



Form of Agreement Terms and Conditions

- Article 1 - Interpretation
- Article 2 - General Provisions
- Article 3 - Relationship Between the City of Thorold and Supplier
- Article 4 - Performance by Supplier
- Article 5 - Payment for Performance and Audit
- Article 6 - Confidentiality
- Article 7 - Intellectual Property
- Article 8 - Indemnity and Insurance
- Article 9 - Termination, Expiry and Extension

Article 1 - Interpretation

1.01 Defined Terms

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

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

“Business Day” means any working day, Monday to Friday inclusive, but excluding statutory holidays and other days on which the City of Thorold has elected to be closed for business;

“Conflict of Interest” includes, but is not limited to, any situation or circumstance where (a) in relation to the procurement process, the Supplier had an unfair advantage or engaged in conduct, directly or indirectly, that may have given it an unfair advantage, including but not limited to (i) having access to information that is confidential to the City of Thorold and not available to other bidders or proponents; (ii) communicating with any person with a view to influencing preferred treatment in the procurement process; or (iii) engaging in conduct that compromises or could be seen to compromise the integrity of the open and competitive procurement process; or (b) in relation to the performance of the Contract, the Supplier’s other commitments, relationships or financial interests (i) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgment; or (ii) could or could be seen to compromise, impair or be incompatible with the effective performance of its contractual obligations;



“Deliverables” means everything developed for or provided to the City of Thorold in the course of performing under the Contract or agreed to be provided to the City of Thorold under the Contract by the Supplier or its directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors, as further defined, but not limited by, Schedule 1, including but not limited to any goods or services or any and all Intellectual Property and any and all concepts, techniques, ideas, information, documentation and other materials, however recorded, developed or provided;

“Effective Date” is as set out in Schedule 1 (Schedule of Deliverables, Rates and Specific Provisions);

“Expiry Date” shall be earlier of the date specified in Paragraph E of Schedule 1 a Schedule of Deliverables, Rates and Specific Provisions for the end of the term and the date of any early termination in accordance with the provisions of this Contract;

“Indemnified Parties” means the City of Thorold and the City of Thorold’s elected officials, directors, officers, agents, employees and volunteers;

“Industry Standards” include, but are not limited to (a) the provision of any and all labour, supplies, equipment and other goods or services that are necessary and can reasonably be understood or inferred to be included within the scope of the Contract or customarily furnished by Persons providing Deliverables of the type provided hereunder in similar situations in Canada and; (b) adherence to commonly accepted norms of ethical business practices, which shall include the Supplier establishing, and ensuring adherence to, precautions to prevent its employees or agents from providing or offering gifts or hospitality of greater than nominal value to any person acting on behalf of or employed by the City of Thorold;

“Intellectual Property” means any intellectual, industrial or other proprietary right of any type in any form protected or protectable under the laws of Canada, any foreign country, or any political subdivision of any country, including, without limitation, any intellectual, industrial or proprietary rights protected or protectable by legislation, by common law or at equity;

“MFIPPA” means the Municipal Freedom of Information and Protection of Privacy Act, Revised Statutes of Ontario 1990, Chapter M.56, as amended;

“Newly Created Intellectual Property” means any Intellectual Property created by the Supplier in the course of performance of its obligations under the Contract;



“The City of Thorold Confidential Information” means all information of the City of Thorold that is of a confidential nature, including all confidential information in the custody or control of the City of Thorold, regardless of whether it is identified as confidential or not, and whether recorded or not, and however fixed, stored, expressed or embodied, which comes into the knowledge, possession or control of the Supplier in connection with the Contract. For greater certainty, the City of Thorold Confidential Information shall: (a) include: (i) all new information derived at any time from any such information whether created by the City of Thorold, the Supplier or any third-party; (ii) all information (including Personal Information) that the City of Thorold is obliged, or has the discretion, not to disclose under provincial or federal legislation or otherwise at law; but (b) not include information that: (i) is or becomes generally available to the public without fault or breach on the part of the Supplier of any duty of confidentiality owed by the Supplier to the City of Thorold or to any third-party; (ii) the Supplier can demonstrate to have been rightfully obtained by the Supplier, without any obligation of confidence, from a third-party who had the right to transfer or disclose it to the Supplier free of any obligation of confidence; (iii) the Supplier can demonstrate to have been rightfully known to or in the possession of the Supplier at the time of disclosure, free of any obligation of confidence when disclosed; or (iv) is independently developed by the Supplier; but the exclusions in this subparagraph shall in no way limit the meaning of Personal Information or the obligations attaching thereto under the Contract or at law;

“The City of Thorold Representative” is as set out in Schedule 1 (Schedule of Deliverables, Rates and Specific Provisions);

“Person” if the context allows, includes any individuals, persons, firms, partnerships or corporations or any combination thereof;

“Personal Information” means recorded information about an identifiable individual or that may identify an individual;

“Personal Health Information” has the meaning assigned to it under PHIPA;

