

NVIDIA MASTER SERVICE AGREEMENT

Date:	PO # (if applicable):
Supplier:	Purchaser:
Supplier Contact:	Purchaser Contact:
Phone:	Phone:
Fax:	Fax:
Email:	Email:

The Supplier and Purchaser agree that the Supplier shall provide the Purchaser with [Insert brief description of goods and/or services], as described more fully below, in accordance with the terms of this Master Service Agreement.

1. Term [Choose one of the two options below and delete the other option]

[Option 1: General Retainer]

The initial term of this Agreement is [insert initial term, i.e. one year] effective [insert start date] through [insert end date] (the "Expiry Date") with options to extend the agreement on the same terms and conditions agreed for up to [insert optional terms anticipated, i.e. three (3) additional one (1) year terms; check for consistency with tender documents], at the sole discretion of the Purchaser. The total duration of the Agreement, including the exercise of any options under this clause shall not exceed [indicate the total duration of the agreement, i.e. 5 years].

[Option 2: Project-Specific]

The term of this Agreement begins on [insert start date] and continues until such time as the Deliverables have been provided to the Purchaser in accordance with this Agreement or until such time as this Agreement is terminated by either party in accordance with its terms.

2. Optional Extension [For Option 1 only. Use only if required, if not delete]

If there is an option to extend this agreement and the Purchaser wishes to exercise it, the Purchaser shall notify the Supplier in writing of its intention to extend the performance term at least thirty (30) days before the Expiry Date, and shall amend the Agreement before the Expiry Date. The preliminary notice does not commit the Purchaser to an extension. The extension shall be by mutual agreement evidenced by a written amendment to this Agreement.

3. Documents Incorporated by Reference

The following tender documents are hereby incorporated by reference into and form a part of this Master Service Agreement:

- a) Request for [Proposals/Quotations] # [Insert RFP/RFQ number] dated [insert tender issue date].
- b) The Supplier's Submission dated [insert date of Supplier's proposal/quotation].

[Insert Purchaser Name and Logo in Header]

4. Terms and Conditions

The following terms and conditions form a part of this Master Service Agreement:

- a) General Terms and Conditions (as attached).
- b) Supplemental General Conditions – Minor Construction Work (as attached). *[Delete this line and the Supplemental General Conditions for contracts that do not involve construction]*
- c) Payment Terms: Net 30 Days. *[Revise if otherwise agreed]*
- d) Delivery Terms: *[Insert the delivery lead time, if applicable, i.e. 30 days]* after receipt of order.

5. Deliverables

The Supplier shall provide the goods and/or services described in the tender documents and/or in Schedule A – Schedule of Deliverables / Statement of Work (attached) of this Master Service Agreement.

This Master Service Agreement shall not be construed as guaranteeing that any goods or services will be ordered by the Purchaser or that any releases will be issued by the Purchaser. Goods and services under this Master Service Agreement will be requested on an “as and when required” basis, at the discretion of the Purchaser. *[Delete this paragraph if the Agreement is for a set requirement]*

6. Location of Goods/Services

The Supplier shall provide the goods and/or services under this Agreement to *[Insert address or addresses for delivery, attaching an Appendix if required]*. The delivery location shall be identified on each order placed with the Supplier.

7. Fees/Pricing

- a) The Supplier shall invoice and shall be paid by the Purchaser in accordance with Schedule B – Fees / Pricing (attached) and the terms of this Master Service Agreement.
- b) The maximum amount (fees) payable under this Master Service Agreement shall not exceed \$ _____ *[insert total value of the contract] [Delete if max award amount is unknown]*

9. Supplier’s Resources:

[Instructions: Include a listing of any specific Supplier personnel, equipment, locations to be utilized under the agreement, i.e. Key Personnel, Customer Service Representatives]

[May include basic service level expectations agreed, i.e. timelines to respond to a service request, provide a quote, order confirmation etc.]

10. Purchaser’s Responsibilities:

[Instructions: Include information identifying the Purchaser Representative responsible for contract administration, with whom and how orders will be placed, any resources, equipment and/or facilities the Purchaser will be providing]

11. Additional Provisions:

[Instructions: Provide any specific contract terms and conditions negotiated and agreed by both parties, i.e. hours of work, reporting requirements, how changes will be handled etc. Any and all provisions superseding the General Terms and Conditions should be stated here.]

