



LONDON & MIDDLESEX COMMUNITY HOUSING

The following Vendor Terms & Conditions (the "Agreement"), entered into on the effective date of acceptance by the Vendor (the "Effective Date"), form the basis for any undertaking between London Middlesex Community Housing ("LMCH") and the Vendor. This Agreement remains implicit with any transaction, purchase order, or other form of contractual arrangement between LMCH, its designated employees and agents, and the Vendor. The acceptance of this Agreement is expressly limited to the terms and conditions contained in this Agreement. LMCH's acceptance of this Agreement is expressly conditioned on Vendor's assent to any additional or different terms, from Vendor's offer, contained in this Agreement. Additional Terms & Conditions may be presented based on the scope of projects undertaken.

1.0 DEFINITIONS

- 1.1 "Vendor" means Vendor and its agents, employees and sub-contractors.
- 1.2 "Deliverables" means any goods or services provided by Vendor pursuant to this Agreement.
- 1.3 "LMCH" means LONDON & MIDDLESEX COMMUNITY HOUSING.
- 1.4 "Shareholder" means the City of London as the sole shareholder of LMCH.

2.0 ACKNOWLEDGEMENT

- 2.1 **ACTING AS CONTRACTOR:** The Vendor acknowledges acting strictly as an independent contractor under the law, and not as an employee of LMCH. Nothing in this Agreement will be deemed or construed to create a joint venture, partnership, or agency relationship between the parties for any purpose. The Vendor, nor any employee or agent of the Vendor, shall hold themselves out as being or shall be construed to be employees or agents of LMCH.

Vendor and its employees will not be entitled to any benefits, policy, programme, or practice, including, but not limited to, vacation pay, holiday pay, health insurance, unemployment insurance, workers' compensation insurance, and fringe benefit plan made available to employees of LMCH.

The Vendor shall comply with all requirements and obligations relating to its employees under federal and provincial law (or foreign law where applicable). The Vendor's employees shall be paid exclusively by the Vendor for all work performed in relation to the Deliverables.

- 2.2 **VENDOR'S MATERIALS:** The Vendor agrees that LMCH shall not be liable for any loss of, or damage to, Vendor's materials or equipment located on any property belonging to or managed by LMCH.

- 2.3 **POLICIES:** The Vendor and its employees and agents are required to comply with all applicable legislated or company rules, regulations, codes or other similar requirements, including policies of LMCH while engaged with or acting on behalf of LMCH, which can be provided to the Vendor upon request.

- 2.4 **TERM:** This Agreement does not offer or imply any commitment to purchase or otherwise transact with the Vendor. The term of this Agreement will be effective from the Effective Date as indicated on any subsequent Purchase Order or signed Contract, and shall, unless terminated pursuant to the termination provisions contained in this Agreement, terminate upon Vendor's completion of all of its obligations contained in that Purchase Order or signed Contract. The acknowledgment or signing of this Agreement does not constitute an agreement to do business with LMCH, only to be accepted as a potential Vendor.

- 2.5 **COLLECTIVE AGREEMENT & UNION LABOUR:** Any part of the Services that is the work of union members represented by the union Locals under the provisions of any collective agreements by which LMCH is bound, shall in each such case be performed only by an employer also bound by such agreement.

3.0 DELIVERABLES

- 3.1 Deliverables ordered by LMCH via purchase order, work order or other instructions issued to a Vendor shall be provided in a timely manner and invoiced per LMCH instruction. The Deliverables will at all times be provided in a professional and competent manner by persons qualified and skilled in their occupations.

The Vendor shall provide all labour, materials, equipment, supplies, and services required to produce the Deliverables as specified in a related Purchase Order or signed Contract, including any unspecified labour, materials or supplies that could be inferred to be included within the scope of the Deliverables. All materials and supplies will be new and of the highest quality, to meet any required specifications.

The Deliverables provided by the Vendor, including its employees, agents or sub-contractors as the Vendor deems necessary, provided that the Vendor shall not substitute alternatives for any of those persons named to LMCH, without the prior written approval of LMCH, which approval shall not be unreasonably withheld.

- 3.2 **MATERIAL SPECIFICATIONS:** The Vendor hereby warrants that the Deliverables comply with all provided plans and specifications (the "Contract Documents") of LMCH, all applicable codes and standards, including but not limited to union requirements, health and safety hazardous materials, and all authorities having jurisdiction unless noted otherwise. No payment on account shall operate as an approval and/or acceptance of the Deliverables. Shop drawing approval is required prior to fabrication of material, unless otherwise agreed to in writing by LMCH.

