

1. **GENERAL.** These Terms and Conditions apply to the City's purchase of the goods and services (**Goods and Services**) described in the City's purchase order (**PO**). These Terms and Conditions and the PO together form the **Contract** between the City of Edmonton (**City**) and the supplier named in the PO (**Supplier**). The Supplier must provide the City with the Goods and Services within the schedule the PO describes. For providing the Goods and Services, the City will pay the Supplier the amounts in the PO, subject to these Terms and Conditions. This Contract replaces prior negotiations, discussions, or agreements between the parties relating to the Goods and Services. Neither party waives any rights under this Contract by failing to insist upon those rights, whether entirely or partially, or in one or more instances. The Supplier must not transfer its rights, liabilities, obligations, or benefits under this Contract without the City's prior written consent. This Contract binds the Supplier, its heirs, executors, administrators, successors, and assigns. The parties may sign this Contract using digital signatures, or the Supplier may accept the Contract by electronic confirmation or providing Goods and Services. The Supplier does not have the exclusive right to provide the Goods to the City during this Contract.
2. **INTERPRETATION.** The PO takes precedence over these Terms and Conditions if there is a conflict between these two documents. Date and time references mean the local date or time in Edmonton, Alberta. If either party has a right under this Contract or law, it may exercise any of those rights, and those rights are not exclusive of each other. References to statutes include any regulations, codes, rules, and policies made under that statute, and any amendments. The parties' rights and obligations which by nature extend beyond the end of this Contract survive expiration or termination. The United Nations Convention on Contracts for the International Sale of Goods does not apply. Alberta law applies to this Contract. Any disputes between the parties will be resolved in Edmonton, Alberta. The parties' relationship is that of independent contracting parties and not that of partnership, joint venture, agency, or employment. Despite any City supervision over Supplier or subcontractor personnel, they are not City employees.
3. **GOODS.** The Goods must be free of all encumbrances. The Supplier must not change the Goods, including replacing parts, changing designs, or varying standards, without the City's prior written approval. Even if the City accepts, approves, or uses Goods, the Supplier is liable for non-compliance with this Contract. There is no guaranteed minimum volume of purchases under this Contract. Before delivering the Goods, the Supplier must provide the City with any license agreements the City needs to enter into to use the Goods. All technology must comply with the City of Edmonton IT Standards for RFPs and Tenders in force at the time the City issues the PO, found [here](#).
4. **DELIVERY.** The Supplier must include a packing slip (including prices or an invoice copy) in all City shipments. Shipments must include manuals and other relevant documents. Delivery is DDP (City facility) Incoterms® 2020, except that the Supplier is responsible for damage to the Goods until they are fully unloaded at the required City facility. Ownership passes to the City upon delivery. The Supplier must provide a bill of sale to the City if requested. To obtain preferential tariff treatment, the Supplier must determine whether the Goods are originating goods under rules of origin in any applicable trade agreements. The Supplier must complete all required proof of origin documentation for all Goods qualifying as originating goods and provide it to the importer when importing the Goods. When the City issues the PO, the Supplier must send a copy of any valid Safety Data Sheet (**SDS**) for each applicable Good to SDS@edmonton.ca. The Supplier must ensure that a second copy of the SDS for each applicable Good accompanies the first shipment of each Good. The Supplier must comply with the requirements in the *Hazardous Products Act*, RSC 1985, c H-3 with respect to SDS and product labeling.
5. **SERVICES.** The Supplier must effectively and efficiently supervise the Services. The Supplier must provide the appropriate resourcing necessary to complete the Services within the time this Contract requires. If the City requests, the Supplier must promptly remove any of its or its subcontractor's personnel from performing the Services where, in the City's opinion, the person is incompetent or unsafe to perform Services, or is believed to have conducted themselves improperly. The Supplier must perform the Services in a competent, diligent, and professional manner consistent with generally accepted industry practice, and with the care, efficiency, and foresight reasonably expected from a service provider skilled and experienced in the Services. The Supplier must notify the City in writing in advance if any Services will disrupt City operations. If Services are taking place at a City-owned or -controlled site, the Supplier must comply with all City requirements with respect to the environment, security, safety, and access at the site.