[Insert Purchaser Name and Logo in Header]

AUTHORIZING SIGNATURES:

SUPPLIER:

Dated: _____

Per: _____

(Signature of authorized representative)

(Printed Name)

(Title)

I have the authority to bind the Supplier_____ (Initials)

PURCHASER:

Dated: _____

Per: _____

(Signature of authorized representative)

(Printed Name)

(Title)

I have the authority to bind the Purchaser_____ (Initials)

GENERAL TERMS AND CONDITIONS

ARTICLE 1 – INTERPRETATION

1.01 Defined Terms

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

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

“Business Day” means any working day, Monday to Friday inclusive, but excluding statutory and other holidays, namely: New Year's Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day which the Purchaser 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 proponent has an unfair advantage or engages in conduct, directly or indirectly, that may give it an unfair advantage, including but not limited to (i) having or having access to information in the preparation of the Supplier's Submission that is confidential to the Purchaser and not available to the open and competitive procurement process and render that process non-competitive and unfair; or (b) in relation to the performance of its contractual obligations in a Purchaser 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) the Agreement; (b) the Master Service Agreement or Purchase order including Schedule “A” (Schedule of Deliverables, Terms, and Key Personnel), Schedule “B” (Schedule of Fees, Pricing and Expenses) and any other schedule attached at the time of execution; (c) the Request for Proposal or other solicitation document, including any addenda; (d) the Supplier's Submission; and (e) any amendments executed in accordance with the terms of the Agreement;

“Deliverables” means everything provided to or agreed to be provided to the Purchaser 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 “A”, 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;

“Expiry Date” is as set out in the Master Agreement or in any subsequent written amendments;

“FIPPA” means the *Freedom of Information and Protection of Privacy Act* (British Columbia) as amended from time to time;

“Indemnified Parties” means the Purchaser, its agents, employees, and any other person designated as such by the Purchaser;

“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 British Columbia 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 Purchaser;

“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;

“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;

“Purchaser Confidential Information” means all information of the Purchaser that is of a confidential nature, including all confidential information in the custody or control of the Purchaser, 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, Purchaser Confidential Information shall: (a) include: (i) all new information derived at any time from any such information whether created by the Purchaser, the Supplier or any third-party; (ii) all information (including Personal Information) that the Purchaser 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 Purchaser 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;

“Rates” means the applicable price, in Canadian funds, to be charged for the applicable Deliverables, as set out in the Contract, representing the full amount chargeable by the Supplier for the provision of the Deliverables, including but not limited to: (a) all applicable duties and taxes; (b) all labour, materials, equipment, tools, facilities, licenses, and approvals costs; (c) all travel and carriage costs; (d) all insurance costs; and (e) all other overhead including any fees or other charges required by law;

“Record”, for the purposes of the Contract, means any recorded information, including any Personal Information, in any form: (a) provided by the Purchaser to the Supplier, or provided by the Supplier to the Purchaser, 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” means the party who is contracted to supply goods, services or construction to the Purchaser. A supplier may be a manufacturer, distributor, contractor, tradesman, consultant, or other;

“Supplier’s Submission” means all the documentation submitted by the Supplier in response to the Request for Proposal or other solicitation document forming the basis for the Contract;

“Term” means the period of time from the effective date set out in the Contract up to and including the earlier of: (i) the Expiry Date or (ii) the date of termination of the Contract in accordance with its terms;

ARTICLE 2 – GENERAL TERMS

2.01 No Indemnities from Purchaser

Notwithstanding anything else in the Contract, any express or implied reference to the Purchaser 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 Purchaser, whether at the time of execution of 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 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 date of execution 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 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 business person 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 this Contract due to a force majeure event, that party shall immediately notify the other party of the delay or non-performance, the reason for such delay or non-performance and the anticipated period of delay or non-performance. If the anticipated or actual delay or non-performance exceeds fifteen (15) Business Days, the other party may immediately terminate the Contract by giving notice of termination and such termination shall be in addition to the other rights and remedies of the terminating party under the Contract, at law or in equity.

