

**MASTER AGREEMENT FOR ROSTER FRAMEWORK
(the “Master Agreement”)**

BETWEEN:

The Corporation of the District of Saanich
(referred to as the “District”)

AND:

**[*INSERT FULL LEGAL NAME OF SUPPLIER*]
[*INSERT INCORPORATION NUMBER IF APPLICABLE - IF NOT APPLICABLE, CHANGE
SIGNATURE BLOCK]
(referred to as the “Supplier”)**

WHEREAS, the District issued RFSQ No. **[*insert RFSQ #*]** (the “RFSQ”) to qualify potential suppliers for eligibility to provide **[*insert name of Deliverables*]** (the “Deliverables”);

AND WHEREAS, pursuant to the RFSQ, the Supplier was selected to be included on a roster of qualified suppliers (the “Qualified Supplier Roster”) for eligibility to participate in potential invitational second stage competitive processes (“Roster Competitions”) for the procurement of the Deliverables;

NOW THEREFORE, the parties agree as follows:

1. Term of Master Agreement

This Master Agreement shall take effect on the **[*insert date*]** and shall remain in effect until it is terminated by the District or the Supplier requests to be removed from the Qualified Supplier Roster.

2. District and Supplier Representatives

The District Representative and contact information for the Master Agreement is:

[*insert name and title of the District’s representative in charge of the contract and contact details, including mailing address and email address*]

The Supplier Representative and contact information for the Master Agreement is:

[*insert name and title of Supplier representative in charge of the contact and contact details, including mailing address and email address*]

The Supplier acknowledges and agrees that the Supplier Representative named above has authority to legally bind the Supplier.

3. Scope of Master Agreement

- 3.1 This Master Agreement governs the relationship between the District and the Supplier in respect of the potential provision of the Deliverables by the Supplier to the District.
- 3.2 The Supplier acknowledges that there is no obligation whatsoever on the District to invite or select the Supplier to provide any Deliverables under this Master Agreement.
- 3.3 No undertaking or any form of statement, promise, representation or obligation shall be deemed to have been made by the District in respect of the total quantities or values of the Deliverables to be requested by them pursuant to this Master Agreement and the Supplier acknowledges and agrees that it has not entered into this Master Agreement on the basis of any such undertaking, statement, promise or representation.
- 3.4 The Supplier acknowledges that in entering into this Master Agreement no form of exclusivity has been conferred on, or volume guarantee has been granted by the District in relation to the provision of the Deliverables by the Supplier and that the District is at all times entitled to enter into other contracts and agreements with other Suppliers for the provision of any or all services or goods which are the same as or similar to the Deliverables.

4. Management of The Qualified Supplier Roster

- 4.1 The Supplier acknowledges that, during the term of this Master Agreement, the District may permit other suppliers to apply for qualification and inclusion on the Qualified Supplier Roster. The same qualification requirements, evaluation process and Master Agreement that are set out in the RFSQ will apply to the ongoing application process for the purpose of qualifying new suppliers for inclusion on the Qualified Supplier Roster.
- 4.2 The Supplier acknowledges that, during the term of this Master Agreement, the District may periodically require all suppliers on the Qualified Supplier Roster to provide documentation for reassessment of their qualifications, based on the same requirements and evaluation process established in the RFSQ. If the Supplier does not continue to satisfy the qualification requirements set out in the RFSQ, the Supplier will be removed from the Qualified Supplier Roster.
- 4.3 The Supplier acknowledges that, during the term of this Master Agreement, the District may remove the Supplier from the Qualified Supplier Roster for reasons of poor performance, conflict of interest or unethical conduct in respect of the provision of Deliverables.
- 4.4 If removed from the Qualified Supplier Roster, the Supplier will no longer be eligible to participate in Roster Competitions and will not be eligible to reapply for inclusion on the Qualified Supplier Roster for a period of up to three (3) years.

5. Provision of Deliverables

- 5.1 The Supplier is a potential provider of the Deliverables and the Supplier may be selected by the District to provide the Deliverables to the District during the term of this Master Agreement.

