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**GEORGINA**

# **THE CORPORATION OF THE TOWN OF GEORGINA STANDARD TERMS AND CONDITIONS**

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The Standard Terms and Conditions contained herein are applicable to all Corporation of the Town of Georgina (*Town*) *bid solicitations* and shall apply to, and form part of the *Town's bid call documents* and apply in like force to any resultant *contracts* or *purchase orders* for the *acquisition of deliverables*. By offering a *bid submission* in response to a *bid solicitation*, *respondents* shall accept the standard terms and conditions as written. Italicized words are defined in the Definitions document. In the event that a word is not italicized but is defined, it shall have the same meaning as though it was italicized.

#### 1. Bid Submission Method

The *bid call document* shall state the single method for offering a *bid submission* to the *Town*, as follows:

1. *Bid solicitations* identified as ELECTRONIC *BID SUBMISSIONS ONLY*, *respondents* shall offer their *bid submission* electronically through the *Town's* bidding system; or
2. *Bid solicitations* identified as HARD COPY *BID SUBMISSIONS ONLY*, *respondents* shall offer a hard (paper) copy of their *bid submission* as stated in the *bid call document*.

#### 2. English Language

1. All *bid submissions* shall be offered in the English language only;
2. The *contractor* and their personnel shall be able to communicate effectively in the English language; and
3. For *construction* projects, all site supervisors shall be able to communicate effectively in the English language.

#### 3. Duplicate Vendor Account Bid Submissions

1. *Respondents* shall offer all *bid submissions* (including green or alternative bids) related to a *bid solicitation* from the same registered *vendor* account in the *Town's* bidding system;
2. If a *bid submission* is received from two *vendor* accounts related to the same *respondent*, then the *Town* shall only consider the latest *bid submission*;
3. Any previous *bid submissions* shall be superseded by the last *bid submission* and shall not be reviewed; and
4. It is the *respondent's* sole responsibility to ensure that duplicate registered *vendor* accounts are not created or used in an inappropriate or incorrect manner.

#### 4. Procurement Policy

1. *Bid submissions* shall be called, received, evaluated, accepted and processed in accordance with the *Procurement Policy* 2018-0051, as amended; and
2. By offering a *bid submission*, the *respondent* agrees to be bound by the terms and

conditions of the *Procurement Policy* 2018-0051, as amended, as fully as if they were incorporated herein.

#### 5. Respondent's Statement of Understanding

1. By offering a *bid submission*, it is understood and accepted by each *respondent* that they have carefully examined all of the *bid call documents* and have carefully considered the *work* to be performed under the *contract*, if *awarded*;
2. The *respondent* offers to furnish all labour, machinery, tools, apparatus and other means of implementation, and any other materials to complete the *work* in strict accordance with the *bid call documents* for the prices set forth in their *bid submission* (if *awarded*); and
3. By offering a *bid submission*, *respondent* confirms that they have had the opportunity to obtain independent legal advice in connection with the *respondent's* review of the *bid call documents* and their *bid submission* preparation, and has read this *bid call document* in its entirety, understands its contents and is offering its *bid submission* freely and voluntarily (without duress or undue influence from any party) with full capacity and authority to do so.

#### 6. Respondents to Bear Their Own Costs

1. The *respondent* shall bear all costs associated with, or incurred in the preparation and presentation of their *bid submission*, including, if applicable, costs incurred for interviews, presentations or demonstrations (if applicable).

#### 7. Enquiries

1. All requests for clarification and questions regarding the *bid call document* shall be submitted in writing as instructed in the *bid call document* prior to the stated deadline for submitting questions;
2. All questions or clarifications shall be specific to the *bid call document* and shall include references to a specific section or schedule and item number;
3. The *Town* cannot guarantee that the *procurement representative* shall answer clarifications or questions received beyond the question deadline;
4. Requests shall be answered by the *procurement representative* or forwarded to the appropriate technical contact within the *Town* for reply;
5. Dependent on their nature, comments or answers shall be returned via email from the *procurement representative* or through an *addendum* to the *bid call document* if the information is applicable to all *respondents*, in the opinion of the *Town*;
6. Verbal clarifications shall not change any of the terms or conditions of the *bid call documents*; and
7. *Respondents* shall only rely on information provided by the *Town* in writing.

## 8. Respondent Teams (Joint Ventures) (if applicable)

1. In the event that there is more than one legal entity offering a combined *bid submission*, the lead *respondent* shall be clearly identified;
2. The *Town* shall *contract* with only the identified lead *respondent* (herein referred to as the “*respondent*”) who shall be completely responsible for the full performance of the *contract*, and who shall act at all times as the primary contact for the *Town*;
3. The *respondent* shall arrange the business relationships between the *respondent* and its team members and any resulting conflicts shall be resolved without the involvement of the *Town*;
4. The *respondent* agrees that no member of the *respondent* team shall be substituted for any other individual or firm without the express written consent of the *Town*;
5. Payments pursuant to the *contract* shall be made directly to the *respondent* for distribution to the *respondent’s* team; and
6. The *respondent* shall save the *Town* harmless from all costs, damages, judgements, claims, demands, suits or other proceedings brought by any member of the *respondent* team in connection with the distribution of such fees.

## 9. Blackout Period

1. A communication *blackout period* shall commence when the *bid call document* is issued and ends when the *contract* is *awarded* by the *Town*;
2. During the *blackout period*, *respondents* shall conduct all communication about the project only with the *procurement representative* stated in the *bid call document*;
3. Any communication initiated by a *respondent* to elected officials or *employees* of the *Town* other than to the *procurement representative* during the *blackout period*, may be grounds for disqualifying the offending *respondent* from consideration for *contract award*;
4. During the *blackout period*, *respondent* may submit questions, as described in the *bid call document*;
5. The *procurement representative* may issue a written *addendum* to provide clarification or modification to the *bid call document*;
6. The *addendum* shall be published in the *Town’s* bidding system; and
7. *Addenda* shall form an integral part of the *bid call document*, shall be read in conjunction therewith, and will be considered as part of the *respondent’s submission*.

## 10. Lobbying Prohibited

1. The *Town* shall be entitled to reject a *bid submission* if any director, officer, personnel, agent or other representative of a *respondent*, including any other parties that may be involved in a joint venture, consortium or similar business relationship with the *respondent*

makes, before, during or after the *blackout period*, any representation or solicitation to any elected official, *employee* or agent of the *Town* including project *consultants*, or to the media, with respect to the *respondent's bid submission*; and

2. This requirement does not extend to any public deputations.

#### 11. Litigation, Probation & Suspension

1. The *Town* shall reject any *bid submission* from any *respondent* or any other party (including any related or affiliated entities and any principal thereof) who is in unresolved dispute with the *Town* or who is currently serving a suspension period; and
2. The *Town* shall retain the right to reject *bid submissions* that may have been received and/or *awarded* by the *Town*, notwithstanding efforts by the *Town* to screen the acceptance of *bid submissions* from parties engaged in unresolved dispute with the *Town* or serving a suspension period, once the *Town* becomes aware of such unresolved litigation or suspension period.

#### 12. Gifts and Donations

1. *Respondents and contractors* shall ensure that there shall be no gifts, gratuities, discounts, special services or personal benefits provided or offered to any *employee* or *consultant* of the *Town*, prior to, during or upon completion of the *contract*, from the *respondent* or *contractor* or any of its personnel or representatives in connection with the *contract*;
2. A *respondent* or *contractor* shall report to the *Manager of Procurement Services* any attempt by any *employee* or *consultant* of the *Town* to obtain any such or similar favour or personal benefit;
3. Any material failure on the part of a *respondent* or *contractor* to comply with this provision may be grounds for disqualification from a *bid solicitation* or for termination of *contract* if an *award* has already been made;
4. If any prospective *contractor* or any of its agents give or offer any gratuity or attempt to bribe any *employee* of the *Town*, or to commit fraud, the *Town* shall be at liberty to:
  1. Reject the *bid submission* of such prospective *contractor*; or
  2. Terminate the *contract* of such *contractor*.
5. If either the rejection of the *bid submission* or the termination of a *contract* pursuant to this provision results in an increased cost to the *Town* in having the *work* completed, the *Town* shall be entitled to rely upon the *bid bond* or *performance bond* (where applicable) to recover the increased costs incurred by the *Town* as compensation and where the amount of the *bid bond* or the *performance bond* (as applicable) is insufficient to compensate the *Town*, the *contractor* shall indemnify the *Town* for the full amount of the increased costs incurred by the *Town*; and
6. If there are no *bonds* in place, in addition to all other rights in the *bid call document* or otherwise available at law or in equity, the *Town* shall deduct the increased costs from future payments, or invoice the *contractor* to recover the costs.



### 13. Errors and Omissions

1. The *Town* shall not be held liable for any errors or omissions in any part of its *bid solicitation*;
2. While the *Town* has used considerable effort to ensure an accurate representation of information in its *bid solicitation*, the information contained in the *bid call document* is supplied solely as a guideline for the *respondent*;
3. The information is not guaranteed or warranted to be accurate by the *Town*, nor is it necessarily comprehensive or exhaustive;
4. Nothing in the *bid call document* is intended to relieve the *respondent* from forming their own opinions and conclusions with respect to the matters addressed in the *bid call document*; and
5. If a *respondent* needs to address any discrepancies, errors and/or omissions in the *bid call document* or if they are in doubt as to any part thereof, they shall submit questions in writing as instructed in the *bid call document*.

### 14. Examination of the Place of the Work

1. Notwithstanding any drawings or specifications provided in the *bid call documents*, *respondents* shall satisfy themselves, by personal visitation and examination of each site for the *work*, with respect to the existing conditions which may be encountered on or adjacent to the site, including without limitation, all underground/overhead utilities locations, surface & sub-surface conditions, existing structures on or adjacent to the sites, access routes and other conditions which may affect performance of the *work*;
2. Access to the place of the *work* shall be provided during the site meeting (if applicable);
3. By offering a *bid submission*, the *respondent* acknowledges and agrees that they have satisfied themselves as to all the provisions of the *bid call documents* and of all the conditions which may be encountered at the site or any other matter which may affect performance of the *work* and no claims shall be made by the *contractor*, that they were uninformed as to any of the conditions affecting the site or the provisions or conditions intended to be covered by the *contract*;
4. *Respondent* shall accept sole responsibility for any error or neglect on their part in respect to the foregoing;
5. No claims shall be accepted by the *Town* for any additional labour, equipment or material cost that was not included in the *bid submission* and may be required for the proper execution and completion of the *work*, due to any failure to comply with the above;
6. *Respondent* shall not be entitled to claim at any time after the offering of its *bid submission* that there was any misunderstanding of the terms and conditions relating to site conditions; and
7. The *Town* shall not be responsible for any misunderstandings on the part of the *respondent*.



