

SCOPE

These General Conditions form a part of every Contract with The Corporation of the City of Brampton (the “Owner”) for the purchase of services, and apply as provided herein.

Where Supplementary Conditions are contained herein, it should be noted that these Supplementary Conditions shall govern in the case of inconsistency or conflict with the General Conditions.

INTERPRETATION / DEFINITIONS

In these General Conditions, the defined terms from Appendix A Instruction to Bidders apply to this Appendix, unless specifically amended or listed below.

“City” means The Corporation of the City of Brampton.

“Contract Administrator” means The Corporation of the City of Brampton staff member assigned to the Contract and responsible for the administration of the Contract.

“Construction Act Document” means a Notice of Non-Payment, a notice of adjudication given pursuant to Section 13.7 of Part II.1 of the *Construction Act* or any documents or responses to adjudication to be given or provided pursuant to Part II.1 of the *Construction Act*;

“Contractor” means the party which has entered into the Contract for the purchase of Goods and/or Services awarded by the Owner under an Invitational Bid Call;

“Employment Standards Act” means the *Employment Standards Act, 2000, S.O. 2000, c.41*.

“Fair Wage Policy” means the City’s Fair Wage Policy and Fair Wage Schedule, as amended from time to time (available on the [City of Brampton’s website](#)) ;

“Fair Wage Statutory Declaration” means the City’s formal legal document titled Fair Wage Statutory Declaration which, shall be submitted by Vendors to confirm their compliance with the Fair Wage policy at project completion or when requested by the City.

“Government Contract Wages Act” means the *Government Contract Wages Act, 2018, S.O. 2018, Chapter 9*.

“Non-Compliance” means a Vendor that fails to meet the requirements and terms set out in this Bid Call including the terms of the City’s Fair Wage Policy and Fair Wage Schedule in any of the following conditions:

- (a) If the Vendor does not fulfil its responsibilities under the Fair Wage policy;
- (b) If the Vendor has been found in violation of the Fair Wage policy.

“Notice of Non-Payment” is a notice delivered pursuant to Section 6.4(2) of Part I.1 of the *Construction Act* in the manner and form prescribed in the *Construction Act*;

“OHSA” means the Ontario *Occupational Health and Safety Act, R.S.O. 1990, c. O.1.*

“Proper Invoice” means an invoice submitted by the Contractor that includes all information required by GC33 which includes the information required for a “Proper Invoice” in Section 6.1 of the *Construction Act* (Ontario).

“Substantial Performance of the Work” is as defined in the lien legislation applicable to the Place of the Work;

“Total Performance of the Work” means when the entire work, except for those items arising from GC 62 – Warranties and GC 63 – Warranty, has been performed in accordance with the requirements of the *Contract Documents* and is so certified by the consultant;

“Working Day” means any day except Saturdays, Sundays, and statutory holidays.

“WSIA” means *Workplace Safety and Insurance Act, 1997, S.O. 1997, c. 16, Sched. A.*

“WSIB” means Workplace Safety and Insurance Board.

Except as the context may otherwise require, the words “City” and “City of Brampton” used in these General Conditions mean The Corporation of the City of Brampton.

1. Adjudication

Either party may refer a matter set out in Section 13.5(1) of the *Construction Act* to adjudication pursuant to Part II.1 of the *Construction Act*. The parties agree that no other matter may be referred to adjudication unless the parties agree in writing.

The parties agree and consent that any Construction Act Document may be sent to the other party(s) and any adjudicator via electronic mail and that service of such Construction Act Documents will be effective at the time and date of sending, except that where an electronic mail message is sent after 4:00 p.m. Eastern Time, service of such Construction Act Documents will be deemed to be effective the following day. The e-mail message to which a Construction Act Document is attached shall include the sender’s name, address, telephone number and the name and telephone number of a person to contact in the event of a transmission problem. Any Construction Act Documents shall be served in accordance with this section unless the parties subsequently agree otherwise in writing or an adjudicator directs otherwise.

2. Amendments to Contract

No amendment of the Contract nor waiver of any terms and provisions shall be deemed valid unless effected by a written amendment executed by each of the parties hereto.

3. Applicable Law

The Contract is to be governed by and in accordance with the laws of the Province of Ontario and the parties agree to attorn to the jurisdiction of the courts of that Province. In addition, the requirements outlined in the City of Brampton’s Purchasing By-law 19-2018, as may be amended from time to time, shall apply for all procurement processes conducted to secure Goods and Services as defined therein.

4. Assignment

The Contractor shall not assign to any person any right, duty or obligation under the Contract, without the prior written consent of the Owner, and any attempt to assign without such consent shall be null and void and of no effect. Where consent is so obtained any assignment shall be made subject to the terms of the Contract and the Contractor shall require the assignee to acknowledge such terms in writing at the time the assignment agreement is executed. Any such assignment shall not relieve the Contractor of its obligations to the Owner under the Contract.

5. Changes

No changes in quantity, price or product substitutions will be accepted without written authority from the Owner.

Where changes to the contract, requiring an adjustment to the contract price apply, the Contractor may submit a quotation for additional work with the following mark-up percentages:

Value of Change Order	Subcontractor and Contractor’s Own Forces Mark-Up Fee	Contractor Mark-up Fee (%) on Subcontractor’s work (includes overhead and profit)
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	(%) (includes overhead and profit)	
\$0 - \$49,999.99	5	5
Over \$50,000.00	5	3

6. Compliance with Laws

The Contractor shall comply and shall ensure that all of its employees, agents and sub-contractors comply with all applicable Federal, Provincial and Municipal laws and orders of government, police, fire, health, building and other authorities in performing its obligations under the Contract including, without limitation, the *Occupational Health and Safety Act*, R.S.O., 1990 c. O.1 and all regulations thereunder, as amended from time to time (the "OHS") and the *Workplace Safety and Insurance Act*, S. O. 1997, c. 16, Sched. A and all regulations thereunder, as amended from time to time (the "WSIA") or any successor legislation, as applicable.

Failure to do so may be considered a default and the Owner shall be entitled at its sole discretion to terminate the Contract and pursue any other legal recourse which the Owner deems to be appropriate.