- 3.3 **INSPECTION:** All Deliverables shall be subject to a reasonable period of inspection, examination and testing (as required)



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by LMCH staff or duly appointed representatives prior to acceptance by LMCH. Any deliverables reasonably determined by LMCH, in its sole discretion, to not be in accordance with the applicable Purchase Order or signed Contract shall be corrected or replaced immediately by the Vendor at no additional cost to LMCH. At the end of the term of this Agreement, LMCH reserves the right, within a reasonable period of time, to inspect services, the property and the work for any damages or deficiencies. Final payment to the Vendor is subject to LMCH's satisfactory inspection, and any cost to rectify any legitimate damages caused by the Vendor shall be deducted from the Vendor's final invoice, and any remaining amounts shall be due to the Vendor within thirty (30) days.

- 3.4 PRODUCT RETURN:** If applicable, there shall be no fees (i.e., restocking, inventory or other) associated with LMCH returning Deliverables, if such return occurs within thirty (30) days of the date the Deliverables were delivered to LMCH, or if the Deliverables are found to not meet its desired purpose, as solely determined by LMCH, acting reasonably.
- 3.5 SCOPE OF WORK:** The Vendor agrees that the Deliverables will be completed in accordance within the terms of the Agreements in place to the specifications of Vendor's quotation, the Contract Documents, the Purchase Order, or signed Contract, and any provided Schedules thereto, including but not limited to, the provided Scope of Work, agreed-to Pricing, and Service Level Agreement.
- 3.6 ORDERING:** Notwithstanding anything to the contrary herein, LMCH may, from time-to-time, in writing, approve the increase or decrease of the quantity or change in specifications of the Deliverables originally ordered (the "Change Order"). If the change requires a subsequent change in the price or timing of the Deliverables, the Vendor must immediately notify LMCH in advance of LMCH executing any applicable Purchase Order or Change Order; and such changes shall be subject to LMCH's prior written approval.
- 3.7 TITLE:** All Deliverables performed hereunder will be performed by Vendor on a "work-for-hire" basis and all right, title and interest in the Deliverables are hereby vested in Vendor at the time such Deliverables are created. Without limiting the foregoing, Vendor hereby assigns to LMCH all right, title and interest in all Deliverables, including all interim versions of Deliverables and all associated documentation. Vendor and its personnel will execute reasonably necessary documents to evidence LMCH's rights in the Deliverables.
- 3.8 OWNERSHIP OF MATERIAL, COPYRIGHT:** All working papers, materials, products, concepts, presentations, data, reports, appendices, photographs, drawings, templates, spreadsheets and databases and any other documents, or other property arising out of or produced in the performance of any Agreement, Contract, Purchase Order, etc. (hereinafter call the "Work") shall upon completion of the Work and its submission to LMCH become the exclusive property of LMCH and LMCH shall have ownership of all copyright thereto and intellectual property therein, and moral rights thereto and all patents, trademarks and industrial designs arising therefrom. No further fees or royalties shall be payable, and no infringement of copyright shall occur by virtue of any use o work or use in any other fashion. Solely for the purposes of the *Copyright Act*, the Vendor acknowledge that the Work has been or shall be prepared in the direction and control of LMCH. The Vendor waives any and all moral rights in the Work. Without limited the generality of the foregoing, LMCH may without any restriction whatsoever make such modifications to or use of the Work as it deems necessary and may allow others the use of the Work or modified Work as it deems necessary. The Vendor agrees not to present the Work and data and not to publish or present papers deriving from the Work derived under any Agreement, Purchase Order, Contract, etc. including but not limited to, publication in professional journals or professional conferences, without first obtaining LMCH's written consent, which consent may be unreasonably withheld. The Vendor warrants that all of the Work shall be original and not copies and shall not contain any inappropriate materials or content.
- 3.9 DELIVERY CANCELLATION:** Failure of the Vendor to provide the Deliverables in a timely manner or by the date specified in an Agreement, Purchase Order, Contract, etc. will give LMCH the right to immediately terminate the Agreement, Purchase Order, Contract, etc. at no cost, obligation, or penalty to LMCH.

4.0 PRICING AND PAYMENT

- 4.1 PRICING:** Pricing will remain in effect for the length of the applicable quote or contract as described in any signed Contract or Purchase Order. LMCH may request that the Vendor adjust any pricing under this Agreement to the Vendor's lowest quoted price to any other customer for the period in effect based on similar size or volume. Vendor's prices shall be deemed to include all required shop drawings, certifications and/or quality control specified in Contract Documents. No fees or expenses for any additional work beyond the provision of the Deliverables will be considered unless pre-approved in writing by LMCH by way of a new Purchase Order or a Change Order.
- 4.2 PAYMENT TERMS:** Invoices shall include a detailed, itemized statement of all charges for which payment is sought, and must include the Contract, Purchase Order number, and specify the date each service was rendered, and shall be delivered on a schedule as agreed between LMCH and the Vendor, or if not specified within five (5) days of the delivery of the work. When requested, the Vendor will provide invoices in an electronic format, emailed to accountspayable@lmch.ca. No payment will be issued without a valid LMCH Contract, Agreement, Purchase Order number. Payment terms are thirty (30) days from confirmed completion, delivery etc. No payment will be made to Vendor for Deliverables, including any materials or services, not delivered in accordance with the job specifications.