## 15. Estimated Quantities

1. The quantities listed in the *bid call document* are estimates and do not constitute a firm commitment;
2. The *Town* reserves the right to increase, decrease or delete entirely the estimated quantities shown in the *bid call document* and shall adjust the *contract* amount accordingly based on the unit price or lump sum price, whichever is applicable;
3. The *Town* shall only pay the *contractor* for the actual quantity used, or actual *work* conducted based on the unit price or extended price, whichever is applicable; and
4. The *contractor* acknowledges that this may result in the *contract* payment being less than their total *bid submission* price for the *contract*.

## 16. Contract Rates

1. *Bid submission* prices offered by the *respondent* shall be all-inclusive and shall include all labour and material costs, all travel and carriage costs, all insurance costs, all costs of delivery, all costs of installation and set-up, including any pre-delivery inspection charges, and all other overhead, including any fees or other charges required by law;
2. There shall be no other charges payable by the *Town* under the *contract* to the *contractor* other than the rates established under the *contract*; and
3. *Bid submission* prices offered by the *respondent* shall be firm for the term of *contract* including any *renewal term(s)*.

## 17. Taxes

1. *Respondent's bid submission* prices (including unit pricing) shall be exclusive of all applicable taxes;
2. In addition to the H.S.T. Registration number, the *contractor* shall state the amount of H.S.T. separately on all invoices; and
3. Where a change in Canadian Federal or Provincial Taxes occurs after the *bid submission deadline* for the *contract*, which change could not have been anticipated at the time of making the *bid submission*, the *Town* shall increase or decrease *contract* payments to account for the exact amount of the change involved and the *contract* shall be deemed to be amended accordingly

## 18. Provisional Items

1. Items listed in the *bid call document* and price schedules as "Provisional Items", may or may not be required for completion of the *work* called for under the *contract*;
2. The *Town* shall determine the necessity and/or actual quantities of these items as the *work* progresses;

3. If any of these items be required, the *contractor* shall be compensated based on the unit prices(s) submitted;
4. In the event that any or all of these items are found not to be required, the *contractor* shall not claim extra payment for loss of anticipated profits;
5. The *contractor* may be required to supply services to additional locations, or add additional quantities of item(s), if required, by the *Town*;
6. Acceptance of additional service(s) or item(s) may be added with the understanding that the rates and discounts offered by the *contractor* in their *bid submission* would apply; and
7. The *respondent* acknowledges and accepts, by way of offering a *bid submission*, that the *Town's award* of *contract* may be based on the sub-total *acquisition value*, including any provisional prices. The *Town* may, in its sole and absolute discretion, include or delete any or all provisional price(s) in the final *contract* price.

#### 19. Subcontractors and Subconsultants

1. The *respondent* shall ensure that all *subcontractors* or *subconsultants* selected and proposed have experience in the subcontracted *work* described and that they shall execute their *work* with competence and according the required time frame;
2. The *respondent* shall ensure that all *subcontractors* or *subconsultants* included in their *bid submission* shall be actively engaged in *work* of the type described and shall be able to show proof upon request by the *Town* of previous *work* of similar nature performed by them;
3. The *respondent* shall ensure that all *subcontractors* or *subconsultants* accept all of the terms and conditions of this *contract* as far as applicable to those parts of the *deliverables* provided by the *subcontractor* or *subconsultant*;
4. Nothing contained in this *contract* shall create a contractual relationship between the *Town* and the *subcontractor* or *subconsultant*;
5. The *respondent* shall not show "own forces" in their table of *subcontractors* or *subconsultants*, except where the *respondent's* intent is to employ the *respondent's* own qualified on-staff personnel to perform such *work*;
6. The *respondent* shall not indicate "TBD" (To Be Determined) or "TBA" (To Be Announced) or similar wording and shall not indicate multiple choices of *subcontractor* or *subconsultant* names for any *subcontractor* or *subconsultant* category in their table of *subcontractors* or *subconsultants*;
7. Only one (1) *subcontractor* or *subconsultant* name shall be indicated for each *subcontractor* or *subconsultant* category;
8. *Respondent* shall list in their table of *subcontractors* or *subconsultants*, all of the *subcontractors* or *subconsultants* who shall perform *work* under the *contract*;
9. The combined total value of *work* assigned to *subcontractors* or *subconsultants* shall not exceed fifty percent (50%) of the total *contract* value. For clarity, the *contractor* shall

conduct no less than fifty percent (50%) of the *work* using “own forces”;

10. No names, either of *subcontractors*, *subconsultants* or “own forces” may be changed after submitting the table of *subcontractors* or *subconsultants* unless prior written approval is received from the *Town*;
11. To change a list of *subcontractors* or *subconsultants*, a *respondent* or *contractor* shall submit a written request to the *Town*, with a full explanation of the reasons for the requested change with no consequences to the *Town*;
12. The *Town* reserves the right to reject a proposed *subcontractor* or *subconsultant* for reasonable cause; and
13. Upon such rejection, the *bidder* shall be required to propose an alternate *subcontractor* or *subconsultant* without a resulting change to the *bid submission price*.

## 20. Delivery Schedule

1. Time is of the essence for the delivery or provision of the *deliverables* requested herein;
2. The delivery date shall be adhered to, as the *Town* is relying on that date for their part of its operations;
3. Failure to comply with the time schedule in providing the *deliverables* may result in the *Town* taking further action to obtain an alternative supply, in which event, any additional cost incurred shall be charged to the *contractor*, and
4. If the *contractor* does not pay such cost, it shall be deducted from the balance of the *bid submission price* owing.

## 21. Completion Date

1. The *contract* requirements shall be completed within the number of working *days* or by the stated completion date indicated in the *bid call document* and/or within the *contract*;
2. If the time limit is not sufficient to permit completion of the *work* by the *contractor* working a reasonable number of hours each day or week on a single shift basis, it is expected that additional shifts shall be required throughout the life of the *contract* to the extent deemed necessary by the *contractor* and the *Town* to ensure the *work* shall be completed within the time limit specified; and
3. Any additional costs occasioned by compliance with these provisions shall be considered included in the *bid submission price* for the various items of *work* and no additional compensation shall be allowed unless otherwise agreed in the *contract*.

## 22. Conflict of Interest

1. In order to protect the integrity of the *procurement process*, *respondents* are advised that the *Town* may reject a *bid submission* in the following circumstances:
  1. If the *respondent*, any of its *subcontractors* or *subconsultants*, any of their respective

personnel or former personnel was involved in any manner in the preparation of this *bid call document*; and

2. If the *respondent* any of its *subcontractors* or subconsultants, any of their respective personnel or former personnel had access to information related to this *bid call document* that was not available to other *respondents* and that would, in the Town's opinion, give the *respondent* an unfair advantage.
2. The experience acquired by a *respondent* who is providing or has previously provided the *deliverables* described in this *bid call document* (or similar *deliverables*) shall not, in itself, be considered by the *Town* as conferring an unfair advantage or creating a *conflict of interest*. This *respondent* remains, however, subject to the criteria established above;
3. By offering a *bid submission*, the *respondent* represents that (except as may be disclosed in the bidding system) it does not consider itself to be in *conflict of interest* nor to have an unfair advantage;
4. The *respondent* acknowledges that it is within the *Town's* sole discretion to determine whether a *conflict of interest* or unfair advantage exists;
5. The *Town* may, in its sole discretion waive any and all actual, potential, or perceived *conflicts of interest*, on such terms and conditions the *Town*, in its sole discretion, considers to be required to satisfy itself that any actual, potential or perceived *conflict of interest* has been appropriately managed, mitigated and minimized;
  1. In this regard, the *Town* may require the *respondent* to implement measures or take other steps to manage or mitigate the impact of any actual, potential or perceived *conflict of interest*.
6. By offering a *bid submission*, the *respondent* releases and forever discharges the *Town* from any and all liability related to any determination the *Town* may make regarding *conflicts of interest*, including any disqualification, prohibition, rejection or *contract* termination which may result therefrom; and
7. In addition to all other rights in the *bid call document* or otherwise available at law or in equity, the *Town* may, in its discretion, immediately disqualify a *bid submission* or may terminate any *contract* entered into in connection with or resulting from the *bid solicitation*, without liability, penalty or cost, upon giving notice to the *respondent* or any of their respective representatives fails to disclose or has failed to disclose any *conflict of interest*.

### 23. Limitation of Future Contracting

1. If a *contractor* under the terms of this *contract*, or through the performance of tasks pursuant to this *contract*, is required to develop specifications or statements of *work* that are to be incorporated into a future *bid solicitation*, the *contractor* shall be ineligible to perform the *work* described in that *bid solicitation* as a prime *consultant* or first-tier *subconsultant* under an ensuing *Town contract*. (For clarity, the *contractor* is prohibited from participating in any aspect of the ensuing *contract* as described above.); and
2. This restriction shall remain in effect for a period of two (2) years from the completion date of this *contract* as this shall allow sufficient time to pass to avoid unfair competitive

advantage, potential bias or *conflict of interest*.

#### 24. Acceptance Period

1. All *bid submissions* shall remain valid and open for acceptance by the *Town* for a period of ninety (90) calendar days, following the *bid submission* deadline; and
2. If the *Town* requests an extension of this acceptance period, the extension shall apply to, in like force, the *respondent's* entire *bid submission*, including but not limited to, pricing, insurance, bonding and other *bid submission* requirements.

#### 25. Unofficial Bid Submission Results

##### 1. PAPER BIDDING ONLY (NOT ELECTRONIC BIDDING):

1. Where the *Town* has requested paper *bid submissions* for a *quick bid request for quotation (QBFRQ)*, a *request for quotation (RFQ)* or a *request for tender (RFT)* only, a public *bid submission* opening may be held at the discretion of the *Town*;
2. In the event a public opening is held, the *Town* shall read out the names of the *respondents* (whose *bid submissions* were received by the *Town* prior to the *bid submission* deadline) and the unverified sub-total *acquisition value* (excluding the Harmonized Sales Tax (H.S.T.));
3. If part *bid submissions* are acceptable, as stated in the *bid call document*, the unverified sub-total of each part(s) *bid submission* shall be read out;
4. In addition, if a percentage (%) annual increase is requested, the percentage increase stated, shall be read out;
5. The *bid submission* time deadline shall be determined by the clock in the *Procurement Services* office; and
6. The *respondent's* unverified sub-total *acquisition value* or if a part *bid submission* is acceptable, the unverified sub-total of each part(s) *bid submission* may be posted on the *Town's* bidding system.