6. **WARRANTY.** The Supplier must supply to the City copies of all applicable manufacturer and Supplier warranties, and if required assist the City to use the warranties. The Supplier must also provide to the City, for no additional charge, any additional warranty services the Supplier usually provides to its customers.

7. **SUBCONTRACTORS.** The Supplier may, after the City approves in writing, retain a subcontractor to help perform the Services. If the City objects to the proposed subcontractor, the Supplier must select a different subcontractor. The Supplier must ensure subcontractors comply with this Contract. If the City believes a subcontractor is not meeting these obligations, the City may require the Supplier to change the subcontractor. The Supplier must ensure that each subcontractor has the competence, qualifications, experience, and capabilities to perform the subcontracted Services. The Supplier is responsible to the City for the acts and omissions of subcontractors and people directly or indirectly employed by them. The City may, if requested by a subcontractor, provide the subcontractor with information about amounts paid to the Supplier. Subcontractors do not have any legal relationship with the City.
8. **PRICING.** PO pricing includes all of the Supplier's costs, including carriage, storage, labour, utilities, overhead, software, tools, equipment, materials, permits, duties, licenses, and any other costs, except as the PO otherwise states. Pricing remains firm. The Supplier must cooperate with the City in seeking refunds of fees, taxes, penalties, or duties to which the City may be entitled.
9. **INVOICING.** The Supplier may only invoice the City for delivered Goods and Services. The Supplier must comply with City requirements for ordering and invoicing, including using SAP Ariba. To be valid, all invoices must align with the PO pricing and include: (a) unique invoice numbers not used previously under any City contract, including where an order has been divided into more than one invoice; (b) a valid GST/HST account number; (c) the PO number; (d) the amounts claimed, with GST and other taxes and environmental charges shown as separate amounts; (e) an itemized list of the Goods and Services for which the Supplier is claiming payment; (f) the Supplier's full legal name and business address, which must both match the City vendor master record; (g) warranty duration; (h) if the Supplier is a non-resident of Canada, a breakdown of amounts charged for Services performed in Canada versus Services performed outside of Canada, including Services subcontractors perform (whether or not the subcontractors are non-residents); (i) the number of hours spent and the rates used to calculate the invoice; and (j) site and address where the Services were performed. If the Supplier is required to be registered for the GST/HST under the *Excise Tax Act*, RSC 1985, c E-15, for an invoice to be valid, the Supplier's GST/HST account number must match with the Supplier's full legal name as written on the Supplier's invoices and the PO; however, if the Supplier's GST/HST account number is under a trade name or the supply is to be made by a GST/HST registered intermediary acting as agent on the Supplier's behalf, to be valid the invoices the Supplier or intermediary provide must include the trade name or the intermediary's name, which must match the GST/HST account number provided on the invoices. If the Supplier's full legal name or business address changes, the Supplier must notify the City promptly. The Supplier must get the City's prior written approval of any assignment or novation of this Contract.
10. **PAYMENT.** Within 30 days of receiving a valid invoice, the City will either pay the invoice or inform the Supplier why it is rejected. If an invoice is incomplete or rejected by SAP Ariba, the invoice is not payable until the Supplier rectifies the issue causing the rejection. The City may pay invoices under this Contract by electronic funds transfer. The Supplier must provide the City with all information the City reasonably requires to transfer funds electronically. The City is not required to pay until the Supplier has provided the City with all information it needs to pay the invoice electronically, including updates to the information. The Supplier is responsible for any losses or expenses resulting from its failure to provide the City with its payment information. The City may set off any overdue accounts, including accounts receivable outside of this Contract, owed by the Supplier to the City against any amounts payable to the Supplier under this Contract. The City will not pay the Supplier if a lien is registered against City property in relation to the Goods or Services, until the Supplier provides the City with evidence of the lien's removal. If the Supplier fails to take appropriate action to remove the lien, the City may do so, and the Supplier must immediately pay to the City all sums the City paid to get the lien removed, including solicitor and their own client costs on a full indemnity basis. Before paying an invoice, if the City determines that non-resident withholding tax applies, the City may withhold and remit the amount payable to the Supplier to the relevant authority. The remittance is payment to the Supplier under this Contract.
