

# **The Corporation of the Municipality of Chatham-Kent Standard Terms and Conditions**

**The Terms and Conditions contained within are applicable to all Municipality of Chatham-Kent's Solicitation and shall form part of the Solicitation.**

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## 1. Definitions

All initially capitalized terms not otherwise defined in these Standard Terms and Conditions shall have the meanings ascribed thereto in the Municipality's [Purchasing By-Law](#), as it may be amended, restated, supplemented or replaced from time to time.

In the event of any inconsistency or conflict in the content of this document, such documents, as stated in **Item 72 Order of Precedence** shall take precedence and govern in the order stated.

**“Addenda or Addendum”** means such further additions, clarifications, deletions, modifications or other changes to any Solicitations.

**“Bidding System”** means the system/or website that the Municipality is utilizing for its Solicitation, Solicitation postings and Responses.

**“Deliverable”** The Good, Service or Construction being purchased.

**“Municipality”** means the Corporation of the Municipality of Chatham-Kent.

**“Purchasing By-Law”** means the Municipality's [Purchasing By-Law](#), as it may be amended, restated, supplemented or replaced from time to time.

**“Site”** means the facility or location where the deliverable is to be performed.

**“Solicitation”** means Municipal documents used in connection with a Purchasing process, including but not limited to Request for Information's, Request for Tenders, Request for Proposals and Request for Quotations.

**“Supplier”** means a person, corporation or other entity that responds or intends to respond to a Solicitation or provides Deliverables to the Municipality including but not limited to contractors, consultants, suppliers, service organizations.

**“Team Member”** means the person identified as the point of contact for Suppliers in a Solicitation.

**“Work”** means the Work to be undertaken by the Supplier pursuant to the provisions of the Contract This definition shall include Supply or Goods, Provision of Services.

## 2. Response Submission

The Solicitation shall state the **single method** for submitting a Response to the Municipality, as follows:

- a. Solicitation identified as **ELECTRONIC RESPONSE SUBMISSIONS ONLY**,

Suppliers shall submit their Response submission electronically through the Municipality's Bidding System.

- b. Solicitation identified as **HARD COPY RESPONSE SUBMISSIONS ONLY**, Suppliers shall submit a hard copy of their Response submission as stated in the Solicitation.

### 3. English Language

All Responses submitted shall be in the English language only. The Supplier, and in particular, all site foreman for construction projects, must be able to communicate effectively in the English language.

### 4. Purchasing Bylaw

- 4.1 All Responses will be called, received, evaluated, accepted and processed in accordance with the Purchasing By-Law, as amended. By submitting a Response, the Supplier agrees to be bound by the terms and conditions of the Purchasing By-Law, as fully as if they were incorporated herein.
- 4.2 Use this hyperlink, to view a copy of the Purchasing By-Law.

### 5. Suppliers Statement of Understanding

By submitting a Response, it is understood and accepted by each Supplier that the Supplier has carefully examined all of the Solicitations and has carefully examined the Deliverable to be performed under the Contract, if awarded. The Supplier offers to furnish all labour, machinery, tools, apparatus and other means of implementation, and any other materials to complete the Deliverable in strict accordance with the Solicitations for the prices set forth in the Response.

### 6. Errors and Omissions

The Municipality shall not be held liable for any errors or omissions in any part of its Solicitation. While the Municipality has used considerable effort to ensure an accurate representation of information in its Solicitation, the information contained in the Solicitations is supplied solely as a guideline for Suppliers. The information is not guaranteed or warranted to be accurate by the Municipality, nor is it necessarily comprehensive or exhaustive. Nothing in the Solicitations is intended to relieve the Suppliers from forming their own opinions and conclusions with respect to the matters addressed in the Solicitations.

If a Supplier needs to address any discrepancies, errors and/or omissions in the Solicitation or if they be in doubt as to any part thereof they shall submit questions in writing as instructed in the Solicitation.

### 7. Examination of the Place of the Deliverable

- 7.1 Notwithstanding any drawings or specifications provided in the Solicitations, Suppliers

are required to satisfy themselves, by personal visitation and examination of each site for the Deliverable, with respect to the existing conditions which may be encountered on or adjacent to the site, including without limitation, all underground/overhead utilities locations, surface & sub- surface conditions, existing structures on or adjacent to the sites, access routes and other conditions which may affect performance of the Deliverable.

- 72 Access to the place of the Deliverable will be provided during the site meeting (if applicable).
- 73 By submitting a Response, the Supplier acknowledges and agrees that he/she has satisfied themselves as to all the provisions of the Solicitations and of all the conditions which may be encountered at the site or any other matter which may affect performance of the Deliverable and no claims may be made by the Supplier, that it was uninformed as to any of the conditions affecting the site or the provisions or conditions intended to be covered by the Contract.
- 74 Suppliers shall accept sole responsibility for any error or neglect on their part in respect to the foregoing. No claims shall be accepted by the Municipality for any additional labour, equipment or material cost that was not included in the Response and may be required for the proper execution and completion of the Deliverable, due to any failure to comply with the above.
- 75 The Supplier is not entitled to claim at any time after the submission of its Response that there was any misunderstanding of the terms and conditions relating to site conditions. The Municipality is not responsible for any misunderstandings on the part of the Supplier.

## **8. Enquiries**

- 8.1 All requests for clarification and questions regarding the Solicitation shall be submitted in writing as instructed in the Solicitation prior to the stated deadline for emailed questions. All questions or clarifications must be specific to the Solicitation and must include references to a specific section or schedule and item number.
- 8.2 The Municipality cannot guarantee that clarifications or questions received beyond the deadline will be answered by the Team Member.
- 8.3 Requests will be answered by the Procurement Representative or forwarded to the appropriate technical contact for reply. Dependent on their nature, comments or answers will be returned via email from the Procurement Representative or through an addendum to the Solicitation should the information be applicable to all Suppliers, in the opinion of the Municipality.
- 8.4 Verbal clarifications shall not change any of the terms or conditions of the Solicitations. Suppliers shall only rely on information provided by the Municipality in writing.

## **9. Disputes**

- 9.1 All disputes shall be conducted in accordance with the Purchasing By-Law's Dispute

Resolution process.

Irregularities shall be dealt with in accordance with the applicable schedule of the Purchasing By-Law, as amended.

#### **10. Capability of Supplier**

The Supplier shall, if requested by the Municipality, provide evidence of experience, ability, capacity, financial resources, etc., if deemed necessary by the Municipality for the performance of the Contract. The Municipality reserves the right to investigate a Suppliers claim or background at any time and in any manner deemed appropriate by the Municipality and shall not be required to disclose the information obtained or the source.

#### **11. Piggyback Option**

Is a form of intergovernmental cooperative procurement in which the Municipality may extend the pricing, terms and conditions of a Contract to other government entities, if agreed to, in writing, by the Supplier. Any requirement of the Municipality for Suppliers to offer Piggyback Options to other government entities will be included in the Solicitation. No individual person or agency shall be responsible in any way whatsoever for the actions or purchases of any other person or agency which may arise, directly or indirectly, as a result of the Response or any Contract(s) which may result.