##### 2. ELECTRONIC BIDDING ONLY

1. Where the *Town* has requested electronic *bid submissions* only, a public *bid submission* opening shall not be held;
2. All *bid submissions* are unofficial until they have been reviewed by the *Town* for compliance, therefore, the *bid submission* with the lowest *bid submission* price listed on the bidding system may not be the lowest compliant *bid submission* for the purpose of awarding a *contract*;
3. The *Town* may post the names of the *respondents*, after verification of compliancy, on the *Town's* bidding system, (whose *bid submissions* were received by the bidding system website, prior to the *bid submission* deadline) and the unverified sub-total *acquisition value* (exclusive of taxes) – the Harmonized Sales Tax (H.S.T.) is

additional;

4. If part *bid submissions* are acceptable, as stated in the *bid call document*, the unverified sub-total of each part(s) *bid submission* shall be posted, after verification of compliancy;
5. The *bid submission* deadline shall be determined by the *Town's* bidding system web clock;
6. The unverified *bid submission* prices are subject to review, verification, calculation and adjustment by the *Town* and if necessary, consideration by the *Town's bid review panel*, in accordance with the terms and conditions of the *bid call document* and the *Town's procurement policy*; and
7. For *quick bid request for proposals (QBRFP)* or *request for proposal (RFP)*, only the names of *respondents* submitting *proposals* shall be released publicly.

## 26. Checking of Bids

1. *Bid submissions* shall be opened and checked by the *procurement representative* and *consultant* (if applicable) to ensure that:
  1. The required *surety* requirements (if required) have been satisfied as specified in the *bid call documents*;
  2. *Bid submissions* comply with the *bid submission* requirements of the *bid call documents*, and that all items as specified have been *bid* on and all schedules and tables are completed, unless part *bid submission* are permitted under the *bid solicitation*;
  3. All mathematical extension calculations are correct.
    1. Where there is an obvious error in the extended price, the unit price stipulated shall govern and the extended price shall be re-calculated using the unit price, along with the estimate quantity; and
    2. Where there is an obvious calculation error in the addition of individual lump sum prices into a sub-total price, the *Town* may make the appropriate mathematical correction to the sub-total price so that the calculation is correct.
  4. The *Town* reserves the right to seek clarification from *respondent* about any aspect of their *bid submission*; and
  5. The *Town* may request information from third parties in order to verify, clarify or supplement the information offered in the *respondent's bid submission*, including but not limited to clarification with respect to whether the *bid submission* meets the mandatory technical requirements set out in the *bid call document*;
    1. The *Town* may revisit, re-evaluate and rescore the *respondent's bid submission* or ranking on the basis of any such information; and



2. Any *bid irregularities* or *proposal irregularities* shall be dealt with in the accordance with the applicable schedule(s) of the *Town's procurement policy*.

## 27. Unbalanced Bid Submission

1. For the purpose of this provision, "*unbalanced*" means the *bid submission* price, whether it be the sub-total *acquisition value* or the price for an item, part, section or division, does not reflect reasonable, and anticipated costs for the required labour, equipment and materials, plus a reasonable proportionate share of the *respondent's* anticipated overhead and profit;
2. If the *Town* receives a *bid submission* from a *bidder* with a price that is abnormally lower than the prices in other *bid submissions* or is otherwise determined by the *Town* to be "*unbalanced*", the *Town* may verify with the *respondent* that the *respondent* satisfies the conditions for participation and the *respondent* is capable of fulfilling the terms of the *contract* for the *bid submission* price; and
3. If the *Town* determines that the *respondent* is not capable of fulfilling the terms of the *contract* for the *bid submission* price, the *bid submission* shall be deemed non-compliant and rejected.

## 28. Misleading or False Information

1. It shall be clearly understood that if there is any evidence of misleading or false information having been submitted by the *respondent* during the *procurement process*, the *Town* may, in its sole discretion, disqualify the *bid submission* or terminate any resulting *contract*.

## 29. Inspection and Testing

1. The *Town* reserves the right to inspect and have a demonstration of any/all deliverables, which may be offered, or of the *respondent's* premises/equipment, prior to *award* and/or at any point during the *contract*;
2. The *Town* or the *Town's consultant* (if applicable) shall carry out the inspection of all proposed *deliverables* to determine whether they meet the requirements of the *bid call document* and/or *contract*, as applicable;
3. If any *deliverables* or workmanship fails, in any way, to meet the terms of the *bid call document* and/or *contract*, the *Town*, shall notify the *contractor* and the *contractor* shall take immediate steps for corrective actions, at its own expense and within the periods specified by the *Town*;
4. If the *contractor* fails to remedy any part of the rejected *deliverables* or workmanship, the *Town* may make alternative arrangements for rectification and any expense(s) incurred by the *Town* shall be paid by the *contractor* within ten (10) *business days'* following receipt of an invoice or the costs shall be deducted from any payment owed the *contractor*, and
5. All costs associated with the inspection or testing of any *deliverables* or workmanship that does not meet the *Town's* specification shall be charged to the *contractor*.



### 30. No Substitutions

1. Where materials are specified in the *bid call document*, the *contractor* shall not ship or use any alternative materials without the prior written approval by the *Town*; and
2. Unauthorized substitutions shall result in the *deliverable* being returned to the *contractor* at their expense.

### 31. F.O.B. Destination

1. All shipments of *deliverables* shall be FOB destination, freight prepaid and allowed;
2. The F.O.B. repaid destination point shall be the destination as indicated in the *bid call document* or on the *purchase order*;
3. For greater certainty, the *contractor* shall be responsible for bearing the cost of shipping and for all liability related to the *deliverables* until they are delivered to, and accepted, after inspection, by the *Town* at the *Town's* facility or if stated, the actual facility room or department location indicated in the *bid call document* or on the *purchase order*;
4. Once the *contract* is awarded, the *Town* may provide a release schedule to the *contractor*, advising when *deliverables* are required for instances where there are multiple delivery requirements; and
5. Note: There is no delivery dock at the Georgina Civic Centre, 26557 Civic Centre Road, Keswick, Ontario L4P 3G1.

### 32. Non-Resident Contractor

1. If the *contractor* is a non-resident of Ontario or Canada, the *contractor* shall:
  1. Obtain from the Retail Sales Tax Branch a certificate showing that the *contractor* has registered with the Retail Sales Tax Branch and shall submit such certificate to the *Town* at the same time that it furnishes all other required *contract award* documentation;
  2. Not commence the *work* or order any materials or equipment for the *contract* until it has registered with the Retail Sales Tax Branch; and
  3. Obtain all necessary approvals, consents, permits, licenses, certificates (including insurance), bonding, registrations and other authorizations required by law (as applicable), prior to execution of the *contract*.

### 33. Non-Resident Subcontractor or Subconsultant

1. The *contractor* shall ensure that all *subcontractors* or *subconsultants* with whom it proposes to use for carrying out any of the *work* and who are non-residents of Ontario or Canada have:
  1. Registered with and have complied with the requirements of the Retail Sales Tax Branch before they commence any such *work*; and

2. Obtained all necessary approvals, consents, permits, licenses, certificates (including insurance), bonding, registrations and other authorizations required by law (as applicable), prior to execution of the subcontract.

#### 34. Rights of the Town

##### 1. The *Town* may:

1. *Award a contract* in whole or in part;
2. Accept or reject any regular, irregular, unbalanced, informal or non-compliant *bid submission* at its unencumbered discretion;
3. Reject the lowest *bid submission*;
4. Reject any or all *bid submission(s)*;
5. Reject part of any *bid submission*;
6. Cancel the *bid solicitation* in whole or in part;
7. Disqualify a *respondent* that has failed to enter into, or complete previous *contracts*;
8. Make changes to the content of the *contract* to address unforeseen circumstances which may have arisen during the *bid solicitation* period, including but not limited to health, environmental, social or emergency events; or
9. Contact any one or more *respondents* to request clarification or further information without any obligation to contact other *respondents* and such additional clarification shall be provided by the *respondent* to the *Town*;
  1. The *Town* may, but is not obligated to amend or revise the *bid submission* based on the clarification or further information; and requests for information shall not be construed as acceptance of a *bid submission*.

##### 2. The *Town* reserves the right, in its sole and absolute discretion that:

1. In the event that only one (1) compliant *bid submission* is received, the *Town* may at its election, proceed to:
  1. Accept the *bid submission*;
  2. Reject the *bid submission*; or
  3. Enter into *negotiations* with the *respondent*.
2. Incomplete, conditional or qualified *bid submissions* may be declared non-compliant and disqualified; and
3. In the event that the *Town* receives no compliant *bid submissions*, the *Town* may enter

into *negotiations* with any one or more of the *respondents* that offered a non-compliant *bid submission*.

### 35. Negotiations

1. The *Town* reserves the right to enter into *negotiations* with a *respondent* which offered a *bid submission* which in the *Town's* sole discretion, provides the *best value* to the *Town* based on the criteria described in the *bid call documents* and the following:
  1. Information provided in the *bid submission* itself;
  2. Information provided in response to enquiries of credit and industry references;
  3. Information received in response to enquiries made by the *Town* in relation to the reputation, reliability, experience and capabilities of the *respondent*;
  4. The manner in which the *respondent* provides *deliverables* to others or has previously provided *services* to the *Town*;
  5. The experience and qualifications of the *respondent's* personnel;
  6. The compliance of the *respondent* with the *Town's* requirements and specifications; and
  7. Innovative approaches proposed by the *respondent* in the *bid submission*.
2. If an *acquisition* agreement cannot be negotiated within thirty (30) days of notification to the selected *respondent*, the *Town* may, in its sole discretion, terminate *negotiations* with that *respondent*; and
3. The *Town* may either *negotiate* with the next qualified *respondent* or *respondents* until a *contract* is *awarded* or choose to terminate the *procurement process* and not enter into a *contract* with any of the *respondents*.

### 36. Capability of Bidder

1. The *respondent* shall, if requested by the *Town*, immediately submit evidence of experience, ability, capacity, financial resources, etc., if deemed necessary by the *Town* for the performance of the *contract*; and
2. The *Town* reserves the right to investigate a *respondent's* claim or background at any time and in any manner deemed appropriate by the *Town* and shall not be required to disclose the information obtained or the source.