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Vendor is solely liable for and shall pay for all materials furnished and labour performed by its subcontractors and suppliers. Absolutely no payments will be issued for invoices submitted more than 180 days after the date the work was delivered. Detailed backup documentation to support amounts claimed on invoices may be requested by LMCH at any time. Failure to provide sufficient back up documentation may result in a delay or refusal to make payments for invoices received by LMCH until such time as the Vendor is able to furnish valid back up supporting documentation.

- 4.3 TAXES:** Vendor assumes liability for any and all taxes, fees, duties withholdings or similar charges, whether domestic or foreign, including, without limitation federal, provincial and local taxes, value-added-taxes, goods and services taxes and property taxes or other governmental charges. The price for the deliverables is exclusive of HST and must be separately stated on the related invoice.
- 4.4 PAYMENT OFFSET:** LMCH may deduct from any amounts due or to become due to Vendor, any sum or sums owing by Vendor to LMCH, including compensation for any breach by Vendor of any part of this Agreement, or to LMCH discharging any liens by the Vendor or by any of the Vendor's sub-contractors. Additionally LMCH shall have the right to request and receive from Vendor satisfactory proof that Vendor's Workplace Safety and Insurance Board ("WSIB") premiums have been paid and, to the extent that any such premiums are outstanding, LMCH shall have the right to deduct from any amounts due or to become due to Vendor, any Vendor WSIB premiums that are outstanding and have not been paid by the Vendor directly to WSIB at the time of payment of the Vendor's invoice. Notwithstanding the foregoing, Vendor acknowledges that payment of its WSIB premiums is Vendor's responsibility alone and Vendor hereby agrees to indemnify LMCH for any losses, costs, claims or damages incurred by LMCH resulting in whole or in part from Vendor's non-payment of its WSIB premiums.

5.0 INSURANCE

- 5.1 Prior to performing any work on any LMCH building or equipment, the Vendor shall immediately provide LMCH with the following:**

- i. An Employer's Clearance Certificate confirming employees of the Vendor providing Deliverables pursuant to the Purchase Order or signed Contract are covered by WSIB insurance or equivalent legislative compensation scheme in the jurisdiction where Deliverables are provided for the specified term of the Purchase Order or signed Contract;
- ii. A signed certificate of insurance from an insurance company licensed to conduct business in the Province of Ontario confirming the Vendor has in place for the term of the Agreement or Purchase Order commercial general liability insurance in an amount not less than five million dollars **(\$5,000,000)** inclusive per occurrence for personal injury, bodily injury, death and property damage, with a deductible of not less than one thousand dollars (\$1000), and an annual aggregate limit of five million dollars (\$5,000,000) or greater, if stipulated;
- iii. When required, a certificate of insurance confirming the Vendor has in place for the term of the Agreement commercial automobile liability insurance covering the ownership, operation and maintenance of all owned, non-owned and hired motor vehicles with a minimum bodily injury (including death) and property damage (including loss of use) limit of two million dollars **(\$2,000,000)** inclusive, per occurrence;
- iv. **When requested**, a certificate of insurance confirming the Vendor has in place for the term of the Agreement Employee Dishonesty/Crime insurance which includes third party coverage in the amount of one million dollars (\$1,000,000);
- v. Vendors supplying professional or consulting services must provide proof of professional errors and omissions coverage with a limit of five million dollars **(\$5,000,000.00)** inclusive, or greater, if stipulated; and/or
- vi. When required, Vendor shall provide an appropriate Performance Bond, which shall be held by LMCH for the duration of the Agreement.

LMCH shall have the right to reasonable require additional types of insurance coverage(s) or increase coverage limits as it deems necessary or as required by its Shareholder. As additional insureds, the certificate(s) must specifically refer to "*London and Middlesex Community Housing, as well as its respective subsidiaries, related entities, affiliates, partners, members, managers, directors, officers, employees, agents and representatives.*" All of the above-identified policies of insurance shall provide for a waiver of any right of subrogation of the insurers against LMCH. The required insurance may not be cancelled without thirty (30) days prior written notice to LMCH.

All insurance policies shall constitute primary coverage and not merely coverage in excess of, or co-coverage with, any insurance otherwise available to LMCH and shall contain cross-liability and severability of interest provisions.



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All certificates must be provided to LMCH or its designated agent in advance of any work beginning. Expired certificates will be cause for LMCH to immediately cease all transactions with the Vendor and withhold any amounts necessary to pay workers' compensation premiums directly to the appropriate authorities.

Vendor may not engage any sub-contractor unless previously specified and noted in the applicable Contract Documents. Vendor must ensure that the sub-contractor has equal insurance coverage as specified above and meets all of the stated requirements, including insurance, licenses, and training. LMCH reserves the right to reject any proposed sub-contractor at its sole and absolute discretion.