- 5.2 If and when the District requires the Deliverables, the District will invite all eligible suppliers on the Qualified Supplier Roster to participate in a Roster Competition.
- 5.3 Despite section 5.2, the District may elect not to invite eligible suppliers on the Qualified Supplier Roster to participate in a Roster Competition, and may in its sole discretion without competitive process select any eligible supplier on the Qualified Supplier Roster to provide the Deliverables in relation to a specific assignment, but only where the estimated value of the Deliverables for such assignment is less than the Competitive Threshold.
- 5.4 For the purposes of section 5.3, “**Competitive Threshold**” means the greater of the following values:
- (a) \$75,000.00; or
 - (b) the open procurement threshold prescribed for municipal governments for goods and services pursuant to the New West Partnership Trade Agreement.
- 5.5 If the Supplier is selected to provide the Deliverables to the District, the Supplier will enter into a Service Schedule in the form of Schedule 2 to this Master Agreement.
- 5.6 The provision of the Deliverables will be governed by the terms and conditions contained in Schedule 1 of this Master Agreement – Standard Terms and Conditions - and the specific terms and conditions of the Roster Competition and any Service Schedule entered into between the District and Supplier in respect of the Deliverables.

6. **Special Provisions**

[*Insert any additional contract performance terms or modifications to the Standard Terms and Conditions in Schedule 2 and note any express deletions from the Supplier’s Submission or negotiated changes to the Solicitation Document, if applicable. DELETE if not applicable and re-number.*]

7. **Execution**

This Agreement may be executed and (i) delivered by facsimile transmission or (ii) scanned and delivered by electronic transmission, and when so executed and delivered, will be deemed an original.

IN WITNESS WHEREOF the parties hereto have executed this Master Agreement as of the date written below.

The Corporation of the District of Saanich

Signature:

Name:

Title:

Date of Signature:

I have the authority to bind the District.

The Corporation of the District of Saanich

Signature:

Name:

Title:

Date of Signature:

I have the authority to bind the District.

[Insert Supplier's Full Legal Name**]**

Signature:

Name:

Title:

Date of Signature:

I have the authority to bind the Supplier.

Schedule 1 - Standard Terms and Conditions

Index

Article 1 - Interpretation

1.01 Defined Terms

Article 2 - General Provisions

2.01 No Indemnities from District
2.02 Entire Contract
2.03 Severability
2.04 Failure to Enforce Not a Waiver
2.05 Changes by Written Amendment Only
2.06 Force Majeure
2.07 Notices by Prescribed Means
2.08 Governing Law

Article 3 – Nature of Relationship Between District and Supplier

3.01 Supplier's Power to Contract
3.02 Representatives May Bind Parties
3.03 Supplier Not a Partner, Agent, or Employee
3.04 Non-Exclusive Contract, Work Volumes
3.05 Responsibility of Supplier
3.06 No Subcontracting or Assignment
3.07 Duty to Disclose Change of Control
3.08 Conflict of Interest
3.09 Contract Binding

Article 4 – Performance by Supplier

4.01 Commencement of Performance
4.02 Deliverables Warranty
4.03 Health and Safety
4.04 Shipment of Goods
4.05 Use and Access Restrictions
4.06 Notification by Supplier of Discrepancies
4.07 Change Requests
4.08 Pricing for Requested Changes
4.09 Performance by Specified Individuals Only
4.10 Time
4.11 Rights & Remedies Not Limited to Contract

Article 5 - Payment for Performance and Audit

5.01 Payment According to Contract Rates
5.02 Hold Back or Set Off
5.03 No Expenses or Additional Charges
5.04 Payment of Taxes and Duties

5.05 Withholding Tax
5.06 Interest on Late Payment
5.07 Document Retention and Audit
5.08 Equivalent Wage Requirement

Article 6 – Confidentiality

6.01 Confidentiality and Promotion Restrictions
6.02 District Confidential Information
6.03 Disclosure Required by Law
6.04 Restrictions on Copying
6.05 Notice of Breach
6.06 Injunctive and Other Relief
6.07 Notice and Protective Order
6.08 Records and Legislative Compliance
6.09 Survival

Article 7 - Intellectual Property

7.01 District Intellectual Property
7.02 No Use of District Insignia
7.03 Ownership of Intellectual Property
7.04 Supplier's Grant of Licence
7.05 No Restrictive Material in Deliverables
7.06 Third-Party Intellectual Property
7.07 Survival

Article 8 - Indemnity and Insurance

8.01 Supplier Indemnity
8.02 Insurance
8.03 Proof of Insurance
8.04 Workplace Safety and Insurance

Article 9- Termination, Expiry and Extension

9.01 Immediate Termination of Contract
9.02 Dispute Resolution by Rectification Notice
9.03 Termination on Notice
9.04 Supplier's Obligations on Termination
9.05 Supplier's Payment Upon Termination
9.06 Termination in Addition to other Rights
9.07 Expiry and Extension of Contract
9.08 Evaluation of Performance