### 37. Availability of Funds

1. All *contract awards* are subject to the approval of the *Director* of the *requisitioning department*, *Director of Corporate Services & Treasurer*, *Chief Administrative Officer (CAO)*, and/or *Council* (as applicable, in accordance with the *procurement policy*) and the availability of funds;
2. In the event the approved budget value is disclosed in a *bid call document*, the *respondent*

shall interpret this value to be the upset limit above which the *Town* may not *award a contract* and to offer a *bid submission* of a higher value may result in the *bid submission* not being eligible for the *award of contract*;

3. In the event that the sub-total *acquisition value* amount offered from the selected *respondent* exceeds the *Town's* approved budget for the *bid solicitation*, the *Town* reserves the right to:
  1. *Award* part of the *contract* to the selected *respondent(s)*, where in the opinion of the *Town* it is possible to do so;
  2. *Negotiate*, where it is in the *best interest* of the *Town*, in the opinion of the *Manager of Procurement Services*;
  3. Reject the *bid submission* and re-issue the *bid solicitation*; or
  4. Cancel the *bid solicitation* in its entirety.

### 38. Contract Award

1. The *Town* shall issue a *purchase order* to the successful *respondent(s)* for the *deliverables* offered and no *contract* shall be formed until the *contractor* is in receipt of the *purchase order* **AND** has submitted the required documentation referenced below **AND** all documentation has been approved by the *Town*;
2. The successful *respondent(s)* shall be required to provide as an upload into the *Town's* bidding system, at a minimum, the following documentation within ten (10) *business days'* of notification of *award*:
  1. Certificates of insurance naming the Corporation of the Town of Georgina as an additional insured (where applicable) and **shall reference the contract number**;
  2. WSIB clearance certificate;
  3. *Performance bond* and *labour & material payment bond* (if applicable);
  4. Completed Vendor Set-Up Form **with** bank letter or void cheque; and
  5. Other documents as specified in the *bid call document*.
3. Insurance, WSIB and bonding uploads must be valid and adhere to the requirements as specified in the *bid call documents* and if they do not meet the requirements as specified, they shall be rejected until the uploaded documents are in accordance with the requirements as specified in the *bid call documents*; and
4. Failure to provide the required documentation, within the required time and in the required form and manner, may result in the *respondent* being disqualified.

### 39. Governing Law

1. This *contract* and each of the documents contemplated by or delivered under or in connection with this *contract* shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario *contract*; and
2. The parties hereby irrevocably and unconditionally attorn to the jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom.

### 40. Town Representative

1. The *Town* shall assign a representative(s) (*Town Representative*) to act solely on its behalf to deal with all matters involving this *contract*;
2. The *Town Representative*(s) shall be the sole judge of whether the *work* completed is adequate and performed in accordance with the *contract*;
3. The *contractor* shall carry out the *work* in accordance with the decisions and directions of the *Town Representative*; and
4. Non-compliance shall be considered as failing to conform to the *contract* requirements.

### 41. Commencement of Work

1. No *work* shall commence at the beginning of each term of *contract*, and no *deliverables* shall be supplied, without a Corporation of the Town of Georgina *purchase order* issued by the *procurement representative*;
2. Failure to abide by this instruction shall result in non-payment for *work* conducted or goods supplied prior to the issuance of an official *purchase order*; and
3. No *work* shall commence until required certificates of insurance, WSIB clearance certificate, *performance bond*, *labour and material payment bond* and any other required documentation has been submitted to, and approved by the *Town*, as applicable.

### 42. Purchase Order

1. The *contractor* shall be issued a *purchase order* upon *award of contract*;
2. The terms and conditions of the *contract* supersede those of any *purchase order* issued;
3. **The *contractor* shall reference the *purchase order* number on all invoices throughout the term of *contract*; and**
4. **Invoices that do not reference the *purchase order* number shall be returned to the *contractor* without being processed for payment and the *contractor* shall re-issue the corrected invoice.**

#### 43. Non-Exclusive

1. Any *contract* awarded as a result of this *bid solicitation* shall be non-exclusive; and
2. The *Town* may, at its sole discretion, acquire the same or similar *deliverables* from other sources during the term of the *contract*.

#### 44. Contract Extension (Optional Years)

1. Prior to the expiry of the initial term of *contract*, the *Town* may, at their sole discretion, extend the term of *contract* for additional term(s) of renewal as prescribed in the *bid call document* under the same terms and conditions as contained in the *contract*;
2. The *contract* extension process shall be as follows:
  1. *Procurement services* shall send an offer of *contract* extension letter to the *contractor*;
  2. The letter shall indicate the *Town's* intention to extend the *contract* in accordance with the *bid call document* and confirm the *bid submission* pricing of *deliverables* for the renewal term;
  3. The *contractor* shall sign back the letter acknowledging and accepting the *contract* extension free of edits or modifications;
  4. The *contractor* shall submit any required documentation; and
  5. The *Town* shall issue a *purchase order* to the *contractor* for the renewal term.
3. In the event a *contractor* edits or modifies any portion of the *contract* extension letter or accompanying price schedules, the *Town* shall deem this to be non-acceptance of the offer to extend the *contract* and may terminate the *contract* without penalty;
4. In the event a *contractor* fails to return the letter acknowledging and accepting the *contract* extension, the *Town* shall deem this to be non-acceptance of the offer to extend the *contract* and may terminate the *contract* without penalty; and
5. This *contract* extension process shall repeat until all potential *contract* extension renewal terms have been fulfilled.

#### 45. Workplace Safety and Insurance Board

1. The *contractor* shall be in good standing with the Workplace Safety and Insurance Board (WSIB) and shall furnish the *Town* with satisfactory evidence, in the form of a valid WSIB Clearance Certificate:
  1. Within ten (10) days from notification of *award*, and, in any event, prior to the commencement of the *work*;
  2. Prior to release of each and every progress draw (if applicable) or upon expiry of the clearance certificate throughout the term of the *contract*; and

3. At any other time during the *contract* at the *Town's* request.
  2. If the *contractor* is an independent operator, the *contractor* is required to provide the *Town* with a valid Independent Operator's Ruling issued by WSIB:
    1. Within ten (10) days from notification of *award*, and, in any event, prior to the commencement of the *work*;
    2. Prior to release of each and every progress draw (if applicable) or upon expiry of the clearance certificate throughout the term of the *contract*; and
    3. At any other time during the *contract* at the *Town's* request.
  3. In order to obtain an Independent Operator's Ruling, the *contractor* shall download the form that corresponds to the applicable classification from the WSIB site at: <http://www.wsib.on.ca> and submit the completed form to WSIB. The WSIB Independent Operator's Ruling is to be submitted to the *Town* prior to commencement of the *contract*. To ensure that the WSIB Independent Operator's Ruling is obtained within the period specified in the *Town's award* letter, the *contractor* shall ensure that an "Expedited Ruling" is requested. (For more information about obtaining an "Expedited Ruling", please contact your local WSIB office.);
  4. The *Town* recommends that all Independent Operators obtain valid WSIB optional insurance providing for long-term disability coverage;
  5. Failure of the recommended *respondent* to provide the above-noted documentation within the timeframe set out in the *award* notification may result in cancellation of the *award* notice to the *respondent* and the *Town* may proceed to *award* to another *respondent*; and
  6. Failure of the *contractor*, to provide the above documentation, at any time during the *contract*, may result in the termination of the *contract*.
46. Criminal Record Check
1. In the event that the *contractor*, their personnel or contracted *persons* may come in regular and direct contact with, or are in a "position of trust or authority" over children, the disadvantaged, the elderly, or other *persons* as determined by the *Town (participants)*, the *contractor* shall obtain a current Police Vulnerable Sector Check (*PVSC*) or a Vulnerable Sector Screening (*VSS*), as performed by their local police service at their expense;
  2. The *PVSC* or *VSS* shall verify that the *contractor*, their personnel or contracted *persons* are clear of unpardoned criminal offences that could result in unsuitability for inclusion in this *contract*;
  3. The *PVSC* or *VSS* shall make reference to "The Corporation of the Town of Georgina";
  4. By offering a response to a *bid solicitation*, the *contractor* agrees to obtain a current *PVSC* or *VSS* for all personnel or contracted *persons* who shall be working at any *Town* site, prior to the commencement of the *work*;
  5. The *contractor* further agrees that they shall obtain and submit to the *Town*, an offense



declaration from each personnel or contracted *persons* at the commencement of each *contract* term, which shall confirm that no new offenses have occurred since the *PCSC* or *VSS* was completed;

6. The *contractor* also agrees that, in the event that the results from the *PVSC* or *VSS* of any personnel or contracted *person* discloses any offenses which, in the absolute discretion of the *Town*, could cause concern to the *Town* as to the safety and well-being of the *participants*, the *contractor* shall not permit any such personnel or contracted *person* to work at any *Town* site, whether owned or leased, in the provision of the *work* identified in the *contract*; and
7. In the event that the *contractor* uses or permits any such personnel or contracted *person* to provide any of the *work* as identified in the *contract*, the *Town* may, in its sole discretion, treat the *contract* as terminated and may charge back to the *contractor* any costs associated with obtaining replacement *contractor(s)* for the otherwise remaining portion of the term.

#### 47. Emergency Telephone Number

1. Prior to commencing the *work*, the *contractor* shall provide the *Town* with the name(s) and telephone number(s) of their representative(s) who can be contacted on a 24-hour basis in case of an emergency during the term of the *contract*.

#### 48. Non-Assignment

1. The *contractor* may not assign the *awarded contract* as a result of this *bid solicitation*, in whole or part without the prior written consent of the *Town*; and
2. Such written consent, if granted, shall not under any circumstances relieve the *contractor* of their liabilities and obligations under the *contract*, and shall be within the sole and unfettered discretion of the *Town* and may be unreasonably withheld.

#### 49. Contract Alterations and Amendments

1. The *Town* shall have the right at any time to order changes in the *work* in accordance with the terms of the *contract*;
2. Alterations, additions, or deletions to the *contract*, shall not be valid or binding on the *Town* unless authorized in writing by the *Town Representative* and the *contractor*;
3. Except as stated in a *contract* change order, the *work* shall remain unaltered and the rights and obligations of the *Town* and the *contractor* shall remain unaltered and in full force and effect;
4. The cost of the *contract*, including costs to the *contractor* of the remaining *work*, shall not change except as may be specified in a change order;
5. Each *contract* change order, unless otherwise specified, shall be deemed to incorporate the terms and conditions of the *contract* and shall be deemed part thereof; and
6. In all cases of misunderstanding and disputes, verbal arrangements shall not be

considered. The *contractor* shall produce written *authority* in support of its contentions and shall advance no claim in the absence of such written *authority*, or use, or attempt to use any conversation with any parties against the *Town* or in prosecuting any claim against the *Town*.

