

Schedule 3 – Supplementary Terms and Conditions

The following Supplementary Terms and Conditions are hereby added to the District of Saanich (the “District”) Standard Terms and Conditions. In the event of any conflict between these Supplementary Terms and Conditions and the Standard Terms and Conditions, these Supplementary Terms and Conditions shall govern.

A. DEFINED TERMS

The following defined terms are added to ARTICLE 1 – INTERPRETATION:

“**Contractor**” means the Supplier, as further defined in the Contract; and

“**Health and Safety Legislation**” includes the *Workers Compensation Act* and the *Occupational Health and Safety Regulation*, and any other applicable health and safety laws, regulations, codes, by-laws and standards.

B. SUPPLEMENTARY TERMS AND CONDITIONS

1. Health and Safety Legislation

The Contractor shall:

- (a) be the designated "prime contractor", as defined in the Health and Safety Legislation, for the work site and shall fulfill the responsibilities of the position under the Health and Safety Legislation and its Regulations;
- (b) ensure that its employees are properly trained in all aspects of workplace safety and health, as it relates to the services contemplated by the Contract;
- (c) comply with and ensure that the persons assigned to provide the Deliverables under the Contract comply with and adhere to all Health and Safety Legislation; and
- (d) give immediate notice by telephone or personal communication to the District as to any damage or injury, or threat of damage or injury, to persons or property during the performance of the services contemplated by this contract.

The Contractor’s failure to comply with any of the above requirements shall be cause for either immediate termination or suspension of the Contract until the deficiency, in the opinion of the District and/or the Workers’ Compensation Board of British Columbia (“WorkSafe BC”), is rectified at no cost to the District.

The Contractor acknowledges and agrees that any damages or fines that may be assessed against the District by reason of a breach or breaches of any Health and Safety Legislation by the Contractor or any of its subcontractors shall entitle the District to set off the damages so assessed against any monies that the District may from time to time owe the Contractor under this Contract or any other contract whatsoever.

2. WorkSafe BC Assessments

The Contractor shall, at all times, pay, or cause to be paid, any assessment or compensation required to be paid pursuant to the Health and Safety Legislation and its Regulations. Upon failure to do so, the District may withhold an amount equal to any unpaid assessment or compensation from monies due, or to become due, to the Contractor. The District shall not release such withheld funds until the Contractor provides it a statutory declaration that all assessments and any compensation payable to WorkSafe BC have been paid.

3. Supervisor and Subcontractors

Prior to commencing the work, the Contractor shall identify to the District the designated work site supervisor, the designated health and safety representative, any subcontractors, and any additional personnel representing the Contractor, along with their respective roles and responsibilities in the performance of the Deliverables.

4. Contractor's Lawful Obligations to its Subcontractors

The Contractor shall comply with *The Builders Lien Act* and its Regulations, and other applicable statute and regulation, and discharge its lawful obligations to its subcontractors. The Contractor shall satisfy any claims against the Contractor or the District by its subcontractors. The issuance of the final payment shall not be construed as a representation that the District has made any examination to ascertain:

- (i) how and for what purpose the Contractor has used the monies paid to the Contractor in accordance with the terms of the Contract; or
- (ii) whether the Contractor has discharged the obligations imposed on the Contractor by *The Builders Lien Act* or any Health and Safety Legislation, noncompliance with which may render the District personally liable for the Contractor's default.

This paragraph 4 shall survive any termination or expiry of the Contract.

5. Co-operation of the Contractor

The District may perform, or retain or permit others to perform other work on or near the work site and may permit public utility companies and others to do work on or near the work site during the Contractor's performance of the Deliverables. The Contractor shall conduct and schedule the performance of the Deliverables and co-operate with those other parties so as to cause as little interference as possible with any such other work being carried out.

6. Licenses and Permits

The Contractor shall obtain and hold throughout the term of the Contract any and all permits, approvals, and licenses required by any municipal, provincial, or federal government or authority having jurisdiction over the whole, or any part of, the Deliverables

to be performed by the Contractor pursuant to the Contract. The Contractor shall provide the District with copies upon request.

7. Protection of the Work and the District's Property

The Contractor shall observe all of the District's procedures with regard to the security of the facility where the Deliverables contemplated by this Contract are performed and shall adequately protect the work, property, and premises of the District. The Contractor shall be responsible for any damages due to any negligent act of the Contractor's employees, agents, contractors, subcontractors and those others for whom the Contractor is responsible.