2.05 Notices by Prescribed Means

Notices shall be in writing and shall be delivered by postage-prepaid envelope, personal delivery, email or facsimile and shall be addressed, respectively: to the Purchaser Address and the attention of Purchaser Representative as set out in the Master Service Agreement; and to the Supplier Address and the attention of the Supplier Representative as set out in the Supplier’s Submission. 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, email or facsimile one (1) Business Day after such notice is received by the other party. In the event of a postal disruption, notices must be given by personal delivery or by facsimile. Unless the parties expressly agree in writing to additional methods of notice, notices may only be provided by the methods contemplated in this paragraph.

2.06 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 PURCHASER 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 that would in any way interfere with the rights of the Purchaser under this 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 Purchaser or to assume or create any obligation or responsibility, express or implied, on behalf of the Purchaser. The Supplier shall not hold itself out as an agent, partner or employee of the Purchaser. Nothing in the Contract shall have the effect of creating an employment, partnership or agency relationship between the Purchaser and the Supplier (or any of the Supplier’s directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors).

3.04 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 this Contract.

3.05 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 Purchaser. Such consent shall be in the sole discretion of the

Purchaser and subject to the terms and conditions that may be imposed by the Purchaser. Without limiting the generality of the conditions which the Purchaser may require prior to consenting to the Supplier's use of a subcontractor, every contract entered into by the Supplier with a subcontractor shall adopt all of the terms and conditions of this Contract as far as applicable to those parts of the 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 Purchaser.

3.06 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 Purchaser and shall comply with any terms and conditions subsequently prescribed by the Purchaser resulting from the disclosure.

3.07 Conflict of Interest

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

3.08 Contract Binding

The Contract shall endure to the benefit of and be 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 Purchaser.

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 Purchaser, are inadequately provided or require corrections, the Supplier shall forthwith make the necessary corrections at its own expense as specified by the Purchaser in a rectification notice.

4.03 Use and Access Restrictions

The Supplier acknowledges that unless it obtains specific written preauthorization from the Purchaser, any access to or use of Purchaser property, technology or information that is not necessary for the performance of its contractual obligations with the Purchaser is strictly prohibited. The Supplier further acknowledges that the Purchaser 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.

4.04 Notification by Supplier to Purchaser

During the Term, the Supplier shall advise the Purchaser 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.

4.05 Condonation Not a Waiver

Any failure by the Purchaser 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 Purchaser 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.

4.06 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.

4.07 Supplier to Comply With Reasonable Change Requests

The Purchaser 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 Purchaser 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 Purchaser 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 Purchaser change request includes an increase in the scope of the previously contemplated Deliverables, the Purchaser 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 Purchaser 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 Non-Exclusive Contract, Work Volumes

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

4.10 Performance by Specified Individuals Only

The Supplier agrees that to the extent that specific individuals are named in the Contract as being responsible for the provision of the

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 Purchaser, 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.

4.11 Rights, Remedies and Obligations Not Limited by Contract

The express rights and remedies of the Purchaser 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 Purchaser or any other obligations of the Supplier at law or in equity.

ARTICLE 5 – PAYMENT FOR PERFORMANCE

5.01 Payment According to Contract Rates

The Purchaser shall, subject to the Supplier's compliance with the provisions of the Contract and the payment process set out in the Contract, pay the Supplier for the Deliverables provided at the Rates established under the Contract.

5.02 Hold Back or Set Off

The Purchaser may hold back payment or set off against payment if, in the opinion of the Purchaser 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 Purchaser 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 Purchaser 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.

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 Purchaser. The Purchaser 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 Purchaser without the prior written consent of the Purchaser. 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 from the Purchaser.

6.02 Purchaser Confidential Information

During and following the Term, the Supplier shall: (a) keep all Purchaser Confidential Information confidential and secure; (b) limit the disclosure of Purchaser 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 Purchaser 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 Purchaser and (ii) in respect of any Purchaser Confidential Information about any third-party, the written consent of such third-party; (d) provide Purchaser Confidential Information to the Purchaser on demand; and (e) return all Purchaser Confidential Information to the Purchaser before the end of the Term, with no copy or portion kept by the Supplier.