#### 50. Bid Submission Debrief

1. *Respondents* shall have up to the deadline as stated in the *procurement policy*, as amended to submit a written request for *bid submission debrief*, question(s) or clarification request and/or concern pertaining to; the *bid call document*, the *procurement process*, discrepancies, errors and/or omissions, or other matters to the *procurement representative* regarding a particular *bid solicitation*;
2. The *Town* reserves the right not to conduct a *bid debrief*, over matters of which the *respondent* failed to notify the *procurement representative*, in accordance with the above paragraph; and
3. All *bid submission debriefs* shall be conducted in accordance with the *procurement policy* and *procurement procedures*.

#### 51. Laws and Regulations

1. The *contractor* shall comply with all applicable statutes, laws, by-laws, regulations, ordinances and orders whether Federal, Provincial, Municipal or otherwise, at any time in effect during the term of the *contract*, and all rules and requirements of the Police and Fire departments, or other governmental authorities, authorities having jurisdiction and all C.S.A. approvals, if required;
2. The *contractor* shall obtain and pay for all necessary permits and licenses, and shall not do or suffer to be done anything in violation of any such laws, ordinances, rules or requirements; and
3. If the attention of the *contractor* is called to any such violation on their part, or of any *person* employed or engaged by the *contractor*, they shall immediately desist from and correct such violation.

#### 52. The Personal Property Security Act

1. The *contractor* warrants that it has the full power and legal right and the responsibility to convey title to all products/goods/inventory/equipment which shall pass to the *Town* in accordance with the terms of the *contract* and all *deliverables* hereunder shall be free from all registered and unregistered liens, encumbrances, charges, security interests, mortgages, or any third party statutory claims; and
2. All transactions contemplated under the *contract* shall be in the ordinary course of business of the *contractor* within the meaning of the Personal Property Security Act (PPSA).

#### 53. No Lemon Policy

1. Any goods or equipment acquired by the *Town* shall be subject to a "No Lemon Policy" whereby after three (3) attempts to repair a recurring malfunction, the *Town*, in its sole

discretion can direct the *contractor* to replace the equipment, on a like-for-like basis and new, at the *contractor's* expense.

#### 54. Over Shipments of Goods

1. Any over shipments made are the responsibility of the *contractor*, and
2. The *Town* reserves the right to reject and return, at the *contractor's* expense, any goods in excess of the quantity ordered or, at the *contractor's* discretion, the *Town* may be permitted keep the goods on a "no charge" basis.

#### 55. Safety Data Sheets (formerly Material Safety Data Sheets)

1. The *contractor* shall supply current Safety Data Sheets (SDS) for all controlled products supplied on or before delivery of initial shipments and again sixty (60) days prior to expiry of the sheet;
2. Failure to comply with this instruction or to label products in accordance with the amended Hazardous Products Act (HPA) and the new Hazardous Products Regulations (HPR) may result in termination of the *contract*, in which event any existing stocks shall be removed and credited back to the *Town* in full by the *contractor*; and
3. The *Town* shall be under no obligation whatsoever, to any *contractor* who does not comply with the *Town's* procedure in this regard.

#### 56. Damage Claims

1. The *contractor* agrees that all *deliverables* to be provided shall be new and of the latest model, unless otherwise stated in the *bid call document*, in good operating condition and free of defects in workmanship and material, and the *contractor* shall repair or replace any damaged or marred items caused or occasioned through the handling or installation by the *contractor* or otherwise occasioned in transit;
2. The *contractor* shall protect the *work*, the *Town's personal property and real property*, and any surrounding private property from damage;
3. The *contractor* accepts full responsibility for any damage caused by the *contractor*, or its officers, personnel, workers, equipment or *subcontractors* to any part of the *Town's personal property and real property*, including but not limited to any buildings, parking lots, sidewalks, curbs, store fronts, doors, walls, light standards, landscaping, or equipment of the property and shall promptly report to the *Town*, in writing and remedy any such damage in accordance with the *Town* instructions; and
4. The *contractor* shall repair and make good such damage at their expense.

#### 57. Clean Up

1. During performance and completion of *work*, the *contractor* shall remove all unused equipment and instruments of service, all excess or unsuitable material and debris, and legally dispose of the debris;

2. The *contractor* shall leave the entire area in a neat, clean and acceptable condition as approved by the *Town*;
3. Failure to do so may require the *Town's employees* to perform necessary clean up and the *contractor* shall be either;
  1. Invoiced for the direct cost associated with such clean up and all such invoices shall be due and payable within ten (10) *business days*; or
  2. Such direct costs shall be deducted from any monies owed to the *contractor*.

#### 58. Packaging and Disposal

1. The *contractor* shall eliminate or reduce the amount of packaging to the extent possible and shall remove packaging from delivered and installed *deliverables*;
2. Packaging once removed, shall be recycled or transported and disposed of in accordance with all applicable laws and regulations governing waste disposal; and
3. The *contractor* shall indicate where garbage is taken for disposal when requested to do so by the *Town*.

#### 59. Identification and Uniform

1. If working at a *Town* facility, all representatives of the *contractor* are required to sign in at reception upon arrival at the *Town's* facility, obtain, and wear a visitor identification card at all times while at the *Town's* facilities (if available);
2. Upon leaving the *Town* facility, all representatives of the *contractor* shall sign out at reception and return the visitor identification card (if issued); and
3. Tradesmen (service personnel) shall in addition to the above, wear a company uniform with a nameplate identifying the name of their employer.

#### 60. Meetings

1. The *contractor's* representative(s), as requested by the *Town*, shall attend all meetings required for the *work*; and
2. The *contractor's* representative(s) attending meetings shall be thoroughly versed and knowledgeable with respect to the proposed topics of discussion and shall have the authority to make the necessary decisions and commitments with respect to matters agreed upon at the meetings.

#### 61. Training

1. Where necessary or otherwise specified in the *bid call document*, the *contractor* shall provide qualified training personnel to instruct the *Town's employees* until they are familiar and competent in the operation and daily maintenance of the acquired goods or services; and

2. Unless otherwise stated, the cost of training shall be included in the *bid submission* price.

## 62. Performance

1. The *contractor* shall thoroughly complete each specified task in a professional manner, using trained, experienced personnel and quality equipment/materials;
2. The *contractor* warrants that its personnel, agents, *subcontractors*, *subconsultants* and/or representatives have the qualifications, experience, knowledge, skills and abilities necessary for the fulfilment of the *contract*;
3. Services shall be performed in accordance with the frequencies specified; and
4. The whole of the services and the manner of performing them shall be done to the satisfaction of the *Town*.

## 63. Warranty/Fit for Intended Use

1. The *contractor* warrants that their workmanship, *deliverables* or *construction* supplied by the *contractor* to the *Town* shall be in full conformity with the *bid call documents*, and any samples provided (if applicable);
2. The *contractor* further warrants that their workmanship, *deliverables* or *construction* are of merchantable quality, and fit for the intended use and shall perform according to the requirements set out by the *Town* as well as in accordance with all published performance specifications contained in any of the *contractor's* product manuals, specifications or proposal;
3. For greater certainty, *deliverables* shall be new, of the latest model, and shall be complete with all necessary accessories for operation;
4. The *Town* shall be afforded a reasonable period of time (not greater than thirty (30) calendar days) for the purpose of inspecting the *deliverables* to confirm their compliance with the specifications, terms and conditions of the *purchase order* or *contract*;
5. Unless a greater warranty period is stated in the *bid call document*, or the *contractor's bid submission*, the warranty period shall be for a minimum of one (1) year on all workmanship, *deliverables* and *construction*;
6. Unless stated otherwise in the *bid call document* or the *contractor's bid submission*, the warranty period shall commence for workmanship and *deliverables*, the day after delivery and acceptance or installation date, if installation occurred at a later date and for *construction*, as stated in the *bid call document*;
7. This general warranty (stated above) is independent of and without prejudice to any specific warranty or service guarantee offered by the *contractor* or third party manufacturer or supplier of the *deliverables* in connection with the purpose for which the *deliverables* were acquired;
8. The *contractor* shall assign to the *Town* any warranty or service guarantee offered by a third party manufacturer or supplier of the *deliverables*;

9. Notwithstanding this assignment, if at any time up to one (1) year from the date of delivery or installation (if applicable) the *Town* determines the *deliverables* or any part thereof do not conform to these warranties, the *Town* shall notify the *contractor* within a reasonable time after such discovery, and the *contractor* shall then promptly correct such nonconformity at the *contractor's* expense;
10. *Deliverables* used to correct nonconformity shall be similarly warranted for one (1) year from the day after delivery and acceptance or installation date;
11. The *contractor's* liability shall extend to all liabilities, losses, damages, claims and expenses incurred by the *Town* caused by any breach of any of the above warranties;
12. Upon rejection of the *deliverable* the same shall be removed by the *contractor* from the premises of the *Town* within five (5) *business days'* after notification unless public health and safety require immediate destruction or other disposal of such rejected *deliverables*, in which case the *Town* may take such actions as it deems necessary, and the *contractor* shall reimburse the *Town* for the cost of such actions within ten (10) *business days'* following receipt of an invoice; and
13. Rejected item(s) left longer than five (5) *business days'* shall be considered as abandoned and the *Town* shall have the right to dispose of the item as its own *personal property*.

#### 64. Warranty for Performance

1. The *contractor* hereby represents and warrants that the *deliverables* shall be provided fully and diligently in a professional and competent manner by *persons* qualified and skilled in their occupations and that all *deliverables* shall be provided in accordance with;
  1. The *contract*;
  2. Industry standards; and
  3. Requirements by law.
2. If any of the *deliverables*, in the opinion of the *Town*, are inadequately provided or require corrections, the *contractor* shall forthwith make the necessary corrections at its own expense as specified by the *Town* in a notice of rectification.

#### 65. Health and Safety Policy

1. The *contractor* shall submit to the *Town*, if requested, an electronic copy of the Health and Safety Policy for their firm along with Health and Safety procedure(s) relevant to the *work* to be performed where applicable; and
2. If the *contractor* does not have a written policy and procedures relevant to the *work*, then the *contractor* shall be expected to abide by the *Town's* safety policy and procedures in addition to the Occupational Health and Safety Act (re: duties of employers).



