



STANDARD TERMS AND CONDITIONS PURCHASE ORDER

1. GENERAL CONDITIONS

- 1.1. Definitions: In this Contract:
 - a) "Contracting Authority" means (i) a Minister or (ii) a Deputy Minister and includes a public officer who has been delegated the powers and duties of a contract officer.
 - b) "GNWT" means the Government of the Northwest Territories.
 - c) "Contractor" means the legal entity that has been awarded the contract.
 - d) "Work" means the goods, services or construction as set out herein.
- 1.2. APPLICABLE LAW: This Contract shall be interpreted and governed in accordance with the laws of the Northwest Territories and the laws of Canada as they apply in the Northwest Territories.
- 1.3. ENTIRE CONTRACT: This Contract, including the signature page, General Conditions, Supplementary Conditions and any attached schedules, comprises the entire agreement between the parties and supersedes all written or oral communications, negotiations and agreements relating to the Work made prior to the date of this Contract.
- 1.4. STATUTORY CONDITION: It is a condition of this Contract that payment hereunder is subject to Section 97 of the *Financial Administration Act*, as amended, which provides as follows: "It is a condition of every contract and other agreement made by or on behalf of Government requiring an expenditure that an expenditure pursuant to the contract or agreement will be incurred only if there is a sufficient uncommitted balance in the appropriation for the department for the Government fiscal year in which the expenditure is required under the contract or agreement"
- 1.5. INDEPENDENT CONTRACTOR: The Contractor is an independent Contractor with the GNWT and nothing in this Contract shall be construed or deemed to create the relationship of employee and employer or of principle and agent between the GNWT and the Contractor. The Contractor is solely responsible for payments of all statutory deductions or contributions including but not limited to pension plans, employment insurance, income tax, workers' compensation and Payroll Tax.
- 1.6. TIME: Time is of the essence of this contract, both with respect to times, dates, or periods specified in the contract; and any times, dates, or periods that may be substituted for any of those in the contract, by agreement between the GNWT and the Contractor.
- 1.7. IMPLIED TERMS: No implied terms or obligations of any kind by or on behalf of either Party to this Contract shall arise from anything in the Contract and the express covenants and agreements therein contained and made by the parties to this Contract are the only covenants and agreements upon which any rights against the parties are to be founded.
- 1.8. AMENDMENTS: This Contract may only be amended, extended or renewed by the written consent of the parties.



- 1.9. **SUCCESSION:** This Contract shall enure to the benefit of and be binding upon the administrators, executors, successors, and assigns of Contractor and the successors and assigns of the GNWT.
- 1.10. **SEVERENCE OF TERMS:** It is intended that all provisions of this Contract shall be fully binding and effective between the parties, but in the event that any particular provision or provisions or a part of one is found to be void, voidable or unenforceable for any reason whatever, then the particular provision shall be deemed severed from the remainder of this Contract and all other provisions shall remain in full force.
- 1.11. **ASSIGNMENT AND SUBCONTRACTING:** The Contractor shall not assign, transfer or sub-contract any of the Work to be done under this contract, or any part thereof, to any Party without prior written consent of the GNWT. If, with the consent of the GNWT the Work or any part thereof is performed by a subcontractor, the Contractor shall be fully responsible to the GNWT for the acts and omissions of the sub-contractor and all its officers, servants and agents. In the case of a proposed assignment of monies owing to the Contractor under this contract, the Contractor acknowledges that the consent in writing of the Comptroller General of the GNWT must be obtained in accordance with s.130(3) of the *Financial Administration Act*.
- 1.12. **WAIVER OF BREACH:** No waiver by either Party of any breach of any term, condition, or covenant of this Contract shall be effective unless the waiver is in writing and signed by both parties. A waiver, with respect to any breach shall not affect the rights of the Parties relating to other or future breaches.
- 1.13. **PERFORMANCE:** The failure of either Party at any time to require the performance of any provision or requirement of this Contract shall not affect the right of that Party to require the subsequent performance of that provision or requirement.
- 1.14. **NOTICE:** Any notice required to be given herein or any other communication to either Party pursuant to this Contract shall be in writing and shall be personally delivered, sent by facsimile, email, or posted by prepaid registered mail at the address on the front of this contract.
- 1.15. **GOODS & SERVICES TAX:** The GNWT certifies that the Work to be purchased from the Contractor will be purchased with government funds and are not, therefore, subject to the Goods and Services Tax (GST) or the Harmonized Sales Tax (HST). Even though the Contractor will not charge GST or HST, the Contractor may be eligible to receive input tax credits with respect to any GST or HST liability incurred in providing the Work if such a refund would be available in other circumstances. It is the sole responsibility of the Contractor to determine if input tax credits are available in respect of the provision of the Work to the GNWT. The GNWT will not compensate the Contractor for any GST or HST liability incurred in the provision of the Work.
- 1.16. **HARASSMENT FREE AND RESPECTFUL WORKPLACE:** The parties and their employees, agents, and representatives shall observe and be bound by the Harassment Free and Respectful Workplace Policy of the GNWT as it applies to this Contract. A copy of the Harassment Free and Respectful Workplace Policy can be found at the following website: <http://www.hr.gov.nt.ca/policy/>. The Contractor shall, upon the request of the GNWT,



remove from any GNWT work site where the Contract work is being performed, any person employed by it for the purposes of the Contract who, in the opinion of the GNWT, has violated the Harassment Free and Respectful Workplace Policy.