6.03 Restrictions on Copying

The Supplier shall not copy any Purchaser 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.

6.04 Injunctive and Other Relief

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

6.05 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 Purchaser Confidential Information, the Supplier will provide the Purchaser with prompt notice to that effect in order to allow the Purchaser to seek one or more protective orders or other appropriate remedies to prevent or limit such disclosure, and it shall co-operate with the Purchaser 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 Purchaser 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 Purchaser) that such Purchaser 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 Purchaser Confidential Information subject to those terms and conditions.

6.06 Audit

In addition to any other rights of inspection the Purchaser may have under statute or otherwise, the Purchaser, its authorized representatives or an independent auditor identified by the Purchaser may, at its own expense, during business hours and upon twenty-four hours Notice to the Supplier, enter upon the Supplier's premises, at the Purchaser's discretion, to inspect and copy any records relating to the Contract. The Supplier must permit the Purchaser to exercise its rights under this section.

6.07 Survival

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

ARTICLE 7 – INTELLECTUAL PROPERTY

7.01 Purchaser 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 Purchaser to the Supplier shall remain the sole property of the Purchaser at all times.

7.02 No Use of Purchaser Insignia

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

7.03 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 save harmless the Indemnified Parties from losses, claims, damages, actions, causes of action, costs and expenses that the Indemnified Parties may sustain, incur, suffer or be put to at any time, either before or after this Contract ends, including any claim of infringement of third-party intellectual property rights, where the same or any of them are based upon, arise out of or occur, directly or indirectly, by reason of any act or omission by the Supplier or by any of the Supplier's agents, employees, officers, directors or subcontractors in connection with this Contract, excepting always liability arising out of the independent acts or omissions of the Indemnified Parties. The obligations contained in this paragraph shall survive the termination or expiry of the Contract.

8.02 Workers Compensation

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 and regulations in relation to the performance of the Supplier's obligations under this Contract, including the *Workers Compensation Act* in British Columbia or similar laws in other jurisdictions. The Supplier shall provide the Purchaser with evidence of the Supplier's compliance with this section within ten (10) Business Days of being requested to do so.

8.03 Insurance

The Supplier must, without limiting the Supplier's obligation or liabilities and at the Supplier's own expense, purchase and maintain throughout the Term the following insurances with insurers licensed in Canada in forms and amounts acceptable to the Purchaser:

- (a) Commercial General Liability in an amount not less than \$2,000,000.00 inclusive per occurrence against bodily injury, personal injury and property damage and including liability assumed under this Contract and this insurance must:
 - (i) include the Purchaser as an additional insured;
 - (ii) be endorsed to provide the Purchaser with 30 days' advance written notice of cancellation or material change;
 - (iii) include a cross liability clause;
 - (iv) be primary; and
 - (v) not require the sharing of any loss by any insurer of the Purchaser.

(b) Additional insurance as set out in section 8.05 below.

8.04 Evidence of Insurance

The Supplier must provide the Purchaser with evidence of all required insurance when and as required by the Purchaser.

8.05 Additional Insurance

The Supplier must obtain, maintain and pay for any additional insurance that the Supplier is required by law to carry, that the Supplier is required by the Purchaser to carry in accordance with Schedule C, or that the Supplier considers necessary to cover risks not otherwise covered by insurance specified in this Agreement in the Supplier's sole discretion.

ARTICLE 9 – TERMINATION, EXPIRY, AND DISPUTE RESOLUTION

9.01 Immediate Termination of Contract

The Purchaser 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) of these General Terms and Conditions; (c) the Supplier breaches the Conflict of Interest paragraph in Article 3 (Nature of Relationship Between Purchaser and Supplier) of these General Terms and Conditions; (d) the Supplier, prior to or after executing the Contract, makes a material misrepresentation or omission or provides materially inaccurate information to the Purchaser; (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 Purchaser; 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 Rectification Notice

Subject to the above paragraph, where the Supplier fails to comply with any of its obligations under the Contract, the Purchaser may issue a rectification notice to the Supplier setting out the manner and time-frame 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 Purchaser. If the Supplier fails to either comply with that rectification notice or provide a satisfactory rectification plan, the Purchaser 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 Purchaser to immediately terminate the Contract.