#### **12. Non-Exclusive**

Any Contract awarded as a result of this solicitation will be non-exclusive, unless specifically indicated otherwise in the Solicitation. The Municipality may, at its sole discretion, purchase the same or similar services from other sources during the term of the Contract.

#### **13. Duplicate Vendor Account Submissions**

Suppliers shall submit all Responses (including Green or Alternative Responses) related to a Solicitation from the same Vendor Account. If a Response is received from two Vendor Accounts related to the same Supplier, then the Municipality shall only consider the Response last submitted. Any previous Responses submitted shall be superseded by the last submission and will not be reviewed. It is the Suppliers sole responsibility to ensure that duplicate Vendor Accounts are not created or used inappropriately.

#### **14. Unofficial Response Results**

##### **14.1 PAPER RESPONSE ONLY (NOT ELECTRONIC RESPONSE)**

Where the Municipality has requested paper Responses only, a public opening will be held by the Municipality. The Municipality shall read out the names of the Suppliers whose, Responses were stamped and received by the Municipality no later than Closing Date and time stated in the Solicitation and the unverified total contract amount. If partial

Responses are acceptable, as stated in the Solicitation, the unverified total of each part shall be read out. In addition, if a percentage (%) annual increase is requested, the percentage increase stated, shall be read out. Likewise, if a percentage (%) discount is requested, the percentage discount will be read out. The closing time and date shall be determined by the electronic time and date stamp clock located in the purchasing department receiving the Response. The Supplier's unverified total contract amount or if a partial Responses are acceptable, the unverified Total of each Part(s) Response will be posted on the Municipality's Bidding System, as the Responses are read out.

#### 142 **ELECTRONIC RESPONSE ONLY**

Where the Municipality has requested electronic Responses only, a public opening will **not** be held. The Municipality shall, post the names of the Suppliers, on the Bidding System whose, Responses were received by the Bidding System website, no later than Closing Date and time stated in the Solicitation and the unverified Total Contract amount, within a reasonable amount of time. If Part Responses are acceptable, as stated in the Response Document, the unverified Total of each Part(s) Response shall be posted. In addition, if a percentage (%) annual increase is requested, the percentage increase shall be posted. The closing time and date shall be determined by the Municipality's Bidding System web clock.

143 The unverified Response prices are subject to review, verification, calculation and adjustment by the Municipality and if necessary, consideration by the Municipality's Proposal Review Committee, in accordance with the terms and conditions of the Solicitation and the Municipality's Purchasing By-Law.

144 For Request for Proposals, **only the names of Suppliers submitting Responses shall be released publicly.**

### 15. Checking of Responses

15.1 Responses opened are checked by the Procurement Representative and Consultant (if applicable) to ensure that:

- i The required Bid Security is properly executed and satisfies the requirements of the Solicitation.
- i Responses comply with the Solicitation, and that all items as specified have been bid on and all Response forms are completed, unless Part Responses are permitted under the Solicitation. Any Response irregularities shall be dealt with in accordance with the Municipality's Purchasing By-Law.
- ii All mathematical extension calculations are correct. Where there is an obvious error in the extended price, the unit price stipulated shall govern and the extended price shall be re-calculated using the unit price, along with the estimate quantity. Where there is an obvious calculation error in the addition of individual lump sum prices into a subtotal price, the Municipality may make the appropriate mathematical correction to the subtotal price so that the calculation is correct.

## **16. Suppliers Teams (if Applicable)**

- 16.1 In the event that more than one legal entity for the purpose of submitting a Response, the lead Supplier must be clearly identified. The Municipality will contract only with the identified lead Supplier (herein referred to as the “Lead Supplier”) who shall be completely responsible for the full performance of the Contract, and who shall act at all times as the primary contact for the Municipality. The business relationships between the Lead Supplier and its team members shall be arranged by the Lead Supplier and any resulting conflicts resolved without the Municipality involvement.
- 16.2 The Lead Supplier agrees that no member of the Lead Suppliers team will be substituted for any other individual or firm without the express written authorization of the Municipality.
- 16.3 Payments pursuant to the Contract will be made directly to the Lead Supplier for distribution to the Lead Suppliers team. The Lead Supplier shall save the Municipality harmless from all costs, damages, judgements, claims, demands, suits or other proceedings brought by any member of the supplier team in connection with the distribution of such fees.

## **17. Gifts and Donations**

- 17.1 Suppliers shall ensure that there will be no gifts, gratuities, discounts, special services or personal benefits provided or offered to any employee or representative or consultant of the Municipality, prior to or during or upon completion of the Contract, from the Supplier or any of its employees or representatives in connection with the Contract. The Supplier shall report to the Purchasing Officer any attempt by any employee or representative or consultant of the Municipality to obtain any such or similar favour or personal benefit. Any material failure on the part of a Supplier to comply with this provision may be grounds for disqualification from a Response or for termination if an award has already been made.
- 17.2 Should any prospective Supplier or any of its agents give or offer any gratuity or attempt to bribe any employee of the Municipality, or to commit fraud, the Municipality shall be at liberty to:(i) reject the Response of such Supplier, or (ii) terminate the Contract of such Supplier. If either the rejection of the Response or the termination of a Contract pursuant to this provision results in an increased cost to the Municipality in having the Deliverable completed, the Municipality shall be entitled to rely upon the Response bond or the performance bond (as applicable) to recover the increased costs incurred by the Municipality as compensation and where the amount of the Response bond or the performance bond (as applicable) is insufficient to compensate the Municipality, the Contactor shall indemnify the Municipality for the full amount of the increased costs incurred by the Municipality.

## **18. Conflict of Interest**

- 18.1 Each Supplier, in their Response, shall declare on a separate sheet of paper or, in the

case of electronic Response submission, the Supplier shall declare in the text field provided in the Bidding System, all Conflicts of Interest or any situation that may be reasonably perceived as a Conflict of Interest that exists now or may exist in the future. Failure to comply with this requirement may render the Response non-compliant and shall cause the Response to be rejected. The Municipality reserves the right to disqualify from further consideration Responses which in the Municipality's sole opinion demonstrate a Conflict of Interest.

- 18.2 Any actual or potential situation that may be interpreted as either a Conflict of Interest or a potential Conflict of Interest arising during the term of a Contract must be reported immediately to the Purchasing Officer. Any failure to advise the Municipality may result in termination of the Contract by the Municipality.

## **19. Ethical Conduct**

In addition to being in compliance with all applicable federal, provincial and municipal laws and regulations, within the context of a Contract, Suppliers shall behave in an ethical manner having regard for and demonstrating care for, the condition of or well-being and fair treatment of all persons, places and things.

## **20. Inspection and Testing**

- 20.1 The Municipality reserves the right to inspect and have a demonstration of any/all goods which may be offered, or of the Suppliers premises/equipment, prior to award and/or at any point during the Contract.
- 20.2 The inspection of all Response items shall be carried out by the Municipality or the Municipality's consultant to determine whether or not they meet the requirements of the Solicitation and/or Contract, as applicable.
- 20.3 If any services, Deliverable, material or workmanship which fails in any way to meet the terms of the Solicitation and/or Contract, the Municipality will notify the Supplier and the Supplier will take immediate steps for corrective actions, at its own expense and within the time frames specified by the Municipality. Should the Supplier fail to remedy any part of the rejected services, Deliverable, material or workmanship, the Municipality may make alternative arrangements for rectification and any expense(s) incurred by the Municipality shall be paid by the Supplier within ten (10) business days' following receipt of an invoice or the costs shall be deducted from any payment owed the Supplier.
- 20.4 All cost associated with the inspection or testing of any service/material that does not meet the Municipality's specification shall be charged to the Supplier.

