



STANDARD TERMS FOR GOODS AND SERVICES

1. General. The following documents shall form the contract (“**Contract**”) between the Town of Wasaga Beach (“**Town**”) and the counterparty (“**Contractor**”) set out in the quote, confirmation or other document confirming purchase of the goods and services by the Town (“**Order**”): (1) these Standard Terms for Goods and Services (“**Terms**”); (2) the Order; (3) any documents (except a Contractor bid) referenced in the Order; (4) any other attached appendices; and (5) the Contractor bid. The Contractor accepts the Contract by commencing performance, in whole or in part, or by communicating its acceptance of same to the Town. Any conflict or inconsistency between the provisions of the Contract shall be resolved in the order listed above. Inclusion of a Contractor bid is limited to incorporating the descriptions and specifications contained therein to the extent they do not otherwise conflict with prior Contract documents. To avoid doubt, the Contract applies to the exclusion of any Contractor terms, including as incorporated in any quote or otherwise. Any such additional terms are expressly rejected by the Town. **These Terms may only be amended or excluded by written agreement signed by a duly authorized representative of the Town and the Contractor explicitly referencing an intention to exclude or amend the Terms .**

2. Performance. The Contractor agrees to provide those goods (“**Goods**”) and supply those services (“**Services**”) and any related deliverables (“**Deliverables**”) identified in the Contract or arising as a result of the provision thereof (collectively the “**Work**”). The Work will conform in all material respects with the specifications in the Contract, including all documentation published by the Contractor relating to the Work. Contractor shall provide the Work in a safe and workmanlike manner, exercising the degree of professionalism, skill and diligence expected of a skilled and experienced Contractor for similar work.

3. Personnel. Contractor shall only use personnel with appropriate licenses, qualifications and training necessary to perform the Work. Any key personnel named in the Contractor’s documents shall not be voluntarily removed or replaced by the Contractor without the Town’s written consent. The Contractor shall immediately remove personnel who are unprofessional, disrupt to the workplace, or violate applicable Town policies and replace such personnel within 5 days with appropriate replacement personnel.

4. Working on Town Property; Clean-up; Storage of Contractor Materials. Contractor shall comply with all Town policies applicable to parties working on Town property; shall be responsible for any damage to Town property or equipment caused by Contractor personnel (including subcontractor personnel); and shall be responsible for cleanup of Contractor’s worksite and the proper disposal of materials, including without limitation packaging or waste. Contractor shall in all cases obtain written pre-approval from the Town representative prior to storing any Contractor materials or equipment on Town property. The Town is not responsible for any damage to, or loss of, Contractor’s materials or equipment while stored on Town property and such storage is at the Contractor’s sole and exclusive risk.

5. Schedule. The Contractor shall perform the Work in accordance with the time period and all specified performance timelines, milestones and delivery dates set out in the Contract (collectively the “**Schedule**”), understanding time is of the essence. Where the Town must provide information in order for the Contractor to perform the Work, the Contractor is obligated to request, document and assist in obtaining such input, including ongoing communication respecting the input, key tasks and timing of same. Contractor shall notify the Town as soon as it becomes aware that it cannot meet the Schedule. In the event of a delay, Contractor shall, at no additional cost to the Town, employ accelerated measures, such as premium transportation costs or labour overtime, to ensure the Goods or Services are delivered on or before the revised delivery date. In the event a delay in delivery or a new delivery date proposed by Contractor is not acceptable to the Town, acting reasonably, then in addition to any other rights and remedies that may be available to the Town at law, the Town may cancel the Contract without any liability whatsoever.

6. Shipping. Where applicable, and unless otherwise specified in the Order, Contractor shall ship the Goods Delivery Duty Paid (DDP-Incoterms, 2018), to the place of destination specified by the Town. A packing slip must accompany each shipment indicating the Contract number. Title to the Goods will pass to the Town upon acceptance by the Town. In the



event of loss or damage during shipping, Contractor shall be required to promptly ship replacement Goods, at Contractor's cost.