All terms under this Contract are governed by the Construction Act, R.S.O. 1990, c. C.30

7. Confidentiality

All information, in any format and of any kind, obtained by the Contractor in connection with this Contract, the City of Brampton, its processes, programs, policies and procedures is the property of the Owner and shall be treated as confidential and shall not be disclosed or provided to any third party and shall not be used for any purpose other than the fulfillment of this Contract. Both parties recognize the vital importance of the protection of any Confidential Information that is provided or otherwise made available by one Party (the "Disclosing Party") to the Party receiving or otherwise obtaining access to such information (the "Recipient"). The Disclosing Party's Confidential Information does not include information which: (i) is or at any time is made generally available to the public by the Disclosing Party; (ii) is known to the Recipient (as substantiated by cogent written evidence in the Recipient's possession) free of any restrictions at the time of disclosure; (iii) is independently developed by the Recipient through individuals who have not had either direct or indirect access to the Confidential Information; and (iv) is rightfully obtained by the Recipient, without any obligation of confidence, from a third party who had a right to transfer or disclose it to any Person free of any obligation of confidence. The above listed exceptions do not apply in the case of Confidential Information that is also Personal Information.

8. Conflict of Interest

The Contractor, its partners, directors, officers, employees, agents and volunteers shall not engage in any business or other transaction or have any financial or other personal interest which, actually or potentially, creates a conflict of interest with the provision of service pursuant

to this Contract, without the Contractor first disclosing to the Owner the actual or potential conflict of interest with the Owner.

If such conflict of interest does exist, the Owner may, at its sole discretion, terminate the Contract.

The Owner reserves the right at its sole discretion to terminate the Contract, if at any time the Owner discovers evidence of an undeclared connection of any members of City Council or officials or employees of the Owner with the Contract, or any conflict of interest, collusion or fraud.

9. Construction Liens

The Contractor shall cause any and all construction liens and certificates of action relating to the work registered or preserved by any Subcontractor, sub-subcontractor, supplier, Contractor's employees, or any other party to whom the Contractor is or may be responsible at law, to be discharged or vacated by the Contractor with seven Working days of the date of registration or preservation, by the posting of security or otherwise, all at the Contractor's sole expense. The Contractor shall not be entitled to receive any payment from the Owner until all such claims for lien and certificates of action have been vacated or discharged.

The Contractor shall cause any and all written notices of lien relating to the work given to any person, including, but not limited to, the Owner by any subcontractor, sub-subcontractor, supplier, Contractor's employees, or any party to whom the Contractor is or may be responsible at law, to be withdrawn in writing, and the Contractor shall do so within seven Working days of the written notice of lien having been given, all at the Contractor's sole expense.

If the Contractor fails to discharge or vacate any such lien or certificate of action, or to have any such written notice of lien withdrawn then the Owner may, at its sole option, fulfil those requirements without notice to the Contractor and the Contractor shall reimburse the Owner on demand for all costs and associated expenses incurred by the Owner in fulfilling those requirements and defending any related action, including without limitation, the costs of borrowing the appropriate cash, letter of credit or bond as security, and legal fees and disbursements on a full indemnity basis. If the Contractor fails to pay such reimbursement the Owner shall have the right, if it so elects, and without prejudice to any other rights or remedies, to set off and deduct all such costs and expenses from any amount owing to the Contractor.

Without limiting the foregoing, the Contractor shall, if requested by the Owner, defend, indemnify and save the Owner harmless from the amount of all such claims and the costs of defending any and all actions commenced against the Owner pursuant to the *Construction Act*, including the legal costs of the Owner, unless the lien was a direct result of a breach of the Contract by the Owner.

GC 9 – Construction Liens does not apply to construction liens claimed by the Contractor.

10. Constructor

Where services are supplied under the Contract, the Contractor, for purposes of the *Ontario Occupational Health and Safety Act*, shall be designated as the Constructor for this project and shall assume all of the responsibilities of the Constructor as set out in that *Act* and its regulations, notwithstanding that the Contractor has been referred to as the 'Contractor' in this and any other related document.

The Contractor:

- i) acknowledges having read and understood the *Occupational Health and Safety Act* together with the Owner's Health and Safety Policies and Procedures;
- ii) covenants and agrees to observe strictly and faithfully the provisions of the *Occupational Health and Safety Act* and all regulations and rules promulgated thereunder together with the Owner's Health and Safety Policies and Procedures;
- iii) agrees to indemnify and save the Owner harmless for damages or fines arising from any breach or breaches of the said *Occupational Health and Safety Act* and/or the Owner's Health and Safety Policies and Procedures;
- iv) assumes full responsibility for the enforcement of the *Occupational Health and Safety Act* and the Owner's Health and Safety Policies and Procedures and shall ensure compliance therewith;
- v) further acknowledges and agrees that any breach or breaches of the *Occupational Health and Safety Act* and/or the Owner's Health and Safety Policies and Procedures whether by the Contractor or any of its sub-contractors may result in the Contractor and/or sub-contractor being removed from the site and in the immediate termination of the contract herein and the forfeiture of all sums owing to the Contractor by the Owner;
- vi) shall allow access to the work site on demand to representatives of the Owner to inspect work sites to ensure compliance with the *Occupational Health and Safety Act* and the Owner's Health and Safety Policies and Procedures;
- vii) agrees that any damages or fines that may be assessed against the Owner by reason of a breach or breaches of the *Occupational Health and Safety Act* by the Contractor or any of its sub-contractors will entitle the Owner to set-off the damages so assessed against any monies that the Owner may from time to time owe the Contractor under the contract or under any other contract whatsoever; and
- viii) the Contractor agrees that where any portion of the work or the Contract is contracted to a sub-contractor the provisions of this section will apply to the sub-contractor and the Contractor will enforce said provisions.

The Contractor shall provide a list of all controlled hazardous materials or products containing hazardous materials, all physical agents or devices or equipment producing or omitting physical agent 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 & Safety Act* and shall provide appropriate Ontario Material Health & Safety Data Sheets for these substances used for the performance of the required work, all prior to the performance of work.

Where hazardous materials, physical agents and/or designated substances are used in the performance of the required work, the Contractor shall ensure that the requirements of the *Ontario Occupational Health & Safety Act* and associated regulations are complied with.

11. Contingency

Any contingency amounts are only to be used for specific work and costs as approved by the Owner in writing. All unspent contingency amounts shall be deducted from the Contract and belong to the Owner.

12. Contract Alterations

No alterations or variations of the terms of the Contract shall be valid or binding upon the Owner unless authorized in writing by the Purchasing Agent or designate.

13. Contract Requirements

The Contractor agrees to perform the Contract in accordance with the terms, provisions, and conditions of the Contract, all specifications and requirements of the Owner and any supplemental directives issued by the Purchasing Agent, and in accordance with the Bid pursuant to which the Contract has been awarded.

14. Contract Termination for Convenience

The Owner may terminate a contract, in whole or in part, whenever the Owner determines that such termination is in the best interest of the Owner without showing cause, upon giving written notice to the Contractor. The Owner shall pay all reasonable costs incurred by the Contractor up to the date of termination. However, in no event shall the Contractor be paid an amount which exceeds the price bid for the work performed. The Contractor will not be reimbursed for any profits which may have been anticipated but which have not been earned up to the date of termination.