11. **RETURNS. Rejected Goods** are Goods which contain defects in material, workmanship, or design, or which the City finds unacceptable for reasons including not approved by the City, used or refurbished, inferior quality, over shipment, wrong good, wrong delivery location, damaged Good, or not authorized by the brand owner for sale and distribution in Alberta. The City may return for full credit all Rejected Goods. The Supplier is responsible for all costs associated with a Rejected Good's return, including transportation, and waives any restocking fee and right to refuse a return. Within 48 hours of the City advising the Supplier of a Rejected Good, the Supplier must provide the City with instructions for how to return the Rejected Good. The Supplier must issue a credit to the City for the Rejected Goods within seven days of receiving the Rejected Goods from the City.
12. **SERVICE DEFICIENCIES.** The City will notify the Supplier of any deficiencies in the Services. Deficiencies include any non-compliance with this Contract. The Supplier must, at its sole expense, rectify the deficiency within the time the City requires, otherwise the City may rectify it and set-off or claim the City's costs against the Supplier. The Supplier is responsible for any costs or loss of value the City experiences as a result of the deficiency.
13. **DELAYS.** In addition to any other remedy the City may have at law, equity, or under this Contract, if the Supplier does not deliver the Goods or Services within the time required by the PO, regardless of the cause of the delay, the City may

terminate all or part of this Contract and order the Goods, Services, or both from another supplier. If the City terminates this Contract, the City has no responsibility to pay the Supplier for any Goods or Services the City has not received, or for any other damages or costs the Supplier incurs due to the termination.

14. **APPLICABLE LAWS.** **Applicable Laws** are all statutes, laws, bylaws, regulations, ordinances, codes, orders, and requirements of governmental or other public authorities having jurisdiction, applicable to this Contract. The Supplier must make sure that the Goods and Services, and their delivery, comply with Applicable Laws and City policies, directives, procedures, standards, and operating procedures in force when it delivers the Goods or Services. Where two or more are applicable, the more restrictive applies. If Applicable Laws change after the City issues the PO, the City will not reimburse the Supplier for costs it incurs as a result. If the Supplier violates any Applicable Laws, the Supplier must correct the violations and bear all resulting expenses, penalties, and damages. If the City must do or pay anything to rectify the violation, the City may set-off or collect the cost of this from amounts it owes to the Supplier. The Supplier must comply with the City's Environmental Policy C512. The City may require the Supplier to sign an acknowledgement confirming its environmental responsibilities. The Supplier has reviewed and understands the current version of the [City's Sustainable Procurement Policy \(C556A\) and Supplier Code of Conduct](#) at the time the City issues the PO.
15. **FOREIGN WORKERS.** If foreign nationals are entering Canada to perform Services, the City is not liable for any consequences arising from any failure of these foreign nationals to gain entry to Canada. If any foreign nationals perform Services in Canada under the International Mobility Program, the Supplier must fully cooperate with the City in any employer compliance inspections, including promptly providing any records or information requested by the City or inspectors. The City may provide inspectors with any Supplier records or information.
16. **WORKERS' COMPENSATION.** If the City requests, the Supplier must provide evidence of compliance with or exemption from the *Worker's Compensation Act*, RSA 2000, c W-15 (**WC Act**), including payments due by the Supplier or any subcontractors. If any of the Supplier's directors, partners, or owners will be performing Services, the Supplier must provide WC Act coverage for them and provide evidence of coverage to the City upon request.