6.0 HEALTH AND SAFETY

- 6.1 **COORDINATION:** Vendor represents and warrants that it accepts the duties and responsibilities for coordination of health and safety for itself and those for whom it is in law responsible in accordance with provincial Workplace Safety and Insurance Board and occupational health and safety regulations relative to the Deliverables being performed.
- 6.2 **LICENSES:** Vendor represents and warrants that, on behalf of the Vendor and each of its agents, employees, sub-contractors and representatives, that it has all training licenses and certifications required or necessary with respect to providing the Deliverables as requested per an Agreement, Purchase Order, or signed Contract.
- 6.3 **TRAINING:** Vendor agrees and confirms that all Vendor agents, employees, sub-contractors, and representatives have been duly trained for the tasks assigned and hold valid licenses and/or certifications for the trade. Vendor must provide proof of training, certification and licensing upon request and any non-conforming personnel must be removed from the assignment and performance of Deliverables immediately. Any breach of this section by Vendor will be deemed a material breach of this Agreement and grounds for immediate contract termination.
- 6.4 **INCIDENTS:** The Vendor shall immediately advise LMCH of any accidents, personal injuries, damages or incidents occurring, incurred or encountered in providing the Deliverables, and will promptly complete and submit any necessary incident reporting documentation provided or requested by LMCH
- 6.5 **ENVIRONMENTAL REQUIREMENTS:** Vendor will comply with all applicable environmental laws and regulations, including without limitation any waste, recycling, electric and electronic equipment regulations. Vendor shall use Eco-logo or Green products whenever commercially available. To the extent required by LMCH, Vendor shall provide the Deliverables in accordance with LMCH's environmental policy and abide by LEED or BOMA Building requirements if Vendor is providing Deliverables to a LEED or BOMA certified property.
- 6.6 **MSDS SHEETS:** Current Material Safety Data Sheets ("MSDS") must be provided at the job site to LMCH for all products used by the Vendor on LMCH property as required by Workplace Hazardous Materials Information Systems Regulations ("WHMIS") or any other similar or replacement regulations or legislation.
- 6.7 **HAZARDOUS MATERIALS:** No hazardous materials (including but not limited to caustic, pressurized, or explosive materials) may be brought on to a LMCH site without prior review and approval by a designated LMCH employee. No hazardous materials may be left unattended during the period of work or left unsecured overnight or on non-business days. No hazardous material may be disposed of or abandoned at the site.
- 6.8 **ASBESTOS:** In the event that Type 2 or 3 asbestos is encountered during construction, the Vendor shall immediately cease work and notify a LMCH representative
- 6.9 **CLEAN-UP:** The Vendor shall maintain the work area in a tidy condition and free from the accumulation of waste products and debris, other than that caused by LMCH. Upon completion of the Work, the Vendor shall remove from the site products, tools, construction machinery, and equipment brought onto the site by Vendor or its subcontractors. If the Vendor fails to comply with its obligations under this paragraph, LMCH may remove the debris and other items and charge the Vendor the full cost of such removal including an overhead charge of 15%.
- 6.10 **FIRE PROTECTION:** The Vendor shall take all necessary precautions, as needed, in connection with providing the Deliverables to prevent the possibility of fire, including the use of fire-resistant sheets to protect adjoining areas, when welding, brazing, and performing any operations with an open flame, combustible adhesives or inflammable solvents. The Vendor shall at all times, when welding, brazing and performing and operations with an open flame, combustible adhesives or inflammable solvents keep a suitable portable fire extinguisher within three (3) meters of the operation. The Vendor shall ensure that all rags and waste containing oil, grease or other inflammable materials are stored in an approved metal container and are removed from the site at the end of each working day.
- 6.11 **CUTTING/PATCHING:** The Vendor shall not undertake any cutting, coring, drilling, grinding or the like of any portion of the building envelope or structural elements, other than those indicated in the signed Contract or Purchase Order without prior written approval of LMCH and in cases where such permission is granted, the Vendor, before commencing to cut any structural member, must provide adequate supports and precaution and install a structurally acceptable alternate system.