ARTICLE 1 – INTERPRETATION

1.01 Defined Terms

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

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

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

“Conflict of Interest” includes, but is not limited to, any situation or circumstance where (a) in relation to the procurement process, the Supplier had an unfair advantage or engaged in conduct, directly or indirectly, that may have given it an unfair advantage, including but not limited to (i) having access to information that is confidential to the District and not available to other bidders or proponents; (ii) communicating with any person with a view to influencing preferred treatment in the procurement process; or (iii) engaging in conduct that compromises or could be seen to compromise the integrity of the open and competitive procurement process; or (b) in relation to the performance of the Contract, the Supplier’s other commitments, relationships or financial interests (i) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgment; or (ii) could or could be seen to compromise, impair or be incompatible with the effective performance of its contractual obligations;

“Contract” means the aggregate of:

- (a) any Service Schedule entered into by the Supplier;
- (b) the Master Agreement, including these Standard Terms and Conditions;
- (c) the RFSQ, including any addenda; and
- (d) the Supplier’s Submission in response to the RFSQ.

Any ambiguity, conflict, or inconsistency between or among the documents comprising the Contract will be resolved by giving precedence to the express terms of the documents in the order in which they appear above, so that a first mentioned document shall prevail notwithstanding any term or aspect of a later mentioned document.

“Deliverables” means everything developed for or provided to the District in the course of performing under the Contract or agreed to be provided to the District under the Contract by the Supplier or its directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors, as further defined, but not limited by, Schedule 1, including but not limited to any goods or services or any and all Intellectual Property and any and all concepts, techniques, ideas, information, documentation and other materials, however recorded, developed or provided;

“District Confidential Information” means all information of the District that is of a confidential nature, including all confidential information in the custody or control of the District, regardless of whether it is identified as confidential or not, and whether recorded or not, and however fixed, stored, expressed or embodied, which comes into the knowledge, possession or control of the

Supplier in connection with the Contract. For greater certainty, District Confidential Information shall: (a) include: (i) all new information derived at any time from any such information whether created by the District, the Supplier or any third-party; (ii) all information (including Personal Information) that the District is obliged, or has the discretion, not to disclose under provincial or federal legislation or otherwise at law; but (b) not include information that: (i) is or becomes generally available to the public without fault or breach on the part of the Supplier of any duty of confidentiality owed by the Supplier to the District or to any third-party; (ii) the Supplier can demonstrate to have been rightfully obtained by the Supplier, without any obligation of confidence, from a third-party who had the right to transfer or disclose it to the Supplier free of any obligation of confidence; (iii) the Supplier can demonstrate to have been rightfully known to or in the possession of the Supplier at the time of disclosure, free of any obligation of confidence when disclosed; or (iv) is independently developed by the Supplier; but the exclusions in this subparagraph shall in no way limit the meaning of Personal Information or the obligations attaching thereto under the Contract or at law;

“District Representative” is as set out in the Master Agreement;

“Effective Date” is as set out in the Service Schedule;

“Expiry Date” is as set out in the Service Schedule;

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

“Industry Standards” include, but are not limited to (a) the provision of any and all labour, supplies, equipment and other goods or services that are necessary and can reasonably be understood or inferred to be included within the scope of the Contract or customarily furnished by Persons providing Deliverables of the type provided hereunder in similar situations in Canada and; (b) adherence to commonly accepted norms of ethical business practices, which shall include the Supplier establishing, and ensuring adherence to, precautions to prevent its employees or agents from providing or offering gifts or hospitality of greater than nominal value to any person acting on behalf of or employed by the District;

“Intellectual Property” means any intellectual, industrial, or other proprietary right of any type in any form protected or protectable under the laws of Canada, any foreign country, or any political subdivision of any country, including, without limitation, any intellectual, industrial or proprietary rights protected or protectable by legislation, by common law or at equity;

“FOIPPA” means the *Freedom of Information and Protection of Privacy Act*;

“Newly Created Intellectual Property” means any Intellectual Property created by the Supplier in the course of performance of its obligations under the Contract;

“Person” if the context allows, includes any individuals, persons, firms, partnerships or corporations or any combination thereof;

“Personal Information” means recorded information about an identifiable individual or that may identify an individual;

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

“Rates” means the applicable price, in Canadian funds, to be charged for the applicable Deliverables, as set out in the Service Schedule;

“Record” means any recorded information, including any Personal Information, in any form: (a) provided by the District to the Supplier, or provided by the Supplier to the District, for the purposes of the Contract; or (b) created by the Supplier in the performance of the Contract;

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

“Supplier Representative” is as set out in the Master Agreement;

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

“Term” is as set out in the Service Schedule; and

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

ARTICLE 2 – GENERAL TERMS

2.01 No Indemnities from the District

Notwithstanding anything else in the Contract, any express or implied reference to the District providing an indemnity or any other form of indebtedness or contingent liability that would directly or indirectly increase the indebtedness or contingent liabilities of the District beyond the obligation to pay the Rates in respect of Deliverables accepted by the District, whether at the time of entering into the Contract or at any time during the Term, shall be void and of no legal effect.