7. Inspection and Acceptance. The Town may reject any materially non-conforming Work, in whole or in part, by written notice to the Contractor within 15 business days following receipt of the Goods or completion of the Services, failing which acceptance is deemed . Acceptance does not confirm compliance with the Contract. Where the Town discovers defective or non-conforming Goods or Services, at the Town's option it may, without prejudice to any other rights or remedies it may have hereunder or at law, : (a) at Contractor's expense, return Goods for a refund, credit, repair or replacement or (b) obtain a price reduction or re-performance of non-conforming Services. The Town shall not be liable for any restocking or other charges for rejected Goods. No payment shall be owed for the Goods or Services unless the Town has accepted the Good or Service.

8. Price, Invoicing and Payment. The Town shall pay for the Work performed in accordance with the Contract. Prices are as set out in the Contract, inclusive of all direct, indirect and incidental charged related to the provision and delivery of the Work (the "Price"). Unless otherwise specified in the Contract, the Price is in Canadian funds, exclusive of Canadian taxes and inclusive of any other taxes, duties, fees (including brokerage fees) and levies that may be imposed on Contractor by Canadian law or a non-Canadian jurisdiction. Price increases or charges not expressly set out in the Contract shall not be charged. Where no Contract term is specified, Prices may increase 12 months following the effective date of the Contract and may not increase more than Canadian Consumer Price Index, as reported in the preceding 12 month period. Contractor shall submit invoices and supporting documentation for Work in accordance with the Contract and any payment schedule therein. Undisputed invoices will be paid within 30 calendar days from the later of (a) the Town's receipt of a complete invoice; or (b) acceptance of the Goods or Services in accordance with s.7. All invoices must meet the Town's requirements, be addressed to the appropriate Town entity and at a minimum provide the date, the legal name of the Contractor, the contact details of the Contractor's account receivables department, the contract number, a description of the Work provided, reference to the line item and dollar amount, the Contractor's HST or other tax registration number, and a transportation bill of lading, as applicable. Taxes payable by the Town must be shown as a separate item. **Invoices are to be submitted to** the attention of the Town Contract representative. The Town is not liable for any Work provided in excess of those specified by the Contract unless expressly agreed in writing in advance. Where payments are subject to Canadian legislated withholding or similar tax, the Town shall withhold such amount unless the Contractor provides appropriate documentation relieving the Town of such obligation. All invoices are subject to verification by the Town and payment of any invoice shall not prejudice the Town's right to dispute such invoice. The Town may withhold payment on disputed invoices on written notice to the Contractor indicating the amount withheld and reason for withholding and no interest shall be charged on disputed amounts withheld. Any undisputed portion of an invoice shall be paid in accordance with this section 8. The parties will negotiate in good faith and discuss any disputed amount.

9. Warranty. Contractor represents and warrants that: i) Services will be performed in a good and workmanlike manner and of a quality at least equal to that generally accepted in the industry for similar work; and ii) the Goods are not subject to economic sanctions, comply with applicable laws, are free from any liens or encumbrances on title, will be new and of current production and that, for a period of one (1) year or the time period set out in the applicable manufacturer's warranty, whichever is greater, or such other time period as may be specified on the Contract, following the Town's acceptance, the Goods will be merchantable, of satisfactory quality, free from defects in design, material and workmanship and where applicable, will conform to and perform in accordance with specifications, drawings and samples accepted by the Town. The Contractor shall assign to the Town all manufacturer's warranties for Goods not manufactured by or for the Contractor and shall take all necessary steps as required by such third-party manufacturers to effect assignment of such warranties to the Town. Work failing to comply with applicable warranties will be, at the Town's option, (i) returned for a full refund or credit of amounts paid by the Town for the defective Work, (ii) repaired, (iii) replaced; (iv) re-performed by Contractor using alternate personnel if instructed by the Town or (v) rejected by the Town, within 30 days of notice from the Town at no cost or risk to the Town including warranty servicing, shipping, transportation costs and risk of loss and damage in transit. The warranty period for such repaired, replaced or re-performed Work shall be the greater of the



remainder of the existing warranty period or six (6) months. The above warranties, together with any additional Contractor warranties, survive inspection, test, acceptance of and payment for the Work.