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- 6.12 SECURITY CLEARANCE:** Upon request by LMCH, the Vendor agrees to provide at its own cost, criminal background checks on agents, employees, sub-contractors and representatives that are providing the Deliverables on a LMCH site. Failure to provide such background checks within fifteen (15) days of LMCH's request will result in the termination of the Agreement at no cost or penalty to LMCH. Any personnel that do not possess a satisfactory background check will be barred from performing the Deliverables at LMCH's sole and exclusive discretion.
- 6.13 AODA ACCESSIBILITY REQUIREMENTS:** Vendor must strictly comply with all applicable accessibility standards required by the Accessibility for Ontarians with Disabilities Act, 2005 ("AODA") and its regulations while carrying out their obligations under any Agreement entered into with LMCH. Failure to comply with the AODA, may result in the immediate termination of any Agreements entered into with LMCH. If requested, Vendors engaging in business with LMCH shall provide documentation describing their accessibility training policies, practices and procedures, and a summary of the contents of training, together with a record of the dates on which training is provided and the number of attendees. LMCH reserves the right to require Vendors, at their own expense, to amend their accessibility policies, practices, and procedures if LMCH deems them not to be in compliance with the requirements of the AODA.
- 6.14 EMERGENCY RESPONSE PLAN: If applicable,** Vendor agrees to provide to LMCH a current Emergency Response Plan (ERP) outlining 24 hour/7 days/week contact phone numbers and emergency response contingency plans. A copy of this plan must be available and accessible on an accessible web site. LMCH shall not be obligated to follow or make use of this plan.
- 6.15 BUSINESS CONTINUITY PLAN: If applicable,** Vendor agrees to provide at LMCH request a working business continuity plan ("BCP") outlining redundant systems, back-up, secondary and recovery programs to LMCH.

7.0 VENDOR RESPONSIBILITIES

- 7.1 SUPERVISION:** The Vendor shall provide reasonable supervision, in accordance with industry standards, to its representatives at all times while the representatives are performing the Deliverables on property owned by or managed by LMCH.
- 7.2 IDENTIFICATION:** Vendor agrees and confirm that all Vendor agents, employees, sub-contractors and representatives will carry the required identification badges and properly display them at all times while on LMCH property. When required, Vendor will also ensure Vendor vehicles will be appropriately branded and carry the correct markings including Vendor name and registration numbers, if applicable (e.g., TSSA number). Should LMCH issue badges, they will be returned immediately upon completion of the contract or job. Vendors who fail to do so, shall be financially responsible for all lost or unreturned badges.
- 7.3 CONFIDENTIALITY:** The Vendor, its partners, directors, officers, appointee, employees, agents, contractors, sub-contractors, and volunteers, both during and following the term of this Agreement:
- Shall treat as confidential and secure all material and information that is the property of LMCH and in the possession or under the control of the Vendor pursuant to this Agreement; and
 - Shall not, directly, or indirectly, disclose or use any material or information belonging to LMCH pursuant to this Agreement, without first obtaining the written consent of LMCH for such disclosure of use.

Without limiting the generality of the foregoing;

- The Vendor shall not use information acquired through the performance of this assignment to gain advantage in any other project or undertaking irrespective of the topic, scale, or scope of such projects of undertakings; and
- The Vendor shall not disclose or use any privileged information that LMCH cannot or may not wish to disclose or use under the Municipal Freedom of Information and Protection of Privacy Act. Upon receipt of a written request from LMCH, the Vendor shall deliver forthwith to LMCH all material and information specified in the request that is the property of LMCH and in the possession or under the control of the Vendor. No copy or duplicate of any such material or information delivered to LMCH shall be retained by the Vendor without the prior written approval of LMCH, provided that the Vendor may retain one copy of any material or information for the purpose of defending its work product. The Vendor shall not destroy any material or information which is the property of LMCH without prior written approval.

Vendor's obligations under this Paragraph shall survive the termination or cancellation of this Agreement.

- 7.4 PRIVACY:** Vendor is required to comply with all relevant privacy legislation. The Vendor understands and agrees that this Agreement and any materials of information provided to LMCH through the performance of this Agreement



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may be subject to disclosure by LMCH pursuant to the *Municipal Freedom of Information and Protection of Privacy Act*, or otherwise.