2.02 Entire Contract

The Contract embodies the entire agreement between the parties with regard to the provision of the Deliverables and supersedes any prior understanding or agreement, collateral, oral or otherwise with respect to the provision of the Deliverables, existing between the parties at the Effective Date of the Contract.

2.03 Severability

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

2.04 Failure to Enforce Not a Waiver

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

2.05 Changes by Written Amendment Only

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

2.06 Force Majeure

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

2.07 Notices by Prescribed Means

Notices shall be in writing and shall be delivered by postage-prepaid envelope, personal delivery or email and shall be addressed to, respectively, the District Representative and the Supplier Representative. Notices shall be deemed to have been given: (a) in the case of postage-prepaid envelope, five (5) Business Days after such notice is mailed; or (b) in the case of personal delivery or email one (1) Business Day after such notice is received by the other party. In the event of a postal disruption, notices must be given by personal delivery or by email. Unless the parties expressly agree in writing to additional methods of notice, notices may only be provided by the methods contemplated in this paragraph.

2.08 Governing Law

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

ARTICLE 3 – NATURE OF RELATIONSHIP BETWEEN DISTRICT AND SUPPLIER

3.01 Supplier's Power to Contract

The Supplier represents and warrants that it has the full right and power to enter into the Contract and there is no agreement with any other Person which would in any way interfere with the rights of the District under the Contract.

3.02 Representatives May Bind the Parties

The parties represent that their respective representatives have the authority to legally bind them to the extent permissible by the Requirements of Law.

3.03 Supplier Not a Partner, Agent or Employee

The Supplier shall have no power or authority to bind the District or to assume or create any obligation or responsibility, express or implied, on behalf of the District. The Supplier shall not hold itself out as an agent, partner or employee of the District. Nothing in the Contract shall have the effect of creating an employment, partnership or agency relationship between the District and

the Supplier or any of the Supplier's directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors.

3.04 Non-Exclusive Contract, Work Volumes

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

3.05 Responsibility of Supplier

The Supplier agrees that it is liable for the acts and omissions of its directors, officers, employees, agents, partners, affiliates, volunteers, and subcontractors. This paragraph is in addition to any and all of the Supplier's liabilities under the Contract and under the general application of law. The Supplier shall advise these individuals and entities of their obligations under the Contract and shall ensure their compliance with the applicable terms of the Contract. In addition to any other liabilities of the Supplier pursuant to the Contract or otherwise at law or in equity, the Supplier shall be liable for all damages, costs, expenses, losses, claims, or actions arising from any breach of the Contract resulting from the actions of the above-mentioned individuals and entities. This paragraph shall survive the termination or expiry of the Contract.

3.06 No Subcontracting or Assignment

The Supplier shall not subcontract or assign the whole or any part of the Contract or any monies due under it without the prior written consent of the District. Such consent shall be in the sole discretion of the District and subject to the terms and conditions that may be imposed by the District. Without limiting the generality of the conditions which the District may require prior to consenting to the Supplier's use of a subcontractor, every contract entered into by the Supplier with a subcontractor shall adopt all of the terms and conditions of the Contract as far as applicable to those parts of the Deliverables provided by the subcontractor. Nothing contained in the Contract shall create a contractual relationship between any subcontractor or its directors, officers, employees, agents, partners, affiliates or volunteers and the District.

3.07 Duty to Disclose Change of Control

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

3.08 Conflict of Interest

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

3.09 Contract Binding

The Contract can be enforced by and is binding upon the parties and their successors, executors, administrators, and their permitted assigns.

ARTICLE 4 – PERFORMANCE BY SUPPLIER

4.01 Commencement of Performance

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

4.02 Deliverables Warranty

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

4.03 Health and Safety

Without limiting the generality of section 4.02, the Supplier warrants and agrees that it has complied with and will comply with, and ensure that any subcontractors comply with, all applicable occupational health and safety laws, regulations, and standards in relation to the performance of the Supplier's obligations under the Contract. The Supplier shall provide the District with evidence of the Supplier's compliance with this section upon request by the District.