15. Contractor Performance Evaluation

The Contractor's performance will be evaluated in accordance with the Owner's Vendor Performance Evaluation Process as set out in the Vendor Performance Standard Operating Procedure. The performance evaluation will be used to provide feedback to the Contractor; to provide the Contractor with the opportunity to implement performance improvements during

the duration of the Contract; and to justify an award or non-award of future Contracts by the Owner in accordance with the terms of the Vendor Suspension Administrative Directive.

16. Damages and Defects

The Contractor agrees that all goods or services provided by the Contractor shall be new upon delivery and installation, in good operating condition and free of defects in workmanship and material, and the Contractor shall repair or replace at the Contractor's sole expense any damaged or marred items caused or occasioned through the handling or installation by the Contractor or otherwise occasioned in transit. The Contractor shall repair or replace the damaged goods within 48 hours.

The Contractor agrees to furnish adequate protection from damage for all work and to repair damage of any kind for which the Contractor or the Contractor's workers are responsible, to the premises or equipment, to its own work or the work of other Contractors, at the Contractor's expense.

When goods are rejected, same must be removed by the Contractor from the premises of the Owner within forty eight (48) hours after notification unless public health and safety require immediate destruction or other disposal of such rejected delivery, in which case the Owner may take such action as it deems necessary.

Rejected items left longer than forty eight (48) hours will be considered as abandoned and the Owner shall have the right to dispose of them as its own property.

17. Default by the Contractor

If the Contractor fails to perform its obligations under the Contract, the Owner may notify the Contractor in writing that the Contractor is in default and instruct the Contractor to correct the default in five (5) business days immediately following the receipt of such notice.

If the Contractor fails to correct the default within the time specified, or in such other time period as may be subsequently agreed upon, the Owner, without prejudice to any other right or remedy the Owner may have, may correct such default and deduct the cost from any payment due to the Contractor.

If the Contractor fails to correct the default in the time specified or in such other time period as may be subsequently agreed upon, the Owner may terminate the Contract by giving written notice of termination to the Contractor. The Contractor will be paid for goods provided and accepted, and services satisfactorily performed, prior to termination less any costs incurred by the Owner in reprocurring and completing the remainder of the Contract.

18. Delivery of Goods

All goods delivered must be standard new equipment or material of the latest model except as otherwise specifically stated in the tender. Where any part or nominal appurtenances of

equipment is not described, it shall be understood that all the equipment and appurtenances which are usually provided in the manufacturer's stock model shall be furnished.

Goods must be new items except as otherwise specifically stated in the Bid Document.

Where goods are furnished for a specified price per unit of weight, the Owner reserves the right to require such materials to be weighed on scales designated by it, in which case payment shall be made on the basis of the net weight of the materials furnished.

Delivery must be made as ordered and in accordance with the Bid Document. If no delivery instructions appear on an order it will be interpreted to mean prompt delivery. Burden of proof of delay in receipt of the order shall rest with the Contractor.

For any exception to the delivery date specified on the Contract, the Contractor shall give prior notification of the cause and extent of anticipated delay and obtain written approval from the Purchasing Agent.

Failure of the Contractor to deliver within the time specified or within reasonable time as interpreted by the Owner, or failure to make replacements of rejected goods or services when so requested, will constitute authority for the Owner to purchase in the open market to replace the goods or services rejected or not delivered. On all such purchases, the Contractor agrees to promptly reimburse the Owner for excess costs occasioned by such purchases. Such purchases will be deducted from the contract quantities. If such cost is not paid by the Contractor, it shall be deducted from the balance of the purchase price owing; however, should public necessity demand it, the Owner reserves the right to use or consume goods or services which are superior in quality with no adjustment in price.

19. Electronic Signatures

Both parties explicitly agree to communicate through electronic means, and that includes allowing for electronic signature on any agreement between the parties.

20. Environmental Responsibility

For the duration of the Contract, the Contractor shall, upon request, provide proof acceptable to the Contract Administrator that Goods and Services being provided under the Contract continue to meet any applicable environmental standard required by the Contract.

21. Ethical Conduct

In addition to being in compliance with all applicable federal, provincial and municipal laws and regulations, Contractors 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.

22. Execution by Counterparts

For the convenience of the parties, this Contract may be executed in any number of counterparts with the same force and effect as if all parties had executed the same document. Each counterpart shall be deemed to be an original document. All of the counterparts shall be construed together and shall be deemed, for all purposes, to constitute one and the same agreement, binding on all parties, despite that all parties did not execute the same counterpart. It shall not be necessary in making proof of this Contract to produce or account for more than one such counterpart. Any amendment to or modification of this Contract provided for herein may be executed in counterpart form.

23. Fair Wage Policy

The Contractor agrees to comply with all requirements set out in the Fair Wage Policy. The Owner has adopted the Fair Wage Policy, respecting Contractors and subcontractors that must be adhered to on this Project.

The Contractor further agrees to comply with the following mandatory requirements:

1. Pay no less than the remuneration set out in the City's Fair Wage Schedule for the relevant classifications and types of construction, maintenance and repair work where remuneration is the sum of the direct hourly wage plus the hourly value of statutory and non-statutory benefits; Remuneration by piece-rate is not permitted on City work. An hourly wage is required when carrying out construction, maintenance and repair work for the City;
2. Maintain payroll records that enable the City to verify compliance with the Fair Wage Policy;
3. Place the Fair Wage poster supplied by the City of Brampton indicating that the City has a Fair Wage Policy alongside the poster supplied by the Workplace Safety and Insurance Board. The poster is available for download on the City's Fair Wage web page;
4. Inform employees that the City of Brampton has a Fair Wage Policy and that the Fair Wage rates are available on the City's website;
5. Complete and submit the Fair Wage Mandatory Requirements Attestation provided by the City at contract award.
6. Complete a Fair Wage Statutory Declaration at the completion of the project with the final invoice or when requested by the City affirming that the Vendor and its Sub-contractors:

- a) Are in full compliance with all statutory obligations including, in particular, the Occupational Health and Safety Act, the Employment Standards Act, the Workplace Safety and Insurance Act and the Ontario Human Rights Code;
 - b) Have made all obligatory remittances under the Employment Insurance Act, the Canada Pension Plan Act and the Workplace Safety and Insurance Act;
 - c) Have classified all workers who are employees per the Employment Standards Act as employees; and
 - d) All workers are properly classified as independent operators where required as per the Workplace Safety and Insurance Act are registered with the Workplace Safety and Insurance Board;
- 7. Ensure that sub-contractors are fully compliant with the Fair Wage Policy;
 - 8. Cooperate fully with any inquiries or investigations undertaken by the City and its representatives; and
 - 9. Where non-compliance with the Fair Wage Policy has been determined by the City, make payments within 14 days to the affected workers such that their remuneration complies with the Policy.