“PHIPA” means the Personal Health Information Protection Act, Statutes of Ontario 2004, Chapter 3, Schedule A, as amended;

“Proceeding” means any action, claim, demand, lawsuit, or other proceeding;

“Rates” means the applicable price, in Canadian funds, to be charged for the applicable Deliverables, as set out in Schedule 1 (Schedule of Deliverables, Rates and Specific Provisions);



“Record”, for the purposes of the Contract, means any recorded information, including any Personal Information or Personal Health Information, in any form: (a) provided by the City of Thorold to the Supplier, or provided by the Supplier to the City of Thorold, for the purposes of the Contract; or (b) created by the Supplier in the performance of the Contract;

“Requirements of Law” mean all applicable requirements, laws, statutes, codes, acts, ordinances, orders, decrees, injunctions, by-laws, rules, regulations, official plans, permits, licences, authorizations, directions, and agreements with all Authorities that now or at any time hereafter may be applicable to either the Contract or the Deliverables or any part of them;

“Supplier Representative” is as set out in Schedule 1 (Schedule of Deliverables, Rates and Specific Provisions);

“Supplier’s Intellectual Property” means Intellectual Property owned by the Supplier prior to its performance under the Contract or created by the Supplier during the Term of the Contract independently of the performance of its obligations under the Contract;

“Term” is as set out in Schedule 1 (Schedule of Deliverables, Rates and Specific Provisions); and

“Third-party Intellectual Property” means any Intellectual Property owned by a party other than the City of Thorold or the Supplier.

Article 2 - General Provisions

2.01 No Indemnities from the City of Thorold

Notwithstanding anything else in the Contract, any express or implied reference to the City of Thorold providing an indemnity or any other form of indebtedness or contingent liability that would directly or indirectly increase the indebtedness or contingent liabilities of the City of Thorold beyond the obligation to pay the Rates in respect of Deliverables accepted by the City of Thorold, whether at the time of entering into the Contract or at any time during the Term, shall be void and of no legal effect.

2.02 Entire Contract

The Contract embodies the entire agreement between the parties with regard to the provision of the Deliverables and supersedes any prior understanding or agreement, collateral, oral or otherwise with respect to the provision of the Deliverables, existing between the parties at the Effective Date of the Contract.



2.03 Severability

If any term or condition of the Contract, or the application thereof to the parties or to any Persons or circumstances, is to any extent invalid or unenforceable, the remainder of the Contract, and the application of such term or condition to the parties, Persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby.

2.04 Failure to Enforce Not a Waiver

Any failure by the City of Thorold to insist in one or more instances upon strict performance by the Supplier of any of the terms or conditions of the Contract shall not be construed as a waiver by the City of Thorold of its right to require strict performance of any such terms or conditions, and the obligations of the Supplier with respect to such performance shall continue in full force and effect.

2.05 Changes by Written Amendment Only

Any changes to the Contract shall be by written amendment signed by the parties. No changes shall be effective or shall be carried out in the absence of such an amendment. Any such written changes shall be included in the definition of Contract.

2.06 Force Majeure

Neither party shall be liable for damages caused by delay or failure to perform its obligations under the Contract where such delay or failure is caused by an event beyond its reasonable control. The parties agree that an event shall not be considered beyond one's reasonable control if a reasonable business person applying due diligence in the same or similar circumstances under the same or similar obligations as those contained in the Contract would have put in place contingency plans to either materially mitigate or negate the effects of such event. Without limiting the generality of the foregoing, the parties agree that force majeure events shall include natural disasters and acts of war, insurrection and terrorism but shall not include shortages or delays relating to supplies or services. If a party seeks to excuse itself from its obligations under this Contract due to a force majeure event, that party shall immediately notify the other party of the delay or non-performance, the reason for such delay or non-performance and the anticipated period of delay or non-performance. If the anticipated or actual delay or non-performance exceeds fifteen (15) Business Days, the other party may immediately terminate the Contract by giving notice of termination and such termination shall be in addition to the other rights and remedies of the terminating party under the Contract, at law or in equity.



2.07 Notices by Prescribed Means

Notices shall be in writing and delivered by mail, personal delivery, or email, and shall be addressed to the contact identified on the face of the Purchase Order. A notice delivered by personal delivery shall be deemed to have been received on the date it is actually delivered. A notice sent by mail shall be deemed to have been received five (5) Business Days after the date of mailing. A notice sent by email shall be deemed to have been received on the date it is sent, provided it is sent during normal business hours. If the email is sent after business hours, it shall be deemed to have been received on the next Business Day. For the purposes of this section, "Business Day" means any day other than a Saturday, Sunday, or statutory holiday in the Province of Ontario.

2.08 Governing Law

The Contract shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

Article 3 - Relationship Between the City of Thorold and Supplier

3.01 Supplier's Power to Contract

The Supplier represents and warrants that it has the full right and power to enter into the Contract and there is no agreement with any other Person which would in any way interfere with the rights of the City of Thorold under this Contract.

