



Region of Waterloo Terms and Conditions

Note:

These Terms and Conditions, as applicable, together with the attached Purchase Order form a legally binding agreement (the “Agreement”) between the Vendor and The Regional Municipality of Waterloo (the “Region”). Any and all supplementary materials provided by the Region and/or the Vendor and attached hereto as Appendix “A” shall be deemed to form part of these Terms and Conditions. For clarity, in the event of any inconsistency between the provisions contained below in these Terms and Conditions and the provisions contained in Appendix “A” attached hereto, the provisions contained in these Terms and Conditions shall prevail. The term “Work” herein means all activities, services, goods, equipment, matters and things required to be done, delivered or performed by the Vendor under the Agreement. The term “Vendor” herein shall include a vendor, consultant, service provider and/or contractor, as the case may be. Also, the word “Contract” is synonymous with “Agreement”; and the word “bid” is synonymous with “tender” and “quotation/quote”.

1. Invoices must be submitted in the Vendor's name in a form acceptable to the Region; invoices must only apply to the Work and must reference the Purchase Order.
2. On shipments originating outside of Canada, Vendor must furnish in addition to invoice, for accounting purposes, properly certified Canadian Customs invoices in quadruplicate, made up in accordance with the Canadian Customs requirements.
3. The Vendor shall disclose to the Region prior to the commencement of any Work as well as during the performance of the Work, any potential conflict of interest. If such a conflict of interest does exist, the Region may, at its discretion, withhold or suspend this order until the matter is resolved to the satisfaction of the Region.
4. If the Vendor is in default in carrying out any of its obligations under this Agreement, or is bankrupt or insolvent or in receivership, the Region may, by giving written notice to the Vendor, terminate for default all or any part of this Agreement. Upon the giving of such notice, the Vendor will have no claim for further payment and remains liable to the Region for all losses and damages suffered by the Region because of the default, including any increase in the cost incurred by the Region in procuring the Work from another source.
5. At any time before the completion of the Work, the Region may, by giving notice to the Vendor, terminate for convenience all or part of this Agreement. In such case, the Vendor will be paid for Work that has been performed, accepted and unpaid in accordance with the Agreement. The Vendor will be entitled to be reimbursed the actual costs reasonably and properly incurred as a direct result of the termination, but in no



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case will such reimbursement exceed the Purchase Order price. The Vendor will have no claim for damages, compensation, loss of profit or otherwise, except as provided in this section.

6. The Vendor is an independent contractor engaged by the Region to perform the Work. Neither the Vendor nor any of its personnel is engaged as an employee, servant or agent of the Region. The Vendor is responsible for all deductions and remittances required by law in relation to its employees.
7. The Vendor shall comply with all federal, provincial and municipal laws, regulations, rules, orders, codes, and standards applicable to the performance of the Work. If requested by the Region, the Vendor shall provide evidence of compliance with such laws, regulations, rules, orders, codes, and standards to the Region.
8. The Vendor must obtain and maintain at its own costs all permits, licences, regulatory approvals and certificates required to perform the Work, unless otherwise agreed upon by the Region. If requested by the Region, the Vendor must provide a copy of any required permit, licence, regulatory approvals or certificate to the Region.
9. The Vendor shall not, in the performance of the Work, infringe or violate any patent, copyright, trade secret, trade mark, industrial design, intellectual property right, or any other right of any person or entity.
10. The Vendor shall not assign this Agreement, in whole or in part, without the prior written consent of the Region. The Agreement must not be amended, in whole or in part, without the prior written agreement of the parties.
11. Without limitation, the Vendor will require prior written approval of the Region for all price changes or material substitutions.
12. The Vendor must perform the Work efficiently in accordance with standards of quality acceptable to the Region and in full conformity with all the requirements of these Terms and Conditions. All the Work is subject to inspection and acceptance by the Region, or persons authorized by the Region.
13. The amount claimed under the Agreement is subject to audit by the Region both before and after payment is made. Without limitation, the Region may inspect and audit the books, payrolls, accounts and records of the Vendor during regular office hours with respect to any item which the Region is required to pay under the Agreement, and to make copies thereof as required. The Vendor must keep proper accounts and records of the cost of performing the Work and keep all documents relating to such cost for six (6) years after it receives the final payment under the Agreement.
14. The Vendor acknowledges and agrees that the Region shall be bound by the Municipal



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Freedom of Information and Protection of Privacy Act in the performance of this Agreement, and the Vendor must, to the extent possible, assist the Region in discharging its responsibilities thereunder.