## 66. The Occupational Health and Safety Act

1. The *contractor*, for purposes of the Ontario Occupational Health and Safety Act (the "OHSA"), shall be designated as the "*Constructor*" for this project and shall assume all of the responsibilities of the "*Constructor*" as set out in the OHSA and its regulations. The foregoing shall apply notwithstanding that; the *contractor* has been referred to as the "*contractor*" in this and any other related documents.
  1. The *contractor* acknowledges that they have read and understood the Occupational Health and Safety Act (RSO 1990, C-0.1, as amended);
  2. The *contractor* shall participate in a start-up meeting(s) to verify expectations in the area of health and safety before the start of any *work*;
  3. The *Town* shall take all action necessary to support the *contractor's* health and safety efforts and to ensure that the *Town* owned and controlled environments in the vicinity of the project are free from hazards;
  4. The *contractor* shall ensure that all *work* locations are properly accessible by emergency service vehicles (e.g. police, fire, ambulance) throughout the duration of the *contract*;
  5. The *contractor* shall have a clearly defined safety plan/rescue plan for its personnel involved in hazardous activities. The plan shall include, but not be limited to, procedures for entering a confined space on the *work* site;
  6. The *contractor* covenants and agrees to observe strictly and faithfully the provisions of the said Occupational Health and Safety Act and all regulations and rules promulgated thereunder, and in particular (without limiting the generality of the foregoing), the provisions regarding the obligations and responsibilities of the "*Constructor*";
  7. The *contractor* agrees to indemnify and save the *Town* harmless for damages or fines arising from any breach or breaches of the said Occupational Health and Safety Act including but not limited to the legal fees incurred by the *Town*;
  8. The *contractor* agrees to assume full responsibility for the enforcement of the said Occupational Health and Safety Act to ensure compliance therewith;
  9. The *contractor* acknowledges and agrees that any breach or breaches of health and safety requirements, whether by the *contractor* or any of its *subcontractors* can be considered a breach of *contract*;
  10. The *contractor* further acknowledges and agrees that any breach or breaches of the Occupational Health and Safety Act whether by the *contractor* or any of its *subcontractors*, may result in the immediate termination of the *contract* and if the *Town* terminates the *contract*, the *Town* reserves the right to draw from the *contract* deposit or surety (if available) to complete said *work* to the *Town* specifications;
  11. The *contractor* shall allow access to the *work* site on demand to *Town Representative(s)* to review *work* sites to ensure compliance with the Occupational Health and Safety Act, but no such review shall relieve the *contractor* from its



responsibilities as *Constructor*;

12. The *contractor* agrees that any damages or fines that may be assessed against the *Town* by reason of a breach or breaches of the Occupational Health and Safety Act by the *contractor* or any of its *subcontractors* shall entitle the *Town* to set-off the damages so assessed against any monies that the *Town* may from time to time owe the *contractor* under the *contract* or under any other *contract* whatsoever;
  13. The *contractor* shall provide a list of all controlled hazardous materials or products containing hazardous materials, all physical agents or devices or equipment producing or emitting physical agents and any substance, compound, product or physical agent that is deemed to be or contains a designated substance in accordance with the Workplace Hazardous Materials Information System (WHMIS) as defined under the Ontario Occupational Health and Safety Act and shall provide appropriate Safety Data Sheets (SDS) for these substances used for the performance of the required *work*, all prior to the performance of the *work*;
  14. When hazardous materials, physical agents and/or designated substances are used in the performance of the required *work* or may have been used in the original *construction*, the selected *contractor* shall ensure compliance to the requirements of the Ontario Occupational Health and Safety Act and associated regulations;
  15. The *Town* reserves the right to terminate the *contract* without obligation for non-compliance with the provisions set out herein, health and safety regulations, the Environmental Protection Act, associated regulations or other applicable legislation;
  16. The *contractor* shall perform the *work* to cause the public the least inconvenience possible. In particular, the *contractor* shall not obstruct any street, thoroughfare, or footwalk longer or to a greater extent than necessary; and
  17. The *contractor* shall take all reasonable precaution necessary to ensure the safety of their personnel and the public, particularly children who may play in the area of *work*.
2. If any *person* is killed or Critically Injured (as defined in R.R.O. 1990, Regulation 834 made under the Occupational Health and Safety Act, R.S.O. 1990, Chapter O.1), in addition to complying with the reporting requirements under the Occupational Health and Safety Act, R.S.O. 1990, Chapter O.1, the *contractor* shall notify the *Town* immediately and in any event by no later than twelve (12) hours after the Critical Injury or death occurred; and
  3. In addition to complying with the reporting requirements under the Occupational Health and Safety Act, R.S.O. 1990, Chapter O.1, the *contractor* shall notify the *Town* of any other incident or injury (apart from a death or Critical Injury) as soon as possible, but in any event by no later than five (5) *business days*' after the incident or injury occurred.

#### 67. Accessibility

1. All Accessibility Standards — including the Accessible Customer Service Standard — are now part of one regulation: the Integrated Accessibility Standards Regulation (IASR) (O. Reg. 191/11);
2. The *Town* is committed to providing equal treatment to people with disabilities with respect

to the use and benefit of *Town's* services, programs, and goods in a manner that respects their dignity and that is equitable in relation to the broader public;

3. *Contractors* who deal with the public or other third parties on behalf of the *Town*, as well as *contractors* who participate in developing *Town's* policies, practices or procedures governing the provision of *deliverables* to members of the public or other third parties, shall conform with the IASR, in particular Part IV.2, for Customer Service;
4. Pursuant to the above, Accessibility Standards for Customer Service, *contractors* who deal with the public or other third parties on behalf of the *Town*, as well as *contractors* who participate in developing *Town* policies, practices or procedures governing the provision of *deliverables* to members of the public or other third parties shall ensure that all of its personnel, agents, volunteers, or others for whom it is responsible, receive training about the provision of goods and services provided to people with disabilities;
5. The Accessible Customer Service Training shall be provided in accordance with Part IV.2, of the IASR for Customer Service and shall include, without limitation, a review of the purposes of the Accessibility for Ontarians with Disabilities Act (AODA) and the requirements of the Customer Service Regulation, as well as instruction regarding all matters set out in the Customer Service Regulation;
6. *Contractors* who provide *deliverables* or facilities on behalf of the *Town* shall ensure that all of its personnel, agents, volunteers, or others for whom it is responsible, receive training on the requirements of the accessibility standards referred to in the IASR and on the Ontario Human Rights Code (the Code) as it pertains to *persons* with disabilities;
7. The *contractor* shall keep records of the training provided, including dates when the training is provided, the number of personnel who received training and individual training records;
8. The *contractor* shall submit to the *Town*, if requested, documentation describing its accessibility training policies, practices and procedures, and a summary of the contents of training, together with a record of the dates on which training was provided and the number of attendees;
9. The *Town* reserves the right to require the *contractor*, at the *contractor's* expense, to amend its accessibility policies, practices and procedures if the *Town* deems them not to comply with the requirements of the IASR;
10. The *contractor* shall only assign those personnel who have successfully completed training in accordance with all regulations related to the Accessibility provisions herein, to provide *deliverables* to, or on behalf of, the *Town*;
11. The *contractor* shall ensure that any information, *deliverables* and/or communication (as defined in the IASR) produced pursuant to the *contract* shall be in conformity with World Wide Web Consortium Web Content Accessibility Guidelines (WCAG) 2.0 Level AA and shall be provided in accessible Word, Excel, PowerPoint, PDF or other format requested by the *Town*;
12. The training shall be provided to each personnel, agent, *subcontractor* or volunteer in the *contractor's* business as soon as possible after he or she is assigned to *work* on *Town*

property or at a *Town* facility;

13. The *Town* reserves the right to inspect the *contractor's* training records; and
14. The *contractor* agrees to provide the *Town* upon request with any training records within ten (10) *business days*'.

#### 68. Invoicing

1. All invoices shall be issued to “**The Corporation of the Town of Georgina**”;
2. All invoices shall be submitted in one of two ways:
  1. Mailed to the Corporation of the Town of Georgina, 26557 Civic Centre Road, Keswick, Ontario L4P 3G1 to the attention of the *requisitioning department* or project specific *Town Representative*; or
  2. Emailed directly to the project specific *Town Representative*.
3. **All invoices shall reference the purchase order number** and conform, at a minimum, to the order and content as set out in the *Town's purchase order* and shall provide additional information including, but not limited to the following:
  1. Harmonized Sales Tax shown separately; and
  2. *Contractor's* H.S.T. registration number.
4. Unless otherwise specified in the *bid call document*, invoices shall contain sufficient detail in accordance with the items and unit prices of the *awarded bid submission* and subsequent *contract*. For example: Time and Material *contracts* shall provide a breakdown of labour and material utilized for the project based on the *contract* unit rate and/or lump sum prices.

#### 69. Payments

1. Payment for *work* satisfactorily performed in the opinion of the *Town* is net thirty (30) days, unless *work* is conducted under the *Construction Act* and in such case the payment terms shall be in accordance with the provisions of the *Construction Act*;
2. Payment using the *Town's* corporate *purchase card (P-Card)*, may be available to the *contractor* at the sole discretion of the *Town*, based upon considerations, which include, but may not be limited to, its practical application given the commodities or services acquired, *acquisition value* and the terms and conditions of the *contract*;
3. In the event that payment is not made by P-Card, payment shall be made using Electronic Funds Transfer (EFT) as follows:
  1. To receive payment by EFT, new or existing *contractors, consultants or vendors* shall submit the *Town's Vendor Set-up Form (Form)* (see **APPENDIX A – VENDOR SET-UP FORM** in the *bid call document*) as part of the documentation required prior to award of *contract*. *Respondents* shall not include the *Form* with their *bid submission*;

2. In the event the *Form* is incomplete, it will be rejected and a new *Form* shall be uploaded;
  3. The *Form* shall be authorized by a signing officer, and someone who has the ability to bind the organization;
  4. All payments made by EFT shall only be made as a direct deposit to Canadian Dollars (CAD) deposit accounts;
  5. Remittance advices shall be sent to the email address provided on the *Form*;
  6. If, during the term of *contract*, there is a change to the information contained in the *Form*, the *contractor*, *consultant* or *vendor* shall submit a new *Form* to *procurement services* at [purchasing@georgina.ca](mailto:purchasing@georgina.ca); and
  7. Inquiries regarding payment status shall be directed to [apinvoices@georgina.ca](mailto:apinvoices@georgina.ca).
4. Where there is a question of non-performance, payment in whole or in part may be withheld unless the *work* is conducted under the *Construction Act* in such case, disputes shall be in accordance with the provisions of the *Construction Act*; and
  5. In the event a cash discount, the withholding of payment as provided herein shall not deprive the *Town* from taking such discount.

#### 70. Set Off

1. The *contractor* agrees that the *Town* may, at any time, set-off against any monies due or payable to the *contractor*, including but not limited to; property taxes (or any penalties and/or interest thereon) owing to the *Town* by the *contractor* at the time such monies become due and payable to the *contractor*.