3.02 Representatives May Bind the Parties

The parties represent that their respective representatives have the authority to legally bind them to the extent permissible by the Requirements of Law.

3.03 Supplier Not a Partner, Agent or Employee

The Supplier shall have no power or authority to bind the City of Thorold or to assume or create any obligation or responsibility, express or implied, on behalf of the City of Thorold. The Supplier shall not hold itself out as an agent, partner or employee of the City of Thorold. Nothing in the Contract shall have the effect of creating an employment, partnership or agency relationship between the City of Thorold and the Supplier (or any of the Supplier's directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors).



3.04 Non-Exclusive Contract, Work Volumes

The Supplier acknowledges that it is providing the Deliverables to the City of Thorold on a non-exclusive basis. The City of Thorold makes no representation regarding the volume of goods and services required under the Contract. The City of Thorold reserves the right to contract with other parties for the same or similar goods and services as those provided by the Supplier and reserves the right to obtain the same or similar goods and services internally.

3.05 Responsibility of Supplier

The Supplier agrees that it is liable for the acts and omissions of its directors, officers, employees, agents, partners, affiliates, volunteers and subcontractors. This paragraph is in addition to any and all of the Supplier's liabilities under the Contract and under the general application of law. The Supplier shall advise these individuals and entities of their obligations under the Contract and shall ensure their compliance with the applicable terms of the Contract. In addition to any other liabilities of the Supplier pursuant to the Contract or otherwise at law or in equity, the Supplier shall be liable for all damages, costs, expenses, losses, claims or actions arising from any breach of the Contract resulting from the actions of the above-mentioned individuals and entities. This paragraph shall survive the termination or expiry of this Contract.

3.06 No Subcontracting or Assignment

The Supplier shall not subcontract or assign the whole or any part of the Contract or any monies due under it without the prior written consent of the City of Thorold. Such consent shall be in the sole discretion of the City of Thorold and subject to the terms and conditions that may be imposed by the City of Thorold. Without limiting the generality of the conditions which the City of Thorold may require prior to consenting to the Supplier's use of a subcontractor, every contract entered into by the Supplier with a subcontractor shall adopt all of the terms and conditions of this Contract as far as applicable to those parts of the Deliverables provided by the subcontractor. Nothing contained in the Contract shall create a contractual relationship between any subcontractor or its directors, officers, employees, agents, partners, affiliates or volunteers and the City of Thorold.

3.07 Duty to Disclose Change of Control

In the event that the Supplier undergoes a change in control the Supplier shall immediately disclose such change in control to the City of Thorold and shall comply with any terms and conditions subsequently prescribed by the City of Thorold resulting from the disclosure.



3.08 Conflict of Interest

The Supplier shall: (a) avoid any Conflict of Interest in the performance of its contractual obligations; (b) promptly disclose to the City of Thorold any actual, potential, or perceived Conflict of Interest that arises during the performance of its contractual obligations; and (c) comply with any requirements prescribed by the City of Thorold to resolve or otherwise manage the Conflict of Interest to the satisfaction of the City.

For the purposes of this section, a “Conflict of Interest” includes any situation or circumstance where the Supplier or any of its employees, agents, or subcontractors has or could be perceived to have an interest that conflicts with the interests of the City of Thorold or that could improperly influence the Supplier’s performance of its obligations under the contract.

3.09 Contract Binding

The Contract can be enforced by and is binding upon the parties and their successors, executors, administrators and their permitted assigns.

Article 4 - Performance by Supplier

4.01 Commencement of Performance

The Supplier shall commence performance upon receipt of written instructions from the City of Thorold.

4.02 Deliverables Warranty

The Supplier hereby represents and warrants that the Deliverables (i) shall be provided fully and diligently in a professional and competent manner by persons qualified and skilled in their occupations; and (ii) shall be free from defects in material, workmanship and design, suitable for the purposes intended, in compliance with all applicable specifications and free from liens or encumbrance on title; and furthermore that all Deliverables shall be provided in accordance with: (a) the Contract; (b) Industry Standards; and (c) Requirements of Law. If any of the Deliverables, in the opinion of the City of Thorold, are inadequately provided or require corrections, the Supplier shall forthwith make the necessary corrections at its own expense as specified by the City of Thorold in a rectification notice.

4.03 Health and Safety

Without limiting the generality of section 4.02, the Supplier warrants and agrees that it has complied with and will comply with, and ensure that any subcontractors comply with, all applicable occupational health and safety laws and regulations in relation to the performance of the Supplier’s obligations under this Contract. The Supplier shall provide the City of Thorold with evidence of the Supplier’s compliance with this section within ten (10) Business Days of being requested to do so.