17. **OCCUPATIONAL HEALTH AND SAFETY.** The Supplier must not compromise the safety or efficiency of City operations. The Supplier must immediately notify the City of any incident having the potential to result in injury requiring emergency medical services, death, or property damage. The Supplier must comply with the *Occupational Health and Safety Act*, SA 2020, c O-2.2 (**OH&S Act**), and at all times ensure that all subcontractors and any others the Supplier directs at the work site comply with Applicable Laws. The Supplier must alert the subcontractors to relevant OH&S Act provisions, and alert the City and everyone else on the work site to any existing or potential hazards that may affect anyone at the work site. The Supplier is not the prime contractor for OH&S Act purposes.
18. **FOIP ACT.** For the purposes of the *Freedom of Information and Protection of Privacy Act*, RSA 2000, c F-25 (**FOIP Act**), the City's employees include any person who performs a service for the City including under a contract with the City, and so the Supplier is deemed to be a City employee for FOIP Act purposes. The FOIP Act applies to all information or records within the Supplier's custody or control that are collected or created for the purposes of this Contract. The Supplier must cooperate fully with the City in any reasonable manner the City requires to help the City meet its obligations under Applicable Laws. The Supplier must provide copies of records within seven days of the City's written request or as the City allows. The Supplier must pay any costs associated with providing records.
19. **RECORDS MANAGEMENT.** The Supplier must retain this Contract and related records in accordance with generally accepted accounting principles for 12 years after the Contract is terminated or it expires. The Supplier must, within seven days of the City's request, provide the City with any retained records. Once a record reaches the end of its retention period, the Supplier must promptly destroy the record in a manner consistent with the following: the Supplier must (a) shred physical records to a maximum of 5/8th of an inch (1.59cm) in a crosscut fashion; (b) pulverize data tapes; (c) delete and empty from trash bins any unstructured electronic records; and (d) wipe structured electronic records with multiple passes (data erasure). If the City requests, the Supplier must provide the City with evidence of records disposition by way of a Certificate of Destruction. Even if a record has reached the end of its retention period, if the City notifies the Supplier of a legal hold, the Supplier must retain all records related to this Contract until the City advises that the legal hold is removed.
20. **DIGITAL SECURITY.** **Digital Assets** are digital resources the City possesses or uses that assists in achieving its business objectives. Digital Assets include digital information and supporting or operational technology. The City owns the Digital Assets. The City does not transfer any ownership rights in the Digital Assets to the Supplier, despite any statements to the contrary in any licence agreements related to this Contract. The City may repatriate any or all Digital Assets at any time during or after this Contract's termination or expiry. After repatriation, the Supplier must ensure that its copy of the repatriated Digital Asset is destroyed as per Section 19. The Supplier must ensure that Digital Assets are segregated from non-City digital assets at all times. The Supplier must ensure that data centres housing Digital Assets are operated securely and that all aspects of the data centre, including operational security, encryption, incident response, identity, access, and disaster recovery, are operated and governed using industry-accepted cyber security practices. At a minimum, any data centre housing Digital Assets must meet the requirements of a Tier 3 data centre, as defined by the Uptime Institute. The Supplier must not store, transfer, or process Contract-related information or

non-financial Records in facilities or cloud environments located or hosted outside of Canada, the United States, or the European Union without the City's written consent. The Supplier must not store, transfer, or process City financial Records in facilities or cloud environments located or hosted outside of Canada.

21. **AUDITS.** The City may audit all Contract-related records. The Supplier must, at its own expense, make these records available for the City's inspection and audit at all times and with reasonable prior notice. The Supplier must cooperate fully with the City. The City may appoint others to assist with audits, and the Supplier must ensure that they are provided the same access to records as the City. If the Supplier does not comply with this Section, the City may withhold payment until the Supplier resolves all audit issues to the City's satisfaction or any dispute between the parties is resolved through the process in Section 29, whichever is sooner. The Supplier must pay the audit costs if the audit reveals significant issues. This Section does not reduce any of the City's other rights or powers.