- 7.5 **RELEASE OF INFORMATION:** Vendor shall not publish, distribute, or use any information developed under or about the existence of this Agreement, or use LMCH's name, logo or trademark for the purpose of advertising or for products or service endorsement without LMCH's prior written approval. Vendor's obligations under this Paragraph shall survive the termination or cancellation of this Agreement.
- 7.6 **LIENS:** Vendor agrees to keep LMCH's property free and clear of all liens, claims, and encumbrances arising from the performance of this Agreement by the Vendor or its sub-contractors. The Vendor shall discharge and vacate forthwith any liens or claims placed against property (real or personal) of LMCH as a direct or indirect result of the Work. The Vendor shall not be entitled to payment of the contract price or any part thereof until any and all liens arising out of or referable to or in connection with the Work, including all construction liens, and any right to such liens have expired or been vacated or discharged. The Vendor shall be solely responsible for and indemnify and save harmless and defend LMCH and its subsidiaries, related entities, affiliates, partners, members, managers, directors, officers, employees, agents and representatives' employees thereof from and against any and all such liens and rights thereto. Upon completion and final acceptance by LMCH of the Deliverables, or upon termination of this Agreement, if deemed necessary by LMCH in its sole and exclusive discretion, LMCH may withhold any amounts due or payable to Vendor until receipt of a fully executed general release of all claims by Vendor and a lien release on behalf of Vendor, its sub-contractors and suppliers. The Vendor shall include a provision satisfying the requirements of this Paragraph in all sub-contracts of Vendor under this Agreement.
- 7.7 **UNDUE INFLUENCE:** LMCH's policy is that its employees may not accept gifts, entertainment, or other gratuity (collectively, "Gratuity") from anyone contracted with, or seeking to contract with LMCH other than customary business courtesies that are reasonable in frequency and value. Vendor represents and warrants to LMCH that neither Vendor (including any of its agents, employees or representatives) nor any subcontractor has or will: a) provide, attempt or offer a Gratuity to any employee or agent of LMCH; b) solicited, accepted or attempted to accept any Gratuity; or c) included directly or indirectly the amount of any Gratuity in the price applicable to any order or subcontract under this Agreement.
- 7.8 **CONFLICT OF INTEREST:** The Vendor, any of the Vendor's advisors, partners, directors, officers, appointees, employees, agents, , contractors, sub-contractors and volunteers shall not engage in any activity or provide any services to LMCH or to any person, group or organization funded by LMCH, where such activity or the provision of such services creates, actually, potentially, or perceivably, in the sole opinion of LMCH, a conflict of interest with the provision of Deliverables pursuant to this Agreement. The Vendor acknowledges and agrees that it shall be a conflict of interest for it to use confidential information of LMCH relevant to the Deliverables where LMCH has not specifically authorized such use. The Vendor shall disclose to LMCH without delay any actual or potential situation that may be reasonable interpreted as a conflict of interest, potential conflict of interest or perceived conflict of interest. A breach of this paragraph by the Vendor shall entitle LMCH to immediately terminate this Agreement, in addition to any other remedies that LMCH has in this Agreement, in law or in equity.
- 7.9 **DATA:** Upon request from LMCH, Vendor agrees to provide LMCH with detailed information of all invoiced transactions on a monthly basis in a suitable electronic format.
- 7.10 **WARRANTY:** Vendor represents and warrants that it has authority to enter into this Agreement and to perform its obligations. Vendor represents and warrants that the Deliverables delivered pursuant to this Agreement shall be new, free from defects in workmanship, materials, and design and shall strictly conform to all the requirements of this Agreement. Vendor further represents and warrants that the performance of work and services pursuant to the requirements of this Agreement shall conform to the highest professional standards for the industry. These warranties shall survive final acceptance and payment. LMCH may elect to require Vendor to repair, replace, or reimburse that portion of the Deliverables or price (as the case may be) for nonconforming materials or finished product or service. In the case of services, LMCH may elect to require Vendor to correct the defective services at no cost or reimburse the amounts paid for such services. Vendor represents and warrants that any Deliverables furnished under this Agreement meet and comply with any and all applicable local, provincial and federal regulatory standards and/or regulations.
- If the Vendor fails or refuses to repair, replace, correct or reimburse LMCH pursuant to its warranty obligations, LMCH may correct or repair with similar Deliverables or Services and charge the Vendor for the costs incurred by LMCH in doing so, or may back charge those costs from the price of the Agreement.
- 7.11 **INDEMNIFICATION:** The Vendor shall defend, indemnify and hold harmless LMCH, its subsidiaries, related entities, affiliates, partners, members, managers, directors, officers, employees, agents and representatives from and against all actions, causes of action, liabilities, claims, suits, judgements, liens, awards and damages of any kind and natures



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whatsoever including death, property loss, damage and expenses, costs of litigation and counsel fees related thereto, sustained by the Vendor or its subsidiaries, and their directors, officers, appointees, employees, agents, contractors, sub-contractors, volunteers or any other third party that is in any way attributable to anything done or omitted to be done by the Vendor in any way related to this Agreement. The foregoing indemnity applies to all acts of the Vendors and its sub-contractors, and respective agents and employees. This indemnity shall survive the early termination or the expiry of the term of this Agreement. Vendor shall ensure and confirm to LMCH that any subcontract agreement includes an indemnification in favour of LMCH as set forth above.

8.0 LMCH RIGHTS

8.1 TERMINATION FOR DEFAULT: LMCH may terminate this Agreement, in whole or in part, immediately upon Vendor's:

- a) Breach of this Agreement; with such breach not being cured within five (5) business days from delivery of written notice of breach;
- b) Failure to make progress, which in LMCH's sole, but reasonable, discretion may endanger performance of this Agreement; or
- c) Failure to provide adequate assurance of further performance. In the event of partial termination, Vendor is not excused from performance of the non-terminated balance of Deliverables under this Agreement. In the event of Vendor's default hereunder, LMCH may exercise any and all rights if may have under law. Vendor's specified obligations under this Agreement shall survive such termination. If the Agreement is terminated in whole or in part due to Vendor default as outlined above, the Vendor shall be liable for LMCH's excess re-procurement costs and any premium costs associated with completion of the Deliverables.