4.04 Shipment of Goods

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

4.05 Use and Access Restrictions

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

4.06 Notification by Supplier of Discrepancies

During the Term, the Supplier shall advise the District promptly of: (a) any contradictions, discrepancies or errors found or noted in the Contract; (b) supplementary details, instructions or

directions that do not correspond with those contained in the Contract; and (c) any omissions or other faults that become evident and should be corrected in order to provide the Deliverables in accordance with the Contract and Requirements of Law.

4.07 **Change Requests**

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

4.08 **Pricing for Requested Changes**

Where a District change request includes an increase in the scope of the previously contemplated Deliverables, the District shall set out, in its change request, the proposed prices for the contemplated changes. Where the Rates in effect at the time of the change request (a) include pricing for the particular type of goods or services contemplated in the change request, the Supplier shall not unreasonably refuse to provide those goods or services at prices consistent with those Rates; or (b) are silent to the applicable price for the particular goods or services contemplated in the change request, the price shall be negotiated between the District and the Supplier within a reasonable period of time and in any event, such change request shall not become effective until a written amendment reflecting the change has been executed by the parties.

4.09 **Performance by Specified Individuals Only**

The Supplier agrees that to the extent that specific individuals are named in the Contract as being responsible for the provision of the Deliverables, only those individuals shall provide the Deliverables under the Contract. The Supplier shall not replace or substitute any of the individuals named in the Contract without the prior written approval of the District, which may not arbitrarily or unreasonably be withheld. Should the Supplier require the substitution or replacement of any of the individuals named in the Contract, it is understood and agreed that any proposed replacement must possess similar or greater qualifications than the individual named in the Contract. The Supplier shall not claim fees for any replacement individual greater than the Rates established under the Contract.

4.10 **Time**

Time is of the essence of the Contract.

4.11 **Rights and Remedies Not Limited to Contract**

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

ARTICLE 5 – PAYMENT FOR PERFORMANCE AND AUDIT

5.01 **Payment According to Contract Rates**

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

5.02 **Hold Back or Set Off**

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

5.03 **No Expenses or Additional Charges**

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

5.04 **Payment of Taxes and Duties**

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

5.05 **Withholding Tax**

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

5.06 **Interest on Late Payment**

If a payment is in arrears through no fault of the Supplier, the interest charged by the Supplier, if any, for any late payment shall not exceed the Bank of Canada's prime rate, in effect on the date that the payment went into arrears.

5.07 **Document Retention and Audit**

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

5.08 **Equivalent Wage Requirement**

Whenever in the performance of the Contract any employee of the Supplier performs work of the same or a similar nature to work for which a wage is specified in the collective agreement between the District and the Canadian Union of Public Employees Local 2011 (the "Collective Agreement") the Supplier shall, as required by Article 34:01 of the Collective Agreement, pay such employee a wage not less than the wage specified for such work in the Collective Agreement, and the Supplier shall require any permitted subcontractor to do the same. In addition to the other audit obligations under the Contract, the Supplier shall provide access to related records including, without limitation, all wages paid to the Contractor's employees and subcontractors to verify compliance with this provision.

ARTICLE 6 – CONFIDENTIALITY

6.01 **Confidentiality and Promotion Restrictions**

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

paragraph, the Supplier shall not, among other things, at any time directly or indirectly communicate with the media in relation to the Contract unless it has first obtained the express written authorization to do so by the District.

6.02 District Confidential Information

During and following the Term, the Supplier shall: (a) keep all District Confidential Information confidential and secure; (b) limit the disclosure of District Confidential Information to only those of its directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors who have a need to know it for the purpose of providing the Deliverables and who have been specifically authorized to have such disclosure; (c) not directly or indirectly disclose, destroy, exploit or use any District Confidential Information (except for the purpose of providing the Deliverables, or except if required by order of a court or tribunal), without first obtaining: (i) the written consent of the District and (ii) in respect of any District Confidential Information about any third-party, the written consent of such third-party; (d) provide District Confidential Information to the District on demand; and (e) return all District Confidential Information to the District on or before the expiry or termination of the Contract, with no copy or portion kept by the Supplier, except to the extent required to meet regulatory record keeping obligations.

6.03 Disclosure Required by Law

Despite subsection (c) of section 6.02, where the Supplier is not subject to an order of a court or tribunal compelling disclosure of District Confidential Information, but the Supplier is nonetheless required by law or by applicable professional standards to disclose District Confidential Information to an Authority, the Supplier may disclose such District Confidential Information to the Authority provided the Supplier has first obtained the written consent of the District, such consent not to be unreasonably withheld or delayed, and provided such disclosure is limited to that District Confidential Information strictly necessary to comply with the law or the applicable professional standard.