4.04 Accessibility

Without limiting the generality of section 4.02, the Supplier shall comply with, and ensure that any subcontractors comply with, applicable accessibility laws, regulations and by-laws, including but not limited to the Ontarians with Disabilities Act, 2001 (ODA), the Accessibility for Ontarians with Disabilities Act, 2005 (AODA), Ontario Regulation 429/07 (Accessibility Standards for Customer Service) and Ontario Regulation 191/11 (Integrated Accessibility Standards), during the term of the Contract.

Without limiting the generality of the foregoing, the Supplier shall ensure that all of its employees, agents, volunteers and any subcontractors who, as part of the Contract: (a) deal with members of the public or other third parties; or (b) participate in developing policies, practices and procedures governing the provision of goods or services to members of the public or other third parties, receive training about the provision of its goods or services to persons with disabilities. The Supplier shall ensure that such training includes, without limitation, a review of the purposes of the AODA and the requirements of Ontario Regulation 429/07.

The City of Thorold reserves the right to inspect the Supplier's training records relating to Ontario Regulation 429/07 and Ontario Regulation 191/11, which must describe its training policy and summarize the training, including to whom the training has been given and when the training was given. The City of Thorold also reserves the right to require the Supplier to amend its training policies, practices and procedures if the City of Thorold deems the training is not compliant with the requirements of Ontario Regulation 429/07 and Ontario Regulation 191/11.

4.05 Shipment of Goods

To the extent that the Deliverables include the shipment of goods to the City of Thorold, all such goods shall be Delivered Duty Paid (DDP) (Incoterms 2010) to the City of Thorold's place of business or such other location as may be specified in the Contract. No transportation or delivery charges of any kind, including, without limitation, packing, storage, cartage or customs brokerage charges, shall be paid by the City of Thorold, unless specifically agreed by the City of Thorold in writing. The Deliverables will be suitably packed in such a manner as will ensure their safe transportation undamaged to their destination. The Deliverables will remain at the risk of the Supplier until the Deliverables are received by the City of Thorold. Receipt of the Deliverables at the City of Thorold's location does not constitute acceptance of the Deliverables by the City of Thorold. The Deliverables are subject to the City of Thorold's inspection and acceptance within a reasonable period of time after delivery. If any of the Deliverables, in the opinion of the City of Thorold, are inadequately provided or require corrections, the Supplier shall make the necessary corrections at its own expense as specified by the City of Thorold in a rectification notice.



4.06 Use and Access Restrictions

The Supplier acknowledges that unless it obtains specific written preauthorization from the City of Thorold, any access to or use of the City of Thorold property, technology or information that is not necessary for the performance of its contractual obligations with the City of Thorold is strictly prohibited. The Supplier further acknowledges that the City of Thorold may monitor the Supplier to ensure compliance with this paragraph. This paragraph is in addition to and shall not limit any other obligation or restriction placed upon the Supplier.

4.07 Notification by Supplier to the City of Thorold

During the Term, the Supplier shall advise the City of Thorold promptly of: (a) any contradictions, discrepancies or errors found or noted in the Contract; (b) supplementary details, instructions or directions that do not correspond with those contained in the Contract; and (c) any omissions or other faults that become evident and should be corrected in order to provide the Deliverables in accordance with the Contract and Requirements of Law.

4.08 Supplier to Comply with Reasonable Change Requests

The City of Thorold may, in writing, request changes to the Contract, which may include altering, adding to, or deleting any of the Deliverables. The Supplier shall comply with all reasonable the City of Thorold change requests and the performance of such request shall be in accordance with the terms and conditions of the Contract. If the Supplier is unable to comply with the change request, it shall promptly notify the City of Thorold and provide reasons for such non-compliance. In any event, any such change request shall not be effective until a written amendment reflecting the change has been executed by the parties.

4.09 Pricing for Requested Changes

Where the City of Thorold change request includes an increase in the scope of the previously contemplated Deliverables, the City of Thorold shall set out, in its change request, the proposed prices for the contemplated changes. Where the Rates in effect at the time of the change request (a) include pricing for the particular type of goods or services contemplated in the change request, the Supplier shall not unreasonably refuse to provide those goods or services at prices consistent with those Rates; or (b) are silent to the applicable price for the particular goods or services contemplated in the change request, the price shall be negotiated between the City of Thorold and the Supplier within a reasonable period of time and in any event, such change request shall not become effective until a written amendment reflecting the change has been executed by the parties.



4.10 Performance by Specified Individuals Only

The Supplier agrees that to the extent that specific individuals are named in the Contract as being responsible for the provision of the Deliverables, only those individuals shall provide the Deliverables under the Contract. The Supplier shall not replace or substitute any of the individuals named in the Contract without the prior written approval of the City of Thorold, which may not arbitrarily or unreasonably be withheld. Should the Supplier require the substitution or replacement of any of the individuals named in the Contract, it is understood and agreed that any proposed replacement must possess similar or greater qualifications than the individual named in the Contract. The Supplier shall not claim fees for any replacement individual greater than the Rates established under the Contract.