8.2 TERMINATION FOR FINANCIAL RISK: LMCH may terminate this Agreement immediately in the event of: a) the appointment, with or without Vendor's consent, of any trustee, liquidator, assignee, custodian, sequestrator or receiver for any substantial portion of Vendor's assets; b) proceedings, voluntary or involuntary, in bankruptcy or insolvency, by or against Vendor; or c) Vendor's admission of inability to pay its debts generally as they come due.

8.3 TERMINATION FOR CONVENIENCE: LMCH may terminate any commitment or agreement any applicable Purchase Orders or other related contracts for convenience upon thirty (30) days written notice to the Vendor. Convenience includes, but is not limited to change in budget, change in need, change in policy, availability of resources, or environmental consideration. Vendor will be paid for any Deliverable which are properly performed or delivered prior to the termination date. On or before the termination date, Vendor will return any and all property owned by LMCH, including completed and in progress Deliverables, in whatever form or medium, to LMCH at no additional cost to LMCH beyond the contract price.

In case of termination for convenience by LMCH of all or any part of this Agreement, the Vendor may submit a claim to LMCH within 60 days after the effective date of termination for fees owing for Services provided prior to the effective date of such termination. In no event shall LMCH be obligated to pay the Vendor any amount other than those set by this Agreement for Services provided prior to the date of such termination. The provisions of this article shall not limit or affect the right of LMCH to cancel this Agreement for default.

8.4 AUDIT RIGHT: Vendor will maintain and retain complete and accurate records and documents pertaining to this Agreement and the furnishing of Deliverables to LMCH. LMCH will have access to (a) the records of Vendor, including all support documentation for the purpose of verifying any and all charges billed to LMCH under this Agreement; and (b) the records of Vendor relating to the Deliverables. Vendor will cooperate with LMCH by providing LMCH with access to Vendor's records promptly (within 10 business days) following LMCH's written request. The examination of such records will be conducted at Vendor's place of business, or such other mutually agreeable location, at expense borne by LMCH. Should a material discrepancy in pricing or invoicing arise (greater than 10% variance), all costs of the audit shall be borne by the Vendor and the amount of the discrepancy shall be refunded to LMCH within thirty (30) days. Vendor will retain such records for a period of five (5) years from the date of completion of the Deliverables.

8.5 SUSPENSION OF WORK: LMCH may, by written order, suspend all or part of the work to be performed under this Agreement for a period not to exceed one hundred (100) days. Within this time period, LMCH may (i) cancel the suspension of work order; or (ii) terminate the Agreement in accordance with either the Termination for Convenience, Termination for Financial Risk, or Termination for Convenience clauses above. The Vendor shall resume work whenever a suspension order is canceled. LMCH and the Vendor shall negotiate a reasonable and equitable adjustment in the price or schedule where performance resumes and there is a material change in the Vendor's performance costs or the Vendor's ability to meet the delivery schedule. The Vendor must submit a claim to LMCH in writing within twenty (20) days of the suspension order being canceled otherwise no claim will be accepted by LMCH.

8.6 BID PERFORMANCE EVALUATION: Pre-qualified vendors will be subject to ongoing periodic review as to the vendor's bid (RFQ) performance. Each bidder will be evaluated based on number of submissions made, and the

relative pricing submitted in comparison to the overall roster. Poor bid performance, including lack of submissions or excessive pricing, may result in the vendor's suspension from participation in LMCH projects.

8.7 PERFORMANCE REVIEWS: The Services to be provided by the Vendor will be subject to periodic review under LMCH's "Contractor Performance Evaluation" (CPE) program to ensure that the Services are performed in accordance with the contracted specifications and LMCH's policies. The results of the CPE reviews will be shared with the Shareholder and other City of London Agencies' purchasing departments. Performance records shall be maintained and shall be considered in future procurement decisions. Poor performance may result in suspension from participation in LMCH projects in accordance with LMCH's Vendor Disqualification Protocol.

9.0 MISCELLANEOUS

9.1 TIME: Time is of the essence and the Vendor's performance of its obligations pursuant to this Agreement must meet schedules, dates, and deadlines set by LMCH, and/or LMCH will be entitled to reasonable damages as a result of such failure.

9.2 ADDITIONAL TERMS: In situations where additional Terms and Conditions are presented, they will be utilized in cooperation with these terms.

9.3 FORCE MAJEURE: Notwithstanding that time shall be of the essence with respect to Vendor performance, neither party will be liable to the other for damages for failure to carry out this Agreement when the failure is due to strikes, lockouts, fires, floods, earthquakes, or other natural disasters, freight embargoes, governmental or administrative prohibitions, riots, and acts of public enemies or terrorists. A party affected by such an event will immediately notify the other, describing the event and estimating its duration. The parties will cooperate in good faith to mitigate the effects of the event. Notwithstanding, if Vendor is unable to timely honor the Agreement, LMCH will be entitled to terminate this Agreement effective upon date of notice. Or, in the alternative, LMCH may elect to seek Deliverables from another vendor without penalty and those Deliverables will count towards any volume requirements that LMCH has committed to purchase.