6.04 Restrictions on Copying

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

6.05 Notice of Breach

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

6.06 Injunctive and Other Relief

The Supplier acknowledges that breach of any provisions of this Article may cause irreparable harm to the District or to any third-party to whom the District owes a duty of confidence, and that the injury to the District or to any third-party may be difficult to calculate and inadequately compensable in damages. The Supplier agrees that the District is entitled to obtain injunctive relief (without proving any damage sustained by it or by any third-party) or any other remedy against any actual or potential breach of the provisions of this Article.

6.07 Notice and Protective Order

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

disclosure, and it shall co-operate with the District and its legal counsel to the fullest extent. If such protective orders or other remedies are not obtained, the Supplier will disclose only that portion of District Confidential Information which the Supplier is legally compelled to disclose, only to such person or persons to which the Supplier is legally compelled to disclose, and the Supplier shall provide notice to each such recipient (in co-operation with legal counsel for the District) that such District 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 such District Confidential Information subject to those terms and conditions.

6.08 Records and Legislative Compliance

The Supplier and the District acknowledge and agree that FOIPPA applies to and governs all Records and may require the disclosure of such Records to third parties. Furthermore, the Supplier agrees (a) to keep Records secure; (b) to provide Records to the District within seven (7) calendar days of being directed to do so by the District for any reason including an access request or privacy issue; (c) not to access any Personal Information unless the District determines, in its sole discretion, that access is permitted under FOIPPA and is necessary in order to provide the Deliverables, and provides written authorization for such access to the Supplier; (d) not to directly or indirectly use, collect, disclose or destroy any Personal Information for any purposes that are not authorized in writing by the District; (e) where the District has provided written authorization to the Supplier to disclose Personal Information, unless such written authorization specifically provides otherwise, not to disclose such Personal Information outside Canada; (f) to ensure the security and integrity of Personal Information and keep it in a physically secure and separate location safe from loss, alteration, destruction or intermingling with other records and databases and to implement, use and maintain the most appropriate products, tools, measures and procedures to do so; (g) to restrict access to Personal Information to those of its directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors who have a need to know it for the purpose of providing the Deliverables and who have been specifically authorized in writing by a District representative to have such access for the purpose of providing the Deliverables; (h) to implement other specific security measures that in the reasonable opinion of the District would improve the adequacy and effectiveness of the Supplier's measures to ensure the security and integrity of Personal Information and Records generally; (i) to promptly notify the District in writing if the Supplier receives any request or demand for disclosure of Personal Information from or on behalf of any person outside Canada; and (j) that any confidential information supplied to the District may be disclosed by the District where it is obligated to do so under FOIPPA, by an order of a court or tribunal or pursuant to a legal proceeding and the provisions of this paragraph shall prevail over any inconsistent provisions in the Contract.

6.09 Survival

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

ARTICLE 7 – INTELLECTUAL PROPERTY

7.01 District Intellectual Property

The Supplier agrees that all Intellectual Property and every other right, title and interest in and to all concepts, techniques, ideas, information and materials, however recorded, (including images and data) provided by the District to the Supplier shall remain the sole property of the District at all times.

7.02 No Use of the District Insignia

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

7.03 Ownership of Intellectual Property

The District shall be the sole owner of any Newly Created Intellectual Property. The Supplier irrevocably assigns to and in favour of the District and the District accepts every right, title and interest in and to all Newly Created Intellectual Property in the Deliverables, immediately following the creation thereof, for all time and irrevocably waives in favour of the District all rights of integrity and other moral rights to all Newly Created Intellectual Property in the Deliverables, immediately following the creation thereof, for all time. To the extent that any of the Deliverables include, in whole or in part, the Supplier's Intellectual Property, the Supplier grants to the District a licence to use that Supplier Intellectual Property in the manner contemplated in this Article, the total consideration for which shall be payment of the Rates to the Supplier by the District.

7.04 Supplier's Grant of License

For those parts of the Deliverables that are Supplier Intellectual Property, the Supplier grants to the District a perpetual, world-wide, non-exclusive, irrevocable, transferable, royalty free, fully paid up right and license: (a) to use, modify, reproduce and distribute, in any form, those Deliverables; and (b) to authorize other Persons, including agents, contractors or sub-contractors, to do any of the former on behalf of the District.