#### 71. Payment of Workers

1. The *contractor* shall pay, or cause to be paid to its personnel employed in the execution of the *contract* on a weekly/biweekly basis, wages at not less than the following rates:
  1. For personnel employed in the execution of the *contract*, who are in contractual relationship with a union, the minimum rate of wages shall be the union rate of wages in the particular district or locality in which the *work* is undertaken; or
  2. For personnel employed in the execution of the *contract*, who are not in contractual relationship with a union, the minimum rate of wages shall be the current Fair Wage Schedules of the Labour Standards Branch, of the Ministry of Labour, in the particular district or locality in which the *work* is undertaken.
2. Revisions made to the schedule during the course of the *contract* shall apply from the effective date of such revisions and all additional resultant costs shall be borne by the *contractor*.

#### 72. Right to Audit and Retention of Records

1. The *contractor* shall make available at any time during business hours and as often as the

*Town* may deem necessary, *contractor's* records with respect to the *work* and its applicable *bid submission*;

2. *The contractor* shall permit the *Town* to audit, examine, and make copies, excerpts or transcripts from such records, and to make audits of data relating to the *work* and its applicable *bid submission*; and
3. *The contractor* shall maintain and retain all records and other documents related to the *work* and its applicable *bid submission* for a period of three (3) years from the date of final payment (or longer as required by law), except in cases where unresolved audit questions require a longer period of time for resolution, as determined by the *Town*.

### 73. Prohibited Behaviours

1. While performing the *contract*, the *contractor's* personnel, agents, *subcontractors*, *subconsultants* and/or representatives shall conduct themselves in a safe, pleasant, ethical and responsible manner at all times, and for greater certainty shall not:
  1. Consume alcoholic beverages, narcotics or prescription drugs which may impair their abilities while in the performance of services for the *contract*, or be under the influence of same when reporting to duty;
  2. Smoke on property owned or leased by the *Town*;
  3. Use foul, profane, vulgar or obscene language or gestures;
  4. Solicit gratuities or tips from any *person* for services performed under the *contract*;
  5. Engage or participate in any action which may constitute a public nuisance or disorderly conduct;
  6. Engage or participate in any action which may constitute an illegal act;
  7. Engage or participate in any willful, negligent or reckless action in disregard of safety or sanitary requirements or regulations;
  8. Perform *work* without having obtained any required clearance, including security clearances;
  9. Play radios or other sound equipment, or wear ear/head phones;
  10. Overly fraternize with *Town employees*, clients, residents, tenants, or visitors to the site or building nor unnecessarily disrupt business while performing their duties;
  11. Interfere with building or *employee* property;
  12. Disrespect property boundaries and not trespass on any private properties, without prior, written approval from the property owner, and the *Town*;
  13. Undertake inappropriate measures to avoid any situation where the general public is required or encouraged to trespass on adjacent lands; and

14. Park or store materials or equipment on private property without prior written permission from the property owner, and the *Town*.
2. At the request of the *Town* or *consultant* (if applicable), the *contractor* shall remove from the site any *person* (whether employed on the *work* or not) who, in the opinion of the *Town* or *consultant* (as applicable), is incompetent, intoxicated or otherwise impaired, or who is conducting himself (or herself) improperly, and the *contractor* shall not permit any such *person* to remain on the site nor return to the site without the prior, written approval of the *Town* or *consultant* (as applicable), as the case may be;
3. At the written request of the *Town*, the *contractor* shall immediately remove any personnel, *subcontractor*, representative or agent for engaging or participating in any of the foregoing prohibited activities, or for any other reason, where it is in the *Town's best interest*; and
4. The personnel, *subcontractor*, representative or agent so removed shall not be placed in another *Town* facility or assigned to any *contract* between the *Town* and the *contractor*.

#### 74. Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)

1. In accordance with the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA), the personal information a *respondent* provides in response to this *bid solicitation* is being collected under authority of the Municipal Act and shall be used exclusively in the selection process and may be used for budgetary purposes for future *bids solicitations*;
2. All *bid submissions* shall become the property of the *Town* and may be disclosed in accordance with a request made under MFIPPA;
3. In accordance with requirements of MFIPPA, *respondents* are reminded to identify in their *bid submission* material, any specific scientific, technical, commercial, proprietary, or similar confidential information, the disclosure of which could cause them injury;
4. Entire *bid submissions* shall not be identified as confidential; and
5. If a *respondent* has any questions in this regard, please consult the *Town's* Clerk's Office at 905-476-4301.

#### 75. Confidentiality

1. In the course of a *contractor's* interaction with the *Town*, a *contractor* may receive, have access to, or otherwise obtain "*confidential information*" (as defined below);
  1. For the purposes of this *contract*, "*confidential information*" means:
    1. All information, documents and materials submitted in any form by a *contractor* in response to a *bid solicitation*;
    2. Any other information, documents, materials and communications in any form, relating in any way to a *bid solicitation*, including any information, documents or materials provided to the *respondent* or by a *Town Representative* or other *person*



working on the *bid solicitation* whether identified as confidential or not; and

3. Any information, documents, materials and communications in any form, produced by the *contractor* or any other *person* based on or developed out of any of the information, documents or materials described above, where identified as confidential or not.
2. For the purposes of this *contract*, “*confidential information*” does NOT include:
  1. Information that is, or subsequently becomes, publicly available other than through a breach of this *contract* or through a breach of a confidentiality agreement which another *person* has entered into concerning the *confidential information*;
  2. Information already possessed before commencing to participate in a *bid solicitation*;
  3. Information which is rightfully received from a third party without breach of any obligation of confidence to the disclosing party; and
  4. Information which is independently developed without the use of the *confidential information*.
2. As a condition of a *contractor’s* interaction or continued interaction, the *Town* requires the *contractor* to agree to the following confidentiality terms and conditions, on which the *Town* shall rely:
  1. A *contractor* shall not use the *confidential information* in any way or for any purpose other than as reasonably required for interaction with the *Town*;
  2. A *contractor* shall disclose the *confidential information* (or any portion thereof) only on a “need-to-know” basis to those *persons* who assist in the preparation of interactions, and only on the condition that all such information be retained by each of those *persons* as strictly confidential; and
  3. Subject to any disclosure requirements of the law, and subparagraph (1), a *contractor* shall keep all *confidential information* received, have access to, or otherwise obtain, strictly confidential for a period of five (5) years after the date of this *contract*, and shall not, at any time, without the prior express written consent of an authorized *Town Representative*, use, divulge, give, release or permit or suffer to be used, divulged, given or released, any portion of the *confidential information* to any other *person*, firm, corporation or other entity for any purpose whatsoever.
3. The *confidential information* is proprietary and confidential, the disclosure of which would be contrary to the public interest and detrimental to the *Town*;
4. The provisions of this *contract* shall remain in effect, regardless of whether the *bid solicitation* proceeds or a *contract* for the *acquisition* of *deliverables* is reached with a *contractor* or any other party;
5. *Contractor* shall safeguard all information to which others have granted access, against inappropriate and unauthorized access;



6. *Contractor* agrees to report incidents of misuse or abuse of information immediately;
7. If a *contractor* is found to have breached this *contract*, the *Town* may take the benefit of all remedies available at law, including specific performance and equitable relief;
8. *Contractor* shall not issue a news release or other public announcement or statement in any form pertaining to details of their *bid submission* or the selection process without the prior written approval of the *Town*;
9. All correspondence, documentation and information submitted by the *Town* in any form to any *contractor* in connection with, or arising out of this *bid solicitation* or the acceptance of any *bid submission*:
  1. Remains the sole property of the *Town*;
  2. Shall be treated as confidential, whether identified as confidential or not; and
  3. Shall not be used for any purpose other than for replying to this *bid solicitation*, and for fulfillment of any related subsequent *contract*.
11. The *contractor* acknowledges that breach of any provisions of the confidentiality section may cause irreparable harm to the *Town* or to any third-party to whom the *Town* owes a duty of confidence, and the injury to the *Town* or to any third-party may be difficult to calculate and inadequately compensable in damages;
12. The *contractor* agrees that the *Town* is entitled to obtain injunctive relief (without providing 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 confidentiality section;
13. If the *contractor* or any of its directors, officers, personnel, agents, partners, affiliates, volunteers or *subcontractors* become legally compelled to disclose any *Town's confidential information*, the *contractor* shall provide the *Town* with prompt written 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 cooperate with the *Town* and its legal counsel to the fullest extent; and
14. If such protective orders or other remedies are not obtained, the *contractor* shall disclose only that portion of the *Town's confidential information* which the *contractor* is legally compelled to disclose, only to such *person* or *persons* to which the *contractor* is legally compelled to disclose, and the *contractor* shall provide notice to each such recipient (in cooperation with legal counsel for the *Town*) that such *Town's confidential information* is confidential and subject to non-disclosure on terms and conditions equal to those contained in the *contract* and if possible, shall obtain each recipient's written agreement to receive and use the *Town's confidential information* subject to those terms and conditions.

#### 76. Information and Delivery of Materials

1. The *contractor* agrees that all information and material in any form of any kind whatsoever acquired or prepared by or for the *contractor* pursuant to the *contract* or in preparation of their *bid submission*, shall, both during and following the termination of the *contract*, be the

sole property of the *Town*, including all information and material provided by the *Town* to the *contractor* for the purposes of the *contract*;

2. Accordingly, the *contractor* hereby assigns to the *Town* all rights (including all *intellectual property* rights), title and interest it may have from time to time in the *work* to the *Town*;
3. Upon the request of the *Town*, the *contractor* agrees to deliver forthwith to the *Town* all materials and information specified in the request that is/are the property of the *Town* and in the possession or under the control of the *contractor* in any form;
4. No copy or duplicate of any such material or information delivered to the *Town* shall be retained by the *contractor* and/or *respondent* team without the prior written approval of the *Town*;
5. The *contractor* further agrees not to destroy any material or information which is the property of the *Town* without the *Town's* prior written approval; and
6. This provision survives the expiration or termination of the *contract*.