9.4 SEVERABILITY: If any term or provision of this Agreement is found by a court of competent jurisdiction to be illegal or otherwise unenforceable, such term or provision will not affect the Agreement's other terms of provisions, or the whole of this Agreement, but such term or provision will be deemed modified to the minimum extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties will be construed and enforced accordingly, preserving to the fullest permissible extent the intent and the agreements of the parties.

9.5 CONFLICT: In the event of conflict between any term(s) of this Agreement with any term(s) in a Vendor standard form contract or contained on a Vendor invoice, quotation, purchase order, or work order, the terms of the Agreement shall govern.

9.6 WAIVER: Waiver of any breach or failure to enforce any term of this Agreement will not be deemed a waiver of any breach or right to enforce which may thereafter occur.

9.7 SURVIVABILITY: In addition to those sections expressly noted for survival herein, other sections of this Agreement, which by their nature are intended to or could reasonably be expected to extend beyond termination, will survive any expiration or termination of this Agreement for any reason.

9.8 GOVERNING LAW: This Agreement shall be governed by, and construed in accordance with, the applicable laws of the Province of Ontario, Canada. The venue for resolution of all disputes arising from this Agreement shall be the Courts located in the city of London in the Province of Ontario.

9.9 ATTORNEYS' FEES: In the event of dispute between the parties to enforce a right or rights provided by or arising out of this Agreement, the non-prevailing party shall pay to the prevailing party reasonable attorneys' fees and other costs and expenses of enforcement proceedings. The "prevailing party" shall be the party receiving a net affirmative award or judgement.

9.10 DISPUTES: Any disputes arising under or relating to this Agreement, other than claims relating to intellectual property rights, confidentiality covenants, and requests for injunctive relief prior to the appointment of the arbitrator, shall be referred to and resolved through final and binding arbitration. Prior to the submission of the dispute to arbitration, the parties may elect to attempt to resolve the dispute through non-binding mediation and/or settlement negotiations. If the parties are unable to resolve the dispute through these alternative methods within three months of the dispute arising, either party is entitled to refer the dispute mandatory arbitration. Disputes involving less than five million dollars (\$5,000,000) may be resolved by a single arbitrator. Disputes involving more than five million (\$5,000,000) shall be heard by a panel of three arbitrators. The fees associated with mediation shall be paid equally by both parties until such a time as an award is decided. The successful party shall have any fees it has paid in



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- association with the arbitration refunded by the unsuccessful party. Pending the final resolution of any dispute, the Vendor shall proceed with performance of this Agreement and be paid by LMCH for amounts not in dispute. The resolution of any dispute by settlement negotiation, mediation, or mandatory arbitration shall be kept strictly confidential.
- 9.11 E-BID SUBMISSION DEADLINES:** The Submission Deadline for electronic bid submissions, as specified in the RFP schedule, shall be a strict deadline with no exceptions. LMCH shall not be held responsible, nor bear any liability, for Proponents who fail to submit proposals by the Submission Deadline due to technical errors such as network failures, power failures, maintenance-related shutdowns, computer failures, internet browser compatibility, mistake, error, or for any other reason whatsoever.
- 9.12 AMENDMENTS:** No agreement or any other understanding in any way purporting to modify the terms and conditions of this Agreement shall be binding upon LMCH unless agreed to in writing and signed by LMCH's authorized representative.
- 9.13 COUNTERPARTS:** The Agreement may be executed in one or more counterparts, all of which, taken together, shall constitute the entire Agreement. An electronic copy of this Agreement may be accepted as an original, and an electronic copy of the parties' signatures may be treated as original and admissible evidence of the Agreement.
- 9.14 HEADINGS:** Headings within this Agreement are for convenient reference only and have no effect in limiting or extending the language of the provision to which they refer.
- 9.15 ASSIGNMENT:** This Agreement shall be binding upon and inure to the benefit of the parties here to and their respective heirs, successors and/or permitted assigns; provided, however, that Vendor may not assign the Agreement without the prior written consent of LMCH. LMCH may assign this agreement (for itself) in whole or in part without the consent of Vendor but shall provide notice to Vendor of any such assignment prior to the date of assignment.
- 9.16 NOTICES:** Any notices or other communications contemplated or required under this Agreement, in order to be valid, shall be in writing and shall be given via personal delivery or via nationally recognized overnight courier at the addresses set forth beneath the parties' signatures below. The parties' addresses are listed at the bottom of this Agreement.
- 9.17 LANGUAGE:** "The parties acknowledge that they require that this Agreement be drawing up in the English language only. *Les parties reconnaissent qu'elles ont exigé que la présente convention soit rédigée en langue anglaise seulement.*"