24. FOB/Freight

All Goods and Services shall be FOB destination and freight prepaid, by the Contractor to any specified delivery location within the City of Brampton boundaries, unless otherwise noted in the Bid Document.

Where specific authorization is granted to ship goods FOB Shipping Point, the Contractor agrees to prepay all shipping charges, and route via cheapest common carrier, and bill the Owner for the shipping charges as a separate item on the invoice. Four copies of Certified Customs Invoices are required with foreign shipments.

The Owner reserves the right to refuse COD shipments.

25. Force Majeure

The parties shall not be liable to each other for any loss, damage or other claim whatsoever arising out of a delay, failure or inability to perform any obligation(s) contained in the Contract for any cause which is beyond the parties reasonable control. Without fault or negligence, such causes may include, but are not limited to, any act of God, fire, flood, earthquake, tornado, labour disputes, war, revolution, riot, sabotage, terrorism, act of the public enemy, explosion, act or failure to act of any government, agency, board or commission. Lack of finances shall in no event be deemed to be a cause beyond a party's control.

In the event that performance of the Contract, in the reasonable opinion of either party, is made impossible by force majeure, then such party shall so notify the other in writing. At the request of the Owner, the Contractor shall:

- a) complete the provision of the Goods and Services with such adjustments as are required by the existence of the force majeure and are agreed upon by both parties;
- b) suspend all Goods and Services to be provided pursuant to the Contract for the duration of an emergency work stoppage resulting from, for example, a labour dispute. Upon resolution of such an emergency work stoppage both parties shall advise in writing, that work can be resumed and Contractor shall use commercially reasonable efforts to restaff the Project. Any adjustments to be made to the work schedules due to the suspension of Goods and Services shall be agreed upon by both parties; or
- c) terminate the agreement as a last option.

Notwithstanding the above, the parties agree that effective March 17, 2020 the Province of Ontario issued a State of Emergency to address the ongoing COVID-19 pandemic for all non-essential businesses within Ontario. Subsequently on March 24th, the Province outlined which services were essential. On April 3rd, further amendments were made to the essential services list. On Friday May 1, 2020 the Province amended O. Reg. 82/20 to confirm specifically that municipal construction projects were essential. Municipal government and the services provided were considered essential. Further, suppliers which support such essential services were also deemed essential. The parties agree that they will, despite these circumstances, work together in good faith to perform the services using their best commercial efforts. In the event the Contractor is unable to perform under the Agreement as a result of COVID-19, upon notice to the Owner and subject to mutual agreement, services may cease with no additional claim for costs by either Party and only additional time being permitted. As other circumstances change, the parties will communicate with one another to ensure a joint solution will be met which ensures the safety and health for all those which participate in the services.

26. Holdback

Where work under this Contract shall be subject to the *Construction Act, R.S.O. 1990 c. C-30*, payment for work completed shall be on a monthly basis at the rate of 90%, providing for a 10% holdback. After acceptance of the work, and in accordance with the *Construction Act*, the holdback will be paid to the Contractor in accordance with the *Construction Act*.

27. Indemnification

The Contractor agrees that the Owner shall not be liable for any injury or damage (including death) to any employees, officer or agent of the Contractor, unless the injury loss or damage is caused by the negligence of an officer or employee of the Owner while acting within the scope of his or her employment.

The Contractor agrees that it shall, at all times, indemnify and save harmless the Owner, each of its elected officials, officers, employees and agents from and against all claims, demands,

losses, costs, damages, action, suits or other proceedings made, sustained, brought or made upon the Owner in respect of any costs, expenses, loss, damage or injury, including death, and reasonable legal fees, arising out of any cause, whether direct or indirect, by reason of or in connection with negligent acts or omissions of the Contractor or any of its officers, directors, employees or agents in connection with the services performed, purportedly performed or required to be performed by the Contractor under this Contract including any non-compliance or breach of applicable laws by the Contractor, including in relation to any claims arising under the Construction Act (Ontario) as the act applies.

28. Independent Contractor

The Contractor, any employees of the Contractor and its agents and sub-contractors shall not be deemed to be at any time employees or servants, agents or sub-contractors of the Owner. The parties agree that the Contractor shall be an independent contractor in the provision of the Goods and Services under the Contract and that no employment relationship is to be created between the Contractor or any employees of the Contractor and the Owner. The Contractor agrees to be solely responsible for any and all payments and/or deductions required to be made including those required for Canada Pension Plan, Employment Insurance, Workplace Safety Insurance Board or Income Tax.

29. Insolvency, Winding Up

In the event of any proceeding, voluntary or involuntary, in bankruptcy or insolvency, winding up or other creditors' proceeding by or against the Contractor, or in the event of the appointment, with or without Contractor's consent, of a receiver, a receiver and manager, agent liquidator or other similar administrator, or an assignee for the benefit of creditors, the Owner shall be entitled to cancel any unfilled part of the Contract without any liability whatsoever.

30. Inspection

The Owner reserves the right to inspect and have a demonstration of any/all Goods which may be offered or of the Contractor's premises and at any point during the Contract.

The inspection of Goods or Services and the making of chemical and physical tests to determine whether or not the specifications are being complied with shall be made in the manner prescribed by the Owner.

Any material or work which fails in any way to meet the terms of the Contract is subject to rejection or to be paid for on an adjusted price basis. The decision of the Owner shall be final.

All costs associated with the inspection or testing of any material or work shall be borne by the Contractor.

31. Insurance

The Contractor agrees to provide appropriate insurance as set out in Part A Supplementary Conditions, Section 1, Insurance Requirements.

32. Intellectual Property

The Contractor shall indemnify and save harmless the Owner, its Councillors, employees and agents from any and all liability, damages, orders, injunctions, penalties, costs and expenses arising in relation to any actions, causes of action, claims, suits or other proceedings commenced against the Owner by any third party regarding the receipt, purchase or use by the Owner of the Contractor's services under the Contract and which infringes any third party patent, copyright, trade secrets, secret process or any other intellectual property entitlement whatsoever and from liability of any kind for the use of any composition, secret process, invention article, appliance, good or service furnished or used in performance of the Contract of which the Contractor is not the patentee, assignee, licensee or trademark holder.

33. Invoicing

Applications for payment on account may be made monthly as the work progresses and shall be dated the last day of each payment period, which is the last day of the month.