## **21. Purchase Order**

- 21.1 Payment for work satisfactorily performed in the opinion of the Municipality is Net Twenty-eight (28) days.
- 21.2 For payment purposes a Purchase Order may be generated and issued to the Supplier. The terms and conditions of the Contract supersede those of any Purchase Order issued.

21.3 All payment requests shall be provided with an up to date Insurance Certificate and a copy of the Suppliers valid WSIB Clearance certificate, where applicable.

21.4 Where there is a question of non-performance, payment in whole or in part may be withheld. In the event a cash discount, the withholding of payment as provided herein shall not deprive the Municipality from taking such discount.

## 22. Invoicing

22.1 All invoices shall be sent to the Municipality of Chatham-Kent, to the Attention of: Accounts Payable, 315 King Street West, PO Box 640, Chatham, Ontario N7M 5K8. Alternatively, electronic copies of invoices may also be sent to [ckap@chatham-kent.ca](mailto:ckap@chatham-kent.ca).

- All invoices submitted by the Supplier shall reference the Purchase Order number and conform to the order and content as set out in the **Municipality's Purchase Order form** and shall provide additional information as follows: Harmonized Sales Tax shown separately
- Supplier's HST registration number

22.2 The Invoice shall contain sufficient detail in accordance with the items and unit prices of the awarded Response. For example: time and material contracts should provide a breakdown of labour and material utilized for the project based on the contract unit rate and/or lump sum prices.

## 23. Set Off Clause

The Supplier hereby agrees that the Municipality may, at any time, set-off against any monies due or payable to the Supplier, any monies including but not limited to; property taxes (or any penalties and/or interest thereon) owing to the Municipality by the Supplier at the time such monies become due and payable to the Supplier.

## 24. Taxes

24.1 Suppliers shall submit Response prices (including unit pricing) **exclusive** of all applicable taxes.

24.2 In addition to the H.S.T. Registration number, the Supplier shall state the amount of H.S.T. separately on all invoices.

24.3 Where a change in Canadian Federal or Provincial Taxes occurs after the Response closing date for the Contract, which change could not have been anticipated at the time of submission, the Municipality shall increase or decrease Contract payments to account for the exact amount of the change involved and the Contract will be deemed to be amended accordingly.

## 25. Availability of Funds

25.1 All Awards are subject to the approval of Department Head, C.A.O., Committee and/or Council (as applicable, in accordance with the Purchasing By-Law and the availability of

funds.

25.2 In the event that the subtotal Response amount from the selected Supplier exceeds the Municipality budget for the Solicitation, the Municipality reserves the right to:

- Where in the opinion of the Municipality it is possible to do so, award part of the Solicitation to the selected Supplier(s); or
- Negotiate, where it is in the best interest of the Municipality, in the opinion of the Purchasing Officer, Chief Financial Officer and/or Chief Legal Officer; or
- Cancel the Solicitation in its entirety.

## 26. Payment of Workers

The Supplier shall pay or cause to be paid weekly/biweekly to every worker employed in the execution of the Contract, wages at not less than the following rates:

- i. For workers employed in the execution of the Contract, who are in contractual relationship with a union, the minimum rate of wages shall be the union rate of wages in the particular district or locality in which the Deliverable is undertaken.
- ii. For workers employed in the execution of the Contract, who are not in contractual relationship with a union, the minimum rate of wages shall be the current Fair Wage Schedules of the Labour Standards Branch, of the Ministry of Labour, in the particular district or locality in which the Deliverable is undertaken. Revisions made to the schedule during the course of the Contract shall apply from the effective date of such revisions and all additional resultant costs shall be borne by the Supplier.

## 27. Estimated Quantities and Provisional Items

27.1 The quantities listed in the Solicitation are estimates only. The Municipality reserves the right to increase or decrease the estimated quantities shown in the Solicitation and will adjust the Contract amount accordingly based on the unit price or lump sum price, whichever is applicable. The Municipality will only pay the Supplier for the actual quantity used based on the unit price or extended price. The Supplier acknowledges that this may result in the Contract payment being less than their total Response for the Contract.

27.2 Items listed in the Response form as “**Provisional Items**”, may or may not be required for completion of the Deliverable called for under the Contract. The necessity and/or actual quantities of these items shall be determined by the Municipality as the Deliverable progresses. Should any of these items be required, the Supplier shall be compensated on the basis of the unit prices(s) quoted. In the event that any or all of these items are found not to be required, the Supplier may not claim extra payment for loss of anticipated profits.

27.3 The Supplier may be required to supply services to additional locations, or add additional quantities of item(s), if required, by the Municipality. Acceptance of additional service or item(s) may be added with the understanding that the rates and discounts submitted by

the Supplier in their Response would apply.

- 27.4 Suppliers acknowledge and accept, by way of submitting a Response, that the Municipality's award of the Contract shall be based on the "SUB TOTAL CONTRACT PRICE", including any and all Provisional Prices. The Municipality may, in its sole and absolute discretion, include or delete any or all Provisional Price(s) in the final Contract price.

## **28. Over Shipments of Goods**

Any over shipments made are the responsibility of the Supplier. The Municipality reserves the right to reject and return, at the Supplier's expense, any goods in excess of the quantity ordered or, at the Supplier's discretion, the Municipality may keep the goods on a "no charge" basis.

## **29. Emergency Telephone Number**

Prior to commencing the Deliverable, the Supplier shall provide the Municipality with the name(s) and telephone number(s) of his/her representative(s) who can be contacted on a 24-hour basis in case of an emergency during the term of the Contract.

## **30. Identification, Uniform and Site Safety Requirements**

- 30.1 If working at a Municipal facility, all representatives of the Supplier or Consultant are required to check in at reception upon arrival at the Municipality's facilities. Upon leaving, all representatives shall check out with reception. Tradesmen (service personnel) shall in addition to the above, wear a company uniform with a nameplate identifying the name of their employer.
- 30.2 In addition, all of the Supplier's staff and/or sub-contractors shall be equipped with proper Personal Protective Equipment (PPE), in accordance with all federal, provincial or municipal laws, acts, and/or regulations.

## **31. Meetings**

- 31.1 The Supplier's representative(s), as requested by the Municipality, shall attend all meetings required for the Deliverable.
- 31.2 The Supplier's representative(s) attending meetings shall be thoroughly versed and knowledgeable with respect to the proposed topics of discussion and shall have the authority to make the necessary decisions and commitments with respect to matters agreed upon at the meetings.

## **32. Reporting**

The Supplier may be required to submit a Contract utilization report. These reports may be requested monthly, quarterly, annually or at the conclusion of the Contract and must be submitted to the Procurement Representative within five (5) business days of the request, at no additional cost.