10. Liability. Neither party shall be liable to the other for special, consequential, incidental, exemplary or indirect costs, lost production or profits, lost opportunity, expenses or damages including without limitation litigation costs arising from any cause whatsoever, even if advised of the possibility of such costs or damages, arising at any time for any matter relating to this Contract. Contractor shall indemnify and hold harmless the Town, its employees, the mayor, councilors, officers and agents (collectively “**Town and Personnel**”) from and against any and all claims, demands, damages, losses, costs and expenses, including fines and penalties related to Workers’ Safety and Insurance requirements, and including legal fees (collectively, “**Claims and Costs**”) to the extent caused by the Contractor, its officers employees, directors, officers, employees, subcontractors, suppliers and other representatives. Contractor shall have no obligation pursuant to this Section to the extent that the Claims and Costs arise from the negligence of any Town and Personnel. This indemnity shall be in addition to and not in lieu of any insurance to be provided by the Contractor in accordance with this Contract and shall survive termination or expiration of this Contract. Contractor shall not enter into any settlements admitting any Town and Personnel liability without the Town’s prior written consent.

11. Termination and Suspension.

a. Without prejudice to any other right or remedy, the non-defaulting party may have hereunder, if either party is adjudged bankrupt, make a general assignment for the benefit of creditors or a receiver is appointed, the other party may immediately terminate the Contract by written notice (“**Termination Notice**”) to the insolvent party or its receiver or trustee in bankruptcy. If either party defaults under the Contract or the Contractor fails or neglects to pursue the Work diligently, the non-defaulting party may provide written notice to the defaulting party requiring their remedy of the default (“**Default Notice**”). If the defaulting party does not remedying the default within 5 days following receipt of the Default Notice (or such other period approved by the non-defaulting party) then the non-defaulting party may: i) correct the default and charge the cost of such correction to the defaulting party, or ii) terminate the Contract, in whole or in part, by issuing a Termination Notice. On termination for default, the Town shall pay for the portion of the Work completed to the satisfaction of the Town, and if terminated by the Town, the Town will deduct the cost to the Town in curing any defects in such Work, and any other costs to complete the Work in excess of the Price.

b. Notwithstanding anything in this Contract, the Town may terminate the Contract or any part of the provision of the Work, for convenience, at any time prior to completion of the Work, by issuing a Termination Notice providing notice of the termination date and the portion of the Work, if any, the Contractor is required to complete before the termination date. In such event, Contractor shall make reasonable efforts to mitigate all costs associated with such termination. The Town shall pay for the Work performed up to the date of termination, together with any reasonable and verifiable demobilization costs, non-cancellable materials costs and for such other reasonable additional costs (if any) incurred by the Contractor as a result of such termination.

c. The Town may suspend the Work, in whole or in part, by written notice to the Contractor. The Contractor shall promptly resume the Work only on receipt of written notice to resume, to the extent requested in the notice, and the Schedule and Delivery Date shall be adjusted equal to the suspension period, or as otherwise agreed in writing between the parties. If the suspension period exceeds 60 consecutive days, not due to any act or default of the Contractor, the Contractor may terminate the Contract and shall be paid as if the Contract was terminated for convenience by the Town.

d. The Town shall not be liable to the Contractor for any other costs or damages whatsoever arising from such termination or suspension of the Contract including consequential damages. The Town shall in no event be liable to pay a total amount exceeding the Contract value

12. Intellectual Property. In exchange for the consideration provided to Contractor, the Town will: (i) have free title to and all ownership interest in the Work delivered except for pre-existing software, provided that it is acknowledged that the Town is hereby granted a perpetual, paid-up, royalty free, irrevocable license to such software; and (ii) own all intellectual property rights in any Deliverables. Contractor agrees to execute any assignment, conveyance or any other assurance necessary to give effect to this section and shall ensure that the Town has supporting technical documentation and a license to all Deliverables sufficient to allow the Town to have the intended use of the Work.