9.03 Termination on Notice

In addition to the termination rights set out in section 9.01, the Purchaser reserves the right to terminate the Contract, without cause, upon thirty (30) calendar days prior notice to the Supplier.

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 Purchaser, provide the Purchaser with any completed or partially completed Deliverables; (b) provide the Purchaser 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 Purchaser pertaining to the provision of the Deliverables and performance of the Contract; (c) execute such documentation as may be required by the Purchaser to give effect to

the termination of the Contract; and (d) comply with any other instructions provided by the Purchaser, 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 Purchaser 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 Purchaser 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 Purchaser 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 Purchaser exercises its option to extend the Contract for the period set out in the Contract, such extension to be upon the same terms (including the Rates in effect at the time of extension), conditions and covenants contained in the Contract, excepting the option to renew. The option shall be exercisable by the Purchaser 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 Dispute Resolution Process

In the event of any dispute between the parties arising out of or in connection with this Contract, the following dispute resolution process will apply unless the parties otherwise agree in writing: (a) the parties must initially attempt to resolve the dispute through collaborative negotiation; and (b) if the dispute is not resolved through collaborative negotiation within fifteen (15) Business Days of the dispute arising, the parties must then resolve the dispute through mediation under the rules of the British Columbia Mediator Roster Society. Unless the parties agree otherwise in writing, the mediation under this section will be held in the city in which the Purchaser is located.

9.09 Security Clearance

BC Criminal Review Act states; "All individuals who work with children or vulnerable adults, or have unsupervised access to children or vulnerable adults in the ordinary course of their employment, or in the practice of an occupation, or during the course of an education program and who are employed by or licensed by, or receive regular ongoing operating funds from the provincial government are covered under the Criminal Records Review Act." Due to the sensitive nature of the Purchaser's undertakings, the Supplier, their employees and/or Subcontractors as may be required based on the Scope of Services to be performed may be requested to have a criminal record checks. The Purchaser reserves the right to request copies of the Criminal Record checks for the Supplier's service personnel when required. Where a criminal record does exist, the employee of the Supplier will not be authorized to conduct work on Purchaser facilities. All costs for these checks will be borne by the Supplier. Please reference the Criminal Records Review Act (RSBC 1996, Chapter 86) Criminal Record Checks can be processed online. Please refer to the following website for further information: <http://www.pssg.gov.bc.ca/criminal-records-review/apply/index.htm>

SUPPLEMENTARY GENERAL CONDITIONS – MINOR CONSTRUCTION WORK

The following Supplementary General Conditions — Minor Construction Work are hereby added to the *General Terms and Conditions*. For greater clarity, where there is a conflict between these Supplementary Conditions and the *General Terms and Conditions*, the former shall govern.

1. Supervisor and Subcontractors

Prior to commencing the work, the Supplier shall identify to the Purchaser his/her designated supervisor and any additional personnel representing the Supplier, and any subcontractors, and their roles and responsibilities for the work.

2. Employees

All employees must wear identification badges, which shall include a photo of the employee, the company name and the first name of the employee.

The Supplier must not employ persons who are not skilled in the assigned tasks or duties and do not adhere to all applicable safety and health requirements. If requested by the Purchaser, the Supplier will immediately remove from the work an employee, agent or subcontractor who, in the opinion of the Purchaser, is incompetent, has engaged in improper conduct or who has been deemed inappropriate. The Purchaser will within a reasonable period of time, provide the Supplier with written notification justifying the removal. Persons removed from the work will not be permitted to return without the written consent of the Purchaser.

3. Protection of the Work and Purchaser's Property

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

4. Licenses and Permits

The Supplier 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 work to be performed by the Supplier pursuant to the Contract. The Supplier shall provide with copies upon request.

5. Worker's Compensation Act

The Supplier shall:

- (a) 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;
- (b) comply with all provisions of the *Worker's Compensation Act*, and all regulations thereunder;
- (c) ensure that any services provided under the Contract are carried out in accordance with the *Worker's Compensation Act* and all applicable statutes and regulations; and
- (d) give immediate notice by telephone or personal communication to the Purchaser 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 Supplier's failure to comply with all applicable safety and health requirements shall be cause for either immediate termination or suspension of the Contract until the deficiency, in the opinion of the Purchaser and/or WorkSafeBC, is rectified at no cost to the Purchaser.