### **33. No Substitutions**

Where materials are specified in the Solicitation, Supplier shall not ship or use any alternative materials without the prior written approval by the Municipality.

### **34. Performance**

The Supplier shall thoroughly complete each specified task in a professional manner, using trained, experienced staff and quality equipment/materials. The Supplier warrants that its employees, agents, sub-contractors and/or representatives have the qualifications, experience, knowledge, skills and abilities necessary for the fulfilment of the Contract. Services will be performed in accordance with the frequencies specified. The whole of the Services and the manner of performing them shall be done to the satisfaction of the Municipality.

### **35. Training**

Where necessary or otherwise specified in the Solicitation, the Supplier will be required to provide qualified training personnel to instruct the Municipality's operators until they are familiar and competent in the operation and daily maintenance of the purchased goods or services. Unless otherwise stated, the cost of training shall be included in the Response cost submitted.

### **36. Warranty/Fit for Intended Use**

- 36.1 The Supplier warrants that the Deliverable, goods, materials, equipment and/or services supplied by the Supplier to the Municipality will be in full conformity with the Solicitations, and any samples provided. The Supplier further warrants that the goods, materials and/or equipment are of merchantable quality, and fit for the intended use and will perform according to the requirements set out by the Municipality as well as in accordance with all published performance specifications contained in any of the Suppliers product manuals. For greater certainty, equipment and materials shall be new, the latest model, and shall be complete with all necessary accessories for operation.
- 36.2 The Municipality will be afforded a reasonable period of time for the purpose of inspecting the goods to confirm their compliance with the specifications, terms and conditions of the purchase order.
- 36.3 Unless a greater warranty period is stated in the Solicitation, the warranty period shall be for a minimum of one (1) year on all goods, services and construction. Unless stated otherwise in the Solicitation, the warranty period shall commence for goods and services the day after delivery and acceptance or installation date, if installation occurred at a later date and for construction, as stated in the Solicitation.
- 36.4 This general warranty (stated above) is independent of and without prejudice to any specific warranty or service guarantee offered by the Supplier or third party manufacturer or supplier of the Goods in connection with the purpose for which the Goods were purchased. The Supplier shall assign to the Municipality any warranty or service

guarantee offered by a third party manufacturer or supplier of the Goods. Notwithstanding this assignment, if at any time up to one (1) year from the date of delivery or installation (if applicable) the Municipality determines the Goods or any part do not conform to these warranties, the Municipality shall notify the Supplier within a reasonable time after such discovery, and the Supplier shall then promptly correct such nonconformity at the Supplier's expense. Goods used to correct nonconformity shall be similarly warranted for one (1) year from the date of installation. The Supplier's liability shall extend to all liabilities, losses, damages, claims and expenses incurred by the Municipality caused by any breach of any of the above warranties.

- 36.5 Upon rejection of good(s) or equipment the same shall be removed by the Supplier from the premises of the Municipality within five (5) days after notification unless public health and safety require immediate destruction or other disposal of such rejected good(s) or equipment, in which case the Municipality may take such actions as it deems necessary, and the Supplier shall reimburse the Municipality for the cost of such actions within ten (10) business days' following receipt of an invoice. Rejected items left longer than five (5) days shall be considered as abandoned and the Municipality shall have the right to dispose of them as its own property.

### **37. No Lemon Policy**

Any equipment purchased by the Municipality shall be subject to a "No Lemon Policy" whereby after three attempts to repair a recurring malfunction, the Municipality, in its sole discretion can direct the Supplier to replace the equipment, at the Supplier's cost, on a like-for-like basis and new at no additional cost to the Municipality.

### **38. Delivery Schedule**

Time is of the essence for the delivery or provision of the Deliverable requested herein. The delivery date shall be adhered to, as the Municipality is relying on that date for their part of its operations. Failure to comply with the time schedule in providing the goods and services may result in the Municipality taking further action to obtain an alternative supply, in which event the cost incurred shall be charged to the Supplier. If such cost is not paid by the Supplier, it shall be deducted from the balance of the purchase price owing.

### **39. F.O.B Destination Point**

- 39.1 All Shipments shall be F.O.B. Destination, Freight Prepaid and Allowed.
- 39.2 The F.O.B Prepaid Destination point shall be the destination as indicated on the purchase order. For greater certainty, the Supplier shall be responsible for the payment of shipping, bearing the cost of shipping and for all liability related to the goods until the goods are delivered to and accepted by the Municipality at the Municipality's facility or if stated, the actual facility room or department location indicated on the purchase order.
- 39.3 Once the Contract is awarded, the Municipality shall provide the Supplier a Purchase Order advising when the materials are required.

#### **40. Damage Claims**

- 40.1 The Supplier agrees that all products to be provided shall be new and of the latest model, unless otherwise stated in the Solicitation, in good operating condition and free of defects in workmanship and material, and the Supplier shall repair or replace any damaged or marred items caused or occasioned through the handling or installation by the Supplier or otherwise occasioned in transit.
- 40.2 The Supplier shall protect the Deliverable, the Municipality property, and any surrounding private property from damage.
- 40.3 The Supplier accepts full responsibility for any damage caused by the Supplier, or its officers, employees, workers, equipment or sub-contractors to any part of the Municipality's property, including but not limited to any buildings, parking lots, sidewalks, curbs, store fronts, doors, walls, light standards, landscaping, or equipment of the property and will promptly report to the Municipality, in writing and remedy any such damage in accordance with the Municipality instructions.
- 40.4 The Municipality, acting reasonably, shall allocate such damages between the Supplier and the Municipality.

#### **41. Completion Date**

- 41.1 The Contract requirements shall be completed within the number of working days or by the stated completion date indicated in the Solicitation and/or within the Contract.
- 41.2 If the time limit is not sufficient to permit completion of the Deliverable by the Supplier working a reasonable number of hours each day or week on a single shift basis, it is expected that additional shifts shall be required throughout the life of the Contract to the extent deemed necessary by the Supplier to insure the Deliverable shall be completed within the time limit specified. Any additional costs occasioned by compliance with these provisions shall be considered to be included in the prices Response for the various items of Deliverable and no additional compensation shall be allowed.
- 41.3 Extension of Contract time may be considered by the Municipality, in accordance with the provisions of the Contract and in accordance with the Municipality's Supplier Performance Procedure.