22. **MINIMUM INSURANCE.** Throughout this Contract, the Supplier must maintain in full force the following minimum insurance requirements: (a) commercial general liability insurance of at least CAD\$2,000,000 per occurrence for personal injury and/or property damage. This policy must be endorsed to include: (i) contractual liability (including this Contract); (ii) non-owned automobiles; (iii) contractors protective liability; (iv) broad form property damage; (v) property damage occurrence; (vi) cross liability; (vii) employers' liability and contingent employers liability; (viii) employees as additional insureds; (ix) sudden & accidental pollution liability (if applicable); and (x) the City added as an additional insured; (b) automobile liability coverage for owned, rented, or leased automobiles used in connection with this Contract of at least CAD\$2,000,000 per accident for bodily injury and/or property damage; and (c) any other insurance the City reasonably requires in amounts and for perils against which a prudent supplier acting reasonably would protect itself in similar circumstances, or if the City deems it necessary.
23. **OTHER INSURANCE REQUIREMENTS.** The Supplier must ensure that all insurance is primary, noncontributory, in Canadian Dollars (or equivalent), and provides a waiver of subrogation (where permitted by Applicable Laws) in favour of the City and an undertaking by the insurers to provide the City with 30 days prior written notice of any insurance cancellation or termination or any change which restricts or reduces the insurance. The Supplier must provide the City with its Certificate of Insurance before the start of this Contract. The Supplier must provide evidence of insurance renewal to the City prior to expiry. The required insurance is subject to the City's approval. No delivery to, or review or approval by, the City of, or failure of the City to request or to review or approve, any insurance documentation limits or relieves the Supplier of its obligations under this Contract. The Supplier is responsible for insurance premiums and deductibles and uninsured losses. The City may release the Supplier's insurance information to anyone whom the City reasonably believes has a claim against the Supplier or a claim against the City for which the Supplier must indemnify the City. The required insurance, limits, and scope of coverage under this Contract do not limit the Supplier's liability, including its liability to indemnify the City. The Supplier must indemnify and defend the City for any losses, claims, demands, payments, judgments, costs, or expenses resulting from any failure to comply with Sections 22 and 23.
24. **TERMINATION OF CONTRACT.** If: (a) the Supplier commits an act of bankruptcy or in contemplation of bankruptcy; (b) a receiver is appointed due to the Supplier's insolvency; (c) the Supplier or any of its directors, officers, or employees engages in harassing or violent behaviour towards City employees or members of the public; or (d) the Supplier is in breach of this Contract, then the City may terminate the Contract immediately for cause by giving the Supplier written notice. The City may also terminate this Contract without cause: (i) at any time before the Goods are shipped by giving the Supplier written notice; or (ii) upon 15 days written notice to the Supplier. Termination does not affect claims or issues unresolved before termination. If the City terminates this Contract, it will pay the Supplier for all received non-Rejected Goods shipped or Services provided prior to the Supplier's receipt of the termination notice. The City has no further liability to the Supplier for any losses or expenses the Supplier suffers due to termination under this Section.
25. **SUPPLIER'S LIABILITY.** If the Supplier, its employees, or subcontractors damage, steal, or lose City property, the City may require the Supplier to repair or replace the City property at its expense and to the City's satisfaction, or may repair or replace the City property itself and set off the costs it incurs against amounts payable to the Supplier. If the Supplier, its employees, or subcontractors, damage or steal a third party's property, the Supplier must promptly repair or replace the third party property at the Supplier's expense. If the City terminates this Contract for cause, the Supplier must pay the City upon demand an amount equal to all loss or damage the City suffers, both directly and indirectly, as a result of the Supplier's non-completion of its obligations. If the Supplier does not pay the City on demand, the City may deduct the amount from any amounts payable to the Supplier.