- 1.17. ACCESS TO INFORMATION: All information, including documents, submitted to the GNWT are in the custody and control of the GNWT and thus subject to the protection and disclosure provisions of the *Access to Information and Protection of Privacy Act*. This Act allows any person a right of access to the records in the custody or under the control of a public body subject to limited and specific exemptions.
- 1.18. VENDOR COMPLAINT PROCESS: The GNWT has in place a Vendor Complaint Process (VCP). The VCP is intended to provide access to a consistent, fair & timely process to deal with vendor complaints concerning the GNWT's procurement process and to identify ways to make improvements to the process. Vendors can obtain a copy of the VCP at: https://www.inf.gov.nt.ca/sites/inf/files/vendor_complaint_process.pdf.

2. CONTRACTOR RESPONSIBILITIES

- 2.1. EQUIPMENT: The Contractor shall furnish all tools, equipment, labour, supervision, materials and other supplies and services necessary for the execution and completion of the Work, at the Contractor's sole expense, unless otherwise specified in writing to the contrary.
- 2.2. SUBCONTRACTORS: The Contractor shall ensure that any subcontractors engaged to perform any portion of the Work will be bound by the terms and conditions essentially the same as those in this contract, to the extent that they are applicable to the goods or services provided by the subcontractor.
- 2.3. COMPLIANCE WITH LAWS: The Contractor shall comply with all legal requirements, and shall have and maintain, at its cost, all permits, licences and fees required for the performance of the Work.
- 2.4. INDEMNITY: The Contractor shall defend, indemnify and hold harmless the GNWT, its Ministers, officers, employees, servants and agents from and against all claims, actions, causes of action, demands, costs, losses, damages, expenses, suits or other proceedings by whomever made, brought or prosecuted in any manner based upon or related wholly or partially to the acts or omissions of the Contractor in its performance of this Agreement. The obligation to indemnify and hold harmless shall not apply to the extent that a court of competent jurisdiction finally determines that such losses or damages were caused by the intentional or negligent acts or omissions of the GNWT, its Ministers, officers, employees, servants or agents.
- 2.5. WORKERS' SAFETY AND COMPENSATION COMMISSION: The Contractor shall, at its own expense, obtain Workers' Safety and Compensation Commission coverage for itself, all employees and partners, or other individuals employed or engaged in the execution of the work and shall ensure all approved subcontractors obtain compensation coverage. The Contractor shall conform and comply with all conditions set forth in the *Workers' Compensation Act* and Regulations pursuant hereto, and pay all assessments pursuant to the said Act.



- 2.6. **RECORDS:** The Contractor shall keep proper accounts and records of this Contract for a period of 3 years after the expiry of this agreement. At any time during the term of this Contract or the three years after the expiry of this contract, the Contractor, upon request of the GNWT shall produce such accounts and records.
- 2.7. **CONFIDENTIALITY:** The Contractor shall ensure that all and any information related to the affairs of the GNWT to which the Contractor becomes privy as a result of this contract, is confidential and shall be treated as confidential during and after the term of this Contract and shall not be divulged, released or published without the prior written approval of the GNWT.
- 2.8. **NOTICE OF CLAIM:** The Contractor shall give notice to the GNWT immediately of any claim, action, or other proceeding made, brought, prosecuted, or threatened in writing to be brought or prosecuted that is based upon, occasioned by or in any way attributable to the performance or non-performance of the service under this contract.
- 2.9. **INVOICING:** The Contractor must submit to the GNWT an invoice in satisfactory form upon completion of the Work or at other times as required.
- 2.10. **INTELLECTUAL PROPERTY:** Title to any report, drawing, photograph, plan, specification, model, prototype, pattern, sample, design, logo, technical information, invention, method or process and all other property, work or materials which are produced by the Contractor in performing the Contract or conceived, developed or first actually reduced to practice in performing the Contract (herein called "the property") shall vest in the GNWT and the Contractor hereby absolutely assigns to the GNWT the copyright in the property for the whole of the term of the copyright.