7.05 No Restrictive Material in Deliverables

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

7.06 Third-Party Intellectual Property

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

7.07 Survival

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

ARTICLE 8 – INDEMNITIES AND INSURANCE

8.01 Supplier Indemnity

The Supplier hereby agrees to indemnify and hold harmless the Indemnified Parties from and against any and all liability, loss, costs, damages and expenses (including legal, expert and consultant fees), causes of action, actions, claims, demands, lawsuits or other proceedings, (collectively, "Claims"), by whomever made, sustained, incurred, brought or prosecuted, including for breaches of confidentiality or privacy or Intellectual Property rights or for third party bodily injury (including death), personal injury and property damage, in any way based upon, occasioned by or attributable to anything done or omitted to be done by the Supplier, its subcontractors or their respective directors, officers, agents, employees, partners, affiliates, volunteers or independent contractors in the course of performance of the Supplier's obligations under, or otherwise in connection with, the Contract. The Supplier further agrees to indemnify and hold

harmless the Indemnified Parties for any incidental, indirect, special or consequential damages, or any loss of use, revenue or profit, by any person, entity or organization, including, without limitation, the District, claimed or resulting from such Claims. The obligations contained in this paragraph shall survive the termination or expiry of the Contract.

8.02 **Insurance**

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

- (a) commercial general liability insurance on an occurrence basis for third party bodily injury, personal injury, and property damage, to an inclusive limit of not less than **\$5,000,000** per occurrence and including products and completed operations liability. The policy is to include the following:
 - i. the District as an additional named insured with respect to liability arising in the course of performance of the Supplier's obligations under, or otherwise in connection with, the Contract.
 - ii. contractual liability coverage
 - iii. cross-liability and severability of interests' clause
 - iv. employers' liability coverage
 - v. 30 day written notice of cancellation, termination, or material change.
 - vi. tenants' legal liability coverage (if applicable and with suitable sub-limits)
 - vii. non-owned automobile coverage with blanket contractual coverage for hired automobiles.

[Note: Insert (b) only if warranted based on the type of work being performed**]**

- (b) errors & omissions liability insurance, insuring liability for errors and omissions in the performance or failure to perform the services contemplated in the Contract, in the amount of not less than **\$1,000,000** per claim and in the annual aggregate.

8.03 **Proof of Insurance**

The Supplier shall provide the District with proof of the insurance required by the Contract in the form of valid certificates of insurance that reference the Contract and confirm the required coverage. The Supplier shall provide the District with renewal replacements on or before the expiry of any such insurance. Upon the request of the District, a copy of each insurance policy shall be made available to it. The Supplier shall ensure that each of its subcontractors obtains all the necessary and appropriate insurance that a prudent person in the business of the subcontractor would maintain and that the District and Indemnified Parties are named as additional insured with respect to any liability arising in the course of performance of the subcontractor's obligations under the subcontract for the provision of the Deliverables.

8.04 **Workplace Safety and Insurance**

The Supplier warrants and agrees that it has complied and will comply with all applicable workplace safety and insurance laws and regulations and, if applicable will provide proof of valid coverage by means of a current clearance certificate to the District upon request. The Supplier covenants and agrees to pay when due, and to ensure that each of its subcontractors pays when due, all amounts required to be paid by it and its subcontractors under all applicable workplace

safety and insurance laws and regulations during the Term. The Supplier further agrees to indemnify the District for any and all liability, loss, costs, damages and expenses (including legal fees) or other charges in connection with the Supplier's failure to comply with any applicable workplace safety and insurance laws or related to the Supplier's status with any workplace safety and insurance board or body.

ARTICLE 9 – TERMINATION, EXPIRY AND EXTENSION

9.01 Immediate Termination of Contract

The District may immediately terminate the Contract upon giving notice to the Supplier where (a) the Supplier is adjudged bankrupt, makes a general assignment for the benefit of its creditors or a receiver is appointed on account of the Supplier's insolvency; (b) the Supplier breaches any provision in Article 6 (Confidentiality); (c) the Supplier breaches the Conflict of Interest paragraph in Article 3 (Nature of Relationship Between District and Supplier); (d) the Supplier, prior to or after entering into the Contract, makes a material misrepresentation or omission or provides materially inaccurate information to the District; (e) the Supplier undergoes a change in control which adversely affects the Supplier's ability to satisfy some or all of its obligations under the Contract; (f) the Supplier subcontracts for the provision of part or all of the Deliverables or assigns the Contract without first obtaining the written approval of the District; or (g) the Supplier's acts or omissions constitute a substantial failure of performance and the above rights of termination are in addition to all other rights of termination available at law, or events of termination by operation of law.