The Contractor shall submit to the consultant, at least 15 calendar days before the first application for payment, a schedule of values for the parts of the Work, aggregating the total amount of the Contract Price, so as to facilitate evaluation of applications for payment.

No later than 10 calendar days following the date of this Contract, the Contractor shall submit to the Consultant, for its review and approval, a sample application for payment that meets the requirements set out in this GC 33.

No later than five Working days prior to the date of an application for payment, the Contractor shall submit to the Owner and consultant a draft application for payment containing all information and drafts of all submittals required as identified below. If the Owner or consultant requires further evidence or supporting documentation, it shall direct the Contractor to include such information in its application for payment no later than four Working days after receipt of a draft application for payment.

"Proper Invoices" shall be submitted to the Owner's online invoice submittal portal in accordance with the Owner's instructions. Each application for payment shall include the information required for a "Proper Invoice" in Section 6.1 of the *Construction Act* as well as additional information as follows:

1. The Contractor's name and address;
2. The date of the Proper Invoice and the period during which the services or materials were supplied;
3. Information identifying the authority, whether in the Contract or otherwise, under which the services or materials were supplied;
4. Contract number or Work Order number;
5. A description, including quantity where appropriate, of the services or materials that were supplied;

6. The amount payable for the services or materials that were supplied, and the payment terms;
7. Invoice number;
8. Location of delivery / service;
9. The name, title, telephone number and mailing address of the person to whom payment is to be sent;
10. a confirmation that a draft application for payment was submitted at least five Working days prior to the date of submission of the application for payment;
11. a confirmation that the amounts claimed in such application for payment correspond to the schedule of values submitted and supporting documentation to support this confirmation including timesheets, packing slips for materials delivered, equipment rental costs, testing and inspection reports, permits and as-built drawings, as applicable, supporting documentation with respect to cash allowance expenditures and any other supporting documentation as the Consultant may direct;
12. separate line items setting out (i) the amount of the Warranty Reserve to be withheld from the payment; and (ii) the amount of the required holdbacks under the Construction Act;
13. the following confirmation: “There are no notices or claims for lien against the *Owner* or the *Place of the Work* (as defined in the *Contract*) and I am not aware of any grounds supporting any claim for lien against the *Owner*”;
14. a Workplace Safety & Insurance Board Clearance Certificate;
15. a construction schedule or revised construction schedule that meets the requirements of the Project;
16. any approved *Change Orders* and *Change Directives* related to the portion of the *Work* that is the subject of the application for payment;
17. the information set out in the Proper Invoice Checklist;
18. The *Contractor* shall submit, with each application for progress payment after the first, a Statutory Declaration, on either an original form of CCDC Document 9A-2001 Statutory Declaration of Progress Payment Distribution by Contractor or a form provided by the *Owner*, stating that payments in connection with the *Work*, as noted in the Statutory Declaration, have been made to the end of the period immediately preceding that covered by the current application;
19. Harmonised Sales Tax shown separately;
20. Contractor’s HST registration number;
21. any insurance renewal certificates as required; and
22. any other information required by the Contract Documents or as the consultant may direct.

If an application for payment does not include all information required by this GC 33, if any of the required confirmations made by the Contractor in its application for payment are untrue or if the Contractor is otherwise in breach of this Contract, it shall not be considered a “Proper Invoice” for the purposes of the *Construction Act*. If the Owner or the Consultant determine that an application for payment does not include all information required by this GC 33, the application for payment shall be rejected and the Contractor shall resubmit the application for

payment with all required information. For clarity, the Owner shall have no obligation to make a payment and the time periods set out in Section 6.4 of the *Construction Act* shall not apply until the Contractor has submitted an application for payment that includes all information required by this GC 33.

Each invoice shall show shipping charges as a separate item and shall contain the original or a copy of the bill indicating that payment by the Contractor for shipping has been made, notwithstanding any agreement by the Owner to pay freight or other transportation charges.

Work shall be invoiced in accordance with the quoted prices in the Bid.

34. MFIPPA

Information contained in a Bid submitted to the Owner shall be subject to disclosure as may be required under the provisions of MFIPPA. Any confidentiality obligations of the Owner under the Invitational Bid Call are expressly subject to the obligations and requirements of *MFIPPA* now or hereafter in effect.

35. No Lemon Policy

Any equipment purchased by the Owner shall be subject to a “No Lemon Policy” whereby after three (3) attempts to repair a recurring malfunction, the Owner, at its sole discretion can direct the Contractor to replace the equipment on a “like-for-like” basis at no additional cost to the Owner.

36. Non-Disclosure

Neither the Owner nor the Contractor shall at any time divulge any matters relating to the business of the other party or any customers, agents of the other party which may become known to it by reason of its services or otherwise and shall be true to the other party in all dealings and transactions relating to the services contemplated by the Contract. Furthermore, neither the Owner nor the Contractor shall use at any time, during the Contract, or after its termination, for its own benefit or purpose of any other person, firm, corporation, association or other business entity, any trade secrets, data or plans belonging to or relating to the affairs of the other party, including knowledge relating to customers, clients, or employees of the other party.

37. Order of Precedence

The Contract will be governed by the provisions contained in the Contract Documents in the order shown, if applicable:

- Owner-authorized change orders
- The Owner’s Purchase Order
- Formally executed agreement
- Addenda
- Scope of Work or Statement of Work
- Supplementary Conditions

- General Conditions
- Contractor's Bid

The foregoing documents are all the Contract Documents and constitute the full agreement between the parties. Where a conflict arises among the terms of any of the above documents, the documents shall prevail as listed in descending order.

38. Over Shipment of Goods

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

39. Ownership and Delivery of Materials

The Contractor agrees that all information and material of any kind whatsoever acquired or prepared by or for the Contractor pursuant to the Contract shall, both during and following the expiration or termination of the Contract, be the sole property of the Owner, including all information and material provided by the Owner to the Contractor for the purposes of the Contract. The Contractor is however permitted to retain copies of all reports.

Upon the request of the Owner, the Contractor agrees to deliver forthwith to the Owner all materials and information specified in the request that is/are the property of the Owner and in the possession or under the control of the Contractor. Except for reports prepared by the Contractor for the Owner, no copy or duplicate of any such material or information delivered to the Owner shall be retained by the Contractor without the prior written approval of the Owner. The Contractor further agrees not to destroy any material or information which is the property of the Owner without the Owner's prior written approval. This provision survives the expiration or termination of the Contract.

40. Packaging and Disposal

Goods shall be securely and properly packed for shipment according to accepted standard commercial practice, without extra charge for packing materials or containers. Containers to remain the property of the Owner unless otherwise stated in the Bid Document.