13. Town Property, Confidentiality, Privacy and Publicity. All specifications, drawings, patterns, samples and other information furnished to Contractor hereunder: i) will be used solely for the purpose of carrying out the Work and for no other purpose; ii) will remain the property of the Town; and iii) be returned or destroyed at the Town's request at the expense of Contractor. This Contract and information issued, used or disclosed in connection with the Work are confidential and may be classified as to the degree of precaution necessary for their safeguarding. Contractor shall at all times take all measures reasonably necessary, including those set out in any instructions issued by the Town, for the protection of same. Contractor shall not use the Town's name in any public statement or publicize the fact the parties are doing business, without the prior written consent of the Town. Contractor agrees that all personal and security sensitive information disclosed by the Town, or managed, accessed, collected, used, retained, created or disposed of in order to fulfill the requirements of the Contract will at all times be stored on segregated, stand-alone information systems in Canada.

14. Contractor Records. Contractor shall keep proper records of costs and expenditures related to the Contract including paid invoices for a period of seven (7) years following the expiration or termination of the Contract and shall make them available to the Town upon request, for inspection and audit during business hours. Where an overpayment by the Town is discovered, the Contractor shall repay such amount within 15 days' of written notice from the Town.

15. Freedom of Information and Privacy Legislation. The Contractor acknowledges that all information distributed and collected with respect to the Work is subject to the *Municipal Freedom of Information and Protection of Privacy Act*, RSO, 1990 or any other applicable information or privacy legislation.

16. Governing Law and Competent Court. This Contract is exclusively governed by and will be construed in accordance with the applicable laws of the Province of Ontario and Canada, without regard to conflicts of laws principles. The parties expressly exclude application of the United Nations Convention on Contracts for the International Sale of Goods. The parties agree to the exclusive jurisdiction of Ontario courts in all matters arising under this Contract. without prejudice to the Town's right to submit a dispute to the court that would be competent absent this clause.

17. Miscellaneous. The Town may withhold from, reduce or set-off against any amount due to Contractor, such sums as are reasonably necessary to cover non-performance, indemnity or liability of Contractor in relation to the Contract. Contractor is an independent contractor and not an agent or employee of the Town. Contractor shall at all times comply with applicable laws. Nothing in this Contract grants Contractor the right to exclusively provide the Goods or Services. The Town shall at any time have the right to engage alternate or supplemental parties to perform the same or similar Services or provide the Goods at any time. Any delay by the Town in the exercise of any right or remedy provided herein shall in no event be deemed to be a waiver of such right or remedy. To be valid, any waiver by the Town must be made in writing expressly referencing the Contract. A valid waiver of any right or remedy herein will in no event be deemed to (i) constitute a waiver of such right or remedy arising in the future or (ii) operate as a waiver of any other right or remedy. If any provision of the Contract is held to be invalid or unenforceable by a judicial or regulatory authority, the meaning of such provision shall be construed, to the extent feasible, so as to render the provision enforceable. If no feasible interpretation would save the provision, it shall be severed, and the remainder shall not be affected and shall be enforced as nearly as possible according to its original terms and intent. The Town may assign its rights and obligations under the Contract without requiring any notice to or consent from Contractor. Contractor may not assign or transfer any right or obligations hereunder without the prior written consent of the Town. Contractor shall be liable for of its subcontractors' compliance with the Contract. A copy or electronic version of this document will have the same force and effect as the original document. Les parties ont accepté que ce document soit rédigé en anglais. The parties have agreed that this document be prepared in the English language.