#### **42. Prohibited Behaviours**

- 42.1 While performing the Contract, the Supplier's employees, agents, representatives, and/or subcontractors must conduct themselves in a safe, pleasant, and responsible manner at all times, and for greater certainty shall not:
  - a) Consume alcoholic beverages, narcotics or prescription drugs which may impair their abilities while in the performance of services for the Contract, or be under the influence of same when reporting to duty;
  - b) Smoke on property owned or leased by the Municipality.
  - c) Use foul, profane, vulgar or obscene language or gestures;

- d) Solicit gratuities or tips from any person for services performed under the Contract;
- e) engage or participate in any action which may constitute a public nuisance or disorderly conduct;
- f) Engage or participate in any willful, negligent or reckless action in disregard of safety or sanitary requirements or regulations;
- g) Perform Deliverable without having obtained any required clearance, including security clearances;
- h) Play radios or other sound equipment, or wear ear/head phones;
- i) Overly fraternize with Municipality staff, clients, tenants, or visitors to the site or building nor unnecessarily disrupt business while performing their duties;
- j) Interfere with building or staff property;
- k) The Supplier shall respect the boundaries and not trespass on any private properties, without prior, written approval from the property owner, and the Municipality.
- l) The Supplier shall take appropriate measures to avoid any situation where the general public is required or encouraged to trespass on adjacent lands.
- m) The Supplier shall not park, store materials or equipment on private property without prior written permission from the property owner, and the Municipality or
- n) At the request of the Municipality or Consultant, the Supplier shall remove from the Site any person (whether employed on the Deliverable or not) who, in the opinion of the Municipality or Consultant, is incompetent, intoxicated or otherwise impaired, or who is conducting himself (or herself) improperly, and the Supplier shall not permit any such person to remain on the Site nor return to the Site without the written approval of the Municipality or designate as the case may be.

422 On the written request of the Municipality, the Supplier immediately shall remove any employee, sub-contractor, representative or agent for engaging or participating in any of the foregoing prohibited activities, or for any other reason, where it is in the Municipality's best interest. The employee or sub-contractor so removed shall not be placed in another Municipality facility or assigned to any Contract between the Municipality and the Supplier.

#### **43. Non-Resident Supplier**

If the Supplier is a non-resident of Ontario or Canada:

- a) It shall obtain from the Retail Sales Tax Branch a certificate showing that the Supplier has registered with the Retail Sales Tax Branch and shall submit such certificate to the Municipality at the same time that it furnishes the Bonds; and
- b) It shall not commence the Deliverable or order any materials or equipment for the Contract until it has registered with the Retail Sales Tax Branch; and
- c) It shall obtain all necessary approvals, consents, permits, licences, certificates, registrations and other authorizations required by law, prior to execution of the Contract.

#### **44. Non-Resident Subcontractor**

The Supplier shall ensure that all subcontractors whom it proposes to use for carrying out any of the Deliverable and who are non-residents of Ontario or Canada have:

- a) Registered with and have complied with the requirements of the Retail Sales Tax Branch before they commence any such Deliverable; and
- b) Obtained all necessary approvals, consents, permits, licences, certificates, registrations and other authorizations required by law prior to execution of the subcontract.

#### **45. Protection of Public**

- 45.1 The Supplier shall provide adequate warning signage, devices, barricades, guards, flagmen, or other necessary precautions shall be taken by the Supplier to give advice and reasonable protection, safety and warning to persons and vehicular traffic concerned in the area(s) affected by the Contract.
- 45.2 The Supplier shall position barricades to adequately keep pedestrian traffic away from ladders and other equipment.

#### **46. Clean Up**

During performance and completion of work, the Supplier shall remove all unused equipment and instruments of service, all excess or unsuitable material and debris, and legally dispose of the debris. The Supplier shall leave the entire area in a neat, clean and acceptable condition as approved by the Municipality. Failure to do so may require the Municipality's employees to perform necessary clean up and the Supplier will be either; 1) invoiced for the direct cost associated with such clean up. All such invoices shall be due and payable within ten (10) business days or 2) such direct costs shall be deducted from any monies owed to the Supplier.

#### **47. Packaging and Disposal**

The Supplier shall eliminate or reduce the amount of packaging to the extent possible and shall remove packaging from delivered and installed items. Packaging once removed, must be recycled or transported and disposed of in accordance with all applicable laws and regulations governing waste disposal. Further, the Supplier must indicate where garbage is taken for disposal when requested to do so by the Municipality.

#### **48. Contract Alterations and Amendments**

- 48.1 Municipality shall have the right at any time to order changes in the Deliverable in accordance with the terms of the Contract. Alterations, additions, or deletions to the Contract, shall not be valid or binding on the Municipality unless authorized in writing by the Procurement Representative and the Supplier, using the Municipality's [Contract Change Order Form](#).
- 48.2 Except as stated in the contract change order, the Deliverable shall remain unaltered

and the rights and obligations of the Parties shall remain unaltered and in full force and effect. The cost of the Contract, including costs to the Supplier of the remaining Deliverable, shall not change except as may be specified in the change order. Each Contract change order, unless otherwise specified, shall be deemed to incorporate the terms and conditions of the Contract and shall be deemed to be part thereof.

48.3 In all cases of misunderstanding and disputes, verbal arrangements shall not be considered. The Supplier shall produce written authority in support of its contentions and shall advance no claim in the absence of such written authority, or use, or attempt to use any conversation with any parties against the Municipality or in prosecuting any claim against the Municipality.

#### **49. Evaluation of Performance**

49.1 The Municipality's Purchasing By-Law allow the Municipality to evaluate Supplier performance and to consider "past performance" evaluations on prior Contracts, when determining award selection. Performance on this Contract will be a consideration in evaluating future Response submissions by the Supplier.

#### **50. Termination of Contract**

##### **50.1 Termination for Supplier Default**

Notwithstanding anything to the contrary in this document, should the Supplier fail to comply with a direction or decision of the Municipality properly given under the terms of the Contract, or where the Supplier is deemed by the Municipality to be in default in any other manner as set forth by the following reasons constituting default, the Municipality may, after giving ten (10) days prior written notice to the Supplier, give notice to immediately terminate this Contract, in whole or in part, and without charge with respect to all or any part of the Contract. Reasons constituting default include:

- a) The Supplier commits a material breach of its duties and obligations under this Contract, unless, in the case of such breach, the Supplier, within ten (10) calendar days after receipt of written notice of such breach from the City, in a manner satisfactory to the Municipality in its sole, absolute and non-reviewable discretion, (a) cures such breach and (b) indemnifies the Municipality for any resulting damage or loss;
- b) The Supplier commits numerous breaches of its duties under the Contract that collectively constitutes a material breach;
- c) A change in control of the Supplier where such control is acquired, directly or indirectly, in a single transaction or series of related transactions, or all or substantially all of the assets of the Supplier are acquired, by any entity, or the Supplier is merged with or into another entity to form a new entity, unless the Supplier demonstrates to the satisfaction of the Municipality that such event will not adversely affect its ability to perform the services under the Contract;
- d) The Supplier commits fraud or gross misconduct;

- e) Where the Supplier becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, or takes the benefit of any statute relating to bankrupt or insolvent debtors, or where a receiver is appointed under a debt instrument or a receiving order is made against the Supplier, or an order is made or a resolution passed for the winding up of the Supplier.

In the event of a termination notice being given under the provisions of this section, the Supplier shall be liable to the Municipality for any milestone payments paid by the Municipality for unfinished work, including all losses and damages which may be suffered by the Municipality by reason of the default or occurrence upon which the notice was based, and also including any increase in the cost incurred by the Municipality in procuring the Deliverable from another source.

In the event of a termination notice being given under the provisions of this section, the Municipality may do such things and incur such costs as it deems necessary to correct the Supplier's default, including without limitation the withholding of payment due or accrued due to the Supplier for services rendered pursuant to this Contract, which moneys may be set off by the Municipality against any expenses that it may incur in remedying a default or failures as described above.