The Contractor 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 Contractor must indicate where garbage is taken for disposal when requested to do so by the Owner.

Unless otherwise provided for in the Contract, the Contractor shall pay all packaging, freight, insurance and other charges whatsoever, in connection with the supply and delivery of the goods and the return of deficient goods or goods wrongly supplied.

41. Payments

The Owner's method of payment is by electronic payment. The Contractor shall be requested to complete the Accounts Payable Direct Deposit Set-Up Form.

All payments will be made within twenty-eight (28) days from receipt of approved Proper Invoice. All invoices must be approved by the Owner.

The Owner shall not be required to make any payment to anyone other than the Contractor.

Except only where expressly provided otherwise, all prices in the Contract are stated and shall be paid in Canadian currency.

Invoices shall be submitted to the Owner's online invoice submittal portal in accordance with the Owner's instructions. The date of the invoice shall be the date it is received in the online portal.

All charges against the Contractor shall be subject to deduction or setoff from current obligations that are due or may become due in respect of this or any other transaction with the Contractor. In the event that collection is not made in this manner the Contractor shall pay the Owner, on demand, the amount of such charges.

Where there is a question of non-performance, the Owner may withhold payment in whole or in part against which to charge back any adjustment required.

The Contractor shall not claim or apply for penalty charges in respect of late payment.

Notwithstanding any other provision in the Contract, the Contractor shall not be entitled to submit an application for payment and the Owner shall not be obligated to make payment to the Contractor if:

- .1 a claim for lien has been received and/or registered against the Project lands;
- .2 if the Owner or mortgagee of the Project lands has received written notice of a lien; or
- .3 the Owner or Consultant reasonably believe that any party has purported to retain title to products or materials in respect of which an application for payment has been made

If the Owner intends to issue payment for an amount less than the full amount stated on the application for payment, the Owner will issue a Notice of Non-Payment in respect of the disputed amount no later than 14 calendar days after the receipt of the application for payment. The Owner shall make payment to the Contractor on account in the amount equal to the undisputed amount of the application for payment on or before the day that is 28 calendar days following receipt of the application for payment. Certificates for payment may provide for retention of amounts as determined by the consultant to ensure correction of deficient work done or unacceptable products provided.

42. Payment of Holdback

After the issuance of the certificate of Substantial Performance of the Work, the Contractor shall: .1 submit an application for payment of the holdback amount, .2 submit CCDC 9A 'Statutory Declaration' to state that all accounts for labour, subcontracts, Products, Construction Equipment, and other indebtedness which may have been incurred by the Contractor in the Substantial Performance of the Work and for which the Owner might in any way be held responsible have been paid in full, except for amounts properly retained as a holdback or as an identified amount in dispute.

43. Permits

The Contractor shall pay and obtain for all necessary permits, approvals, licenses and fees where required.

The Contractor shall notify the Chief Building Official or the registered code agency, where applicable, of the readiness, substantial completion, and completion of the stages of construction set out in the Ontario Building Code. The Contractor shall be present at each site inspection by an inspector or registered code agency. If any laws, ordinances, rules, regulations, or codes conflict, the more stringent shall govern.

44. Personal Information

The Contractor will comply with any laws pertaining to Privacy Protection to which the Owner is subject (including PIPEDA, MFIPPA, regulations and common law). In addition, the Contractor will provide the Owner with information, cooperation and assistance, as requested by the Owner from time to time, in order to enable the Owner to comply with any and all requirements to which the Owner is subject under any laws pertaining to the Privacy Protection (including PIPEDA, MFIPPA, regulations and common law). The Contractor shall indemnify the Owner for any loss or damages claimed by a third party as a result of a breach of obligations related to Privacy Protection in respect of personal information in the possession of the Contractor.

45. Price

Everything supplied under the Contract shall be at or based on the price or prices set forth or referred to, and in accordance with the Contract. No changes in quantity, price or product substitutions will be accepted without written authority from the Owner.

The Contractor warrants that the prices for goods under the Contract are not less favorable than those currently extended to any other customer for the same or similar goods in similar quantities. In the event the Contractor reduces its price for such goods during the Contract, the Contractor shall reduce the prices under the Contract correspondingly. If the price is not stated in the Contract, the price shall be the lower of the later price last quoted or paid, or the prevailing market price.

In the event that the Owner is entitled to a cash discount, the period of computation will commence on the date of receipt of a correctly completed invoice.

46. Protection of Work and Property

The Contractor shall protect the Work and the Owner's property and property adjacent to the Place of the Work from damage which may arise as the result of the Contractor's operations under the Contract, and shall be responsible for such damage.

Before commencing any work, the Contractor shall determine the location of all underground utilities and structures indicated in the Contract Documents or that are reasonably apparent in an inspection of the Place of the Work.

Should the Contractor in the performance of the Contract damage the Work, the Owner's property or property adjacent to the Place of the Work, the Contractor shall be responsible for making good such damage at the Contractor's expense.

47. Publicity/Use of Names

Except as provided for in the Contract, any news release, public announcement, advertisement, or publicity released by the parties concerning the Contract or the initiative will be subject to the prior written approval of the other party and any third parties as required. Any such publicity shall give due credit to the contributions of each party.

Neither party has the right to use the other's name, logo, trademark, insignia or other intellectual property without the prior written consent of the other.

The Contractor agrees to obtain the written consent of the Owner before publishing or issuing any information regarding the Owner or the Contract.

48. Quality

All Goods and Services purchased under the Contract must meet or exceed commonly accepted industry standards as to quality of material and workmanship and must be warranted as such.

Electrical equipment must comply with C.S.A. Standard of institutional use and/or Ontario Hydro special approval prior to delivery.

The Owner may return to the Contractor at the Contractor's risk and expense, any goods which in the opinion of the Purchasing Agent are defective or inferior in quality for full purchase credit or replacement as the Purchasing Agent may require, at no additional cost to the Owner.

49. Quantities

Quantities shown are estimated requirements and should be used as a guide only. Quantities may be increased or decreased and any additional payment or reduction in payment shall be made at the unit prices bid.

There is no obligation on the part of the Owner to purchase more or less than the quantity listed. The Owner reserves the right to purchase more or less than the quantity listed, depending upon actual requirements during the life of the Contract.

50. Receipt of and Addresses for Notices in Writing

Notices in writing will be addressed to the Owner at the address set out below.

Notice in Writing will be addressed to the Contractor as shown on the Bid from the Contractor.

