



**Toronto and Region Conservation Authority (“TRCA”)
PURCHASE ORDER Terms and Conditions (SERVICES)**

The following constitute the terms and conditions relating to the attached purchase order (the “PO”) and acceptance of this PO shall bind the seller described in such PO (“Supplier”), unless TRCA and Supplier are parties to a written agreement covering the purchase of the Services (as defined below) ordered hereunder (a “Master Agreement”), in which case the Master Agreement shall take precedence. Any terms proposed in Supplier’s acceptance of this PO which add to, vary from, or conflict with the terms herein are hereby rejected (but such proposed terms shall not operate as a rejection of this PO) unless such variances or conflicts are in the terms of description of the Services, or the price or delivery schedule of the Services, and specifically approved in writing by TRCA.

1. **Provision of Services.** Supplier shall provide TRCA with certain services and Deliverables (as defined below) as set forth in the PO, and any services, functions or responsibilities not specifically described therein that are an inherent, necessary or customary part of such services and are reasonably required for proper performance of the services (collectively, the “**Services**”). The Services may involve the creation by Supplier of deliverables and work product, such as reports or written or electronic materials, for use by TRCA (collectively, the “**Deliverables**”).

2. **Supplier Performance.** Supplier shall perform the Services, its responsibilities and obligations: (a) in a timely and professional manner in accordance with applicable professional and industry standards, (b) in compliance with all applicable laws, and (c) within any time, schedule, completion requirements and any other requirements specified in the PO. Unless stated in the PO, Supplier shall be responsible for obtaining all necessary licences and permits required under applicable law to perform any Services, and shall supply all labour, materials, tools, equipment, permits and supervision for the complete and satisfactory performance of the Services. Supplier agrees to replace or correct defects in the Services or Deliverables at no charge to TRCA. If Supplier does not correct or replace such defects following reasonable notice by TRCA, TRCA may make such corrections or perform such Services at the expense of Supplier. All other representations, warranties and conditions, including those implied by statute, are disclaimed.

3. **Third-Party Warranties.** All warranties or guarantees received by Supplier from third parties in connection with the Services or Deliverables shall be transferred and assigned to TRCA or if not transferable shall be held by Supplier for and on behalf of TRCA.
4. **Subcontracting.** Supplier shall not subcontract any material portion of the Services without the written consent of TRCA. Any subcontracting of the Services by Supplier shall be pursuant to a written agreement between Supplier and the subcontractor containing terms and conditions that are consistent with this Agreement, and Supplier shall be responsible for the performance of any of its subcontractors.
5. **TRCA Premises.** Where any Services occur at TRCA premises, Supplier shall: (a) comply with rules and policies of TRCA while on the premises, (b) protect the property where the Services are being performed from damage by the Services, (c) repair all damage resulting from same, (d) keep in a safe, neat, and tidy condition the area where the Services are being performed, and (e) perform the Services with minimum disturbance and interference to TRCA's operations. Supplier shall be responsible for any spill or release of toxic or hazardous substances or materials caused by persons for whom it is responsible, including the immediate clean-up, repair, reporting (as required by applicable law), and compensation for all injuries caused.
6. **Payment.** Amounts billed for Services shall be payable Net 30 days unless otherwise stipulated in the PO. No additional charges will be accepted by TRCA unless specifically stated in the PO.
7. **Set Off.** TRCA may setoff amounts owing to Supplier under this PO against amounts owed by Supplier to TRCA under this or any other transaction.
8. **Termination.** TRCA may terminate this PO in its sole convenience, in whole or in part, at any time. In the event of such termination, (a) Supplier shall immediately cease delivery of the Services, (b) TRCA will pay a reasonable termination charge for partially completed Deliverables at its discretion (which will be promptly delivered to TRCA), and for Services delivered to TRCA, based on the percentage of work completed prior to the notice of termination. The foregoing is TRCA's sole liability on termination of this PO for TRCA's convenience.
9. **Acceptance and Cancellation.** TRCA reserves the right to cancel all or any part of the PO if such order is not delivered as specified in the PO and if Supplier fails to promptly remedy any deficiency to TRCA's satisfaction (acting reasonably) following TRCA's notice of same, taking into account the delivery and other timelines specified in the PO and that time is of the essence. In the event of such cancellation, TRCA shall have no liability to Supplier other than to pay the amounts set out in this PO for Services completed to TRCA's

satisfaction (provided that if the PO sets out multiple types of Services, those completed Services are of benefit to TRCA in light of the Services that are not completed).