4.11 The City of Thorold Rights and Remedies and Supplier Obligations Not Limited to Contract

The express rights and remedies of the City of Thorold and obligations of the Supplier set out in the Contract are in addition to and shall not limit any other rights and remedies available to the City of Thorold or any other obligations of the Supplier at law or in equity.

Article 5 - Payment for Performance and Audit

5.01 Payment According to Contract Rates

The City of Thorold shall, subject to the Supplier's compliance with the provisions of the Contract, pay the Supplier for the Deliverables provided at the Rates established under the Contract.

5.02 Hold Back or Set Off

the City of Thorold may hold back payment or set off against payment if, in the opinion of the City of Thorold acting reasonably, the Supplier has failed to comply with any requirements of the Contract.

5.03 No Expenses or Additional Charges

There shall be no other charges payable by the City of Thorold under the Contract to the Supplier other than the Rates established under the Contract.

5.04 Payment of Taxes and Duties and Freight

Unless otherwise stated, the Supplier shall pay all applicable taxes, including excise taxes incurred by or on the Supplier's behalf with respect to the Contract.



5.05 Withholding Tax

The City of Thorold shall withhold any applicable withholding tax from amounts due and owing to the Supplier under the Contract and shall remit it to the appropriate government in accordance with applicable tax laws. This paragraph shall survive any termination or expiry of the Contract.

5.06 Document Retention and Audit

For seven (7) years after the Expiry Date or any date of termination of the Contract, the Supplier shall maintain all necessary records to substantiate (a) all charges and payments under the Contract and (b) that the Deliverables were provided in accordance with the Contract and with Requirements of Law. During the Term, and for seven (7) years after the Term, the Supplier shall permit and assist the City of Thorold in conducting audits of the operations of the Supplier to verify (a) and (b) above. The City of Thorold shall provide the Supplier with at least ten (10) Business Days prior notice of its requirement for such audit. The Supplier's obligations under this paragraph shall survive any termination or expiry of the Contract.

Article 6 - Confidentiality

6.01 Confidentiality and Promotion Restrictions

Any publicity or publications related to the Contract shall be at the sole discretion of the City of Thorold. The City of Thorold may, in its sole discretion, acknowledge the Deliverables provided by the Supplier in any such publicity or publication. The Supplier shall not make use of its association with the City of Thorold without the prior written consent of the City of Thorold. Without limiting the generality of this paragraph, the Supplier shall not, among other things, at any time directly or indirectly communicate with the media in relation to the Contract unless it has first obtained the express written authorization to do so by the City of Thorold.



6.02 The City of Thorold Confidential Information

During and following the Term, the Supplier shall: (a) keep all the City of Thorold Confidential Information confidential and secure; (b) limit the disclosure of the City of Thorold Confidential Information to only those of its directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors who have a need to know it for the purpose of providing the Deliverables and who have been specifically authorized to have such disclosure; (c) not directly or indirectly disclose, destroy, exploit or use any the City of Thorold Confidential Information (except for the purpose of providing the Deliverables, or except if required by order of a court or tribunal), without first obtaining: (i) the written consent of the City of Thorold and (ii) in respect of any the City of Thorold Confidential Information about any third-party, the written consent of such third-party; (d) provide the City of Thorold Confidential Information to the City of Thorold on demand; and (e) return all the City of Thorold Confidential Information to the City of Thorold before the end of the Term, with no copy or portion kept by the Supplier.

6.03 Restrictions on Copying

The Supplier shall not copy any the City of Thorold Confidential Information, in whole or in part, unless copying is essential for the provision of the Deliverables. On each copy made by the Supplier, the Supplier must reproduce all notices which appear on the original.

6.04 Notice of Breach

The Supplier shall notify the City of Thorold promptly upon the discovery of loss, unauthorized disclosure, unauthorized access or unauthorized use of the City of Thorold Confidential Information.

6.05 Notice and Protective Order

If the Supplier or any of its directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors become legally compelled to disclose any the City of Thorold Confidential Information, the Supplier will provide the City of Thorold with prompt notice to that effect in order to allow the City of Thorold to seek one or more protective orders or other appropriate remedies to prevent or limit such disclosure, and it shall co-operate with the City of Thorold and its legal counsel to the fullest extent. If such protective orders or other remedies are not obtained, the Supplier will disclose only that portion of the City of Thorold Confidential Information which the Supplier is legally compelled to disclose, only to such person or persons to which the Supplier is legally compelled to disclose, and the Supplier shall provide notice to each such recipient (in co-operation with legal counsel for the City of Thorold) that such the City of Thorold Confidential Information is confidential and subject to non-disclosure on terms and conditions equal to those contained in the Contract and, if possible, shall obtain each recipient's written agreement to receive and use such the City of Thorold Confidential Information subject to those terms and conditions.