The delivery of a *Notice in Writing* will be by hand, by courier, by prepaid first class mail or other form of electronic communication during the transmission of which no indication of failure of receipt is communicated to the sender. A *Notice in Writing* delivered by one party in accordance with the *Contract* will be deemed to have been received by the other party on the date of delivery if delivered by hand or courier, or if sent by mail it shall be deemed to have been received five calendar days after the date on which it was mailed, provided that if either such day is not a business day, then the *Notice in Writing* shall be deemed to have been received on the business day next following such day. A *Notice in Writing* sent by facsimile or other form of electronic communication shall be deemed to have been received on the date of its transmission provided that if such day is not a business day or if it is received after the end of normal business hours on the date of its transmission at the place of receipt, then it shall be deemed to have been received at the opening of business at the place of receipt on the first business day next following the transmission thereof. An address for a party may be changed by *Notice in Writing* to the other party setting out the new address in accordance with this provision.

Owner: Purchasing
 City of Brampton
 2 Wellington Street West
 Brampton, Ontario L6Y 4R2
 Email: purchasing@brampton.ca

51. Receipt of Goods

Delivery of goods to the Owner and any acknowledgement of receipt by the Owner shall not be deemed to be confirmation by the Owner that the goods are satisfactory in accordance with the Contract.

Upon receipt of goods, the requisitioner shall have the right to inspect the goods to ensure that the correct items have been delivered, and sign for receipt of goods. Anything supplied by the Contractor under the Contract is subject to inspection and approval by the Owner.

Nothing contained in the Contract shall relieve in any way the Contractor from the obligation of testing, inspection and quality control.

When goods or quantities are incorrect, the requisitioner shall contact the Contractor to arrange for return of, additional or replacement of goods as the case may be. The Contractor shall provide price adjustments or credits resulting from above.

When a receiving signature can be obtained in the appropriate central receiving area, this must NOT be construed to be acceptance of the goods received, their quality or quantity, but is simply the receipt of a package. The requisitioner of the goods will ascertain the correctness and/or acceptability of the goods, whether or not payment has been made.

Delivery is not complete until the goods have been actually received and accepted. The risk of loss or damage prior to completion of delivery shall be upon the Contractor, and any such loss or damage to goods or materials ordered hereunder shall not release the Contractor from any obligation hereunder.

52. Right to Audit

The Contractor shall maintain complete, true and correct records, together with such supporting or underlying documents and materials, for the duration of this Contract. All such records shall be in an organized and accessible manner to the Owner and its authorized representatives. The Contractor will retain these records for a period which is the greatest of (i) seven (7) years following the completion, expiry or termination of this Contract, including any and all renewals thereof; or (ii) such period that any such records are required to be retained under any applicable laws and regulations; and (iii) in the case of any matter which is the subject of dispute under the Contract, the date on which a final resolution of the dispute is achieved. No provision of this Contract will be construed so as to give the Owner any control whatsoever over the Contractor's records.

The Owner and its authorized representatives shall have the right to audit, to examine and make copies of or extracts from all financial and related records relating to or pertaining to the Contract kept by or under the control of the Contractor, including, but not limited to those kept by the Contractor, its employees, agents, assigns, successors, and subcontractors. Such records shall include, but are not limited to, accounting records; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); related payroll documents (timesheets, etc.); bank statements and journals. Costs of any audits conducted under the authority of this section and not addressed elsewhere will be borne by the Owner unless the audit identifies or discloses overpricing or overcharges (of any nature) by the Contractor to the Owner in excess of 0.5 percent (.5%) of the total Contract billings. In this case, in addition to the Contractor making prompt adjustments for the overcharges, the Contractor shall also promptly reimburse the Owner for the actual cost of the Owner's audit.

During the Term and for seven (7) years following the expiry or termination of this Contract, the Owner or any authorized representative of the Owner will be entitled, upon at least five (5) business days' prior notice to Contractor, to review or audit any of these records. When requested by the Owner, the Contractor will provide the Owner and any authorized representatives referred to in this section with access to and copies of these records as well as any further information that may be required with reference to these records. The Owner and

its authorized representatives referred to in this section will have the right to remove all such documents for the purpose of making copies and will return them to the place from which they were removed.

The Contractor shall ensure the Owner has these audit rights with the Contractor's employees, agents, assigns, successors and subcontractors and the obligations of these rights shall be explicitly included in any subcontract or agreement formed between the Contractor and any subcontractors to the extent that those subcontracts or agreements relate to fulfillment of the Contractor's obligations to the Owner.

This right to audit shall not be construed to limit, revoke, or abridge any other rights, powers, remedies or obligations relating to audit which the Owner may have by municipal, provincial, or federal statute, ordinance or regulation, whether those rights, remedies powers, or obligations are express or implied.

This right to audit section shall survive the completion, expiry or termination of this Contract.

53. Rights and Remedies

If the Owner terminates the Contract for cause, the Owner shall have the following rights and remedies:

- i) The Owner may retain any Performance Security deposited by the Contractor to the use of the Owner and carry out the works in any way the Owner deems best to secure completion of the Contract and performance and delivery of all Goods and Services to the satisfaction of the Owner, and the Contractor shall be liable for all direct or indirect damages, costs and expenses incurred by the Owner in excess of those provided for in the Contract.
- ii) All payments previously made by the Owner shall be refunded by the Contractor to the Owner, immediately upon the return of previously delivered or performed Goods and Services without prejudice to any other rights, recourse or remedies the Owner may have available to recover all direct and indirect damages caused by the Contractor's default and termination of the Contract.
- iii) The Owner may withhold further payment, in whole or in part, to the Contractor.
- iv) The Owner may remove the Contractor's name from the Owner's Official Contractor File for a specified period.
- v) All rights and remedies available to the Owner are distinct, separate and cumulative and shall not be exclusive of any rights or remedies available to the Owner under the Contract or otherwise at law or in equity. No delay or omission by the Owner in exercising such a right or remedy or single or partial exercise of any right or remedy

shall include any other or further exercise of such right or remedy or the exercise of any other right or remedy.

54. Safety Data Sheets (SDS)

The Contractor shall provide Safety Data Sheets for each hazardous material supplied and made available to the Owner within 72 hours upon request. These sheets must also be provided prior to or at the time of pickup or delivery to the Owner.

All hazardous material containers must be clearly labelled in accordance with the Ontario *Occupational Health and Safety Act* and associated Regulations, the *Workplace Hazardous Materials Information System Act (WHMIS)* and where applicable, the *Transportation of Dangerous Goods Act* and the *Dangerous Goods Act* of Ontario.

If applicable, all hazardous material must meet Government Food and Drug Regulations in accordance with the *Food and Drugs Act* of Canada or latest revision thereof.