10. **Time.** Supplier acknowledges that time is of the essence with respect to delivering the Services. Any failure to meet the stipulated delivery date shall entitle TRCA to cancel the PO without liability of any kind.

11. **Intellectual Property.** Unless otherwise stated in the PO: (a) all right, title and interest in the Deliverables, including all intellectual property rights in the Deliverables, shall be the exclusive property of TRCA, (b) Supplier agrees to and does hereby assign to TRCA all of its rights, title, interests in the Deliverables, including all intellectual property rights in the Deliverables – and warrants that it has obtained unlimited waivers of moral rights from all persons involved in Deliverables which may be protected by copyright. Supplier shall execute such documents, render such assistance, and take such other actions as TRCA may reasonably request, at Supplier’s expense, to obtain, perfect, maintain, defend and enforce the foregoing rights in and to the Deliverables.

12. **Supplier Workers.** Supplier shall be responsible for all costs of employment (including all federal, provincial and local income tax payments) and workers’ compensation insurance for all of its personnel.

13. **Insurance.** For the duration of all activities under this PO, Supplier shall maintain the following insurances with an insurance carrier acceptable to TRCA (i) commercial general liability insurance for a minimum of \$2,000,000 per occurrence and \$2,000,000 in the aggregate (ii) comprehensive professional liability (errors and omissions) insurance with a limit of not less than \$2,000,000 per claim and \$2,000,000 in the aggregate (iii) such other insurance in such amounts as is reasonable given the nature of Supplier’s activities related to the PO and (iv) any other insurance requested by TRCA related to the Services and Deliverables. Supplier shall provide to TRCA evidence of its insurance coverage promptly upon TRCA’s request.

14. **WSIB.** If the services involve construction, Supplier must (a) be registered with the Workplace Safety and Insurance Board (“WSIB”) as an “employer”; (b) maintain registration as an “employer” with the WSIB during the duration of the Services; (c) prior to commencing performance of the Services, provide TRCA with a copy of a valid current WSIB clearance certificate indicating its WSIB firm number and account number and that its account is in good standing; and (d) provide TRCA with a new clearance certificate no later than seven (7) days before the expiration of the most recent clearance certificate provided to TRCA. Notwithstanding the foregoing, if Supplier is recognized by WSIB as an “independent operator”, it must provide TRCA with a letter from WSIB acknowledging

independent operator status and confirming that WSIB coverage is not required, which must be provided prior to commencement of the Work/Services. Upon TRCA request, Supplier shall, at its own expense, obtain an account for optional insurance coverage from WSIB.

15. **Confidentiality.** Supplier agrees to maintain in confidence and not disclose to any third party any confidential information which it may have received from or on behalf of, or compiled for, TRCA, except as required by law, and subject to prior notice to TRCA. Supplier will promptly report any actual or reasonably suspected loss, theft or breach of TRCA confidential information to TRCA. Supplier will only use such confidential information for the purpose of performing its obligations under this PO.

16. **Indemnification.** Supplier shall indemnify and hold TRCA and its affiliates, and their respective directors, officers, employees and agents harmless for any claims, demands or actions of any sort (including reasonable professional fees) which may be made as a result of, arising from or relating to (i) any defect in the Services or Deliverables, (ii) any breach of or non-compliance with any of the terms of this PO, (iii) allegations that the Services or Deliverables infringe or violate any third party's proprietary intellectual property or other rights, or (iv) any negligence by Supplier or persons for whom it is responsible in connection with this PO.

17. **Assignment.** Supplier shall not assign any of its rights or obligations under the PO without the prior written consent of TRCA.

18. **Entire Agreement.** This PO and any documents referred to herein, constitute the entire agreement between the parties related to the subject matter described herein.

19. **Limitation of Liability.** Except in connection with breach of privacy or confidentiality, or intellectual property infringement: (a) in no event shall either party be liable to the other for anticipated profits or for indirect or consequential damages, and (b) each party's liability to the other in connection with or resulting from this PO shall be limited to the value of this PO.

20. **Waiver.** TRCA's failure to insist on performance of any terms and conditions herein in a specific instance or to exercise any right or privilege or waiver of a certain breach hereunder shall not constitute a waiver of any other terms, conditions, rights or privileges.

21. **Independent Contractor.** Supplier is an independent contractor and not an employee, partner or agent of TRCA. Supplier is not authorized to enter into any contract or assume any obligation on behalf of TRCA.

22. **Choice of Law.** This PO shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.