In the event of a termination notice being given under the provisions of this section, the Supplier shall agree to repay immediately to the Municipality the portion of any advance payment at the date of the termination. In the event of a termination notice being given under the provisions of this section, and subject to the resolution of any claim or claims which the Municipality may have against the Supplier as set forth in the previous three paragraphs, payment will be made within thirty (30) days of the date of the invoice from the Municipality to the Supplier for the value of all finished work delivered and accepted by the Municipality, such value to be determined in accordance with the rate (s) specified in the Contract.

No specific remedy expressed in the Contract is to be interpreted as limiting the rights and remedies which the Municipality may be entitled to, to mitigate damages, under any contract or otherwise in law.

All Municipality information (including copies thereof) shall be returned to the Municipality within thirty (30) days' following notice of termination in the form specified by the Municipality. In addition, the Municipality shall have the right to take possession of and use any completed or partially completed portions of the Deliverable despite any Contract provisions expressed or implied to the contrary.

Upon the termination or expiry of this Contract, or the completion of the Deliverable, the Supplier shall promptly discontinue use of any Data, and return the same to the Municipality.

## 50.2 Termination for Convenience

- a) Notwithstanding anything contained in the Contract, the Municipality may, at any time prior to the completion of the Deliverable, by giving notice to the Supplier,

terminate the Contract as regards all or any part of the Deliverable not completed. Upon a termination notice being given, the Supplier shall cease work in accordance with and to the extent specified in the notice, but shall proceed to complete such part or parts of the Deliverable as are not affected by the termination notice. The Municipality may, at any time or from time to time, give one or more additional termination notices with respect to any or all parts of the Deliverable not terminated by any previous termination notice.

- b) In the event of a termination notice being given pursuant to this section, the Supplier shall be entitled to be paid, to the extent that costs have been reasonably and properly incurred for purposes of performing the Contract and to the extent that the Supplier has not already been so paid or reimbursed by the Municipality:
  - i. on the basis of the Contract Price, for all completed Deliverable that is inspected and accepted in accordance with the Contract, whether completed before, or after and in compliance with the instructions contained in, the termination notice; or
  - ii. the cost to the Supplier for all Deliverable terminated by the termination notice before completion, the cost to the Supplier being determined in accordance the Contract Price and percentage completed.
- c) The Supplier shall have no claim for damages, compensation, loss of profit, allowance or otherwise by reason of, or directly or indirectly arising out of, any action taken or termination notice given by the Municipality under this section, except to the extent that this section expressly provides.

## **51. Indemnification**

The Supplier shall indemnify and hold harmless the Municipality, its officers, Council members, partners, agents and employees from and against all actions, claims, demands, losses, costs, damages, suits or proceedings whatsoever which may be brought against or made upon the Municipality and against all losses, liabilities, judgements, claims, suits, demands or expenses which the Municipality may sustain, suffer or be put to resulting from or arising out of the selected Supplier's actions or omissions in the performance or rendering of any Deliverable or service required hereunder to be performed or rendered by the Supplier, its agents, officials and employees, or any damage or injury caused to any third party by reason of or arising out of any breach, violation or non-performance of any provision of the Contract by the Supplier, its agents, officials and employees. This indemnification shall include any legal costs incurred by the Municipality on a substantial indemnity basis, including those incurred to defend any criminal prosecutions against the Municipality, resulting from the actions of the selected Supplier.

## **52. Legal Jurisdiction**

The jurisdiction for all legal matters, disputes and issues arising in connection with any Solicitation, Response or Contract shall be Chatham, Ontario and all Suppliers submitting Responses and all Suppliers agree that they shall and will deal with any legal

matters concerning this solicitation only in and through the courts of the Province of Ontario.

### **53. Laws and Regulations**

The Supplier shall comply with all applicable statutes, laws, by-laws, regulations, ordinances and orders whether Federal, Provincial, Municipal or otherwise, at any time in effect during the term of the Contract, and all rules and requirements of the Police and Fire departments, or other governmental authorities, and all C.S.A. approvals, if required. The Supplier shall obtain and pay for all necessary permits and licenses, and shall not do or suffer to be done anything in violation of any such laws, ordinances, rules or requirements. If the attention of the Supplier is called to any such violation on his/her part, or of any person employed or engaged by the Supplier, he/she shall immediately desist from and/or correct such violation.

### **54. Ontario College of Trades and Apprenticeship Act, 2009**

The Supplier shall be responsible for compliance with the Ontario College of Trades and Apprenticeship Act, 2009, as amended. The Supplier shall be responsible for providing written proof of trade qualifications, such as a certificate of qualification or apprenticeship Contract, to ministry inspectors.

### **55. The Occupational Health and Safety Act**

55.1 The Supplier, for purposes of the Ontario Occupational Health and Safety Act (the "OHSA"), shall be designated as the Constructor for this project and shall assume all of the responsibilities of the "Constructor" as set out in the OHSA and its regulations. The foregoing shall apply notwithstanding that the Supplier has been referred to as the "Supplier" in this and any other related document.

- a) The Supplier acknowledges that they have read and understood the Occupational Health and Safety Act (RSO 1990, C-0.1, as amended).
- b) The Supplier covenants and agrees to observe strictly and faithfully the provisions of the said Occupational Health and Safety Act and all regulations and rules promulgated thereunder, and in particular (without limiting the generality of the foregoing), the provisions regarding the obligations and responsibilities of the "Constructor".
- c) The Supplier agrees to indemnify and save the Municipality harmless for damages or fines arising from any breach or breaches of the said Occupational Health and Safety Act including but not limited to the legal fees incurred by the Municipality.
- d) The Supplier agrees to assume full responsibility for the enforcement of the said Occupational Health and Safety Act to ensure compliance therewith.
- e) The Supplier further acknowledges and agrees that any breach or breaches of the Occupational Health and Safety Act whether by the Supplier or any of its subcontractors, may result in the immediate termination of the Contract. The

Municipality reserves the right to draw from the Contract deposit or surety (if available) to complete the said Deliverable to the Municipality specifications.

- f) The Supplier shall allow access to the Deliverable site on demand to representatives of the Municipality to review Deliverable sites to ensure compliance with the Occupational Health and Safety Act, but no such review shall relieve the Supplier from its responsibilities as Constructor.
- g) The Supplier agrees that any damages or fines that may be assessed against the Municipality by reason of a breach or breaches of the Occupational Health and Safety Act by the Supplier or any of its subcontractors shall entitle the Municipality to set-off the damages so assessed against any monies that the Municipality may from time to time owe the Supplier under the Contract or under any other Contract whatsoever.
- h) The Supplier shall provide a list of all controlled hazardous materials or products containing hazardous materials, all physical agents or devices or equipment producing or emitting physical agents and any substance, compound, product or physical agent that is deemed to be or contains a designated substance in accordance with the Workplace Hazardous Materials Information System (WHMIS) as defined under the Ontario Occupational Health and Safety Act and shall provide appropriate Material Health and Safety Data Sheets for these substances used for the performance of the required Deliverable, all prior to the performance of the Deliverable.
- i) When hazardous materials, physical agents and/or designated substances are used in the performance of the required Deliverable or may have been used in the original construction, the selected Supplier shall ensure that the requirements of the Ontario Occupational Health and Safety Act and associated regulations are complied with.
- j) The Municipality reserves the right to terminate the Contract without obligation for non-compliance with the terms set out herein, health and safety regulations, the Environmental Protection Act, associated regulations or other applicable legislation.
- k) The Supplier shall perform the Deliverable so as to cause the public the least inconvenience possible. In particular, the Supplier shall not obstruct any street, thoroughfare, or footwalk longer or to a greater extent than necessary.
- l) The Supplier shall take all reasonable precaution necessary to ensure the safety of the workers and the general public, particularly children who may play in the area of Deliverable.