15. The Vendor will report to the Region, and jurisdictional authorities, any accident or incident involving Vendor, Regional, or public personnel and/or property, arising from the Vendor's execution of the Work.
16. The Vendor, both during and after the term of this Agreement, shall at all times, and at its own cost, expense and risk, indemnify and hold harmless the Region, its elected officials, officers, employees, volunteers, agents, contractors, and all respective heirs, administrators, executors, successors and assigns from any and all losses, damages (including, but not limited to, incidental, indirect, special and consequential damages, or any loss of use, revenue or profit by any person, organization or entity), fines, penalties and surcharges, liabilities (including, but not limited to, any and all liability for damage to property and injury to persons, including death), judgments, claims, demands, causes of action, contracts, suits, actions or other proceedings of any kind (including, but not limited to proceedings of a criminal, administrative or quasi criminal nature) and expenses (including, but not limited to, legal fees on a substantial indemnity basis), which the indemnified person or persons may suffer or incur, howsoever caused, arising out of or in consequence of or directly or indirectly attributable to the Services required to be performed by the Vendor, its agents, employees and sub-consultants on behalf of the Region, provided such losses, damages, fines, penalties and surcharges, liabilities, judgments, claims, demands, causes of action, contracts, suits, actions or other proceedings of any kind and expenses as defined above are due or claimed to be due to the negligence, breach of contract, and/or breach of law of the Vendor, its agents, employees or subconsultants.
17. It is the responsibility of the Vendor and/or its Insurance Broker to review all potential operations and exposures to determine if the coverage and limits noted below are sufficient to address all insurance related exposures presented by the specifications of the Work. The Vendor shall insure its undertaking, business and equipment under the following coverage so as to protect and indemnify and save harmless the Region:
 - (a) General Liability Insurance:

The Vendor shall maintain liability insurance acceptable to the Region throughout the term of this Agreement. Coverage shall consist of a comprehensive policy of public liability and property damage insurance, with all coverage endorsements available, in an amount of not less than \$2,000,000 per occurrence. Such insurance shall name The Regional Municipality of Waterloo, and any other person or party identified in the contract documents, as an additional insured with a cross liability endorsement and severability of interests provision. The policy SIR/deductible shall not exceed \$100,000 per claim and if the policy has an aggregate limit, the amount of the aggregate shall be double the required per occurrence limit. (Please refer to Clause 21 for additional insurance



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requirements.)

(b) Provisions:

All Insurers must be licensed in Ontario. The Vendor shall forward Certificates of Insurance on the Region's Forms (Standard Certificate of Insurance and if required a Certificate of Professional Liability Insurance) evidencing this insurance to the Region. The Certificates shall state that coverage will not be cancelled, terminated, amended or otherwise changed or modified except after thirty (30) days (fifteen (15) days if cancellation is due to non payment of premium) prior written notice by certified mail to the Region. It is also understood and agreed that in the event of a claim any deductible or self-insured retention (SIR) under these policies of insurance shall be the sole responsibility of the Vendor and that this coverage shall preclude subrogation claims against the Region and any other person insured under the policy and be primary insurance in response to claims. Any insurance or self-insurance maintained by the Region and any other person insured under the policy shall be considered excess of the Vendor's insurance and shall not contribute with it. The minimum amount of insurance required herein shall not modify, waive or otherwise alter the Vendor's obligation to fully indemnify the Region under this Agreement. Any failure to comply with any provision of the insurance policy by the Vendor shall not affect coverage provided to the Region.