## 77. Intellectual Property

1. The *contractor* shall pay all royalties and license fees required for the *work* provided;
2. The *contractor* represents and warrants that it has the sole and unrestricted right, title and interest or good and sufficient power, authority and right to use any *intellectual property* required for the completion of the *work*;
3. The *contractor* shall, at its own expense, defend all claims, actions or proceedings against the *Town* based on any allegation that any *work* or any part of the *work* performed or the supply of any material in the performance of a *contract* constitutes an infringement of any trademark, patent, copyright or other proprietary right, and it shall pay to the *Town* all costs, damages, charges and expenses, including its lawyers' fees on a substantial indemnity basis occasioned to the *Town* by reason thereof;
4. If, in any action or proceeding, the *work* or any part thereof is held to constitute an infringement of any trademark, patent, copyright or other proprietary right, the *contractor* shall forthwith, either secure for the *Town* the right to continue using the *work*, or shall at the *contractor's* expense and with the *Town's* prior written approval, replace the infringing items with non-infringing *work*, or modify them so that the *work* no longer infringes any such right;
5. All municipal asset information and data provided to and developed by the *contractor* shall remain the property of the *Town* at all times;
6. The *contractor* shall provide municipal asset information (infrastructure system plans, reports, drawings, models, etc.) on a continuous basis to the *Town* such that records at the *Town* offices are always up-to-date;
7. The *contractor* agrees that all *intellectual property* and every other right, title and interest in and to all concepts, techniques, ideas, information and materials, however recorded, (including images and data) provided by the *Town* to the *contractor* shall remain the sole property of the *Town* at all times;

8. The *Town* shall be the sole owner of any newly created *intellectual property*;
9. The *contractor* irrevocably assigns to and in favor of the *Town* and the *Town* accepts every right, title and interest in and to all newly created *intellectual property* in the *work(s)*, immediately following the creation thereof, for all time and irrevocably waives in favor of the *Town* all rights of integrity and other moral rights to all newly created *intellectual property* in the *work(s)*, immediately following the creation thereof, for all time;
10. To the extent that any of the *work(s)* includes, in whole or in part, the *contractor's intellectual property*, the *contractor* shall grant to the *Town* a license to use that *contractor's intellectual property* in the manner contemplated in this assignment, the total consideration for which shall be payment of the *contract* rates to the *contractor* by the *Town*;
11. The presumption governing the *contract* shall be that the *Town* shall be the sole owner of any *intellectual property* in any form contained in any of the *work(s)*;
12. If the *contractor's intellectual property* forms any part of the *work(s)*, the *contractor* shall notify the *Town* in writing as such prior to the delivery of the *work(s)* containing any such *contractor's intellectual property*;
13. In the absence of any such notice, the presumption shall remain that the *Town* is the sole owner of any *intellectual property* contained in the *work(s)*; and
14. The *contractor* shall not incorporate into any part of the *work(s)* anything that would restrict the right of the *Town* or of any client to modify, further develop or otherwise use the *work(s)* in any way that the *Town* or the client deems necessary, or that would prevent the *Town* or any client from entering into any *contract* with any party other than the *contractor* for the modification, further development of or other use of the *work(s)*.

#### 78. Publicity

1. The *Town* may, in its sole discretion, acknowledge the *contractor* in any publicity or publication; and
2. The *contractor* shall not make use of its association with the *Town* in any publicity or publication without the prior written consent of the *Town*.

#### 79. Limit on Liability

1. The *respondent* agrees that, if the *Town* is found to be liable for any act or omission in respect of, without limitation, the administration of the *procurement process* or *award* by it of this *bid solicitation*, the total liability and aggregate amount of damages recoverable against the *Town* for any matter or relating to or arising from any act or omission by the *Town*, whether based upon an action or claim in contract, warranty, equity, negligence or otherwise, shall be limited to the *respondent's* cost of preparing its *bid submission*.

#### 80. Duty to Disclose Change of Control

1. In the event the *contractor* undergoes a change of control, the *contractor* shall immediately

disclose such change of control to the *Town* in writing, and shall comply with any terms and conditions subsequently prescribed by the *Town* resulting from this disclosure.

## 81. Termination of Contract

### 1. Termination for Contractor Default

1. Notwithstanding anything to the contrary herein, if the *contractor* fails to comply with a direction or decision of the *Town* properly given under the terms of the *contract*, or where the *contractor* is deemed by the *Town* to be in default in any other manner as set forth by the following reasons constituting default, the *Town* may, after giving ten (10) calendar days' prior written notice to the *contractor*, give notice to immediately terminate this *contract*, in whole or in part, and without charge with respect to all or any part of the *contract*. Reasons constituting default include:
  1. The *contractor* commits a material breach of its duties and obligations under this *contract*, unless, in the case of such breach, the *contractor*, within ten (10) calendar days' after receipt of written notice of such breach from the *Town*, in a manner satisfactory to the *Town* in its sole, absolute and non-reviewable discretion:
    1. Cures such breach; and
    2. Indemnifies the *Town* for any resulting damage or loss.
  2. The *contractor* commits numerous breaches of its duties under the *contract* that collectively constitutes a material breach;
  3. A change in control of the *contractor* where such control is acquired, directly or indirectly, in a single transaction or series of related transactions, or all or substantially all of the assets of the *contractor* are acquired, by any entity, or the *contractor* is merged with or into another entity to form a new entity, unless the *contractor* demonstrates to the satisfaction of the *Town* that such event shall not adversely affect its ability to perform the services under the *contract*;
  4. The *contractor* commits fraud or gross misconduct; or the *contractor* has contravened the *Town's* Supplier Code of Conduct;
  5. The *contractor* subcontracts for the provision of part or all of the *deliverables* without first obtaining written approval of the *Town*;
  6. The *contractor* assigns the *contract* without first obtaining written approval of the *Town*; and
  7. Where the *contractor* becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, or takes the benefit of any statute relating to bankrupt or insolvent debtors, or where a receiver is appointed under a debt instrument or a receiving order is made against the *contractor*, or an order is made or a resolution passed for the winding up of the *contractor*.
2. In the event of a termination notice being given under the provisions of this section, the *contractor* shall be liable to the *Town* for any milestone payments paid by the *Town* for

unfinished *work*, including all losses and damages which may be suffered by the *Town* by reason of the default or occurrence upon which the notice was based, and also including any increase in the cost incurred by the *Town* in acquiring the *work* from another source;

3. In the event of a termination notice being given under the provisions of this section, the *Town* may do such things and incur such costs as it deems necessary to correct the *contractor's* default, including without limitation the withholding of payment due or accrued due to the *contractor* for services rendered pursuant to this *contract*, which moneys may be set off by the *Town* against any expenses that it may incur in remedying a default or failures as described above;
  4. In the event of a termination notice being given under the provisions of this section, the *contractor* shall agree to repay immediately to the *Town* the portion of any advance payment at the date of the termination;
  5. In the event of a termination notice being given under the provisions of this section, and subject to the resolution of any claim or claims which the *Town* may have against the *contractor* as set forth in the previous three (3) paragraphs, payment shall be made within thirty (30) calendar days' of the date of the invoice from the *Town* to the *contractor* for the value of all finished *work* delivered and accepted by the *Town*, such value to be determined in accordance with the rate (s) specified in the *contract*;
  6. No specific remedy expressed in the *contract* is to be interpreted as limiting the rights and remedies which the *Town* may be entitled to, to mitigate damages, under any *contract* or otherwise in law;
  7. All *Town* information (including copies thereof) shall be returned to the *Town* within thirty (30) calendar days' following notice of termination in the form specified by the *Town*;
  8. The *Town* shall have the right to take possession of and use any completed or partially completed portions of the *work* despite any *contract* provisions expressed or implied to the contrary; and
  9. Upon the termination or expiry of this *contract*, or the completion of the *work*, the *contractor* shall promptly discontinue use of any data, and return the same to the *Town*.
2. Termination for Convenience
1. Notwithstanding anything contained in the *contract*, the *Town* may, at any time prior to the completion of the *work*, by giving notice to the *contractor*, terminate the *contract* as regards all or any part of the *work* not completed;
  2. Upon a termination notice being given, the *contractor* shall cease *work* in accordance with and to the extent specified in the notice, but shall proceed to complete such part or parts of the *work* as are not affected by the termination notice;
  3. The *Town* may, at any time or from time to time, give one or more additional termination notices with respect to any or all parts of the *work* not terminated by any previous termination notice;



4. In the event of a termination notice being given pursuant to this section, the *contractor* shall be entitled to be paid, to the extent that costs have been reasonably and properly incurred for purposes of performing the *contract* and to the extent that the *contractor* has not already been so paid or reimbursed by the *Town*:
  1. On the basis of the *contract* price, for all completed *work* that is inspected and accepted in accordance with the *contract*, whether completed before, or after and in compliance with the instructions contained in, the termination notice; or
  2. The cost to the *contractor* for all *work* terminated by the termination notice before completion, the cost to the *contractor* being determined in accordance the *contract* price and percentage completed.
5. The *contractor* shall have no claim for damages, compensation, loss of profit, allowance or otherwise by reason of, or directly or indirectly arising out of, any action taken or termination notice given by the *Town* under this section, except to the extent that this section expressly provides.

## 82. Indemnification

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

## 83. Non-Waiver

1. No condoning, excusing or overlooking by the *Town* of any default, breach or non-observance by the *contractor* at any time or times in respect of any provision herein contained shall operate as a waiver of the *Town's* right hereunder in respect of any continuing or subsequent default, breach or non-observance or so as to defeat or affect in any way the rights of the *Town* herein in respect of any such continuing or subsequent default or breach, and no waiver shall be inferred from or implied by anything done or omitted by the *Town* save only an express waiver in writing; and



2. Any *work* completed by the *Town* required by this *contract* to be done by the *contractor* shall not relieve the *contractor* of their obligations to do that *work*.

#### 84. Force Majeure

1. It is understood and agreed that the *contractor* shall not be held liable for any resulting losses if the fulfilment of the terms and conditions of the *contract* shall be delayed or prevented by wars, acts of public enemies, fires, floods, acts of God, or for any other cause not within the control of the *contractor* and which by **the exercise of reasonable diligence the *contractor* is unable to prevent**; and
2. If the performance of any *contract* be delayed or prevented as herein set forth, the *contractor* agrees to give immediate written notice and a detailed explanation of the cause and probable duration of any such delay.

#### 85. Severability

1. If any provision of these Standard Terms and Conditions, or the *bid call document* in its entirety is held by a court of competent jurisdiction to be invalid, unenforceable or contrary to law, such provision shall be changed and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law, or severed and the remaining provisions of these Standard Terms and Conditions, or the *bid call document* in its entirety shall remain in full force and effect.

#### 86. Entire Agreement

1. The *contract* embodies the entire agreement between the parties with regard to the provision of *deliverables* and supersedes any prior understanding or agreement, collateral, oral or otherwise with respect to the provision of *deliverables*, existing between the parties at the date of execution of the *contract* precluding any action for negligent misrepresentation.

#### 87. Survival of Clauses

1. Clauses pertaining to indemnity, liability, *Town* information, use of information, warranty, confidentiality and publicity, shall survive the expiration or other termination of the *contract*, in addition to any other clauses, which survive by operation of law or for which survival is implied by the clause itself; and
2. The survival period shall be a minimum period of two (2) years, unless otherwise agreed in writing.