55.2 If any person is killed or Critically Injured (as defined in R.R.O. 1990, Regulation 834 made under the Occupational Health and Safety Act, R.S.O. 1990, Chapter O.1), in addition to complying with the reporting requirements under the Occupational Health and Safety Act, R.S.O. 1990, Chapter O.1, the Supplier shall notify the Municipality immediately and in any event by no later than twelve (12) hours after the Critical Injury or death occurred.

55.3 In addition to complying with the reporting requirements under the Occupational Health and Safety Act, R.S.O. 1990, Chapter O.1, the Supplier shall notify the Municipality of any other incident or injury (apart from a death or Critical Injury) as soon as possible, but in any event by no later than five (5) business days after the incident or injury occurred.

#### 56. Safety Data Sheets (formerly Material Safety Data Sheets)

The Supplier shall supply current Safety Data Sheets for all controlled products supplied on or before delivery of initial shipments and again sixty (60) days prior to expiry of the sheet. Failure to comply with this instruction or to label products in accordance with the amended **Hazardous Products Act** and the new **Hazardous Products Regulations (HPR)** may result in cancellation of the Contract, in which event any existing stocks shall be removed and credited back to the Municipality in full by the Supplier. The Municipality shall be under no obligation whatsoever, to any Supplier who does not comply with the Municipality's procedure in this regard.

#### 57. Workplace Safety and Insurance Board (WSIB)

The Supplier shall be in good standing with the Workplace Safety and Insurance Board and shall furnish the Municipality with satisfactory evidence, in the form of a valid WSIB Clearance Certificate:

- a) Within the timeframe specified in the award letter, and, in any event, prior to the commencement of the Deliverable;
- b) Prior to release of each and every progress draw or every sixty (60) days throughout the term of the Contract; and
- c) At any other time during the Contract at the Municipality's request.

If the Supplier is an Independent Operator, the Supplier is required to provide the Municipality with a valid Independent Operator's Ruling issued by WSIB:

- a) Within the timeframe specified in the award letter, and, in any event, prior to the commencement of the Deliverable;
- b) Prior to release of each and every progress draw or every sixty (60) days throughout the term of the Contract; and
- c) At any other time during the Contract at the Municipality request.

In order to obtain an Independent Operator's Ruling, the Supplier must download the form that corresponds to the applicable classification from the WSIB site at: <http://www.wsib.on.ca> and submit the completed form to WSIB. The WSIB Independent Operator's Ruling is to be submitted to the Municipality prior to commencement of the Contract. To ensure that the WSIB Independent Operator's Ruling is obtained within the time period specified in the Municipality's award letter, the Supplier shall ensure that an "**Expedited Ruling**" is requested. (For more information about obtaining an "Expedited Ruling", please contact your local Workplace Safety & Insurance Board Office.)

The Municipality recommends that all Independent Operators obtain valid WSIB optional insurance providing for long term disability coverage.

Failure of the recommended Supplier to provide the above-noted documentation within the timeframe set out in the award letter may result in cancellation of the award notice to the Supplier and the Municipality may proceed to award to another Supplier.

Failure of the Supplier, to provide the above documentation, at any time during the Contract, may result in the termination of the Contract.

## **58. Health and Safety Policy**

The Supplier shall provide the Municipality, prior to commencement of Deliverable, with a written copy of the Health and Safety Policy for their firm along with Health and Safety procedure(s) relevant to the Deliverable to be performed where applicable. If the firm does not have written procedures relevant to the Deliverable, then the firm shall be expected to abide by the Municipality's safety procedures in addition to the Occupational Health and Safety Act (re: duties of employers).

## **59. Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)**

In accordance with the Municipal Freedom of Information and Protection of Privacy Act, the personal information Suppliers provide in response to this Solicitation is being collected under authority of the Municipal Act and will be used exclusively in the selection process and may be used for budgetary purposes for future Responses. All Responses submitted shall become the property of the Municipality and may be disclosed in accordance with a request made under MFIPPA. In accordance with requirements of MFIPPA, Suppliers are reminded to identify in their submission material, any specific scientific, technical, commercial, proprietary, or similar confidential information, the disclosure of which could cause them injury. Complete Responses are not to be identified as confidential. Should Suppliers have any questions in this regard, please consult the Municipality's Clerk at 519-360-1998.

## **60. Confidentiality**

- 60.1 Suppliers shall not at any time before, during or after completion of the Deliverable, divulge any information communicated to or acquired by the Supplier or disclosed by the Municipality in the course of the Contract and while carrying out the Deliverable without the prior written consent of the Municipality.
- 60.2 All reports, data, documents, materials and information of any kind whatsoever prepared in the course of carrying out the Deliverable are the sole and exclusive property of the Municipality. Any breach of this requirement for confidentiality may result in the Contract being terminated and may also result in damages being assessed including but not limited to; the Municipality right to draw from the Contract deposit or surety (if available) or claiming any amounts owing to the Supplier under the Contract.
- 60.3 All documents and records in the custody or under the control of the Municipality including but not limited to the Response and all other information delivered by the Supplier pursuant to the Response Document shall become the property of the Municipality, and the Municipality may use any such information, including pricing

information provided by the Supplier, for the purpose of or in connection with cost estimating for other projects, and for such purpose, the Municipality may disclose such information to consultants retained by the Municipality.

## **61. Publicity**

The Municipality may, in its sole discretion, acknowledge the Supplier in any publicity or publication. The Supplier shall not make use of its association with the Municipality in any publicity or publication without the prior written consent of the Municipality.

## **62. Accessibility**

- 62.1 All accessibility standards — including the accessible customer service standard — are now part of one regulation: the Integrated Accessibility Standards Regulation (O. Reg. 191/11).
- 62.2 The Municipality is committed to providing equal treatment to people with disabilities with respect to the use and benefit of Municipality's services, programs, and goods in a manner that respects their dignity and that is equitable in relation to the broader public. All Suppliers with the Municipality must comply with all laws applicable to the performance of the work.
- 62.3 Suppliers who deal with the public or other third parties on behalf of the Municipality, as well as Suppliers who participate in developing Municipality's policies, practices or procedures governing the provision of goods and services to members of the public or other third parties, must conform with the Integrated Accessibility Standards Regulation (O. Reg. 191/11), in particular Part IV.2, for Customer Service.
- 62.4 Pursuant to the above, Accessibility Standards for Customer Service, Suppliers who deal with the public or other third parties on behalf of the Municipality, as well as Suppliers who participate in developing Municipality policies, practices or procedures governing the provision of goods, services and construction to members of the public or other third parties shall ensure that all of its employees, agents, volunteers, or others for whom it is responsible, receive training about the provision of goods and services provided to people with disabilities. The Accessible Customer Service Training shall be provided in accordance with Part IV.2, of the Integrated Accessibility Standards Regulation for Customer Service and shall include, without limitation, a review of the purposes of the AODA and the requirements of the Customer Service Regulation, as well as instruction regarding all matters set out in the Customer Service Regulation.
- 62.5 Suppliers who provide goods, services or facilities on behalf of the Municipality shall ensure that all of its employees, agents, volunteers, or others for whom it is responsible, receive training on the requirements of the accessibility standards referred to in the Integrated Regulation and on the Human Rights Code as it pertains to persons with disabilities.
- 62.6 The Supplier shall submit to the Municipality or Ministry, if requested, documentation describing its accessibility training policies, practices and procedures, and a summary of