6.06 Protection of Privacy

The Supplier shall adhere to or exceed the standards set in MFIPPA, PHIPA or any other relevant Ontario or federal privacy legislation or common law as may be passed or amended from time to time, as relates to the confidential and secure treatment, including collection, use, disclosure or retention, of Personal Information, Personal Health Information and the City of Thorold Confidential Information which the Supplier comes into contact with in the course of performing its obligations under, or otherwise in connection with, the Contract.

6.07 MFIPPA Records and Compliance

The Supplier and the City of Thorold acknowledge and agree that MFIPPA applies to and governs all Records and may require the disclosure of such Records to third parties. Furthermore, the Supplier agrees (a) to keep Records secure; (b) to provide Records to the City of Thorold within seven (7) calendar days of being directed to do so by the City of Thorold for any reason including an access request or privacy issue; (c) not to access any Personal Information unless the City of Thorold determines, in its sole discretion, that access is permitted under MFIPPA and is necessary in order to provide the Deliverables; (d) not to directly or indirectly use, collect, disclose or destroy any Personal Information for any purposes that are not authorized by the City of Thorold; (e) to ensure the security and integrity of Personal Information and keep it in a physically secure and separate location safe from loss, alteration, destruction or intermingling with other records and databases and to implement, use and maintain the most appropriate products, tools, measures and procedures to do so; (f) to restrict access to Personal Information to those of its directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors who have a need to know it for the purpose of providing the Deliverables and who have been specifically authorized by a the City of Thorold representative to have such access for the purpose of providing the Deliverables; (g) to implement other specific security measures that in the reasonable opinion of the City of Thorold would improve the adequacy and effectiveness of the Supplier's measures to ensure the security and integrity of Personal Information and Records generally; and (h) that any confidential information supplied to the City of Thorold may be disclosed by the City of Thorold where it is obligated to do so under MFIPPA, by an order of a court or tribunal or pursuant to a legal proceeding and the provisions of this paragraph shall prevail over any inconsistent provisions in the Contract.

6.08 Injunctive and Other Relief

The Supplier acknowledges that breach of any provisions of this Article may cause irreparable harm to the City of Thorold or to any third-party to whom the City of Thorold owes a duty of confidence, and that the injury to the City of Thorold or to any third-party may be difficult to calculate and inadequately compensable in damages. The Supplier agrees that the City of Thorold is entitled to obtain injunctive relief (without proving any damage sustained by it or by any third-party) or any other remedy against any actual or potential breach of the provisions of this Article.



6.09 Survival

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

Article 7 - Intellectual Property

7.01 the City of Thorold Intellectual Property

The Supplier agrees that all Intellectual Property and every other right, title and interest in and to all concepts, techniques, ideas, information and materials, however recorded, (including images and data) provided by the City of Thorold to the Supplier shall remain the sole property of the City of Thorold at all times.

7.02 No Use of the City of Thorold Insignia

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

7.03 Ownership of Intellectual Property

The City of Thorold shall be the sole owner of any Newly Created Intellectual Property. The Supplier irrevocably assigns to and in favour of the City of Thorold and the City of Thorold accepts every right, title and interest in and to all Newly Created Intellectual Property in the Deliverables, immediately following the creation thereof, for all time and irrevocably waives in favour of the City of Thorold all rights of integrity and other moral rights to all Newly Created Intellectual Property in the Deliverables, immediately following the creation thereof, for all time. To the extent that any of the Deliverables include, in whole or in part, the Supplier's Intellectual Property, the Supplier grants to the City of Thorold a licence to use that Supplier Intellectual Property in the manner contemplated in this Article, the total consideration for which shall be payment of the Rates to the Supplier by the City of Thorold.

7.04 Supplier's Grant of Licence

For those parts of the Deliverables that are Supplier Intellectual Property, the Supplier grants to the City of Thorold a perpetual, world-wide, non-exclusive, irrevocable, transferable, royalty free, fully paid up right and licence: (a) to use, modify, reproduce and distribute, in any form, those Deliverables; and (b) to authorize other Persons, including agents, contractors or sub-contractors, to do any of the former on behalf of the City of Thorold.



7.05 No Restrictive Material in Deliverables

The Supplier shall not incorporate into any Deliverables anything that would restrict the right of the City of Thorold to modify, further develop or otherwise use the Deliverables in any way that the City of Thorold deems necessary, or that would prevent the City of Thorold from entering into any contract with any contractor other than the Supplier for the modification, further development of or other use of the Deliverables.

7.06 Supplier Representation and Warranty Regarding Third-Party Intellectual Property

The Supplier represents and warrants that the provision of the Deliverables shall not infringe or induce the infringement of any Third-party Intellectual Property rights. The Supplier further represents and warrants that it has obtained assurances with respect to any Supplier Intellectual Property and Third-party Intellectual Property that any rights of integrity or any other moral rights associated therewith have been waived.

7.07 Survival

The obligations contained in this Article shall survive the termination or expiry of the Contract.

