily injury, including accident benefits as may be required by applicable laws. Five million (\$5,000,000) per occurrence is required if Heavy Equipment is to be used to complete the services. For clarity, “Heavy Equipment” refers to equipment commonly used for construction work (e.g., bulldozers, backhoes, compactors, dump trucks, excavators, graders, loaders, pavers, rollers, trench diggers, tractors, etc.). **(c)** All policies listed above: (i) shall apply as primary insurance and not excess to any other insurance available to the City; and (ii) shall remain in force until final acceptance of the work described herein by the City, unless provided otherwise herein. **(d)** At the expiry date of the policies, the Supplier shall provide original signed Certificates or electronic equivalents thereof, evidencing renewals or replacements to the City prior to the expiration date of the original policies, without notice or request by the City.

Consultant – in addition to above a certificate of these policies originally signed by the insurer or an authorized agent of the insurer must be delivered to the City prior to

City of Niagara Falls Purchase Order Terms & Conditions

the commencement of the Consultant's Services every time they are renewed: Professional Liability (errors and omissions coverage) insurance for acts, errors and omissions arising from the performance of Services by the Consultant: (i) in the amount of not less than Two Million Dollars (\$2,000,000) per claim, and Four Million Dollars (\$4,000,000) in the aggregate; (ii) which policy SIR/deductible shall not exceed \$100,000 per claim; (iii) shall not be construed as a limit of liability of the Consultant in the performance by the Consultant of the Services; (iv) notwithstanding anything to the contrary contained in the Terms and Conditions, kept in full force and effect for a period of time ending no sooner than three years after the termination or expiry of the PO, as the case may be ; (v) if the policy is cancelled or not renewed for any reason, the Consultant must provide ninety (90) days written notice to the City; and (vi) the City maintains the discretion to request that the Consultant obtain and maintain an Extended Reporting Endorsement at the Consultant's sole expense; (iv) states The Corporation of the City of Niagara Falls as an additional insured; (v) has provisions for cross-liability and severability of interests as between the Consultant and the City, broad form contractual liability, owner's/contractor's protective liability, contingent employer's liability, employers liability and personal injury liability.

27. Workplace Safety and Insurance Board (WSIB). If the Supplier will be providing all or a portion of the Deliverables at a project site, the Supplier shall provide **(a)** a valid, current Clearance Certificate declaring that the selected bidder is registered with WSIB, and has an account in good standing, or **(b)** a Letter of Good Standing issued by WSIB.

If WSIB coverage is not required by law to be carried by the Supplier, the Supplier shall provide one of the following (as the case may be): **(a)** An Exemption Letter from WSIB, satisfactory to the City's Solicitor, **(b)** An Independent Operators Status Certificate issued by WSIB, or **(c)** Such further and other evidence as may be satisfactory to the City's Solicitor. Required documentation must be delivered to the City prior to work commencing and as and when requested by the City.

28. Safety Data Sheets (SDS). SDS as required by the Workplace Hazardous Material Information System (WHMIS) legislation are to be sent to the Ship To address specified in the PO.

29. Canadian Customs Regulations. Foreign invoices must be furnished with one (1) clear copy, certified by the Supplier in accordance with Canadian Customs Regulations and forwarded to Thompson Ahern International. One (1) clear copy of certified Canada Customs Invoices, USMCA Certificates of Origin are required with foreign shipments.

City of Niagara Falls Purchase Order Terms & Conditions

- 30. Liens.** In the event that any claim for lien is served and/or registered against the lands in which the Deliverables are being provided by or through a subcontractor of the Supplier and provided the City has paid all amounts properly due under the Contract, the Supplier shall, at its own expense, post the security necessary to vacate or discharge such lien, as the case may be. In the event that a lien action is commenced, and a statement of claim is issued and served, the Supplier shall take all reasonable steps to remove the City from the action and shall indemnify and hold the City harmless in such action, except where the statement of claim makes substantive claims against the City beyond the recovery of holdback under the *Construction Act*. In the event that the Supplier fails to conform with the requirements, above, the City may fulfill those requirements (without notice to the Supplier) and set off and deduct from any amount owing to the Supplier, all costs and associated expenses, including the costs of posting security and all reasonable legal fees and disbursements associated with discharging or vacating the claim for lien or certificate of action and defending the action.
- 31. Dispute Resolution.** The parties shall make all reasonable efforts to resolve a dispute by amicable negotiations and agree to provide, on a without prejudice basis, full and timely disclosure of relevant facts, information and documents to facilitate these negotiations.
- 32. No Assignment.** Neither party may assign their respective rights and obligations without first obtaining the written consent of other party, provided however that either party may assign the services to an affiliate or the successor of its business upon prior written notice to the other party.
- 33. Miscellaneous.** (a) These Terms and Conditions shall enure to the benefit of and be binding upon the parties and their respective successors (including any successor by reason of amalgamation, merger or statutory arrangement of any party) and permitted assigns. (b) Any notice shall be given in writing and delivered personally, by email, or prepaid courier addressed to the respective address provided in the PO. (c) The Supplier is an independent Supplier to the City. Nothing contained in these Terms and Conditions shall be deemed or construed by the parties nor by any third party as creating the relationship of principal and agent, partnership, employee and employer or joint venture between the parties. (d) These Terms and Conditions shall be governed by and constituted in accordance with the laws in force in the Province of Ontario, excluding any conflict of laws principles. (e) The PO, these Terms and Conditions, and any appendices attached thereto constitutes the entire Contract and understanding of the parties and supersedes any and all prior understandings,



City of Niagara Falls Purchase Order Terms & Conditions

discussions, negotiations, commitments, representations, warranties, and Contracts, written or oral, express or implied between them.