6. Site Safety Plan

Prior to the start of performance of any Deliverables, the Supplier shall prepare and submit to the Purchaser a Site Safety Plan that meets the requirements of *The Workplace Safety and Health Act*. This Plan shall include but is not limited to all items listed below:

- (a) Hazard/Risk Assessment Practices and Procedures, including planned site safety inspections and accident/incident investigation procedures
- (b) Site Safety Rules
- (c) Outline of Company Safety Training Program
- (d) Safety Committee and/or Site Safety (Toolbox) Meeting Program
- (e) Emergency Response Plan and Procedures

7. Worker's Compensation Board of British Columbia Assessments

The Supplier shall, at all times, pay, or cause to be paid, any assessment or compensation required to be paid pursuant to the *Workers Compensation Act*. Upon failure to do so, the Purchaser may withhold an amount equal to any unpaid assessment or compensation from monies due, or to become due, to the Supplier. The Purchaser shall not release such withheld funds until the Supplier provides it a statutory declaration that all assessments and any compensation payable to the Worker's Compensation Board of British Columbia have been paid.

8. Supplier's Lawful Obligations to its Subcontractors

The Supplier shall discharge the Supplier's lawful obligations to its subcontractors and shall satisfy any claims against the Supplier or the Purchaser by its sub-contractors. The issuance of the certificate for payment shall not be construed as a representation that the Purchaser has made any examination to ascertain:

- (a) how and for what purpose the Supplier has used the monies paid on account of the Contract price; or
- (b) whether the Supplier has discharged the obligations imposed on the Supplier by law, or requirements of the *Worker's Compensation Act*, or other applicable statute or regulation, noncompliance with which may render the Purchaser personally liable for the Supplier's default.

9. Insurance

In addition to the Insurance prescribed in the General Terms and Conditions, the Supplier shall also, at the Supplier's own expense, purchase and maintain throughout the Term the additional insurance described in Schedule C.

SCHEDULE A
SCHEDULE OF DELIVERABLES / STATEMENT OF WORK

[Insert the deliverables on this section]

SCHEDULE B FEES / PRICING

[Insert the pricing submitted in this section]

SCHEDULE C ADDITIONAL INSURANCE REQUIREMENTS FOR LIGHT CONSTRUCTION

In addition to the Insurance prescribed in the General Terms and Conditions, the Supplier shall also, at the Supplier's own expense, purchase and maintain throughout the Term insurance with insurers licensed in Canada in the forms and amounts set out below:

[Insert specific additional insurance terms for light construction based on project-specific advice. Terms may include:

Structural, Mechanical, Electrical and Civil Sub-Contractors insurance coverage to be based on the value of their scope of work. All other specialty Sub-Contractors to carry a minimum of \$250,000.00 Errors and Omissions Insurance despite the value of their scope of work; and/or

Course of Construction insurance on an All Risks basis to insure against loss of or damage to the work, supplies and materials performed by Suppliers or their subcontractors at full replacement cost value.]

OR

ADDITIONAL INSURANCE REQUIREMENTS FOR CONSULTANTS

In addition to the Insurance prescribed in the General Terms and Conditions, the Supplier shall also, at the Supplier's own expense, purchase and maintain throughout the Term insurance with insurers licensed in Canada in the forms and amounts set out below:

[Insert specific additional insurance terms for consultants based on project-specific advice. Terms may include:

Professional Liability Insurance

Professional (Errors and Omissions) Liability Insurance protecting the Supplier, and if applicable their insurable Sub-Contractors and their respective servants, agents or employees, against any loss or damage arising out of the professional services rendered by any of them under this Agreement. Such insurance shall be for an adequate amount acceptable to the Province and shall in any event be not less than:

i. Contract valued at \$0.00 to \$2.5 million: \$250,000.00

ii. Contract value at \$2.5 million to \$7.5 million: \$500,000]

APPENDIX

[Insert applicable Appendices as required]