Article 8 - Indemnity and Insurance

8.01 Supplier Indemnity

The Supplier hereby agrees to indemnify and hold harmless the Indemnified Parties from and against any and all liability, loss, costs, damages and expenses (including legal, expert and consultant fees), causes of action, actions, claims, demands, lawsuits or other proceedings, (collectively, "Claims"), by whomever made, sustained, incurred, brought or prosecuted, including for breaches of confidentiality or privacy or Intellectual Property rights or for third party bodily injury (including death), personal injury and property damage, in any way based upon, occasioned by or attributable to anything done or omitted to be done by the Supplier, its subcontractors or their respective directors, officers, agents, employees, partners, affiliates, volunteers or independent contractors in the course of performance of the Supplier's obligations under, or otherwise in connection with, the Contract.

The Supplier further agrees to indemnify and hold harmless the Indemnified Parties for any incidental, indirect, special or consequential damages, or any loss of use, revenue or profit, by any person, entity or organization, including, without limitation, the City of Thorold, claimed or resulting from such Claims. This indemnity shall be in addition to and not in lieu of any insurance to be provided by the Supplier in accordance with this Contract. The obligations contained in this paragraph shall survive the termination or expiry of the Contract.



8.02 Insurance

The Supplier hereby agrees to put in effect and maintain insurance for the Term, at its own cost and expense, with insurers having a secure A.M. Best rating of B + or greater, or the equivalent, all the necessary and appropriate insurance that a prudent person in the business of the Supplier would maintain including, but not limited to, the following:

(a) Commercial General Liability Insurance

Commercial General Liability insurance for all Deliverables to a limit of not less than five million dollars (\$5,000,000) per occurrence.

The policy will be extended to include:

- Bodily injury, death and property damage
- Cross liability and severability of interest
- Blanket contractual
- Premises and operations
- Personal and advertising injury
- Broad form property damage
- Products and completed operations
- Owner's and contractors protective
- Non-owned Automobile to a limit of not less than two million dollars (\$2,000,000)

The policy shall be endorsed to:

- Include the City of Thorold as an additional insured; and
- Contain an undertaking by the insurers to give thirty (30) days prior written notice in the event that there is a material change in the foregoing policies or coverage affecting the Additional Insured(s) or cancellation of coverage before the expiration date of any of the foregoing policies.

(b) Automobile Insurance

Automobile Insurance (OAP1) for both owned and leased vehicles with inclusive limits of not less than two million dollars (\$2,000,000).

Proof of automobile insurance will not be required if the Supplier provides a signed letter stating that they do not own or lease vehicles.

(c) Additional Insurance Requirements

Any other type of insurance specified in Schedule 1 (Schedule of Deliverables, Rates and Specific Provisions) or required elsewhere under the Contract.



All policies of insurance shall be written with an insurer licensed to do business in Ontario and be non-contributing with, and will apply only as primary and not excess to any other insurance or self-insurance available to the City of Thorold.

8.03 Proof of Insurance

The Supplier shall provide the City of Thorold with proof of the insurance required by this Contract in the form of valid certificates of insurance that reference this Contract and confirm the required coverage. The Supplier shall provide the City of Thorold with renewal replacements on or before the expiry of any such insurance. Upon the request of the City of Thorold, a copy of each insurance policy shall be made available to it. The Supplier shall ensure that each of its subcontractors obtains all the necessary and appropriate insurance that a prudent person in the business of the subcontractor would maintain and that the City of Thorold and Indemnified Parties are named as additional insured with respect to any liability arising in the course of performance of the subcontractor's obligations under the subcontract for the provision of the Deliverables.

8.04 Workplace Safety and Insurance Act Coverage

The Supplier warrants and agrees that it has complied and will comply with all applicable workplace safety and insurance laws and regulations and, if the Supplier is subject to the Workplace Safety and Insurance Act ("WSIA"), will provide proof of valid WSIA coverage by means of a current clearance certificate (or other means acceptable to the City of Thorold) to the City of Thorold upon request. The Supplier covenants and agrees to pay when due, and to ensure that each of its subcontractors pays when due, all amounts required to be paid by it and its subcontractors under the WSIA during the Term, failing which the City of Thorold shall have the right, in addition to and not in substitution for any other right it may have pursuant to the Contract or otherwise at law or in equity, to pay to the Workplace Safety and Insurance Board (the "WSIB") any amount due pursuant to the WSIA and unpaid by the Supplier or its subcontractors and to deduct such amount from any amount due and owing from time to time to the Supplier pursuant to the Contract together with all costs incurred by the City of Thorold in connection therewith.

The Supplier further agrees to indemnify the Indemnified Parties for any and all liability, loss, costs, damages and expenses (including legal fees) or other charges in connection with the Supplier's failure to comply with any applicable workplace safety and insurance laws or related to the Supplier's status with the WSIB.



Article 9 - Termination, Expiry and Extension

9.01 Immediate Termination of Contract

The City of Thorold may terminate the Contract, in whole or in part, at its sole discretion and for any reason, by providing written notice of termination to the Supplier.