the contents of training, together with a record of the dates on which training is provided and the number of attendees. The Municipality reserves the right to require the Supplier, at the Supplier's expense, to amend its accessibility policies, practices and procedures if the Municipality deems them not to be in compliance with the requirements of the Integrated Accessibility Standards Regulation (O. Reg. 191/11). The Supplier shall only assign those employees who have successfully completed training in accordance with such Regulations to provide services to, or on behalf of, the Municipality.

- 62.7 The Supplier shall ensure that any information, products, deliverables and/or communication (as defined in the Integrated Regulation) produced pursuant to the Contract shall be in conformity with World Wide Web Consortium Web Content Accessibility Guidelines (WCAG) 2.0 Level AA and shall be provided in accessible Word, Excel, PowerPoint, PDF or other format requested by the Municipality.
- 62.8 The training shall be provided to each employee, agent, subcontractor or volunteer in the Supplier's business as soon as possible after he or she is assigned to Deliverable on Municipality property or at a Municipality facility. The Supplier shall keep records of the training provided, including dates when the training is provided, the number of employees who received training and individual training records. The Municipality reserves the right to inspect the Supplier's training records. The Supplier agrees to provide the Municipality upon request with the training records within ten (10) business days.

### **63. The Personal Property Security Act**

The Supplier warrants that it has the full power and legal right and the responsibility to convey title to all products/goods/inventory/equipment which shall pass to the Municipality in accordance with the terms of the Contract and all goods and products hereunder shall be free from all registered and unregistered liens, encumbrances, charges, security interests, mortgages, or any third party statutory claims. All transactions contemplated under the Contract shall be in the ordinary course of business of the Supplier within the meaning of the Personal Property Security Act.

### **64. Ownership and Delivery of Materials**

- 64.1 The Supplier agrees that all information and material of any kind whatsoever acquired or prepared by or for the Supplier pursuant to the Contract or in preparation of the Response shall, both during and following the termination of the Contract, be the sole property of the Municipality, including all information and material provided by the Municipality to the Supplier for the purposes of the Contract. Accordingly, the Supplier hereby assigns to the Municipality all rights (including all intellectual property rights), title and interest it may have from time to time in the Deliverable to the Municipality.
- 64.2 Upon the request of the Municipality, the Supplier agrees to deliver forthwith to the Municipality all materials and information specified in the request that is/are the property of the Municipality and in the possession or under the control of the Supplier. No copy or duplicate of any such material or information delivered to the Municipality shall be

retained by the Supplier and/or supplier team without the prior written approval of the Municipality. The Supplier further agrees not to destroy any material or information which is the property of the Municipality without the Municipality's prior written approval. This provision survives the expiration or termination of the Contract.

## **65. Intellectual Property**

- 65.1 The Supplier shall pay all royalties and license fees required for the Deliverable provided. The Supplier represents and warrants that it has the sole and unrestricted right, title and interest or good and sufficient power, authority and right to use any intellectual property required for the completion of the Deliverable.
- 65.2 The Supplier shall, at its own expense, defend all claims, actions or proceedings against the Municipality based on any allegation that any Deliverable or any part of the Deliverable performed or the supply of any material in the performance of a Contract constitutes an infringement of any trademark, patent, copyright or other proprietary right, and it shall pay to the Municipality all costs, damages, charges and expenses, including its lawyers' fees on a substantial indemnity basis occasioned to the Municipality by reason thereof.
- 65.3 If, in any action or proceeding the Deliverable or any part thereof is held to constitute an infringement of any trademark, patent, copyright or other proprietary right, the Supplier shall forthwith either secure for the Municipality the right to continue using the Deliverable or shall at the Supplier's expense and with the Municipality's prior written approval, replace the infringing items with non- infringing Deliverable or modify them so that the Deliverable no longer infringes any such right.

## **66. Survival of Clauses**

Clauses pertaining to indemnity, liability, ownership of information, use of information, warranty, confidentiality and publicity, shall survive the expiration or other termination of the Contract, in addition to any other clauses which survive by operation of law or for which survival is implied by the clause itself.

## **67. Force Majeure**

It is understood and agreed that the Supplier shall not be held liable for any losses resulting if the fulfilment of the terms and conditions of the Contract shall be delayed or prevented by wars, acts of public enemies, fires, floods, acts of God, or for any other cause not within the control of the Supplier and which by the exercise of reasonable diligence the Supplier is unable to prevent. Should the performance of any Contract be delayed or prevented as herein set forth, the Supplier agrees to give immediate written notice and explanation of the cause and probable duration of any such delay.

## **68. Non-Waiver**

No condoning, excusing or overlooking by the Municipality of any default, breach or non-observance by the Supplier at any time or times in respect of any provision herein contained shall operate as a waiver of the Municipality's right hereunder in respect of

any continuing or subsequent default, breach or non-observance or so as to defeat or affect in any way the rights of the Municipality herein in respect of any such continuing or subsequent default or breach, and no waiver shall be inferred from or implied by anything done or omitted by the Municipality save only an express waiver in writing. Any Deliverable completed by the Municipality required by this Contract to be done by the Supplier shall not relieve the Supplier of his/her obligations to do that Deliverable.

#### **69. Non-Assignment**

The Contract awarded as a result of this Solicitation may not be assigned by the Supplier without the prior written consent of the Municipality. Such written consent, if granted, shall not under any circumstances relieve the Supplier of his/her liabilities and obligations under the Contract, and shall be within the sole and unfettered discretion of the Municipality and may be unreasonably withheld.

#### **70. Severability**

If any provision of these Standard Terms and Conditions is held by a court of competent jurisdiction to be contrary to law, such provision shall be changed and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law and the remaining provisions of these Standard Terms and Conditions shall remain in full force and effect.

#### **71. Order of Precedence**

In the event of any inconsistency or conflict in the contents of the following documents, such documents shall take precedence and govern in the following order:

- a) Agreement (Contract)
- b) Addenda
- c) Special Provisions
- d) Special Specifications and all associated Quantity Sheets detailing Contract Unit Prices
- e) Specifications
- f) Contract Drawings
- g) Standard Drawings
- h) Supplemental General Conditions
- i) General Conditions
- j) Instructions to Suppliers
- k) Municipality's Standard Terms and Conditions
- l) Tender (Suppliers Response submission)
- m) Appendices

Later dates shall govern within each of the above categories of documents.