(c) Third Party Claims Process:

The Region's claims process for Third Party claims is to refer the claimant directly to the Vendor and to leave the resolution of the claim with the Vendor. This applies regardless of whether or not it is an insured loss. As the Region has a responsibility to the taxpayers, we must ensure that claimants are dealt with in a fair and efficient manner. Claims reported to the Vendor, either directly by a third party or through the Region shall be promptly investigated by the Vendor. The Vendor shall make contact with the third party claimant within 48 hours of receipt of notice of a claim. The Vendor shall initiate an investigation of the claim immediately upon notice, and advise the third party claimant in writing, with a copy to the Region, of the status of their claim within 20 business days of the notice. Upon resolution of the claim, the Vendor shall issue a letter to the claimant, with a copy to the Region, which will include the reasons for their position. Should this position not resolve the claim and be accepted by the third party claimant, the Vendor shall immediately report the claim to its Insurer for a further review. (Insurer for this purpose is defined as either the Claims Department of the Vendor's Insurance Company or the Claim's Administrator at the Vendor's Insurance Broker.) The Vendor's Insurer upon receipt of this claim shall advise the third party claimant by letter, with a copy to the Region, that they are now investigating the claim. When a final position on the claim has been determined, the Vendor's Insurer shall advise the third party claimant by letter, with a copy to the Region. Failure to follow this procedure shall permit the Region to investigate and resolve any such claims. Nothing herein shall limit the right of the Region to investigate and resolve any such claims notwithstanding the



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response of the Vendor and/or its Insurer and to seek indemnification from the Vendor or to exercise any other rights under this Agreement. The Region may, without breaching this Agreement, retain from the funds owing to the Vendor an amount that, as between the Region and the Vendor, is equal to the balance in the Region's favour of all outstanding debts, claims or damages, whether or not related to this Agreement.

18. The Vendor must register as an employer or independent operator (as the case may be) with the Workplace Safety and Insurance Board (WSIB). Prior to commencing the Work, the Vendor shall enrol in the WSIB e-Clearance service and provide the Region with a Clearance Certificate Number through the e-Clearance service. The Vendor must maintain its account with the WSIB in good standing throughout the duration of this Agreement, and shall ensure that its e-Clearance is automatically renewed prior to its expiry. At no time may work proceed or continue under this Agreement in the absence of a current Clearance Certificate Number from the WSIB.
19. The Vendor shall comply with the Occupational Health and Safety Act and the Regulations thereunder ("OHSA"). Without limitation, the Vendor shall:
 - (a) be responsible to take all necessary steps to protect persons (workers, general public, etc.) and property, from any harm during the course of the Work;
 - (b) permit only persons familiar with and abiding by the OHSA on site, and be responsible to remove from the site any persons not observing or complying with the safety requirements of the OHSA; and
 - (c) include all provisions herein contained in any agreement with subcontractors, and hold all subcontractors equally responsible for safe work performance and ensure that all subcontractors comply with their obligations under the OHSA.
20. If the Vendor is responsible for a delay in the progress of the Work due to an infraction of legislated or Vendor health and safety requirements, the Vendor will, without additional cost to the Region, work such overtime, acquire and use for the execution of the Work, such additional labour and equipment as to be necessary, in the opinion of the Region's representative to avoid delay in the final completion of the Work or any operations thereof.
21. Only in the event that the Vendor is providing Work involving any of the following exposure areas, shall it provide additional insurance coverage under the following terms so as to protect and indemnify and save harmless the Region:
 - (a) Automobile Liability Insurance:
The Vendor shall maintain automobile liability insurance on all Owned and Leased Automobiles if the Vendor uses automobiles to perform the Work, to a limit of \$2,000,000.
 - (b) Professional Liability Insurance:
In the event that the Vendor is providing professional consulting services (including, but not limited to, architectural, planning and engineering services), it



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shall take out and keep in force until three (3) years after this Agreement is no longer in effect, Professional Liability insurance in the amount of \$1,000,000 providing coverage for acts, errors and omissions arising from their professional services performed under this Agreement. The policy SIR/deductible shall not exceed \$100,000 per claim and if the policy has an aggregate limit, the amount of the aggregate shall be double the required per claim limit. If the Vendor hires subcontractors to perform professional services in connection with the Work (i.e. for design/build projects; bridge structures; retaining walls; noise walls), the Vendor shall ensure its subcontractors providing a professional service in connection with the Work shall maintain coverage as above.