Termination shall be effective **upon the Supplier's receipt of such written notice**, which shall be determined in accordance with the notice provisions in Section 2.07 of this Agreement.

For clarity, the effective date of termination shall be as follows:

- (a) If notice is delivered by personal delivery, termination shall be effective on the date the notice is actually delivered to the Supplier.
- (b) If notice is delivered by mail, termination shall be effective on the Fifth (5th) Business Day following the date of mailing.
- (c) If notice is delivered by email, termination shall be effective on the date the email is sent, provided it is sent during normal business hours. If the email is sent after business hours, termination shall be effective on the next Business Day.

In the event of termination under this Section, the City shall be liable only for payment of the Rates in respect of Deliverables that have been received and accepted by the City up to the effective date of termination. The Supplier shall have no claim for damages, loss of anticipated profit, or any other compensation arising from such termination.

The express rights of termination under this Agreement are in addition to, and shall not limit, any other rights or remedies available to the City of Thorold under this Agreement, at law, or in equity.

9.02 Dispute Resolution by Rectification Notice

Subject to the above paragraph, where the Supplier fails to comply with any of its obligations under the Contract, the City of Thorold may issue a rectification notice to the Supplier setting out the manner and timeframe for rectification. Within seven (7) Business Days of receipt of that notice, the Supplier shall either: (a) comply with that rectification notice; or (b) provide a rectification plan satisfactory to the City of Thorold and upon approval proceed diligently to comply with the approved plan within the timelines specified therein.

If the Supplier fails to either comply with that rectification notice or provide a satisfactory rectification plan, the City of Thorold may immediately terminate the Contract. Where the Supplier has been given a prior rectification notice, the same subsequent type of non-compliance by the Supplier shall allow the City of Thorold to immediately terminate the Contract.



9.03 Termination on Notice

The City of Thorold reserves the right to terminate the Contract, without cause, upon thirty (30) calendar days prior notice to the Supplier.

9.04 Supplier's Obligations on Termination

On termination of the Contract, the Supplier shall, in addition to its other obligations under the Contract and at law (a) at the request of the City of Thorold, provide the City of Thorold with any completed or partially completed Deliverables; (b) provide the City of Thorold with a report detailing: (i) the current state of the provision of Deliverables by the Supplier at the date of termination; and (ii) any other information requested by the City of Thorold pertaining to the provision of the Deliverables and performance of the Contract; (c) execute such documentation as may be required by the City of Thorold to give effect to the termination of the Contract; and (d) comply with any other instructions provided by the City of Thorold, including but not limited to instructions for facilitating the transfer of its obligations to another Person. This paragraph shall survive any termination of the Contract.

9.05 Supplier's Payment Upon Termination

On termination of the Contract, the City of Thorold shall only be responsible for the payment of the Deliverables provided under the Contract up to and including the effective date of any termination. Termination shall not relieve the Supplier of its warranties and other responsibilities relating to the Deliverables performed or money paid. In addition to its other rights of hold back or set off, the City of Thorold may hold back payment or set off against any payments owed if the Supplier fails to comply with its obligations on termination.

9.06 Termination in Addition to Other Rights

The express rights of termination in the Contract are in addition to and shall in no way limit any rights or remedies of the City of Thorold under the Contract, at law or in equity.

9.07 Expiry and Extension of Contract

The Contract shall expire on the original Expiry Date, unless the City of Thorold exercises its option to extend the Contract, such extension to be upon the same terms (including the Rates in effect at the time of extension), conditions and covenants contained in the Contract, excepting the option to renew. The option shall be exercisable by the City of Thorold giving notice to the Supplier not less than thirty (30) days prior to the original Expiry Date. The notice shall set forth the precise duration of the extension.



9.08 – Alternative Dispute Resolution

In the event that a dispute, claim, or disagreement arises out of or in connection with the Contract that cannot be resolved through good faith negotiations or through the issuance and response to a rectification notice in accordance with Section 9.02, the parties may, subject to the prior written approval of the Council of the City of Thorold, submit the dispute to mediation. The mediation shall be conducted by a mutually agreed mediator located in the Province of Ontario, with each party bearing its own legal and other costs and equally sharing the costs of the mediator.

If the dispute is not resolved through mediation within thirty (30) calendar days of the mediator's appointment, and subject again to the prior written approval of the Council of the City of Thorold, the parties may agree to submit the dispute to binding arbitration in accordance with the *Arbitration Act, 1991* (Ontario), or any successor legislation. The arbitration shall be conducted in English and held in the City of Thorold or such other location in Ontario as may be agreed to by the parties. The arbitrator's decision shall be final and binding on both parties, and judgment on the award may be entered in any court of competent jurisdiction.

Nothing in this section shall prevent or restrict the City of Thorold from seeking injunctive relief, specific performance, or any other equitable remedy at any time, whether before, during, or after any attempt at alternative dispute resolution.