26. **INDEMNIFICATION.** The Supplier must indemnify and defend the City and its employees from and against all losses, claims, demands, judgments, costs, or expenses resulting from this Contract (**Claim**). The City will notify the Supplier of each Claim and the Supplier must contest or resolve the Claim on the City's behalf. The Supplier must bear all costs relating to dealing with the Claim on the City's behalf, including any costs the City may incur in relation to the Claim. When the Claim is concluded, the Supplier must pay any judgment or order against, or any settlement entered into on behalf of, the City or its employees. In this Section, **costs** includes legal costs on a solicitor and their own client, full indemnity basis, whether the City's legal counsel is in-house or external.

27. **CONFIDENTIALITY. Confidential Information** is information the Supplier obtains from the City, but does not include public knowledge or information which the Supplier rightfully knew before the City issued the PO. Except as per Section 30, during and after this Contract the Supplier must not disclose or use, or permit the disclosure or use of, any Confidential Information unless required to perform its obligations under this Contract or by Applicable Laws. The Supplier is responsible if anyone to whom it discloses Confidential Information breaches this Section. If an Applicable Law requires the Supplier to disclose Confidential Information, the Supplier must provide the City with prompt written notice and cooperate with the City's efforts to preserve confidentiality. The Supplier must notify the City of disclosures immediately and, if a disclosure has not yet occurred, as far in advance of the disclosure as possible. The Supplier must not disclose or promote its relationship with the City without the City's express prior written consent. The Supplier must not use the City's official logo, emblem, flag, crest, or other mark without the City's express prior written consent.
28. **INTELLECTUAL PROPERTY RIGHTS.** All document deliverables prepared by the Supplier or a subcontractor in performing the Services (**Documents**) become City property, including copyright, even if the Documents contain contrary wording. Documents do not include pre-existing intellectual property the Supplier or a subcontractor own and use in the Services (**Materials**), which remain the Supplier's or subcontractor's property. The Supplier hereby grants to the City, or must promptly secure from its subcontractor, an irrevocable, perpetual, and royalty-free licence in all Materials. This licence allows the City to publish, use, reproduce, and modify all or part of the documents for any purposes as the City deems fit; create derivative works; and share the documents with the City's contractors to allow them to perform their obligations to the City. The Supplier must ensure that nothing it provides under this Contract, including Documents and Materials, infringes any intellectual property rights. Upon completion or termination of this Contract, the Supplier must deliver all of the Documents to the City, whether completed or not. The Supplier must promptly obtain waivers of moral rights in the deliverables from all authors, and provide the City with evidence of the waivers on the City's request.
29. **DISPUTES.** The parties must make commercially reasonable efforts to resolve their differences as efficiently and cost effectively as possible. Negotiation does not suspend any limitation periods or Contract deadlines unless the parties specifically agree in writing to suspend limitation periods. A specific dispute's limitation period is suspended once the Supplier issues a Notice of Dispute. The Supplier must provide the Goods and Services despite any dispute proceedings. If the City makes a decision under this Contract or to resolve a difference between the parties which they could not settle by negotiation, the City will provide a written decision with reasons. The Supplier is deemed to accept the City's decision as final and binding unless it gives the City a written Notice of Dispute (in [this form](#)) within seven days of receiving the City's written decision. The Notice of Dispute triggers a formal dispute. Disputes arising out of this Contract must be resolved under this Section. If the Supplier gives the City a Notice of Dispute, the parties will appoint an arbitrator to resolve the dispute. Unless the parties otherwise agree, the parties must conduct all formal disputes under this Contract before a single arbitrator under the Rules of Arbitral Procedure (found [here](#)). An arbitral award rendered under this Section is final and binding on the parties and there is no appeal to the courts.
30. **DISPUTE CONFIDENTIALITY.** The parties must keep information disclosed during any dispute proceedings confidential and only disclose and use this information as required for the purposes of the proceedings, unless the other party otherwise provides written consent. The City may disclose to City Council members details regarding a dispute or proceeding. A party may disclose a dispute's existence and its general nature.
31. **LIVING WAGE.** Where the Supplier is performing Services in City facilities and where required under Council Policy C556C, Sustainable Procurement, the Supplier must pay its employees, and require subcontractors to pay their employees, a living wage (as defined in the Council Policy).