(c) **Broad Form Contractors' Equipment Insurance:**

The Vendor shall maintain coverage on all construction machinery and equipment used by the Vendor for the performance of the Work. Such insurance shall be in a form acceptable to the Region and shall not allow subrogation claims by the Insurer against the Region.

(d) **All Risk Installation Floater Insurance:**

The Vendor shall maintain all risk installation floater coverage if the Work involves the installation of any machinery and/or equipment. Coverage shall be in an amount equal to the value of the machinery and/or equipment, and shall include coverage while it is in transit to and awaiting installation at the work site.

(e) **Broad Form Builders' Risk Insurance:**

The Vendor shall maintain broad form builders' risk coverage if the Work involves the construction of a facility. For clarity, this provision is applicable only for contracts relating to the construction of a new facility. If the majority of this Agreement involves the renovation or addition to an existing Region facility, the Region will purchase and maintain the Builders' Risk insurance coverage. In such event, the Vendor shall not include a cost into their contract price for Builders' Risk coverage. If applicable, the Builders' Risk shall be underwritten on the following basis:

- Coverage in the amount of 1.1 times the full replacement cost of the construction project;
- Policy deductible shall not exceed \$5,000 without prior approval by the Region. If a loss occurs, the deductible shall be the sole responsibility of the Vendor;
- The Vendor and the Region must be named as co-insured;
- The policy shall contain a clause which will allow occupancy prior to the completion or acceptance of the entire Work; and
- A copy of the Builders' Risk Certificate shall be furnished to all parties prior to the commencement of the construction project.

(f) **Boiler & Machinery Insurance:**

The Vendor shall maintain boiler & machinery coverage if the Work involves the installation of boilers, pressure vessels, and/or mechanical/electrical equipment. Coverage shall be on a Comprehensive Plus Form to the full replacement cost of



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- the boiler and machinery equipment.
- (g) **Contractor's Pollution Liability:**
The Vendor shall maintain Contractor's Pollution Liability (CPL) coverage if specifically required pursuant to any other provision of the Agreement and/or, if the Work involves the bulk transportation, storage or application of a hazardous product or substance (including the supply or delivery of any petroleum product, paint, or toxic or noxious chemical), the maintenance or repair of any tank or mechanical device used in the storage or distribution of that substance, the removal, transportation or delivery of septic discharge, liquid waste, leachate, the supply, delivery, storage or application of pesticide, herbicide or fungicide, or the carrying on of some industrial process. Without limitation, if CPL is required and the Work involves handling or proximity to known environmental contaminants, the Vendor must provide CPL coverage to respond to any claims that allege the Work has exacerbated any known pre-existing environmental condition. Coverage shall be in an amount of not less than \$2,000,000 per claim or per occurrence, or such greater amount as the Region may from time to time require, naming the Region as an additional insured. Coverage shall be maintained in force for 12 months following the termination of this Agreement. The policy SIR/deductible shall not exceed \$100,000 per claim and if the policy has an aggregate limit, the amount of the aggregate shall be double the required per occurrence limit.
- (h) **Aircraft and/or Watercraft Liability:**
The Vendor shall maintain aircraft and/or watercraft coverage if the Work involves aircraft and/or watercraft, respectively. Coverage shall be in an amount of not less than \$2,000,000 per occurrence, or such greater amount as the Region may from time to time require, naming the Region as an additional insured. The policy SIR/deductible shall not exceed \$100,000 per claim and if the policy has an aggregate limit, the amount of the aggregate shall be double the required per occurrence limit.
22. Only in the event that the Vendor is providing professional consulting services (including, but not limited to, architectural, planning and engineering services), shall the following additional provisions apply:
- (a) All work product that is prepared or produced by the Vendor in the performance of the Work, including, without limitation, concepts, products, processes, notes, data, memorandums, reports, documentation, maps, drawings, computer programs, trade names, trade marks, service marks and the goodwill related thereto, either in written or in electronic form, belongs to the Region upon acceptance by or on behalf of the Region.
- (b) The Vendor shall transfer, assign and convey to the Region, its successors and assigns all of the Vendor's right, title, interest and ownership throughout the world, without reservation, in and to any materials or documentation written, designed or produced by or for the Vendor pursuant to or in connection with this Agreement in any medium or format, including but not limited to, reports, studies,