Failure to comply with these requirements shall result in the hazardous material being refused by the Owner and may result in cancellation of the Contract, in which event any existing stocks shall be removed and credited back to the Owner in full by the Contractor. The Owner shall be under no obligation whatsoever to any Contractor who does not comply with the Owner's provisions.

55. Sub-Contracting

The Contractor shall not sub-contract any portion of the Contract work without prior written approval by an authorized representative of the Owner.

The Contractor shall be solely responsible for the payment of every sub-Contractor employed, engaged, or retained by it for the purpose of assisting it in the performance of its obligations under the Contract. The Contractor shall coordinate the provision of the Goods and Services by its sub-contractors in a manner acceptable to the Owner, and ensure that they comply with all the relevant requirements of the Contract.

The Contractor shall be liable to the Owner for all costs or damages arising from acts, omissions, negligence or willful misconduct of its sub-contractors, suppliers and of persons directly or indirectly employed by them.

56. Substantial Performance

When the Contractor considers that the work is substantially performed within one Working day, deliver to the consultant and to the Owner a comprehensive list of items to be completed or corrected, together with a written application for a review by the consultant to establish Substantial Performance of the Work.

Immediately following the issuance of the certificate of Substantial Performance of the Work, the Contractor, in consultation with the consultant, shall establish a reasonable date for finishing the work.

The Contractor, shall attain Total Performance of the Work, including the rectification of all deficiencies, within 30 Working days of attaining Substantial Performance of the Work.

Within 7 calendar days of receiving a copy of the certificate of Substantial Performance of the Work signed by the consultant, the Contractor shall publish a copy of the certificate in a construction trade newspaper (as that term is defined in the *Construction Act*) and shall provide to the consultant and the Owner the date of publication and the name of the construction trade newspaper in which the publication occurred. If the Contractor fails to comply with this provision, the Owner may publish a copy of the certificate and charge the Contractor with the costs so incurred.

Together with the submission of its written application for Substantial Performance of the Work, the Contractor shall submit to the consultant and to the Owner a statutory declaration setting forth in reasonable detail any then outstanding and unresolved disputes or claims between the Contractor and any subcontractor or supplier, including any claims allegedly arising from delay, which are, directly or indirectly, related to any then outstanding or anticipated disputes or claims between the Contractor and the Owner.

57. Survival of Clauses

Upon the termination of the Contract for any reason including normal expiration, clauses pertaining to indemnity and limitation of liability, confidential and proprietary information, and publicity, in addition to any other clauses which survive by operation of law, shall survive the expiration or other termination of the Contract.

58. Taxes

The Contractor is required to be registered and in full compliance with legislative requirements for the Harmonized Sales Tax (HST).

Invoices paid to addresses outside Canada shall be subject to applicable withholding taxes in accordance with the *Income Tax Act* of Canada and any applicable treaties.

59. Timing

Time is of the essence for the delivery or provision of the Goods and Services requested.

Notwithstanding that the Contractor has complied with the above requirements, the Owner may exercise any right of termination.

60. Toxic and Hazardous Substances

Prior to the Contractor commencing the Work, the Owner shall take all reasonable steps to determine whether any toxic or hazardous substances are present at the Place of the Work,

and provide the Consultant and the Contractor with a written list of any such substances that are known to exist and their locations.

If the Contractor encounters toxic or hazardous substances at the Place of the Work, or has reasonable grounds to believe that toxic or hazardous substances are present at the Place of the Work, the Contractor must immediately report the circumstances to the Consultant and the Owner in writing.

61. Vendor Accessibility Responsibilities

All vendors including, but not limited to, contractors, third-parties, external service providers etc. are responsible for complying with the requirements outlined in the *Accessibility for Ontarians with Disabilities Act (AODA) S.O. 2005, c. 11.*

The Vendor Accessibility Responsibilities Manual below, provides a high-level overview of AODA requirements, key Accessibility considerations and tips on providing Accessible customer service. Vendors should build upon the information provided in the manual and foster a barrier-free approach so that individuals of all abilities have equitable access to their services, goods, technology and/or information.

It is the responsibility of the vendor to understand which requirements are applicable to their business, organization, and/or entity and ensure they are in compliance with the AODA.

<https://www.brampton.ca/en/City-Hall/Accessibility/Documents/Inclusive%20Customer%20Service%20Resource%20Manual%20for%20Vendors.pdf>.

62. Waiver

Any failure by either party to enforce at any time any of the provisions, including the termination provisions of the Contract shall not be construed to be a waiver of such provision or of the right of either party to enforce such provision or exercise any other rights available to it under the Contract or at law at any time.

63. Warranties

The Contractor expressly warrants that all goods or services furnished under the Contract:

- (a) shall conform to all specifications and appropriate standards, will be new, and free from defects in material or workmanship;
- (b) will conform to any statements made on containers or labels or advertisements for such goods or services, and that any goods will be adequately contained, packaged, marked, and labelled;
- (c) will conform in all respects to samples;

- (d) will be merchantable, and will be safe and appropriate for the purpose for which goods or services of that kind are normally used;
- (e) are suitable for their intended purposes, will perform in accordance with the Owner's specifications and will satisfy the Owner's requirements and operate in accordance with all published performance specifications contained in any of the Contractor's product manuals;
- (f) the Contractor has the full power and legal right to convey all products hereunder which shall pass to the Owner in accordance with the terms of the Contract, and all goods and products hereunder shall be free from all liens, encumbrances, security interests and all transactions contemplated under the Contract shall be in the ordinary course of business of the Contractor within the meaning of the *Personal Property Security Act*, and.

Inspection, test, acceptance or use of the goods or services furnished hereunder shall not affect the Contractor's obligation under these warranties, and such warranties shall survive inspection, test, acceptance and use.

All the Contractor's warranties under the Contract shall run to the Owner, its successors, assigns and customers, and users of products sold by the Owner. The Contractor agrees to replace or correct defects of any goods or services not conforming to the foregoing warranty promptly, without expense to the Owner, when notified of such nonconformity by the Owner, provided the Owner elects to provide the Contractor with the opportunity to do so. In the event of failure of the Contractor to correct defects in or replace nonconforming goods or services promptly, the Owner, after reasonable notice to the Contractor, may make such corrections or replace such Goods and Services and charge the Contractor for the cost incurred by the Owner in doing so.

64. Warranty

All Goods and Services shall carry a minimum of a one (1) year comprehensive warranty from the time of the acceptance by the Owner.

2.5% warranty holdback shall be released at the end of the one (1) year warranty period.

65. Workplace Safety and Insurance Board

A valid Workplace Safety and Insurance Board Clearance Certificate from the Ontario Workplace Safety and Insurance Board shall be required to perform the work.