3. GNWT RIGHTS AND OBLIGATIONS

- 3.1. **BREACH OF CONTRACT:** The GNWT, having given written notice of a breach, may withhold or hold back in whole or in part any payment due the Contractor without penalty, expense or liability, if in the opinion of the Contracting Authority, the Contractor has failed to comply with or has in any way breached an obligation of the Contractor. Any such holdbacks shall continue until the breach has been rectified to the satisfaction of the GNWT.
- 3.2. **DEFAULT:** In the event that the Contractor is, in the opinion of the Contract Authority, in default in respect of any of the obligations under this Contract hereunder the GNWT may do any act it deems necessary to rectify such default and may deduct or set off the cost of such rectification against any amount or payment due to the Contractor.
- 3.3. **SET OFF:** The GNWT may set off any payment due to the Contractor pursuant to this Agreement against any monies owed by the Contractor to the GNWT only in accordance with Section 57 of the NWT *Financial Administration Act*, which provides that:

The Comptroller General may retain money by way of deduction or set-off out of money payable to a person by Government out of the Consolidated Revenue Fund or by a public agency, if (a) that person owes money to Government or a public agency; (b) Government or a public agency has made an overpayment to that person; or (c) that person received an accountable advance and has not repaid or accounted for it.



- 3.4. **TERMINATION:** The GNWT may terminate this Contract at any time, upon giving written notice to this effect to the Contractor if, in the opinion of the Contracting Authority: the Contractor is unable to perform the Work as required; the Contractor's performance of the Work is faulty; the Contractor becomes insolvent or commits an act of bankruptcy; in the event any actual or potential labour dispute delays or threatens to delay timely performance of this contract; or the Contractor defaults or fails to observe the terms and conditions of this Contract in any material respect. This Contract shall terminate as of the day for termination set out in the written notice.
- 3.5. **PAYMENT:** Upon completion of the Work, or any agreed upon part thereof, and provided all terms and conditions hereof on the part of the Contractor have been complied with, the GNWT shall pay each invoice from the Contractor within thirty (30) calendar days after its receipt, or thirty (30) calendar days after delivery of the Work, whichever is later. Invoices from Northern Contractors (as defined by the GNWT Business Incentive Policy, 63.02) will be paid twenty (20) calendar days after receipt of the invoice, or twenty (20) calendar days after delivery of the Work, whichever is later.
- 3.6. **LIABILITY:** The GNWT, its servants and agents, shall not be liable to the Contractor, its officers, servants, agents or subcontractors for any loss, damage or injury (including death) or for any loss or damage to the property of the Contractor, or property of others for which the Contractor is responsible, how ever arising or in any manner based upon, arising from or attributable to the performance of this contract; and the Contractor waives all rights and recourse against the GNWT for any such loss, damage, or injury or loss or damage to the Contractor's property or property of others for which the Contractor is responsible.

4. TERMS AND CONDITIONS – GOODS SUPPLY

- 4.1. The Contractor shall provide the goods set out herein to the full satisfaction of the GNWT.
- 4.2. Goods supplied will be subject to inspection and may be rejected if they do not meet specifications or are in any way unfit for the purpose or use intended, and shall be returned to the Contractor at no cost to the GNWT
- 4.3. The GNWT shall not accept any condition or reservation, customary or otherwise, subject to which the Contractor may purport to sell, ship or deliver the goods other than those stated herein.
- 4.4. The reference numbers on contracts must be clearly shown on all invoices, packing slips, express receipts, Bills of Lading, and on all packing cases and each separate piece of material, as well as all relevant correspondence. Invoices shall include Contract reference numbers and list all goods supplied, and where available, corresponding serial numbers are to be included with all goods listed.
- 4.5. Failure to comply with any condition may result in cancellation of the Contract with no liability on the part of the GNWT for any losses, damages, expenses or costs incurred by the Contractor.



- 4.6. Delivery of the goods required must be made within the time and manner stipulated in the Contract documents.
- 4.7. The Contractor shall ensure the GNWT receives the manufacturer's warranty for the goods purchased notwithstanding any manufacturer's warranties the Contractor agrees to warrant and assume responsibility for all goods (including hardware, firmware, and/or software products) that it licenses, contracts or sells to the GNWT.
- 4.8. The Contractor warrants that all goods delivered are new, free from defects and conform to specifications, drawings and samples specified by the GNWT; that his warranty shall survive any inspection, delivery, acceptance, or payment made by the GNWT of or for the materials and the purchaser may reject and return, at the risk and expense of the Contractor, any goods which are defective, or do not comply with the said specifications, drawings or samples.
- 4.9. The Contractor shall maintain the following insurance coverage, as applicable for the activity under contract, for the duration of this Contract:
 - Commercial General Liability Insurance with a limit of not less than \$2,000,000 inclusive per occurrence for bodily injury, death and damage to property including loss of use thereof
 - Automobile Liability Insurance in respect of the Contractor's owned and leased vehicles with limits of not less than \$1,000,000 inclusive per occurrence for bodily injury, death, and damage to property.