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templates, compilations and collections of data, and related documentation (herein the “Intellectual Property”). If requested by the Region, the Vendor shall execute and agrees to cause its directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors to execute an irrevocable written waiver of any moral rights or other rights of integrity in the Intellectual Property in favour of the Region.

23. Only in the event that the Vendor is providing construction administration services as part of the Work, shall the following additional provisions apply:
 - (a) Neither the Vendor nor any person, firm or corporation associated or affiliated with or subsidiary to the Vendor shall tender for any construction services directly or indirectly related to the Work, or have an interest either directly or indirectly in such construction services.
24. Only in the event that the Vendor is supplying materials and/or equipment as part of the Work, shall the following additional provisions apply:
 - (a) All material supplied must be new and conform to the latest issue of the applicable drawing, specification and part number that is in effect on the date of the Purchase Order.
 - (b) All material which does not meet specifications may be returned at the Vendor's risk and expense.
 - (c) The Vendor shall supply Material Safety Data Sheets on all goods identified as hazardous substances or containing identified hazardous substances.
 - (d) The risk of loss or damage to the materials and/or equipment will pass from the Vendor to the Region upon delivery and acceptance of the Work.
 - (e) For all goods supplied under the Agreement, the warranty period will be twelve (12) months after delivery and acceptance of the Work, or the length of the Vendor's or manufacturer's standard warranty period, whichever is longer.
25. Only in the event that the Work performed by the Vendor is a “project”, as that term is defined in the Occupational Health and Safety Act and the Regulations thereunder (“OHSA”), shall the following additional provisions apply:
 - (a) The Vendor agrees to be the “constructor”, for the purposes of the OHSA, and shall comply with all obligations of a constructor under the OHSA.
26. Only in the event that the Vendor is providing goods or services to members of the public or other third parties on behalf of the Region, or participating in the development of Regional policies, practices or procedures governing the provision of goods and services to members of the public or other third parties as part of the Work, shall the following additional provisions apply:
 - (a) The Vendor agrees to comply with all accessibility standards under the Accessibility for Ontarians With Disabilities Act, 2005 (“AODA”) and the Regulations thereunder, including the Accessibility Standards for Customer Service, O. Reg. 429/07 as well as the Integrated Accessibility Standards, O.



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- (b) Without limitation, the Vendor shall maintain training records with respect to all accessibility standards training provided as prescribed in the Regulations under the AODA and in the Human Rights Code, including dates when training is provided, the number of personnel who received training, and individual training records.
 - (c) The Vendor shall also complete the Region's AODA Contractor Compliance Form (available at: <http://www.regionofwaterloo.ca/en/doingBusiness/resources/AODAComplianceStatement.pdf> or by hard copy upon request), and provide the Region with copies of any and all such forms within seven (7) days of written request by the Region.
27. This section of the Agreement shall only apply to a Vendor who, pursuant to the Agreement, is providing the Region's Human Resources & Citizen Services department with training services (the "Course"):
- (a) The Vendor shall develop Course content, handouts, and other supporting materials. In case of any changes to the handouts, contents or other material, the Vendor is to provide these changes for review and written approval of the Region not less than three (3) weeks prior to the Course date. The Vendor shall, at its sole cost, print all Course Materials identified in Appendix "A" and attached hereto (the "Course Material") for the Course for all Course participants unless otherwise mutually agreed by the parties in writing prior to commencement of the Course;
 - (b) The Vendor shall provide the computer equipment and supplies necessary/required to deliver the course;
 - (c) Except as set out in section 27(e) below, the Vendor hereby transfers, assigns and conveys to the Region all of the Provider's right, title, interest and ownership throughout the world, without reservation, in and to any and all materials or documentation produced, designed or written by or for the Vendor pursuant to or in connection with this Agreement in any medium or format (the "Intellectual Property").
 - (d) The Vendor hereby waives any moral rights or other rights of integrity in the Intellectual Property in favour of the Region and shall ensure that any agent or employee of the Vendor shall have waived all moral rights over any Intellectual Property created under this Agreement; and
 - (e) Notwithstanding the provision of sections 27(c) and 27(d) above, the Region acknowledges that the Course Material to be used by the Vendor in the facilitation of the Course was developed solely by the Vendor and is the sole and exclusive property of the Vendor. The Vendor hereby grants the Region a nonexclusive, perpetual, irrevocable, royalty-free licence to copy and distribute the Course Material internally on the Region's portal for use by Course participants. For clarity, except for the licence rights granted in this section 27(e), the Vendor retains all rights in the Course Material.