8. Risk and Indemnity

The Contractor shall bear all risk of loss or damage from any cause, which may occur to any part or portion of the Deliverables, until the Deliverables have been completely accepted by the District in writing.

If any loss or damage occurs to the Deliverables before the District accepts the Deliverables in writing, the Contractor shall immediately repair or re-execute any damaged part of the Deliverables at the Contractor's expense.

9. Condition of Site

The Contractor shall confine all work to the site. The Contractor shall keep the site free from accumulations of waste material or rubbish caused by the Contractor's activities during the performance of the Deliverables and shall remove all rubbish from the site and the vicinity upon the completion of the work.

10. Specifications and Materials

The Contractor shall carefully study and compare all specifications, drawings, and other instructions relating to the performance of the Deliverables and comply with the requirements of the Contract. The Contractor shall not substitute any supplies or materials where a specific brand or model has been specified in the Contract without first obtaining written approval from the District.

11. Inspections and Warranty

The Contractor shall complete all of the Deliverables to the satisfaction of the District and in accordance with timelines set out in the Contract. The Contractor shall permit the District Representative and all others authorized by the District, from time to time, at all times to have access to the work for the purposes of inspecting the work. The Contractor shall uncover any work for examination as required by the District at the Contractor's expense when the work has been previously covered up without prior approval or consent from the District.

The Contractor shall rectify any defective or deficient work at the Contractor's own expense to the satisfaction of the District from the date on which the Contractor commences the work pursuant to the Contract to the completion date and for a warranty

period of one (1) year after the completion date. An inspection by the District Representative does not relieve the Contractor of responsibility for the quality of the work, or from any obligation to perform the work in accordance with the requirements of this Contract.

During the warranty period, if the Contractor fails to comply with the direction from the District to rectify any defective or deficiency within five (5) calendar days, or immediately in the case of an emergency, the District may draw upon any maintenance security it is holding and complete the required work at the Contractor's expense. Should any part of the Deliverables be repaired or replaced during the warranty period, a new warranty under the same conditions and for the same period as specified herein shall commence at the completion of the repair or replacement.

The warranty given pursuant to this section shall not limit extended warranties on any items of equipment or material called for elsewhere in the Contract.

The Contractor shall, to the extent permitted by the manufacturer and/or supplier, assign to the District the benefit of any warranty by any manufacturers and/or suppliers in addition to the warranty as mentioned above.

This paragraph 11 shall survive any termination or expiry of the Contract.

12. Completion of the Deliverables

Completion of the Deliverables occurs when the District Representative determines that the Deliverables have been completed in accordance with this Contract and the District accepts the Deliverables in writing. The District shall not accept the Deliverables in writing unless and until the Contractor;

- (a) has cleaned up and restored the work site to the satisfaction of the District; and
- (b) has rectified any defects as identified in writing by the District.

13. Extension of the Completion Date

If the Contractor fails to complete the Deliverables in accordance with the timelines set out in the Contract, the District may elect to do the following:

- (a) extend the completion date by a written notice to the Contractor; or
- (b) terminate the Contract in accordance with Article 9 of the District's Standard Terms and Conditions.

14. Payment Terms

The Contractor shall submit a monthly invoice for Deliverables completed to date in accordance with the payment schedule set out in the Contract.

The District may adjust any invoice to reflect the District Representative's estimate of the work completed satisfactorily as of the invoice date. Notwithstanding any other provision

of the Contract, the Contractor shall not receive any payment from the District for any unacceptable work, unauthorized work, economic loss or loss of profits.

All payments under this Contract shall be subject to the holdback and other provisions of *The Builders Lien Act*.

Payments under this Contract may also be subject to holdback for any maintenance security provided for in this Contract.

The Contractor acknowledges that payments do not represent a final evaluation or acceptance of the work by the District.

15. Builders Lien Act Holdback

The release of the holdback shall be in accordance with the requirements of *The Builders Lien Act*.

16. Maintenance Security Holdback

The District will retain a maintenance security holdback, which is at no time a part of the statutory holdback under *The Builders Lien Act*, in the amount of 1.5% of monies otherwise payable under the Contract.

The 1.5% maintenance security, less any deductions made therefrom in accordance with the Contract, shall be released at the end of the warranty period, provided that there are no outstanding maintenance and warranty issues.