9.02 Dispute Resolution by Rectification Notice

Subject to the above paragraph, where the Supplier fails to comply with any of its obligations under the Contract, the District may issue a rectification notice to the Supplier setting out the manner and timeframe for rectification. Within seven (7) Business Days of receipt of that notice, the Supplier shall either: (a) comply with that rectification notice; or (b) provide a rectification plan satisfactory to the District. If the Supplier fails to either comply with that rectification notice or provide a satisfactory rectification plan, the District may immediately terminate the Contract. Where the Supplier has been given a prior rectification notice, the same subsequent type of non-compliance by the Supplier shall allow the District to immediately terminate the Contract.

9.03 Termination on Notice

The District reserves the right to terminate the Contract, without cause, upon thirty (30) calendar days prior notice to the Supplier.

Without limiting the foregoing right of the District to terminate the Contract without cause, the District further reserves the right to terminate any particular Service Schedule, without cause, upon thirty (30) calendar days prior notice to the Supplier and in such case, for purposes of sections 9.04, 9.05 and 9.06, a reference to the term "Contract" shall be deemed a reference to the particular Service Schedule.

9.04 Supplier's Obligations on Termination

On termination of the Contract, the Supplier shall, in addition to its other obligations under the Contract and at law (a) at the request of the District, provide the District with any completed or partially completed Deliverables; (b) provide the District with a report detailing: (i) the current state of the provision of Deliverables by the Supplier at the date of termination; and (ii) any other information requested by the District pertaining to the provision of the Deliverables and performance of the Contract; (c) execute such documentation as may be required by the District to give effect to the termination of the Contract; and (d) comply with any other instructions provided

by the District, including but not limited to instructions for facilitating the transfer of its obligations to another Person. This paragraph shall survive any termination of the Contract.

9.05 Supplier's Payment Upon Termination

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

9.06 Termination in Addition to Other Rights

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

9.07 Expiry and Extension of Contract

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

9.08 Evaluation of Performance

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

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

Schedule 2 – Form of Service Schedule

Pursuant to the Master Agreement, the District and the Supplier shall enter into Service Schedule(s) for the provision of assignment-specific Deliverables in accordance with the following form:

SERVICE SCHEDULE

WHEREAS, the District has selected the Supplier to provide the particular Deliverables described herein pursuant to the terms of the Master Agreement and the terms set out below.

NOW THEREFORE, the parties agree as follows:

Article 1 – Definitions and Interpretation

- 1.1 Unless otherwise specified in the Service Schedule, capitalized words and phrases shall have the meaning set out in the Master Agreement.
- 1.2 In the event of a conflict or inconsistency in the provisions of this Service Schedule and the Standard Terms and Conditions in Schedule 1 of the Master Agreement, the specific terms and condition contained in this Service Schedule will govern.

Article 2 – Contacts for Service Schedule

- 2.1 The Supplier's contact for purposes of this Service Schedule will be:

[*insert Supplier contact name, phone, facsimile and e-mail*]

- 2.2 The District's contact for purposes of this Service Schedule will be:

[*insert the District contact name, phone, facsimile and e-mail*]

Article 3 - Term of Service Schedule

- 3.1 This Service Schedule shall take effect on the **[*insert date*]** (the "**Effective Date**") and shall be in effect until **[*insert end date of initial term*]** (the "**Expiry Date**"), with an option in favour of the District to extend the term for an additional period of **[*insert extension period, if applicable, or revise this language as necessary*]**, unless it is terminated earlier in accordance with the terms of the Contract or otherwise by operation of law (the "**Term**").

Article 4 – Deliverables, Rates and Payment Process

- 4.1 The Supplier agrees to provide the Deliverables to the District as described in the Master Agreement and as more particularly specified in Appendix A (Assignment) to this Service Schedule. Subject to the Master Agreement, the Rates for the provision of the Deliverables will be as specified in Appendix B (Rates) to this Service Schedule.

Agreed to this ____ day of _____, 20__

[*Insert Supplier's Legal Name*]

Per: _____
Signature of Authorized Signatory

Print Name

I have the authority to bind to Supplier.

SAMPLE

Appendix A to Service Schedule - Assignment

Include for example:

- detailed description of the Deliverables
- geographic regions in which Deliverables are to be provided
- milestones, dates, timelines
- description of standards to be achieved/quality management plan
- identify personnel to be used by the Supplier, including any subcontractors
- reporting requirements

The RFQ or other form of solicitation document issued for the Roster Competition and/or the Supplier's response to the Roster Competition can be referenced or attached.

Appendix B to Service Schedule - Rates

Provide detail for:

- Rates as per Roster Competition
- Ceiling cost limit for the Service Schedule
- Invoicing process and payment terms

The RFQ or other form of solicitation document issued for the Roster Competition and/or the Supplier's response to the Roster Competition can be referenced or attached.

[end of Service Schedule]