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This section 27, if applicable, shall survive termination or expiration of this Agreement.

28. This section 28 of the Agreement shall only apply to a Vendor who in completing the Work is providing, or contracting with a third party to provide, services that store, process or transmit a cardholder's payment card data (the "Cardholder Data"), or that can impact the Cardholder's Data (collectively the "Payment Services"). For greater certainty the use of 'cardholder' and 'payment card' in this paragraph shall have the meaning as defined in the Payment Card Industry Data Security Standards. In such case, the Vendor shall comply with the following:
- (a) The Vendor shall in relation to the services delivered under this Agreement, comply with, shall have a program in place to assure continued compliance, and cause such compliance of any third party provider of Payment Services that the Vendor has contracted with in relation to all or a portion of the services under this Agreement (a "Subcontractor"), with the applicable Payment Card Industry Data Security Standards (the "PCI DSS") published by the PCI Security Standards Council, as the PCI DSS may be amended, supplemented, or replaced from time to time, and as applicable. The Vendor shall keep itself apprised of the current version of the PCI DSS, published by the PCI Security Standards Council from time-to-time;
 - (b) The Vendor accepts responsibility for the security of any Cardholder Data used by them, obtained by them or which can be impacted through the services provided by the Vendor pursuant to this Agreement, including such Cardholder Data obtained by a Subcontractor;
 - (c) The Vendor shall report in writing to the Region, proof of compliance with the applicable PCI DSS at a minimum annually during the term of this Agreement, and on dates as further requested by the Region with the Region acting reasonably, in a form satisfactory to the Region, with the Region acting reasonably with regard to such satisfactory form. Acceptable forms to demonstrate the Vendor's PCI DSS compliance may include, but not be limited to a current Attestation of Compliance, if applicable, (the "AOC") executed by an authorized signing party of the Vendor and sent to the Region within ten (10) business days of execution of such AOC;
 - (d) If the Vendor becomes aware that the Vendor or its Subcontractors are not, or will not likely be in compliance with the applicable portions of the PCI DSS for any reason whatsoever, the Vendor shall forthwith provide notice in writing to the Region of the non-compliance or likely non-compliance along with a remediation



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plan outlining how the Vendor shall meet compliance with the applicable portions of the PCI DSS (the “Remediation Plan”). The Region may also, should it have knowledge of or suspect PCI DSS non-compliance by the Vendor or one of its Subcontractors, in its sole discretion, decide to conduct an audit of the Vendor and its PCI DSS compliance requirements related to the services to be performed pursuant to this Agreement (the “Audit”), and depending on the result of such Audit, may request that the Vendor complete a Remediation Plan. If a Remediation Plan and/or Audit required under this s. 28 are unsatisfactory to the Region, with such satisfaction to be in the Region’s discretion, such event shall be considered a material breach of this Agreement and the Region may terminate the Agreement for cause pursuant to s.4 of this Agreement;

- (e) For greater clarity, the Vendor’s failure to comply with this s. 28(a), (b), (c) or (d) shall be considered a material breach of this Agreement and the Region may terminate the Agreement for cause pursuant to s.4 of this Agreement

